Republic of the Philippines
DEPARTMENT OF ENERGY
(Kagawaran ng Enerhiya)

DEPARTMENT CIRCULAR NO. DC 2021- 10 - 0031

PRESCRIBING THE POLICY FOR THE TRANSPARENT AND EFFICIENT PROCUREMENT OF ANCILLARY SERVICES BY THE SYSTEM OPERATOR

WHEREAS, Section 2 (b) and (c) of Republic Act (RA) No. 9136 or the "*Electric Power Industry Reform Act* (EPIRA)", declares that it is the policy of the State to ensure the quality, reliability, security and affordability of the supply of electric power; and to ensure the transparent and reasonable prices of electricity in a regime of free and fair competition and full accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market. Furthermore, Section 2 (f) of the EPIRA states that it is also the policy of the State to protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;

WHEREAS, Section 45 of the EPIRA provides that no generation company, distribution utility, or its respective subsidiary or affiliate or stockholder or official of a generation company or distribution utility, or other entity engaged in generating and supplying electricity specified by Energy Regulatory Commission (ERC) within the fourth civil degree of consanguinity or affinity, shall be allowed to hold any interest, directly or indirectly, in National Transmission Corporation (TRANSCO) or its concessionaire;

WHEREAS, Section 45(a) of the EPIRA provides that no company or related group can own, operate or control more than thirty percent (30%) of the installed generating capacity of a grid and/or twenty-five percent (25%) of the national installed generating capacity. "Related group" includes a person's business interests, including its subsidiaries, affiliates, directors or officers or any of their relatives by consanguinity or affinity, legitimate or common law, within the fourth civil degree;

WHEREAS, Section 9 (d) of the EPIRA provides that the TRANSCO shall improve and expand its transmission facilities, consistent with the Grid Code and the Transmission Development Plan (TDP) to be promulgated pursuant to this Act, to adequately serve generation companies, distribution utilities and suppliers requiring transmission service and/or ancillary services through the transmission system:

WHEREAS, Section 21 of the EPIRA provides that the concessionaire of the national transmission assets shall be responsible for the improvement, expansion, operation, and/or maintenance of its transmission assets and shall comply with the Grid Code and the TDP as approved;

WHEREAS, on 4 December 2019, the Department of Energy (DOE) issued Department Circular No. DC2019-12-0018, entitled "*Adopting A General Framework*

Governing the Provision and Utilization of Ancillary Services in the Grid", which mandates the System Operator to procure the full requirement for Ancillary Services to meet the power quality and reliability of the grid;

WHEREAS, Section 4 of DC2019-12-0018 provides that the System Operator (SO) shall ensure compliance with its obligation to procure the required level and specifications of Ancillary Services (AS);

WHEREAS, Section 1.6 of DC2019-12-0018 requires a transparent and cost-effective procurement of AS taking into account the appropriate location and capacity requirements of each grid in accordance with the TDP;

WHEREAS, on 13 May 2021, the DOE promulgated Department Circular No. DC2021-03-0009 entitled "*Adopting a General Framework Governing the Operationalization of the Reserve Market in the Wholesale Electricity Spot Market and Providing Further Policies to Supplement DC2019-12-0018*" which mandates the System Operator to ensure adequate and least cost procurement of AS through combination of AS contracts and the reserve market;

WHEREAS, DC2021-03-0009 further provides that the System Operator shall allow for non-discriminatory participation of AS providers and shall conduct a competitive selection process for AS contracts in accordance with the guidelines to be promulgated by the DOE;

WHEREAS, contracting AS through competitive selection shall improve transparency, competitiveness, and wide dissemination of bid opportunities to ensure participation of all eligible generation companies to meet the required levels of AS;

NOW, THEREFORE, in consideration of the foregoing, the DOE hereby issues and promulgates the Competitive Selection Process (CSP) in the procurement of Ancillary Services by the System Operator.

SECTION 1. GENERAL PRINCIPLES.

The procurement by the System Operator (SO) of Ancillary Services (AS) through contracts shall be governed by the following principles:

1.1. Transparency and non-discriminatory