

**The Republic of the Philippines**

**Sale of the**

***Manila Thermal Power Plant (MTPP) Land  
located at  
Isla de Provisor, Paco, Manila***



**The Bidding Procedures**

05 December 2017

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## **BIDDING PROCEDURES**

### **SALE OF MANILA THERMAL POWER PLANT LAND LOCATED AT PACO, MANILA**

**This Bidding Procedures govern the bidding for the sale of Manila Thermal Power Plant Land located at Paco, Manila (the “Property”).**

### **BID TERMS AND SPECIFICATIONS**

#### **PART I - INSTRUCTIONS TO BIDDERS**

##### **IB-01 REQUIREMENTS FOR ISSUANCE OF THE BIDDING PACKAGE**

The Bidding Package is issued by the Privatization, Bids and Awards Committee (“PBAC”) of the Power Sector Assets and Liabilities Management Corporation (“PSALM”) to Interested Parties/Bidders who want to bid for the sale of the Property.

The Bidding Package consists of the following:

- A. The Bidding Procedures, which is composed of:
  - 1. Bid Terms and Specifications
    - a) Part I - Instructions to Bidders
    - b) Part II - Definitions and Construction
  - 2. Bid Form (Form No. 1)
  - 3. Site Visit Request Form (Form No. 2)
  - 4. Form of Waiver of Rights to Seek Legal Remedies (Form No. 3)
  - 5. Representations and Warranties Form (Schedule 1)
  - 6. Form of Acceptance of Bidding Procedures (Schedule 2)
  - 7. Statement Under Oath (Schedule 3)
  - 8. Form of Authorization to Verify (Schedule 4)
  - 9. Tabular Form of Bidder’s Comments to the Deed of Absolute Sale/Deed of Conditional Sale (DOAS) (Schedule 5)
  - 10. Form of Bid Security Issued by a Bank Licensed to Do Business and is Operating in the Philippines Bid Security (Schedule 6)
  - 11. Draft Deed of Absolute Sale (DOAS)(Schedule 7)
  
- B. Property Profile

The Bidding Package shall be issued to Interested Parties in accordance with the Invitation to Bid published on 05-06 December 2017 in three leading newspapers of general circulation, and on the PSALM website (<http://www.psalm.gov.ph>), upon payment of a non-refundable fee of Philippine Pesos One Hundred Thousand

(PhP100,000) (the “Participation Fee’). The Bidding Package shall be issued from 05 December 2017 until two (2) days before the Bid Submission Deadline.

Interested Parties may purchase the Bidding Package at the PSALM Office from 05 December 2017 until two (2) days before the Bid Submission Deadline, from 9:00 AM to 5:00 PM.

Interested Parties are required to acknowledge receipt of the Bidding Package and accept its terms and conditions through its submission of the form attached as Schedule 2 (Form of Acceptance of Bidding Procedures). Only those that have submitted the Form of Acceptance of the Bidding Procedures shall be considered eligible and allowed further participation in the Bidding Process.

## **IB-02 ADDENDA AND CLARIFICATION OF THE BIDDING PROCEDURES**

The PBAC reserves the right to amend, revise, supplement, modify or clarify the Bidding Procedures through a Supplemental Bid Bulletin (SBB), a copy of which will be made available to all Bidders. The SBB, upon its issuance, shall automatically be incorporated in and made an integral part of the Bidding Procedures. It shall be the Bidder’s responsibility to inquire into and secure the SBB that the PBAC may issue.

Failure of a Bidder to secure the SBB and acknowledge receipt and acceptance of the terms and conditions of each SBB on the space provided in the transmittal letter shall constitute a waiver of its right to be informed of its contents. The Bidder shall take into account the information and procedure set forth in the Bidding Package, including the Bidding Procedures and SBBs, in preparing its Bid.

Any request for clarification on any of the provisions of the Bidding Procedures should be immediately relayed to the PBAC Chairman on or before the Pre-bid Conference. Any further revision or clarification on the Bidding Procedures shall be contained in an SBB for the general information of all Bidders.

Any deviation of a Bid from the Bidding Procedures shall render the Bid unresponsive, resulting in the disqualification and/or rejection of the Bid.

Nothing contained in this Section shall impair the rights reserved by the PBAC in the Invitation to Bid and the Bidding Procedures.

## **IB-03 BIDDING SCHEDULE**

The schedule and process for the Bidding (Bidding Schedule) are as follows:

<b>Activity</b>	<b>Date</b>
Publication of Invitation to Bid	05-06 December 2017
Issuance of the Bidding Package (Bidding Procedures, Property Profile)	9:00 AM to 5:00 PM, 5 December 2017 to 22 January 2018

<b>Activity</b>	<b>Date</b>
Due Diligence Period	05 December 2017 until two (2) Business Days prior to Bid Submission Deadline
Pre-bid Conference	2:00 PM, 21 December 2017
Bidders' Comments Deadline on the Bidding Procedures and/or DOAS/DOCS	5:00 PM, 29 December 2017
Bid Submission Deadline	12:00 NN, 24 January 2018
Post-qualification	Within five (5) Business Days after Bid Opening
Issuance of Notice of Award	Within fifteen (15) Business Days after the declaration of the Highest Bidder
Buyer's Remittance to PSALM of the full Purchase Price / Execution of DOAS	Within ten (10) Business Days from issuance of NOA
PSALM Execution of the Deed of Absolute Sale	Within five (5) Business Days from Receipt of Receipt of Payment and BUYER-executed DOAS
Turnover of the Property	After execution of DOAS by BUYER and SELLER.

The PBAC may change the Bidding Schedule without prior notice. Bidders will be notified promptly of any change in the schedule through SBBs.

All references to times and dates shall refer to Philippine Standard Time, unless otherwise expressly specified in writing. If any of the dates should fall on a holiday, the deadline shall be extended to the same time of the immediately succeeding Business Day. The PSALM Office on the 3<sup>rd</sup> Floor National Transmission Corporation (TransCo) Bldg., Power Center, Quezon Ave. corner BIR Road, Diliman, Quezon City, Philippines shall be the venue of all the foregoing activities, unless otherwise expressly specified in writing.

#### **IB-04 SUBJECT OF THE BID/BACKGROUND OF THE PROPERTY**

The Bid shall cover the sale of 20,975 square meters more or less, of land (the "*Property*") as enumerated and described in the Invitation to Bid and the Property Profile issued to Bidders as part of the Bidding Package. PSALM reserves the right to withdraw, without prior notice, any or all properties offered for sale at any time before the Bid Submission Deadline.

[See Property Profile]

#### **IB-05 CONDITIONS OF THE SALE**

- 1. The sale shall be for CASH, and on an "As Is, Where Is" basis.**

The sale of the Property is on an "As Is, Where Is" basis. The descriptions in the Invitation to Bid, and in the Property Profile, are based on documents in

the custody of PSALM, which might differ from the actual description, status, and physical condition of the Property. In all cases, Interested Parties should conduct their own investigation and analysis of the Property, their condition and prospects, and of the data set forth in the Property Profile.

The term “As Is, Where Is” shall refer not only to the description and physical condition of the Property and its contents or inclusions at the time of the bidding, if any is declared to be part of the sale, but also to the condition of the title of the Property or other evidence of ownership and the extent and state of whatever rights, interest and participation over the property PSALM may have at the time of bidding.

The term “As Is, Where Is” shall also include the Winning Bidder’s assumption of all unpaid taxes, fees and/or expenses, such as but not limited to, capital gains tax or creditable withholding tax, whichever is applicable, documentary stamp tax, registration and transfer fees, association or condominium fees and/or assessments, and all other expenses and charges to, as applicable, cause the transfer of the title to the winning Bidder. The Bidder shall already include Value Added Tax (VAT) in its/his/her Bid Price.

PSALM shall not be liable in any way for the presence of any unauthorized person or illegal occupant on the property or removal of any structure, improvement, receptacle, and waste, if any, it being clearly agreed upon that it shall be the responsibility of the winning Bidder, at its/his/her own expense, to evict/clear said illegal occupant, structure, receptacle, and waste from the premises. Identification, location, and survey of the property shall be the responsibility of the winning Bidder at its/his/her sole expense.

The Bidder/s shall be responsible in taking steps to determine the actual condition, site, area, shape, and other circumstances of the property.

2. **Currency.** All bids shall be expressed in Philippine Pesos only.
3. **Bid Security.** The Bid Security shall be in an amount at least equal to ten percent (10%) of the Bid Price, and shall be in the form of cash, cashier’s or manager’s check, or stand-by letter of credit issued by any commercial or universal bank licensed to do business and operating in the Philippines.
3. **Payment.** Within ten (10) Business Days from the date of the Notice of Award, the Buyer shall pay a one-time full payment of the Purchase Price in accordance with the payment instruction to be issued by PSALM.
4. In case the Winning Bidder fails to submit the DOAS and the full payment of the Purchase Price within 10 business days from the receipt of the Notice of Award and DOAS for signing, PSALM shall cancel the sale and forfeit the Bid Security thereof.

## **IB-06 ELIGIBLE BIDDER**

Any person (natural or juridical) authorized by law to acquire, own, hold or develop real properties in the Philippines may be allowed to participate in the public bidding.

1. Individual Buyer/Sole Proprietorship (Filipino Citizen)
2. Corporations/partnerships duly registered and organized under the laws of the Philippines and at least 60% Filipino-owned.
3. An incorporated joint venture (JV) or consortium of local individuals/entities, i.e., a group of 2 or more persons/entities with the intention to be jointly and severally responsible or liable for the particular transaction with PSALM.
4. A joint venture of local entity/ies with a foreign entity/ies licensed to do business in the Philippines provided there is a written Joint Venture Agreement/Memorandum of Agreement/Understanding for the purpose of acquiring the PSALM Property/ies, provided further that the ownership of such joint venture shall not be in violation of existing laws restricting foreign ownership of land in the Philippines and provided finally that should the joint venture be declared as the Winning Bidder/Buyer, it shall organize or incorporate under Philippine Laws to qualify with the constitutional requirement to contract and acquire real property in the Philippines, within a non-extensible period of thirty (30) working days from the date of receipt of the Notice of Award.
5. Government corporate entities may be eligible to participate only if they can establish that they (a) are legally and financially autonomous, (b) operate under commercial law, and (c) are not dependent agencies of the Government of the Philippines or of PSALM.
6. Local Government Units (LGU's) may be eligible to participate only if they can provide (a) Resolution of the Sanggunian authorizing the Local Chief Executive to enter into a contract of sale, (b) Ordinance appropriating the amount to pay for the purchase of the Property, and (c) a Certification of the Local Treasurer as to availability of funds.
7. PSALM personnel and their relatives up to the 2nd degree of affinity or consanguinity shall be ineligible to bid, including corporations, partnerships or joint ventures participating in the bidding process owned or partially owned by PSALM personnel and their relatives within the 2nd degree of affinity or consanguinity.

## **IB-07 DUE DILIGENCE**

Bidders shall be allowed to conduct due diligence during Business Days from 05 December 2017 until two Business Days prior to Bid Submission Deadline.

Each Bidder shall be solely responsible for its own due diligence of the Property and all matters relating to this Bidding Procedures which may, in any manner, affect the nature of its bid. PSALM shall not be responsible for any erroneous interpretation or conclusion by the Bidder out of the data furnished or indicated in this Bidding Procedures and official eligibility and bid proposal forms, including addenda, amendments or Bid Bulletins issued by the PBAC. Failure of the prospective Bidders

to examine and inform itself shall be at its sole risk and no relief for error or omission shall be given.

The Bidder shall investigate the Property, existing structures and improvements, if any, facilities, and utilities as to all topographical, geological, and other conditions thereat that may affect directly or indirectly the full implementation of the proposed sale and to carefully examine conditions of the Property and its surrounding vicinities affecting the actual execution of the sale and such other information as to allow the Bidder to make a competitive estimate. The Bidder, by the act of submitting its bid proposal, acknowledges that it has inspected the Property, its existing structures and improvements, if any, facilities, and utilities and accepted all the terms and conditions for this public bidding as set forth in the Bidding Procedures.

No verbal agreement or conversation with, nor any verbal clarification from, PSALM, NPC, the PBAC, their directors, officers, employees, advisors, consultants, and agents shall affect or modify any of the terms and conditions contained in this Bidding Procedures. Only amendments, supplements or clarifications to this Bidding Procedures that are set down in the Supplemental Bid Bulletin/s issued to Bidders who have purchased the Bidding Procedures shall be relied upon as authorized.

The Bidders are responsible for having taken steps to carefully examine this Bidding Procedures including its attachments and deemed to have become familiar with all existing laws, decrees, ordinances, acts, rules, and regulations which may affect this Bidding Package.

A Bidder who shall opt to conduct its due diligence shall accomplish Form No. 2 - Site Visit Request Form. The Bidder shall bear all costs and risks associated with the conduct of due diligence, and preparation and submission of the bid.

#### **IB-08 PRE-BID CONFERENCE**

Bidders are encouraged to attend the Pre-bid Conference at 2:00 PM on 21 December 2017 to discuss the Property, the Bidding Package and other possible questions and/or clarifications from Bidders. Non-attendance of the Bidder will in no way prejudice its bid, however, the Bidder is expected to know the changes and/or amendments to the Bidding Procedures discussed during the Pre-Bid Conference.

Any statement made at the Pre-bid Conference shall not modify the terms of the Bidding Procedures, unless such statement is issued through an SBB.

#### **IB-09 PREPARATION AND CONTENTS OF BIDS**

Bids shall be composed of two (2) separate envelopes containing the First Bid Envelope (Eligibility Component) and the Second Bid Envelope (Financial Component).



1. The First Bid Envelope shall be marked “Eligibility Component” and shall contain the following Eligibility Documents:

a. For Individuals

- i. Duly accomplished Representations and Warranties Form (Schedule 1)
- ii. Copies of Two (2) valid government-issued IDs
- iii. Certificate of Employment and Compensation, if employed.
- iv. Certified True Copy of Latest Income Tax Return (ITR)
- v. Certification from at least one (1) commercial/universal bank, legally operating in the Philippines, stating that the Bidder is known to them, maintains a deposit account with them and is in good financial credit standing
- vi. Letter authorizing PSALM representative/s to verify the validity of all documents submitted (Schedule 4)
- vii. Certification under oath of the Bidder that all documents submitted in satisfaction of the eligibility requirements is original/authentic copy of the original, and that all statements and information provided therein are true and correct (Schedule 3)
- viii. Waiver of Rights to seek legal remedies (e.g. Temporary Restraining Order (TRO), law suits, etc.) to prevent PSALM from awarding and executing a contract with the Winning Bidder/Buyer; (*PSALM Form No. 3*)

b. For Sole Proprietorship

- i. Duly accomplished Representations and Warranties Form (Schedule 1)
- ii. Certified True Copy of DTI Registration and Business Profile
- iii. Certified True Copy of Latest Audited Financial Statement (for previous year. See wording in other Bidding Docs)
- iv. Certified True Copy of latest Income (previous year)/Business Tax Return (ITR/BTR) and Tax Clearance valid up to Bid Submission Deadline.
- v. Certified True Copy of Mayor’s/Business Permit issued by the City or Municipality where the principal place of business of the prospective Bidder is located
- vi. Certification from at least one (1) commercial/universal bank, legally operating in the Philippines, stating that the Bidder is known to them, maintains a deposit account with them and is in good financial and credit standing
- vii. Letter authorizing PSALM representative/s to verify the validity of all the documents submitted
- viii. Certification under oath of the Bidder that all documents submitted in satisfaction of the eligibility requirements is original/authentic copy of the original, and that all statements and information provided therein are true and correct
- ix. Waiver of Rights to seek legal remedies (e.g. Temporary Restraining Order (TRO), law suits, etc.) to prevent PSALM from awarding and

executing a contract with the Winning Bidder/Buyer; (*PSALM Form No. 3*)

c. For Corporation/Partnership/Joint Venture (JV)/Consortium

- i. Duly accomplished Representations and Warranties Form (Schedule 1)
- ii. Certified True Copy of SEC Registration and Company Profile of the Bidder; or in case of a foreign entity, at least 60% Filipino-owned and licensed to do business in the Philippines
- iii. Certified True Copy of Articles of Incorporation/Partnership, By-Laws of the Bidder, as amended, if any;
- iv. Certified True Copy of Mayor's/Business Permit issued by the City or Municipality where the principal place of business of the prospective Bidder is located;
- v. Certified True Copy of Latest Audited Financial Statement;
- vi. Certified True Copy of Income/Business Tax Returns and Tax Clearance issued by the Bureau of Internal Revenue (BIR);
- vii. Certification from at least one (1) commercial/universal bank, legally operating in the Philippines, stating that the Bidder is known to them, maintains a deposit account with them and is in good financial and credit standing;
- viii. Board Resolution duly certified by the Bidder's Corporate Secretary expressly authorizing the Bidder's/Corporation's participation in the bidding process, nominating, appointing, and authorizing a representative to communicate, represent, sign and execute contracts and other documents relative thereto;
- ix. If a JV or Consortium, the Bidder (including all its JV/Consortium members) shall submit a copy of the duly notarized JV Agreement/Memorandum of Agreement (MOA)/Understanding (MOU) which:
  - a. Briefly describes the JV/Consortium, the individual members of the JV/Consortium and the extent of the participation of each member;
  - b. Identifies the lead member of the JV/Consortium who is authorized by all the members to represent and sign any and all documents related to this process, receive notices/instructions and to make payments for and in behalf of the JV/Consortium; and
  - c. Provides that the members shall be jointly and severally liable for the obligations of the Bidder under the award/contract.
- x. Letter authorizing PSALM representative/s to verify the validity of all documents submitted;
- xi. Waiver of Rights to seek legal remedies (e.g. Temporary Restraining Order (TRO), law suits, etc.) to prevent PSALM from awarding and executing a contract with the Winning Bidder/Buyer; (*PSALM Form No. 3*)

- xii. A declaration of any legal or other impediments which may affect the Bidder's (and its JV or Consortium members) ability to participate in the bidding or a certification to be submitted by the Bidder (and its JV or Consortium members) stating the absence of such legal impediments;
- xiii. Certification under oath of the Bidder that all documents submitted in satisfaction of the eligibility requirements is original/authentic copy of the original, and that all statements and information provided therein are true and correct.

d. For Government Corporations/Entities

- i. Duly accomplished Representations and Warranties Form (Schedule 1)
- ii. Board resolution duly certified by the Bidder's Corporate Secretary expressly authorizing the Bidder's/Corporation's participation in the bidding process, nominating, appointing and authorizing a representative to communicate, represent, sign and execute contracts and other documents relative thereto;
- iii. Certified True Copy of Charter or applicable law on the creation of the entity;
- iv. Bank Certification or any proof of funds availability.

e. For Local Government Units

- i. Duly accomplished Representations and Warranties Form (Schedule 1)
- ii. Resolution of the Sanggunian authorizing the Local Chief Executive to enter into a contract of sale;
- iii. Ordinance appropriating the amount to pay for the purchase of the property;
- iv. Certification of the Local Treasurer as to availability of funds.

2. The Second Bid Envelope shall be marked "Financial Bid Component" (the "Second Bid Envelope") and shall contain the duly accomplished Form No. 1- Bid Form together with the Bid Security.

Bidders are required to submit one (1) set of original Bids and three (3) sets of copies thereof, with each set contained in a sealed envelope. In the event of any discrepancy between the original and the copies, the original shall prevail.

Interlineations, erasures, overwriting, alterations or modifications in the bid and documents accompanying the same shall not be allowed and shall invalidate the bid.

A Bidder must type/print its name below its signature or that of its authorized representative on the Bid Form. Bids of a partnership or a corporation shall be signed in the name of the entity by an authorized partner or authorized officer, followed by the name, signature and designation of the person authorized to sign the Bid.

All Bids, documents, specifications, and related information shall be prepared and submitted in the English language.

#### **IB-10 SEALING AND MARKING OF BIDS**

1. Bidders shall enclose their original Eligibility Documents in one sealed envelope marked “ORIGINAL - Eligibility Component”, and the original of their financial component in another sealed envelope marked “ORIGINAL - Financial Bid Component”, sealing them together in an outer envelope marked “ORIGINAL BID”.
2. Each copy of the first and second envelopes shall be similarly sealed, with inner envelopes duly marked as “COPY No. \_\_\_ - Eligibility Component” and “COPY No. \_\_\_ - Financial Bid Component”, and the outer envelope as “COPY NO. \_\_\_” respectively.
3. The envelopes containing the original and the copies shall then be enclosed in one single envelope. All envelopes shall:
  - a. contain the name of the Property to be bid in capital letters;
  - b. bear the name and address of the Bidder in capital letters;
  - c. be addressed to “The CHAIRPERSON, Privatization Bids and Awards Committee” as identified in the Invitation to Bid; and
  - d. bear a warning “DO NOT OPEN BEFORE \_\_\_”, the date and time of the opening of the Bid.

PSALM shall assume no responsibility for the misplacement or premature opening of the Bids should the envelopes be not sealed and marked as required.

#### **IB-11 BID VALIDITY PERIOD**

The Bid shall be valid for a period of one hundred twenty (120) Calendar Days from Bid Submission Deadline.

#### **IB-12 BID SECURITY**

1. Each Eligible Bidder shall submit as part of its Bid, a Bid Security equivalent to a minimum of ten percent (10%) of the Bid. The Bid Security shall be in any of the following acceptable forms:
  - A. Cash;
  - B. Cashier’s or Manager’s Check issued by a commercial or universal bank licensed to do business in the Philippines; or
  - C. Irrevocable standby letter of credit issued by a commercial or universal bank licensed to do business in the Philippines.

2. The Bid Security shall be payable to PSALM Corporation and shall be valid throughout the Bid Validity Period or any extension thereof.
3. If in the form of cash, cashier's or manager's check, the Bid Security of the Winning Bidder shall be treated as part of the Purchase Price. If Bid Security is in the form of an SBLC, it shall be called and proceeds shall be treated as part of the Purchase Price.
4. Except for Bid Security of the 2<sup>nd</sup> Highest Bidder, the Bid Security of all losing Bidder/s shall be returned immediately without interest after the Bidder with the Highest Bid has been determined. The receipt by the losing Bidder/s of its/his/her bid security shall be deemed a waiver on its/his/her part to contest the result of the Bidding. However, should a losing Bidder contest/protest/appeal the outcome of the bidding, its/his/her Bid Security shall be retained until the resolution thereof. Once the contest/protest/appeal is resolved, the Bid Security of the losing Bidder shall be returned without interest.
5. A Bid submitted without the required Bid Security, or with a non-compliant Bid Security, shall be rejected outright and returned to the Bidder. The Bidder shall be disqualified from participating further in the Bidding Process.
6. The Bid Security shall be forfeited in any of the following instances:
  - a) Any misrepresentation, error and/or fraudulent declaration made by the Bidder in the bid documents or any of the required attachments discovered at any time after the preliminary assessment of Eligibility Documents;
  - b) Withdrawal or modification, whether conditional or otherwise, of the Bid after the deadline for submission of Bids;
  - c) Any material inconsistencies, errors or misrepresentations in the submitted documents of the Bidder with the highest bid;
  - d) Post-disqualification of the Bidder with the highest bid due to misrepresentation, fraudulent acts, falsification, submission of spurious/fake documents or commission of offense in connection with the bidding process;
  - e) Failure of the Winning Bidder to pay the Purchase Price and/or to submit the necessary documents upon written notification from PSALM of the approval of the bid or the required submission of the necessary documents;
  - f) Any judicial or extrajudicial action by the Winning Bidder that shall delay the execution of the Deed of Absolute Sale (DOAS) and/or its compliance with its obligations as set out in the Bidding Procedures;
  - g) Any circumstances or reason that provides PSALM a reasonable and valid basis to believe the Bidder is or has been rendered incapable of completing its obligation, as proposed.

The decision of the PBAC shall be final.

### **IB-13 SUBMISSION OF BIDS**

The Bids must be submitted on or before the Bid Submission Deadline, to:

THE CHAIRMAN  
PSALM Privatization, Bids and Award Committee  
Sale of Manila Thermal Power Plant Land  
Power Sector Assets and Liabilities Management Corporation  
3<sup>rd</sup>Floor National Transmission Corporation (TransCo) Building  
Power Center, Quezon Ave. cor. BIR Road, Diliman,  
Quezon City, Philippines

The venue for the submission of Bids shall be at the PSALM Office, Diliman, Quezon City.

PSALM reserves the right to change the date, time, and venue for the submission, opening, or evaluation of Bids.

Bids submitted after the Bid Submission Deadline shall be rejected and returned unopened to the Bidder.

### **IB-14 DISQUALIFICATION OF BIDS**

The PBAC shall disqualify the following Bids:

- A. Bids of parties who are disqualified from participating in any bidding by a government entity or entering any kind of contract with a Government Entity;
- B. Bids submitted without a Bid Security or which do not comply with the requirements in Section IB-12 (Bid Security);
- C. Bids with prices expressed in currencies other than Philippine Peso;
- D. The Bid of a Bidder who breaches the warranty against offering or paying commission or consideration to any government officer or any PSALM official or employee provided in Paragraph P (1) of Section IB-25;
- E. The Bid of a Bidder who breaches the warranty against conflict, dispute or unsettled issue provided in Paragraph P (2) of Section IB-25;
- F. Bids from Bidders who breached the warranty on Compliance with Philippine Law, as provided in Paragraph P(3) of Section IB-25;
- O. When PSALM determines that there is a material change in the information provided in the Eligibility Documents;
- P. There is a subsequent event that causes a material adverse change in the information provided in the Eligibility Documents;
- Q. Any other ground for disqualification of a Bid and/or a Bidder as provided for in the Bidding Procedures; or
- R. Any other analogous cases.

## **IB-15 MINIMUM BID PRICE**

At any time prior to the opening of the second bid envelope, the PSALM Board of Directors, upon the recommendation of the PBAC, shall meet to determine the Minimum Bid Price for the Property. The PBAC reserves the right not to disclose the Minimum Bid Price at any time prior to, or following the opening and evaluation of the second bid envelope.

At any time after the PSALM Board of Directors determines the Minimum Bid Price but prior to the opening and evaluation of the second bid envelope, the PBAC shall ask the Commission on Audit representative and the authorized representative of each Bidder present whose first bid envelope has been rated “passed” to initial the flap of the sealed envelope containing the Minimum Bid Price. Thereafter, the PBAC shall place said sealed envelope in a clear container near or adjacent to where the first bid envelopes and second bid envelopes were deposited.

The Financial Bid of the Highest Bidder must meet or exceed the Minimum Bid Price in order to qualify for the award of the Property.

## **IB-16 OPENING AND PRELIMINARY EVALUATION OF SEALED BIDS**

1. The PBAC shall open the first bid envelopes of Bidders in public, at the time, date and place specified by the PBAC, to determine each Bidder’s compliance with the prescribed eligibility documents. For this purpose, the PBAC shall check the documents submitted by each Bidder against a checklist of required documents to ascertain if all are present, using a non-discretionary “pass/fail” criterion. If the Bidder submits the required document, it shall be rated as “passed” for that particular requirement. Bids that fail to include any requirement or are incomplete or patently insufficient shall be considered as “failed”.
2. Immediately after determining compliance with the requirements in the first envelope, the PBAC shall open the second bid envelope of each remaining Bidder whose first bid envelope was rated “passed”. In case one or more of the requirements in the second envelope of a particular bid is missing, incomplete or patently insufficient, and/or if the submitted bid price is lower than the Minimum Bid Price, the PBAC shall rate the particular bid 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.
3. The Bids which is at least equal to or higher than the Minimum Bid Price shall be ranked from highest to lowest to identify the order of Bids.
4. A tie for the Highest Bid shall be resolved immediately through an auction conducted by the PBAC among the Bidders. The Bidders shall each submit a revised and signed Bid Form. A Bidder shall not submit a Bid lower than its original Bid. This process shall be repeated until the tie is broken. Each Bidder

must ensure that its representative has the authority to bind the Bidder in case of an auction. The PBAC shall declare the Bidder who submits the highest Bid as the Highest-Ranking Bidder. The highest among the Bids that a Bidder submitted shall be deemed as its Bid.

In case there is a tie for 2nd Highest Bid, and the Highest Bidder has been disqualified, the 2 Bidders which submitted the 2nd Highest Bid shall each submit a revised and signed Bid Form. The 2 Bidders which submitted the 2nd Highest Bid shall not submit a Bid lower than its original Bid. This process shall be repeated until the tie is broken.

The PBAC has the sole discretion to allow the correction of innocuous or clerical errors.

If none of the Bids meet the Minimum Bid Price, the PBAC shall declare all the Bids to be non-compliant and declare a failure of bidding.

The decision of the PBAC may be questioned by filing a request for reconsideration within three (3) calendar days upon receipt of written notice or upon verbal notification. The PBAC shall decide on the request for reconsideration within seven (7) calendar days from receipt thereof. The bidder shall not be allowed to submit additional documents to correct any defects in the bid submitted. If a failed bidder signifies his intent to file a request for reconsideration, the PBAC shall keep the bid envelopes of the said failed bidder unopened and/or duly sealed until such time that the request for reconsideration has been resolved.

## **IB-17 POST-QUALIFICATION**

1. The PBAC shall conduct post-qualification within a period of five (5) Business Days from declaration of Highest Bidder to verify the accuracy and authenticity of all the documents and information submitted by the Bidder with the highest bid. Any material inconsistency, error, or misrepresentation in the submitted documents shall be a ground for disqualification and forfeiture of the Bid Security.
2. If the Highest-Ranking Bidder passes post-qualification, its bid shall be declared as the Highest-Ranking and Responsive Bid. The PBAC shall recommend to the PSALM Board, through the PSALM President and CEO that the sale of the Property be awarded to the Highest-Ranking and Responsive Bidder as the Winning Bidder.
3. If the Bidder with the highest bid fails post-qualification due to misrepresentation, fraudulent acts, falsification, submission or spurious/fake documents or commission of an offense in connection with the bidding process or the PBAC shall notify the Bidder of the results thereof and forfeit its Bid Security, without prejudice to other remedies available to PSALM.



4. Immediately after the PBAC has notified the bidder with the highest bid of its post-disqualification, notwithstanding any request for reconsideration, or after post-qualification, if the Winning Bidder withdrew prior to the issuance of the Notice of Award, or refused to accept the same, the PBAC shall initiate and complete the post-qualification of the Bidder with the second highest bid, provided the second highest bid is not lower than the Minimum Bid Price.

Otherwise, the PBAC shall declare a failure of bidding.

#### **IB-18 AWARD TO THE WINNING BIDDER**

1. Within fifteen (15) Business Days after the Highest-Ranking Bidder is declared, the PBAC shall serve a Notice of Award to the Highest-Ranking and Responsive Bidder as the Winning Bidder.
2. The Notice of Award shall be sent together with the Deed of Absolute Sale for signature of the Winning Bidder.
3. The Winning Bidder shall submit to the PBAC its/his/her confirmation on the receipt of the Notice of Award within two (2) Business Days from receipt thereof.

#### **IB-19 RIGHTS AND RESPONSIBILITIES OF THE PARTIES**

##### **1. Rights and Responsibilities of the Winning Bidder**

The Winning Bidder shall:

- a. Strictly comply with the terms and conditions of the DOAS to be executed between PSALM and the Winning Bidder and maintain all warranties and representations in good standing until PSALM's execution of the DOAS.
- b. Pay at its sole account, all applicable taxes, licenses, fees, and charges due on the sale transaction.
- c. Deliver the duly signed DOAS to PSALM together with the full payment; and if the Winning Bidders/Buyer is a corporation, its Board Resolution/Secretary's Certificate approving the DOAS and appointment of its authorized signatory/ies shall be submitted as additional supporting document.

Failure of the Winning Bidder/Buyer to comply with the requirements shall render the award nullified and the Bid Security forfeited in favor of PSALM.

##### **2. Rights and Responsibilities of PSALM**

PSALM shall deliver the possession of the Property to the Winning Bidder, on an "AS IS, WHERE IS" basis, upon the execution of the DOAS.

## **IB-20 FAILURE OF BIDDING**

There shall be a failure of Bidding in any of these instances:

- A. The Bidding Package is issued to only one entity;
- B. All Bidders, except one, withdrew from the Bidding Process prior to Bid Submission Deadline;
- C. All Bidders, except one, withdrew their Bids prior to the Opening of Bids;
- D. Only one Bid is received by Bid Submission Deadline;
- E. No Financial Bid meets the Minimum Bid Price;
- F. No Bid has passed the post qualification stage;
- G. The Winning Bidder withdrew prior to the issuance of the Notice of Award, or the Winning Bidder refused to accept the same and there is no other post-qualified Bidder; and
- H. Other grounds provided in the Bidding Procedures.

## **IB-21 PROTEST MECHANISMS**

1. A Bidder determined as failed/disqualified and/or whose bid has been found non-compliant may file a request for reconsideration within three (3) calendar days upon receipt of written notice or upon verbal notification. The PBAC shall decide on the request for reconsideration within seven (7) calendar days from receipt thereof.
2. Upon receipt of the PBAC's decision denying the request for reconsideration, a Bidder may file an appeal in writing (Notice of Appeal) to the PBAC. The appeal must be filed within five (5) Business Days from declaration of Bidder's disqualification. The Notice of Appeal shall be accompanied by a Sworn Statement stating the grounds relied upon for the appeal and the corresponding payment of a non-refundable appeal fee in an amount equivalent to at least one percent (1%) of the Minimum Bid Price or such amount as may be recommended by the PBAC, in the form of a Manager's Check issued by a local commercial or universal bank.

A Bidder may not file a Notice of Appeal without filing first a request for reconsideration.

3. The bidding process shall be suspended for a maximum period of thirty (30) calendar days while the appeal is being evaluated. The decision of the PBAC on the appeal shall be final and immediately executory.

## **IB-22 WAIVER**

Bidders shall hold PSALM free and harmless from any liability, costs and expenses, suit or allegation arising out of Bidders participation in this bidding process. All Bidders waive their right to seek legal action (e.g. Temporary Restraining Order, lawsuits, etc.) to prevent PSALM from awarding and executing a contract with the Winning Bidder.

#### **IB-23 EFFECTIVITY OF THE DEED OF ABSOLUTE SALE (DOAS)**

The effectivity of the Deed of Absolute Sale shall be in accordance with its terms.

#### **IB-24 CANCELLATION OF DEED OF ABSOLUTE SALE (DOAS)**

PSALM shall have the right to rescind the DOAS, revert back ownership of the property to PSALM in case of default in its/his/her obligations with PSALM under the DOAS.

#### **IB-25 TURNOVER OF THE POSSESSION OF THE PROPERTY**

PSALM shall turnover possession of the Property in accordance with the terms of the Deed of Absolute Sale (DOAS).

#### **IB-26 GENERAL CONDITIONS**

- A. PSALM, its representatives, the PBAC, and NPC shall not be responsible for the interpretation or conclusion drawn by a Bidder from data or information furnished by PSALM, NPC, the PBAC, their directors, officers, employees, advisors, consultants, or agents, or for the accuracy or completeness of such data or information.
- B. A Bidder shall, at all times, comply with Philippine Law.
- C. All risks, taxes, costs, fees, expenses, and liabilities incurred, directly or indirectly, by a Bidder in the preparation of its Bid, inclusive of its due diligence effort and the cost incurred in securing the Bid Security, including fees and disbursements of its advisors, shall be borne and paid by such Bidder whether its Bid is accepted or rejected. PSALM, NPC and/or the PBAC shall not be held liable for such risks, taxes, costs, fees, expenses, and liabilities. PSALM, NPC, the PBAC, their directors, officers, employees, advisors, consultants, and agents shall not be held liable in the event that a court of competent jurisdiction or other Government Entity declares the Bidding, selection and/or award invalid or sets it aside, for any reason and at any time.
- D. Any request and/or receipt of Bids or any information or document will not constitute an invitation or commitment by PSALM or the PBAC to enter into any agreement, undertaking or covenant with the Bidder.
- E. All deadlines in the Bidding Procedures and other relevant documents or communications issued during the course of the Bidding must be strictly adhered to. Late submissions will be refused.
- F. PSALM and the PBAC, at their discretion, reserve the right to: (i) accept or reject any or all Bids or any part thereof; (ii) withdraw from the proposed sale or any part of the Bidding Process or to vary any of its or their terms at

any time without giving any reason therefore; (iii) waive any defect contained therein; (iv) accept the offer 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) exercise any other remedy granted by Philippine Law or the Bidding Procedures; and (vii) require the submission of additional documents and/or information in relation to the Bidding.

- G. The PBAC reserves the right to: (1) add to, modify, supplement, change the Bidding Procedures, including the Bidding Schedule, without prior notice, at any time and for any reason through SBBs; (2) accept or reject a Bid or any of its parts; (3) waive any defect contained in a Bid or any document; (4) accept an offer deemed most advantageous to the Government; (5) exercise any remedy granted by Philippine Law or the Bidding Procedures; and (6) require the submission of additional documents and/or information in relation to the Bidding.
- H. Bidders shall carefully examine the Bidding Package, including the Bidding Procedures, all SBBs, the Property Profile, and the DOAS and fully inform themselves of all conditions and matters that could affect their Bid, participation or undertaking in the Bidding and the DOAS. The Bidder, by submitting its Bid, declares that it has read and understood each and every section and page of the Bidding Procedures, each SBB, and the DOAS, and the respective provisions, terms and conditions of the same, and accepts and agrees to be bound and fully abide by and comply with the fore stated documents.
- I. A document, which is required to be submitted under oath and acknowledged, shall comply with the following:
  - 1. if executed in the Philippines, it shall be sworn to or acknowledged before a Philippine Notary Public; or
  - 2. if executed outside the Philippines, either it is sworn to or acknowledged before: (a) a Philippine consular official authorized to administer oaths; or (b) any person authorized to administer oaths in that jurisdiction and the same is authenticated before a Philippine consular official authorized to authenticate documents.
- J. Bidders shall be responsible for their own due diligence investigation on all related matters, the Bidding Procedures, the Bidding Process, and the DOAS. PSALM, NPC, the PBAC, their directors, officers, employees, advisors, consultants, or agents do not make any representation or warranty concerning any matter affecting this transaction.
- K. In computing a period, the first day shall be excluded and the last day included. Unless otherwise expressly specified in writing, all references to times and dates shall refer to Philippine Standard Time. If any of the dates

fall on a day that is not a Business Day, the deadline shall be extended to the same time of the immediately succeeding Business Day.

#### L. Disqualification

In addition to the grounds for the disqualification of Bids stated in Section IB-14 (Disqualification of Bids) and other provisions of the Bidding Procedures, the PBAC shall be entitled, in its sole discretion, and without prejudice to its other rights or remedies, to disqualify a Bidder from participation in this Bidding Process in any of the following instances:

1. The Bidder makes a material misrepresentation in any document or information communicated to the PBAC, whether verbal or written;
2. The Bidder submits a Bid, which is inconsistent with or fails to comply with the Bidding Procedures;
3. The Bidder fails to promptly comply with the PBAC's reasonable request for further information or clarification in relation to documents, information or the Bid submitted by such Bidder;
4. An administrator, supervisor, receiver, liquidator, or other lien holder takes possession of or is appointed over the whole or any part of the Bidder's assets, or any attachment, execution or other process is enforced upon the whole or a substantial part of its assets;
5. If the Bidder is in the process of liquidation, winding up, bankruptcy, dissolution, corporate rehabilitation, or suspension of payments;
6. The Bidder signifies its intention to withdraw or modify its Bid after the Bid Submission Deadline or actually withdraws or modifies its Bid;
7. The Bidder withdraws its Bid during the Bid Validity Period;
8. The Bidder submits a Bid with conditions or delivers a Bid Security that does not comply with the requirements of Section IB-12 (Bid Security);
9. The Bidder or its Affiliate has participated in the valuation of the Property, or their respective advisors in relation to the Bidding Process of the Property and the Bidder failed to disclose such fact;
10. The Bidder breaches any of the conditions of the Bidding Procedures;
11. The Bidder or anyone on its behalf breaches the warranty against offering or paying commission or consideration to any government officer or pays a PSALM director, official, employee, advisor, consultant, any member of the PBAC, or agent consideration or commission for the Bidding or DOAS;
12. The Bidder breaches the warranty against compliance with Philippine Law provided in Paragraph P (3) of Section IB-25;
13. The Bidder is disqualified or prohibited from participating in any bidding, or entering into a contract with, a Government Entity;
14. The Bidder is an Affiliate of another Bidder, or holds or acquires any ownership interest in another Bidder as listed in the General Information Sheet;
15. The Bidder has an Affiliate, and such Affiliate: (i) is a Bidder; or (ii) holds or acquires any ownership interest in another Bidder as listed in the latest General Information Sheet;

16. Upon the occurrence of an event or omission which is a ground for disqualification in the Bidding Procedures;
  17. The Bidder makes a material change in the information provided in the Eligibility Documents;
  18. There is a subsequent event that causes a material adverse change in the information provided in the Eligibility Documents;
  19. The Bidder or anyone on its behalf exerts or utilizes any corrupt or unlawful influence to secure or solicit the Bidding, the DOAS for a consideration or commission;
  20. Any ground for disqualification of a Bid and/or a Bidder provided for in the Bidding Procedures; or
  21. The Bidder has been disqualified from participating in PSALM's bidding activities due to fraudulent acts or has committed fraud or breach in the provisions of any agreement with PSALM.
- M. Whenever an address is required, the full address must be given. The use of Post Office box as an address is prohibited.
- N. All submissions to PSALM must be in the English language. If the document is in a foreign language, both the document in the foreign language and its legal translation in English must be submitted and the document must be authenticated before a Philippine consular official authorized to authenticate documents. The official language to be used in the Bidding, Bidding Procedures, the DOAS, reports, notices and correspondences shall also be in English.
- O. An Interested Party, Bidder, Highest-Ranking Bidder, Buyer or Winning Bidder (collectively referred to as Bidder for purposes of this paragraph) represents and warrants that:
1. The Bidder, or anyone on its behalf, has neither directly or indirectly offered or paid a PSALM director, official, employee or any member of the PBAC any consideration or commission for the Bidding or DOAS, nor exerted or utilized any corrupt or unlawful influence to secure or solicit the Bidding, or the DOAS for any consideration or commission. A violation of this warranty shall constitute sufficient ground for the disqualification of the Bidder, the termination of the DOAS and the forfeiture of the Bid Security, without prejudice to the filing of any civil and/or criminal action under Philippine Law, including the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019) against the Bidder and the PSALM officials/employees involved;
  2. From acceptance of the terms and conditions of the Bidding Documents until Turnover Date, the Bidder, its parent company, stockholders, subsidiaries, Affiliates, directors or officers or any of their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, have no conflict, dispute or unsettled issue, arising out of, or in connection with the EPIRA or its

Implementing Rules and Regulations, the DOE, PSALM, NPC or TRANSCO, which affect the privatization of NPC assets or TRANSCO or the appointment of IPPAs, namely: (i) an unresolved issue, as determined by the inter-agency committee, arising from the renegotiation of contracts with IPPs mandated by Section 68 of the EPIRA; and (ii) any unpaid account arising from contractual obligations with the DOE, PSALM, NPC or TRANSCO. Any violation of this warranty shall constitute a sufficient ground for the disqualification of the Bidder, the termination of the DOAS, or forfeiture of the Bid Security, without prejudice to the filing of civil and/or criminal action under Philippine Law against the Bidder and/or its representatives;

3. A Bidder shall comply with Philippine Law at all times. A violation of this warranty shall constitute sufficient ground for the disqualification of the Bidder, the termination of the DOAS, and the forfeiture of the Bid Security, without prejudice to the filing of civil and/or criminal action under Philippine Law against the Bidder and/or its representatives;
  4. The Bidder shall indemnify PSALM and the PBAC and hold them free and harmless against all losses, claims, liabilities, damages, and expenses arising out of or relating to its fault or negligence in the Bidding, including but not limited to, third party claims for personal injuries, property damage, or consequential damages as provided in the DOAS for the Property;
  5. The Bidder shall pay: (a) all costs, expenses, fees, and taxes, including all documentary stamp taxes payable in connection with the execution, amendment, or modification of the DOAS; and (b) all costs, expenses, fees, and taxes related to and arising from the exercise or performance of its obligations under the Bidding, Bidding Procedures or the DOAS; and
  6. The Bidder unconditionally and irrevocably waives any right to seek and obtain a writ of injunction or prohibition or restraining order against the PBAC, PSALM, NPC and/or any third party to prevent or restrain the Bidding Process or any related proceedings, the issuing bank, the conduct of a bidding or any related proceeding, the selection of the Highest-Ranking Bidder, Buyer or Winning Bidder, the performance of the DOAS and forfeiture of the Bid Security.
- P. In case of conflict or discrepancy between the Bidding Procedures and the Bid, the Bidding Procedures shall prevail.
- Q. Certified true copies of documents to be submitted under the Bidding Procedures shall be certified by the entity issuing such documents (e.g., the SEC Certificate of Registration shall be certified by the SEC). In case of documents which the issuing entity does not issue any certification, then the

Bidder shall submit a written certification under oath that the document submitted is a true and faithful reproduction of the original and that the original document is in the Bidder's possession.

- R. If there is a dispute between (a) PSALM, and (b) any of the Interested Parties, Bidders, the Highest-Ranking Bidder, Buyer or Winning Bidder arising from the Bidding Procedures or in the interpretation of its provisions, the parties shall endeavor to resolve such dispute through negotiations done in good faith. If the parties fail to resolve the dispute, they shall refer the matter to the court of proper jurisdiction of the Republic of the Philippines, which shall have exclusive jurisdiction over any action or proceeding arising from or in connection with the Bidding, the Bidding Procedures and the DOAS. In case of litigation, the venue of action shall be the proper courts of the Quezon City, Philippines, to the exclusion of any other courts. PSALM, the Interested Party, Bidder, Highest-Ranking Bidder, Buyer or Winning Bidder voluntarily and irrevocably agree to submit to the jurisdiction of such court.
- S. PSALM's failure to exercise, or any delay in the exercise of, its rights under the Bidding Procedures and the DOAS shall not operate as a waiver of such rights. PSALM's single or partial exercise of a right shall not preclude the exercise of any other right. The right and remedies in this process and related documents are cumulative and not exclusive of any other right or remedy provided by Philippine Law.
- T. PSALM and the PBAC shall not be liable to the Interested Party, Bidder, Highest Ranking Bidder, Highest Ranking and Responsive Bidder, Buyer, Winning Bidder, or any third party in contract, tort or for any loss or damage sustained in connection with the utilization of the Property, including without limitation to any claim for loss of use, lost income, lost profits, or consequential damages.
- U. All notices to and communications with PSALM and the PBAC pursuant to the Bidding Procedures shall be in writing and shall be sent to:
- THE CHAIRMAN  
PSALM Privatization, Bids and Awards Committee  
Sale of Manila Thermal Power Plant Land  
Power Sector Assets and Liabilities Management Corporation  
3<sup>rd</sup> Floor National Transmission Corporation (TransCo) Building  
Power Center, Quezon Ave. cor. BIR Road, Diliman,  
Quezon City, Philippines
- V. PSALM, its representatives and the PBAC shall not be liable for any loss or damage arising from their delay or inability to perform their obligations under the Bidding, Bidding Procedures and the Final DOAS, if the same is due to causes beyond their reasonable control including, without limitation to, acts of God, accidents, acts of war, labor shortages or labor difficulties, strikes, civil disturbances, insurrections, riots, revolutions, acts of sabotage,



governmental actions, delay or failure by the appropriate Government Entity to issue necessary licenses, permits or authorizations, delay or accident occurring in the course of transportation, unavailability of material or equipment, acts or omissions of the Bidder for the Property, their contractors, suppliers, agents, or employees, and/or third parties.

- W. No Government official or employee shall directly or indirectly give, nor shall any Bidder be entitled to, any information regarding the Bidding Process or the other Bidders, other than what is contained in the Bidding Procedures, or disclosed in the Pre-bid Conference, SBBs and in the official announcements.
- X. If a provision of the Bidding Procedures or a part of the Bidding Package is held to be invalid, illegal, or unenforceable, the validity, legality, or enforceability of the remaining provisions will not be affected and shall remain in full force and effect.
- Y. If the Bidder does not have the officer required by the Bidding Procedures, the Bidder must certify under oath that the person executing the required document is authorized to execute it and to bind the Bidder.

## PART II - DEFINITIONS AND CONSTRUCTION

### DEFINITIONS

In the Bidding Procedures, the following capitalized terms and their variations have the meanings specified in this Section:

<b>Affiliate</b>	any person which, alone or together with any other person, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person. Affiliate shall include a subsidiary company and parent company and subsidiaries, directly or indirectly, of a common parent.
<b>Bid</b>	a signed offer or proposal submitted by a Bidder in compliance with Section IB-09 (Preparation and Contents of Bids).
<b>Bidder</b>	an Interested Party to whom the PBAC issues the Bidding Package.
<b>Bidding or Bidding Process</b>	the bidding process for the sale of the Property, as outlined in the Bidding Procedures.
<b>Bidding Package</b>	the set of documents for the privatization of the Property, as specified in Section IB-01 (Requirements For Issuance Of The Bidding Package).
<b>Bidding Procedures</b>	shall have the meaning set forth in Section IB-01 (Requirements For Issuance Of The Bidding Package).
<b>Bidding Schedule</b>	shall mean the schedule for the Bidding as set out in Section IB-03 (Bidding Schedule).
<b>Bid Price</b>	Refers to the amount that the Bidder is willing to purchase the Property.
<b>Bid Security</b>	Refers to an amount which serves as an expression of intent to participate in the public bidding for the Property, which shall be a minimum of ten percent (10%) of the Bid Price, in the form of cash, bank manager's check or cashier's check, or standard letter of credit, issued by any commercial or universal bank doing business in the Philippines.
<b>Bid Security Drawing Event</b>	any occurrence which entitles PSALM to draw upon the Bid Security under IB-12 (Bid Security), including but not limited to: (i) a Bidder's failure to completely, faithfully, fully and promptly comply with its obligations under the Bidding Procedures during the Bid Validity Period, or its extension; or (ii) a violation of the Bidding Procedures.
<b>Bid Submission Deadline</b>	the deadline for the submission of Bids set forth in Section IB-03 (Bidding Schedule).
<b>Bid Validity Period</b>	the 120 Calendar Day period which starts on the Bid Submission Deadline.

<b>Business Day</b>	any day other than a Saturday, Sunday, public holiday in the Republic of the Philippines or Quezon City, or a day on which banks located in Quezon City are authorized by law to be closed.
<b>Business Hours</b>	shall mean 9:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m. of a Business Day.
<b>Buyer</b>	shall mean the Winning Bidder with whom PSALM enters into the DOAS for the sale of the Property.
<b>Deed Of Absolute Sale (DOAS)</b>	shall mean the agreement to be entered into between the PSALM and the BUYER for the sale and purchase of the Property, including the schedules, attachments, and annexes thereto as well as the pertinent attachment, annexes and schedules to such schedules, attachments, and annexes, which was distributed to the Bidders as part of the Bidding Package.
<b>DOE</b>	the Department of Energy of the Republic of the Philippines.
<b>ERC</b>	the Energy Regulatory Commission.
<b>Eligible Bidder</b>	Refers to a Bidder who, in response to the Invitation to Bid, has submitted Eligibility Documents and was declared “Eligible” based on the provisions set in this Bidding Procedures.
<b>Government Entity</b>	any government agency, authority, bureau, department, court, tribunal, legislative body, public official, statutory or legal entity or person (whether autonomous or not), commission, corporation or instrumentality, whether national or local, of the Republic of the Philippines having jurisdiction over these Bidding Procedures, the Bidding Process, and the DOAS.
<b>Highest-Ranking Bidder</b>	shall have the meaning set forth in IB-15 (Opening and Preliminary Evaluation Sealed Bids).
<b>Latest Audited Financial Statements</b>	the latest audited financial statements for fiscal year ending 2016.
<b>Notice of Award</b>	shall have the meaning set forth in Section IB-17 (Award to the Winning Bidder).
<b>NPC</b>	shall mean the National Power Corporation.
<b>PBAC</b>	shall have the meaning set forth in Section IB-01 (The Bidding Package).
<b>Property</b>	Refers to the property for sale through public bidding, specifically the Manila Thermal Power Plant Land, referred to in Annex A of this Bidding Procedures.
<b>Philippine Law</b>	shall mean: (i) the Constitution of the Republic of the Philippines and all Philippine laws, statutes, treaties, rules, codes, ordinances, regulations, certificates, decisions, orders, memoranda, circulars, decrees, resolutions,

	directives, rulings, interpretations, approvals, licenses, and permits of any Governmental Body; and (ii) judgments, decrees, injunctions, writs, orders or like actions of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction, in each case: (a) that apply to these Bidding Procedures and the privatization and performance of the DOAS by the parties; and (b) as amended, supplemented, replaced, interpreted by a duly authorized Government Entity, or otherwise modified from time to time.
<b>Philippine Peso</b>	the lawful currency of the Republic of the Philippines.
<b>Philippine Standard Time</b>	shall have the meaning set forth in Republic Act No. 10535.
<b>Pre-bid Conference</b>	shall have the meaning set forth in IB-08 (Pre-bid Conference).
<b>PSALM</b>	the Power Sector Assets and Liabilities Management Corporation created under Republic Act No. 9136.
<b>PSALM Office</b>	shall mean the office of PSALM located 3rd Floor National Transmission Corporation (TransCo) Building, Power Center, Quezon Ave. cor. BIR Road, Diliman, Quezon City, Philippines
<b>Public Bidding</b>	Refers to a method of disposal which is open to participation by any interested party; public bidding ensures that PSALM would get the highest selling price for the Property offered for sale.
<b>Purchase Price</b>	Refers to the amount a Bidder is willing to pay in order to purchase the Property.
<b>Minimum Bid Price</b>	Refers to the minimum bid amount which PSALM shall accept from the Bidder as purchase price for the Property.
<b>SBLC</b>	shall have the meaning set forth in Section IB-12 (Bid Security).
<b>Supplemental Bid Bulletins (SBBs)</b>	amendments, supplements or clarifications to the Bidding Procedures or the Bidding Process that the PBAC may issue, which shall be in writing and numbered sequentially. The SBBs are automatically incorporated into and made an integral part of the Bidding Procedures.
<b>TRANSCO</b>	the National Transmission Corporation, a government owned and controlled corporation created by virtue of the Republic Act No. 9136.
<b>Winning Bidder</b>	Refers to the eligible bidder whose Bid Price has been evaluated by the PBAC as the highest bid, compliant with the requirements of this Bidding Procedures and approved by the PSALM Board of Directors.

## CONSTRUCTION

In the Bidding Procedures, unless the context otherwise requires:

1. The singular shall include the plural and vice versa.
2. Words referred to as “he”, shall be deemed to include the male, female and neuter (e.g., his/hers/its), and vice-versa.
3. The terms “include” and “including” shall be construed as being at all times followed by the words “without limitation” unless the context specifically indicates otherwise.
4. Whenever a Bidder is required to form an opinion, make a determination or designation, give a notice of approval or consent, incur costs or expenses, request any item or action, exercise discretion or perform any act in relation to the Bidding, it must be done in accordance with the Bidding Procedures.
5. References to the Bidding Procedures shall, in addition to its terms, include SBB provision, terms and conditions, any amendment, supplement or modification of these provisions, and the PBAC’s decisions.
6. Article and Section headings are for convenience of reference only and shall not be deemed to limit or otherwise affect any of the provisions.
7. Unless expressly provided,
  - a. reference to a Paragraph, Section, Exhibit or Schedule shall refer to a Paragraph, Section, Exhibit or Schedule respectively, of the Bidding Procedures;
  - b. any reference to a “day” shall refer to a calendar day;
  - c. reference to a person shall refer to a natural or juridical person; and
  - d. capitalized terms used in the Exhibits and Schedules shall have the meanings ascribed to those terms in the Bidding Procedures.

## CHECKLIST OF ELIGIBILITY DOCUMENTS

Documents to be contained in the First Envelope			Remarks
For individuals	1	Duly accomplished Representations and Warranties Form ( <i>Schedule 1</i> )	
	2	Copies of Two (2) valid government-issued IDs	
	3	Certificate of Employment and Compensation	
	4	Certified True Copy of Latest Income Tax Return (ITR)	
	5	Certificate from at least one (1) commercial/universal bank, legally operating in the Philippines, stating that the Bidder is known to them, banking with them and is in good financial and credit standing	
	6	Letter authorizing the PSALM representative/s to verify the validity of all the documents submitted. ( <i>Schedule 4</i> )	
	7	Certification under oath of the Bidder that all documents submitted in satisfaction of the eligibility requirements is original / authentic copy of the original, and that all statements and information provided therein are true and correct ( <i>Schedule 3</i> )	
For Sole Proprietorship	1	Duly accomplished Representations and Warranties Form ( <i>Schedule 1</i> )	
	2	Certified True copy of DTI Registration and Business Profile	
	3	Certified True Copy of Latest Audited Financial Statement	
	4	Certified True Copy of Latest Income/Business Tax Return (I/BTR) and original Tax Clearance	
	5	Certified True Copy of Mayor's/Business Permit issued by the City or Municipality where the principal place of business of the prospective bidder is located	
	6	Certificate from at least one (1) commercial/universal bank, legally operating in the Philippines, stating that the Bidder is known to them, banking with them and is in good financial and credit standing	
	7	Letter authorizing the PSALM representative/s to verify the validity of all the documents submitted ( <i>Schedule 4</i> )	
	8	Certification under oath of the Bidder that all documents submitted in satisfaction of the eligibility requirements is original / authentic copy of the original, and that all statements and information provided therein are true and correct ( <i>Schedule 3</i> )	

<b>Documents to be contained in the First Envelope</b>		<b>Remarks</b>	
<b>For Partnership/Corporation/Joint Venture/Consortium</b>	1	Duly accomplished Representations and Warranties Form ( <i>Schedule 1</i> )	
	2	Certified True Copy of SEC Registration and Company Profile of the Bidder; or in case of a foreign entity, at least 60% Filipino owned and licensed to do business in the Philippines	
	3	Certified True Copy of Articles of Incorporation/Partnership, By-Laws of the Bidder as amended, if any	
	4	Certified True Copy of Mayor's/Business Permit issued by the City or Municipality where the principal place of business of the prospective bidder is located	
	5	Certified True Copy of Latest Audited Financial Statement	
	6	Certified True Copy of Income/Business Tax Returns and original Tax Clearance issued by the Bureau of Internal Revenue (BIR)	
	7	Certificate from at least one (1) commercial/universal bank, legally operating in the Philippines, stating that the Buyer is known to them, banking with them and is in good financial and credit standing	
	8	Board Resolution duly certified by the Bidder's Corporate Secretary expressly authorizing the Bidder's/Corporation's participation in the bidding process, nominating, appointing and authorizing a representative to communicate, represent, sign and execute DOAS and other documents relative thereto	
	9	If a JV or Consortium, the Bidder (including all its JV/Consortium members) shall submit a copy of the duly notarized JV Agreement / Memorandum of Agreement (MOA) / Understanding (MOU) which: <ul style="list-style-type: none"> <li>a Briefly describes the JV Consortium, the individual members of the JV/Consortium and the extent of the participation of each member;</li> <li>b Identifies the lead member of the JV/Consortium who is authorized by all the members to represent and sign any and all documents related to this process, receive notices/instructions and to make payments for and on behalf of the JV/Consortium; and</li> <li>c Provides that the members shall be jointly and severally liable for the obligations of the bidder under the award/contract</li> </ul>	
	10	Letter authorizing the PSALM representative/s to verify the validity of all the documents submitted ( <i>Schedule 4</i> )	
	11	Waiver of Rights to seek legal remedies (e.g. Temporary Restraining Order (TRO), law suits, etc.) to prevent PSALM from awarding and executing a DOAS with the Winning Bidder / Buyer ( <i>PSALM Form No. 3</i> )	
	12	A declaration of any legal or other impediments which may affect the Bidder's (and its JV or Consortium members) ability to participate in the bidding or a certification to be submitted by the Bidder (and its JV or Consortium members) stating the absence of such legal impediments	
	13	Certification under oath of the Bidder that all documents submitted in satisfaction of the eligibility requirements is original / authentic copy of the original, and that all statements and information provided therein are true and correct ( <i>Schedule 3</i> )	

<b>Documents to be contained in the First Envelope</b>			<b>Remarks</b>
<b>For Government Corp./Entities</b>	1	Duly accomplished Representations and Warranties Form ( <i>Schedule 1</i> )	
	2	Board Resolution duly certified by the Bidder's Corporate Secretary expressly authorizing the Bidder's/Corporation's participation in the bidding process, nominating, appointing and authorizing a representative to communicate, represent, sign and execute contracts and other documents relative thereto	
	3	Copy of Charter or applicable law on the creation of the entity	
	4	Bank Certification or any proof of funds availability.	
<b>For Local Government Units</b>	1	Duly accomplished Representations and Warranties Form ( <i>Schedule 1</i> )	
	2	Resolution of the Sanggunian authorizing the Local Chief Executive to enter into a contract of sale	
	3	Ordinance appropriating the amount to pay for the purchase of the property	
	4	Certification of the Local Treasurer as to availability of funds to pay for the purchase of the property.	

**Documents to be contained in the Second Envelope**

<b>For all</b>	1	Bid Proposal ( <i>PSALM Form No. 1</i> )	
	2	Bid Security ( <i>Schedule 6</i> )	



**Bid Form**

Date: \_\_\_\_\_

The Chairperson  
Privatization Bids and Awards Committee (PBAC)  
Power Sector Assets and Liabilities  
Management Corporation  
3/F National Transmission Corporation (TransCo) Building  
Power Center, Quezon Ave. cor. BIR Road, Diliman  
Quezon City, Philippines

Gentlemen and/or Ladies:

Having examined the Bidding Procedures dated \_\_\_\_\_, including Supplemental Bid Bulletin Numbers *[insert numbers]*, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to purchase *[name of property]* located in *[location of property]* in conformity with the said Bidding Procedures, for the sum of *[Total Bid Amount, in words]*, broken down as follows:

<b>PARTICULARS</b>	<b>AMOUNT IN PHILIPPINE PESOS (PHP)</b>
<b>A. [Name of Property]</b>	
<b>B. Plus: 12%VAT</b>	
<b>TOTAL BID AMOUNT (A+B)</b>	

We agree to abide by this Bid for the Bid Validity Period specified in IB-11 of the Bidding Procedures and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

Until a formal DOAS is prepared and executed, this Bid, together with your written acceptance thereof and your Notice of Award, shall be binding upon us.

We certify/confirm that we comply with the eligibility requirements as provided under IB-09 of the Bidding Procedures.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2017.

\_\_\_\_\_  
*[signature]* *[in the capacity of]*

Duly authorized to sign Bid for and on behalf of \_\_\_\_\_.

**PSALM Form No. 2**

**SITE VISIT REQUEST FORM**

Bidder's Name:		Date :	
Contact No.:			
Fax No:			
Requested Schedule:		Alternative Dates:	
Approved Schedule:			
<b>NOMINATED PERSONS</b>			
<b>Name</b>		<b>Position</b>	<b>Company</b>
1.			
2.			
3.			
Requested by:		Receiving PSALM Personnel:	
_____		_____	
Name and Signature of Authorized Representative		Signature Over Printed Name/ Date	

**WAIVER OF RIGHT TO SEEK LEGAL REMEDIES**

(To be submitted on the Bidder's letterhead)

**Date**

THE CHAIRMAN  
PSALM Privatization, Bids and Award Committee  
Power Sector Assets & Liabilities Management Corporation  
3/F National Transmission Corporation (TransCo) Building  
Power Center, Quezon Ave. cor. BIR Road, Diliman  
Quezon City, Philippines

**Subject: Sale of Manila Thermal Power Plant Through Public Bidding**

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Sir:

As a duly authorized representative of *[Name of Company]*, (hereinafter referred to as the "Company"), and in connection with the bidding of \_\_\_\_\_ with an aggregate area of \_\_\_\_\_sq.m. \_\_\_\_\_property located at \_\_\_\_\_, the undersigned on behalf of the Company, hereby expressly and formally commits to abide by the decision of the PSALM-PBAC for subject Property/ies to determine the eligibility of Bidders as well as the eventual Winning Bidder among them.

Accordingly, and in accordance with the Bidding Procedures for the sale through public bidding of the property/ies, the Company hereby holds PSALM free and harmless from any liability, costs and expenses, suit or allegation arising out of the Company's participating in the bidding process. This also serves as a formal waiver by the Company of any right to file any form of legal remedy or action before any court, tribunal or administrative body to prevent or restrain or prohibit PSALM from continuing the public bidding proceedings related thereto and from awarding and executing a DOAS with the Winning Bidder as determined by the PSALM-PBAC.

Very truly yours,

Authorized representative (Please enclose letter of authority)

Name and Signature : \_\_\_\_\_

Title/Position : \_\_\_\_\_

Date : \_\_\_\_\_

## SCHEDULE 1 - REPRESENTATIONS AND WARRANTIES FORM

(To be submitted on the Bidder's letterhead)

[date of Bid Submission Deadline]

THE CHAIRMAN

PSALM Privatization, Bids and Award Committee (PBAC)

Sale of \_\_\_\_\_

Power Sector Assets and Liabilities Management Corporation (PSALM)

3/F National Transmission Corporation (TransCo) Building

Power Center, Quezon Ave. cor. BIR Road, Diliman

Quezon City, Philippines

Sir:

We refer to the Bidding Procedures dated \_\_\_\_\_, as amended or supplemented, (*Bidding Procedures*) for the Sale of the [name of property] located at [location of property] (The Property). We submit this Bid Form - Purchase Price of the Property to the PBAC after having completed a comprehensive and complete business, legal, technical and financial due diligence.

Capitalized terms used but not defined in this document shall have the meaning given in the Bidding Procedures.

We unconditionally, voluntarily and irrevocably state that:

1. This document represents our voluntary offer for the purchase of the Property, all on the basis and terms set forth in the Deed of Absolute Sale (DOAS) that we executed and delivered.
2. This document constitutes an unconditional and irrevocable offer, which shall be valid and may be accepted by PSALM within one hundred eighty (180) days from the day of the Bid Submission Deadline, regardless of any event including force majeure affecting the *Property*, that may occur within such period or as may be extended, as provided in the Bidding Procedures.
3. The Bid for the purchase of the Property on the terms set forth in the DOAS for , the *Property* which we executed and delivered, is being made on an “**as-is, where-is**” basis.
4. [Bidder's name] unconditionally and voluntarily represents and warrants that:
  - a. It has secured, read and understood all sections and pages of the Bidding Procedures, the Supplemental Bid Bulletin/s (SBB/s), their respective provisions, undertakings, terms and conditions, and corresponding amendments, supplements or modifications, the PBAC's decisions and the DOAS for the *Property*;
  - b. It accepts, agrees to be bound, and shall fully abide by and comply with the terms and conditions of the Bidding Procedures, the SBB/s, their respective provisions, undertakings, terms and conditions, and corresponding amendments, supplements or modifications, the PBAC's decisions and the DOAS for the *Property*;
  - c. The Bidder and its representatives have conducted an independent due diligence, investigation, analysis and verification of the quality, quantity

and condition of the *Property* and the Bidder confirms that it and its representatives have been provided adequate access to the *Property*, Data Room, personnel, premises and pertinent records of PSALM and NPC;

- d. It has fully informed itself and understood all the conditions and matters affecting or that could affect its Bid, participation or undertaking in the Bidding or the implementation of the sale of the *Property* and other contemplated transactions as contained in the DOAS;
- e. It unconditionally and irrevocably waives all claims and causes of action against the PBAC, PSALM, or any of their advisors and consultants in the event that the Bidding, selection and/or award be: (i) stopped or terminated by PSALM; or (ii) restrained, enjoined, declared invalid or is set aside by a court of competent jurisdiction or any Governmental Entity for any reason;
- f. It unconditionally and irrevocably waives any defect, deviation, fault or infirmity in the Bidding Process conducted by the Committee or by PSALM;
- g. All of the documents submitted in satisfaction of the Bidding Procedures are original copies or true and faithful reproductions or copies of the original;
- h. All the documents and information submitted as part of the Documentary Deliverables are true and correct as of the Bid Submission Deadline. Any falsity, error, or misrepresentation shall constitute ground for disqualification from this bidding or revocation of award as determined by the PBAC;
- i. It will advise the PBAC within two Business Days of any change in the information contained in any portion of its Bid or in previous submissions to PSALM or the PBAC;
- j. It is not barred or blacklisted from participating in any bidding by any Government Entity or in any contract with a Government Entity;
- k. It has not been disqualified from participating in PSALM's bidding activities by reason of fraudulent acts or has not committed fraud or breach in the provisions of any agreement with PSALM;
- l. The Bidder, its officers and directors are not related to the Chairman, President and CEO, members of the Board of Directors of PSALM and members of the PBAC by consanguinity or affinity up to the fourth civil degree, legitimate or common law;
- m. The Bidder and/or its incorporators, past or present shareholders and directors, officers, employees, representatives or agents have not given, authorized or offered any commission or bribe or, in any manner, given or offered any money or other consideration directly or indirectly to any past or present director, officer, employee or agent of any Government Entity, including PSALM, which violates Philippine Law, including the Revised Penal Code (Act Number 3815, as amended) and the Anti-Graft and Corrupt Practices Act (RA 3019, as amended);
- n. The Bidder and/or its parent company, stockholders, subsidiaries, Affiliates, directors, officers, or any of their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, have no conflict, dispute or unsettled issue, arising out of, or in connection with the EPIRA or its Implementing Rules and Regulations, the DOE, PSALM, NPC or TRANSCO,

which affect the privatization of NPC Assets or TRANSCO, namely: (i) an unresolved issue, as determined by the inter-agency committee, arising from the renegotiation of contracts with IPPs mandated by Section 68 of the EPIRA; and (ii) any unpaid account arising from contractual obligations with the DOE, PSALM, NPC or TRANSCO. Any violation of this warranty shall constitute a sufficient ground for the disqualification of the Bidder, the termination of the DOAS, or forfeiture of the Bid Security, without prejudice to the filing of civil and/or criminal action under Philippine Law against the Bidder and/or its representatives;

- o. It shall at all times comply with Philippine Law and it accepts Philippine Law as the law governing the Bidding and the DOAS for the Property;
- p. It unconditionally and irrevocably waives any right to seek and obtain a writ of injunction or prohibition or restraining order against the PBAC, PSALM, NPC and/or any third party to prevent or restrain the Bidding Process or any related proceedings, the issuing bank, confirming or advising bank, the conduct of a bidding or any related proceeding, the selection of the Highest Ranking Bidder, Buyer or Winning Bidder, the performance of the DOAS and the draw on or forfeiture of the Bid Security. The Bidder commits to abide by the decision of the PBAC, waives its right to seek legal remedies against PSALM officers and employees, consultants, the PBAC and its Secretariat free and harmless from any liability, cost and expenses, suit or allegation arising from its participation in this Bidding Process
- q. In the event it is declared the Winning Bidder, it commits to comply with the terms and conditions of the sale through public bidding and the terms and conditions of the DOAS, it also undertakes to submit a Performance Bond to guarantee prompt, faithful and complete performance of its obligations under the DOAS for the Property in accordance with its terms;
- r. It is qualified under Philippine Law to bid for the sale and disposal of the Property and in the event it is declared the Winning Bidder, it is qualified under Philippine Law to be its Winning Bidder for the Property;
- s. It has secured the necessary licenses and permits required by Philippine Law to participate in the Bidding Process and submit a Bid and all such permits and licenses are valid and existing;
- t. It is not an Affiliate of another Bidder, or does not hold or acquire any ownership interest in another Bidder as listed in the General Information Sheet; and
- u. It does not have any Affiliate: (i) who is a Bidder; or (ii) who holds or acquires any ownership interest in another Bidder as listed in the latest General Information Sheet.
- v. It has no pending or unpaid tax liabilities in the Philippines
- w. The Bidder, its Directors, Officers and staff or any representative thereof, shall not attempt to establish any contact with any PSALM officers and employees, consultant, PBAC and its Secretariat on matters concerning the bidding from the date of submission of its bid, up to the conclusion of the bidding process, except for clarifications on proposal which must be in writing and addressed to the PBAC through its Chairperson.

- x. It is not involved in any money laundering activity as defined by the Anti-Money Laundering Act of 2001 (R.A. No. 9160); and
- y. It authorizes PSALM or its authorized representatives to conduct investigation and verification of the statements, documents and information submitted relative to its Bid.

For this purpose, the Bidder hereby authorizes any public office or any person or firm to furnish pertinent information deemed necessary and requested by PSALM to verify statements and information provided in this statement

- 5. The Second Bid Envelope contains four copies of Financial Bid.

**[BIDDER'S NAME]**

Signature  
Printed Name  
Title/Designation

Witnessed by:

\_\_\_\_\_

### ACKNOWLEDGEMENT

SUBSCRIBE AND SWORN TO BEFORE ME on this \_\_\_\_\_ day of \_\_\_\_\_ 2017 at the City of \_\_\_\_\_, affiant exhibited to me \_\_\_\_\_ issued at \_\_\_\_\_ on \_\_\_\_\_.

Doc No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 2017.

## SCHEDULE 2 - FORM OF ACCEPTANCE OF BIDDING PROCEDURES

(To be submitted on the Bidder's letterhead)

[date]

THE CHAIRMAN

PSALM Privatization, Bids and Award Committee

Sale of [Name of Property]

Power Sector Assets & Liabilities Management Corporation

3/F National Transmission Corporation (TransCo) Building

Power Center, Quezon Ave. cor. BIR Road, Diliman

Quezon City, Philippines

Sir:

We refer to the Bidding Procedures, dated \_\_\_\_\_, as amended or supplemented, (*Bidding Procedures*) for the Sale of the [name of Property] (the Property).

Capitalized terms used but not defined in this document shall have the meaning given in the Bidding Procedures.

[Bidder's name] declares, represents and warrants that:

1. It has received the Bidding Package dated \_\_\_\_\_, which includes the Bidding Procedures;
2. It has read and understood each and every section and page of the Bidding Procedures, its provisions, terms and conditions, amendment, supplement or modification, all Supplemental Bid Bulletins, and the PBAC's decisions, and accepts and agrees to be bound and fully abide by and comply with their terms and conditions;
3. It unconditionally and irrevocably waives any right to seek and obtain a writ of injunction or prohibition or restraining order against the PBAC, PSALM, NPC and/or any third party to prevent or restrain the Bidding Process or related proceedings, the conduct of a bidding or any related proceeding, the selection of the Highest Ranking Bidder, Buyer or Winning Bidder, the performance of the DOAS for [name of Property] and any draw on or forfeiture of the Bid Security. Such waiver shall be without prejudice to the right of the undersigned to question the basis for any disqualification or the rejection of its Bid by appropriate administrative or judicial processes not involving the issuance of a writ of injunction or prohibition or restraining order;
4. It shall at all times comply with Philippine Law; and,
5. It unconditionally and irrevocably waives any defect, deviation, fault or infirmity in the Bidding Process conducted by the PBAC or by PSALM up to and including the date of this document.



[BIDDER'S NAME]

By:  
[Name]  
[Designation]  
[Title]

Witnessed by:  
[Name]

ACKNOWLEDGMENT

SUBSCRIBE AND SWORN TO BEFORE ME on this \_\_\_\_\_ day of \_\_\_\_\_ 2017 at the  
City of \_\_\_\_\_, affiant exhibited to me \_\_\_\_\_ issued at \_\_\_\_\_ on  
\_\_\_\_\_.

Doc No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 2017.

### SCHEDULE 3 - STATEMENT UNDER OATH

(To be submitted on the Bidder's letterhead)

[date]

THE CHAIRMAN

PSALM Privatization, Bids and Award Committee

Sale of [name of Property]

Power Sector Assets & Liabilities Management Corporation

3/F National Transmission Corporation (TransCo) Building

Power Center, Quezon Ave. cor. BIR Road, Diliman

Quezon City, Philippines

Sir:

We refer to the Bidding Procedures, dated \_\_\_\_\_, as amended or supplemented, (*Bidding Procedures*) for the Sale of the [name of Property] (the Property).

[Bidder's name] declares, represents and warrants that:

- A. It is not disqualified or prohibited from participating in any bidding conducted by a government entity or entering into any kind of contract with a government entity;
- B. The Bidder, its parent company, stockholders, subsidiaries, Affiliates, directors or officers or any of their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, have no conflict, dispute or unsettled issue, arising out of, or in connection with the EPIRA or its Implementing Rules and Regulations, the DOE, PSALM, NPC or TRANSCO, which affect the privatization of NPC Assets or TRANSCO or the appointment of IPPAs, namely: (i) an unresolved issue, as determined by the inter-agency committee, arising from the renegotiation of contracts with IPPs mandated by Section 68 of the EPIRA; and (ii) any unpaid account arising from contractual obligations with the DOE, PSALM, NPC or TRANSCO. Any violation of this warranty shall constitute a sufficient ground for the disqualification of the Bidder, the termination of the Notice of Award or the Deed of Absolute Sale, and/or forfeiture of the Bid Security, without prejudice to the filing of civil and/or criminal action under Philippine Law against the Bidder, and/or its representatives;
- C. It is qualified under Philippine Law to bid for the Property and in the event it is declared the Winning Bidder, it is qualified under Philippine Law to own the Property;
- D. Each of the documents submitted in satisfaction of the bidding requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;
- E. It has not been disqualified from participating in PSALM's bidding activities by reason of fraudulent acts or has not committed fraud or breach in the provisions of any agreement with PSALM; and
- F. It shall at all times fully comply with Philippine Law.

[BIDDER'S NAME]

Signature  
Printed Name  
Title/Designation

Witnessed by:

\_\_\_\_\_

ACKNOWLEDGMENT

SUBSCRIBE AND SWORN TO BEFORE ME on this \_\_\_\_\_ day of \_\_\_\_\_ 2017 at the  
City of \_\_\_\_\_, affiant exhibited to me \_\_\_\_\_ issued at \_\_\_\_\_ on  
\_\_\_\_\_.

Doc No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 2017.

## SCHEDULE 4 - FORM OF AUTHORITY TO VERIFY

(To be submitted on the Bidder's letterhead and must be separate for each of the entities)

[date]

The Commissioner  
Bureau of Internal Revenue  
Agham Road  
Quezon City, Philippines

The Chairman  
Securities and Exchange Commission  
SEC Building  
EDSA, Mandaluyong City, Philippines

[Banks]

[Any other appropriate government agency]

Gentlemen:

This is to authorize the Power Sector Assets and Liabilities Management Corporation (PSALM) or its representatives to verify, examine and secure copies of all records pertaining to our Company on file with your office. We issue this authorization in furtherance of the Bidding Procedures dated \_\_\_\_\_, for the Sale of the [name of Property] located in \_\_\_\_\_.

**[BIDDER'S NAME]**

By:  
[Name]  
[Designation]  
[Title]

Witnessed by:  
[Name]



**SCHEDULE 6 - FORM OF BID SECURITY ISSUED BY A BANK LICENSED TO DO  
BUSINESS AND IS OPERATING IN THE PHILIPPINES**

(To be submitted on the letterhead of the Issuing Bank)

**IRREVOCABLE STANDBY LETTER OF CREDIT**

Number: [●]  
Amount: PhP \_\_\_\_\_  
Stated Expiration Date [●]  
Account Party: [●]

Power Sector Assets and Liabilities Management Corporation  
3/F National Transmission Corporation (TransCo) Building  
Power Center, Quezon Ave. cor. BIR Road, Diliman  
Quezon City, Philippines

Subject: Letter of Credit No. [●]

We refer to the Bidding Procedures, dated \_\_\_\_\_, as amended or supplemented, (*Bidding Procedures*) for the Sale of the [name of Property]. Unless otherwise defined, capitalized terms used in this document shall have the meaning ascribed to them in the Bidding Procedures.

We establish this Irrevocable Standby Letter of Credit No. [●] (*SBLC*) for the benefit of the Power Sector Assets and Liabilities Management Corporation (*PSALM* or *Beneficiary*) in the amount of Philippine Pesos \_\_\_\_\_ (PhP\_\_\_\_\_). Funds under this SBLC are available to PSALM, at sight, upon our receipt of the original copy of the SBLC and a Demand Certificate: (1) in the form of Annex A attached to this document notifying us of the occurrence of a Bid Security Drawing Event defined in the Bidding Procedures; (2) appropriately completed and signed by PSALM's authorized officer, employee or signatory; and, (3) presented as specified on or before the Expiration Date defined in this document. The SBLC does not contain any condition to drawing other than our confirmation that the Demand Certificate appears, on its face, to comply with the requirements of the immediately preceding sentence.

The SBLC shall be drawable at our office in Metro Manila, Philippines.

PSALM shall present one Demand Certificate dated the date of presentation for the drawing to [name and address of Issuing Bank]. If PSALM presents the Demand Certificate by 10:00 AM local time on any day on which we are open for business (*Business Day*), in strict conformance with the SBLC's terms and conditions, we will honor it by making payment in immediately available funds: (1) in accordance with PSALM's payment instructions; (2) without any restrictions, conditions, inquiry or right of objection on our part; (3) without notice to the Account Party prior to such payment; and, (4) notwithstanding any condition, demand, or objection by the Account Party or any other party, without PSALM having to further substantiate such demand, by 3:00 PM local time on such Business Day. Otherwise, we will honor PSALM's Demand Certificate by 10:00 AM local time on the following Business Day.

If demand for payment does not conform to the terms and conditions of this SBLC, we shall give PSALM prompt notice of and the reasons for the same, and that we will, upon PSALM's request, hold any document presented to us for five (5) Business Days or return the same to PSALM. Upon being notified that a demand for payment did not conform to this SBLC, PSALM may correct such non-conforming demand; provided that the corrected demand shall be made and presented to us on or before the Expiration Date.

This SBLC shall expire at 3:00 PM at our office on the earliest of the following: (1) the Stated Expiration Date; (2) our honoring of the Demand Certificate presented equal to the Drawing Amount, and, (3) PSALM's surrender of the original SBLC for cancellation. The earliest of these dates is the *Expiration Date*. Except if expressly provided in this paragraph, this SBLC shall not terminate prior to the Stated Expiration Date. Neither the Account Party nor us may terminate this SBLC prior to its Stated Expiration Date without the written consent of PSALM. Notwithstanding the occurrence of the Stated Expiration Date, we will honor and pay for the amount drawn by PSALM as stated in the Demand Certificate; provided, that the Demand Certificate was presented to us before the Expiration Date.

This SBLC sets forth in full our undertaking and references made to any document, instrument or agreement, except the Demand Certificate, shall not amend, modify, amplify or limit our undertaking.

All documents presented to us in connection with the demand for payment, and all notices and communications to us with respect to this SBLC shall be in writing and addressed and presented to us at our office at [address of Issuing Bank] Attention: [●], and shall make reference to this SBLC by number.

This SBLC shall be subject to the 1998 International Standby Practices and in case of dispute arising from, or in connection with, its interpretation or implementation, shall be subject to Philippine Law.

[Insert Date and Place of Issue]

[Issuing Bank]

THIS ANNEX A IS AN INTEGRAL PART OF  
LETTER OF CREDIT NO. [●]  
DATED [●]

ANNEX A  
**DEMAND CERTIFICATE**  
[Date]

[Address of Issuing Bank]

Attention: [●]

Re: Demand for Payment under Letter of Credit No.

Ladies and Gentlemen:

We refer to your Letter of Credit No. [●] (*SBLC*). Any term defined in the SBLC shall have the same meaning when used in this document. A Bid Security Drawing Event has occurred and the Beneficiary demands payment of [amount] under the SBLC, such payment to be made to [insert account instructions].

This Certificate has been executed and delivered by the Beneficiary on [●] [date].

**POWER SECTOR ASSETS AND LIABILITIES  
MANAGEMENT CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:



## SCHEDULE 7 DEED OF ABSOLUTE SALE

KNOW ALL MEN BY THESE PRESENTS:

This Deed of [Absolute] Sale (the “DOAS”), made and executed this \_\_\_\_ at the City of \_\_\_\_\_, by and between:

**POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION**, a government owned and controlled corporation created by virtue of Section 49 of Republic Act No. 9136, otherwise known as the “Electric Power Industry Reform Act of 2001” (“EPIRA”) with principal office at the 3/F National Transmission Corporation (TransCo) Building, Power Center, Quezon Ave. cor. BIR Road, Diliman, Quezon City, represented by its Officer-In-Charge, LOURDES S. ALZONA, hereinafter referred to as the “SELLER”;

-and-

\_\_\_\_\_, a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at \_\_\_\_\_, Philippines, represented by its [Designation], [Authorized Signatory], hereinafter referred to as the “BUYER”.

WITNESSETH:

WHEREAS, the SELLER is the owner of parcels of land [or, together with improvements, as may be applicable] thereon located at \_\_\_\_\_ (the “Property”), herein described, listed and defined in Annex A;

WHEREAS, the SELLER desires to sell through public bidding the abovementioned Property on an “AS IS, WHERE IS” basis;

WHEREAS, the BUYER has offered to buy the Property and has represented and warranted himself/herself/itself as qualified to own properties under existing laws, rules and regulations and has inspected the properties, determined the conditions and verified the possessory documents thereto;

WHEREAS, on the basis of the abovementioned representation and warranty by the BUYER, the SELLER accepted the offer of the former to buy the Property on cash basis and, pursuant to the recommendation of the PSALM Privatization, Bids and Awards Committee (PBAC) per its memorandum dated \_\_\_\_\_, the Property was awarded to the BUYER after a bidding duly conducted for the purpose.

WHEREAS, pursuant to the Resolution issued by the PSALM Board of Directors during its meeting held on \_\_\_\_\_, its \_\_\_\_\_ was authorized to sign, execute, and deliver this Deed for and its behalf;

WHEREAS, the acceptance of the offer and award of the Property to the BUYER by the SELLER were approved by the \_\_\_\_\_.

NOW, THEREFORE, for and in consideration of the foregoing premises, this Deed of Absolute Sale is entered into under the following terms and conditions:

1. PURCHASED PROPERTIES: In consideration of the Purchase Price and on the terms and subject to the conditions of this DOAS and of the Bidding Procedures/Documents dated \_\_\_\_\_ between the SELLER and the BUYER, the SELLER hereby sells, transfers and conveys to the BUYER, and the BUYER hereby purchases and accepts from the SELLER, all of the SELLER's right, title, interest in and to the properties herein described, listed and defined in Annex A, free and clear of any and all encumbrances except those that are registered and annotated in the title of the Property as of the date of execution of this DOAS. The BUYER purchases the Property on an "As Is, Where Is" basis and shall be limited to those that are described, listed and defined in Schedule A.

2. PRICE: The total consideration for the sale of the Property is \_\_\_\_\_ (PhP \_\_\_\_\_).
3. PAYMENT: Full payment shall be acknowledged to have been received by the SELLER upon the signing of this DOAS.
4. EXPENSES: The BUYER shall be liable for all expenses for documentation, Taxes, registration fees, transfer fees and other expenses for the transfer of the title to its name.
5. TAXES and ASSESSMENTS: Upon the execution of this DOAS, all Taxes, fees and expenses related to this Agreement, including registration fees and transfer and documentary stamp taxes shall be for the account of the BUYER.
6. VENUE: Should any dispute arise out of this DOAS, the PARTIES agree to file any action in the Court of proper jurisdiction of Quezon City, Metro Manila, to the exclusion of any other courts.
7. INCORPORATION: The terms of the Bidding Procedures dated 05 December 2017 executed are incorporated herein by reference.
8. REGISTRATION AND ISSUANCE OF NEW TITLE: This DOAS shall be registered with the appropriate Register of Deeds and all Taxes, costs, fees and expenses necessary to cause the registration of this DOAS and the issuance of a new title in the name of the BUYER shall be for the sole account of the BUYER. Any and all permits necessary to transfer title to the Property from the SELLER to the BUYER shall be the responsibility and for the account of the BUYER.
9. EFFECTIVITY: This DOAS shall be effective and bind the SELLER only after the necessary governmental approvals have been obtained.
10. SEPARABILITY: Should any portion of this DOAS be declared unconstitutional, illegal, and void or contrary to public policy, the remainder of the DOAS shall remain in full force and effect.

IN WITNESS WHEREOF, the parties and their witnesses have hereunto set their hands on the date and place first above-written.

**POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION**

Represented by:

**LOURDES S. ALZONA**  
Officer-in-Charge  
Date: \_\_\_\_\_, 20\_\_

**BUYER**

Represented by:

**Name of Authorized Signatory**  
Designation  
Date: \_\_\_\_\_, 20\_\_

Signed in the Presence of:

\_\_\_\_\_

\_\_\_\_\_

**ACKNOWLEDGEMENT**

REPUBLIC OF THE PHILIPPINES )  
 ) s.s.

Before me, this \_\_\_\_\_ day of \_\_\_\_\_, in \_\_\_\_\_, personally appeared:

<u>Name</u>	<u>Identification Document Presented</u>	<u>Date and Place Of Issue</u>
<b>Power Sector Assets and Liabilities Management Corporation</b>		
Represented by: <b>Lourdes S. Alzona</b>		

Known to me to be the same person who executed the foregoing Deed of Absolute Sale and acknowledged to me that the same is his free and voluntary act and deed, in the capacities in which he appears.

This instrument consists of six (6) pages including this page where the acknowledgment appears.

WITNESS my hand and seal at the date and place above-written.

Notary Public

Doc. No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 20\_\_.

**ACKNOWLEDGEMENT**

REPUBLIC OF THE PHILIPPINES )  
 ) s.s.

Before me, this \_\_\_\_\_ day of \_\_\_\_\_, in \_\_\_\_\_, personally appeared:

<u>Name</u>	<u>Identification Document Presented</u>	<u>Date and Place Of Issue</u>
<b>BUYER</b>		
Represented by: _____		

Known to me to be the same person who executed the foregoing Deed of Absolute Sale and acknowledged to me that the same is his free and voluntary act and deed, in the capacities in which he appears.

This instrument consists of six (6) pages including this page where the acknowledgment appears.

WITNESS my hand and seal at the date and place above-written.

Notary Public

Doc. No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 20\_\_.

## List of Properties

Property: \_\_\_\_\_

1. Parcels of Land situated in \_\_\_\_\_, with details as follows:

LOT NO.	AREA (Sq. M.)	TAX DEC.	TCT No.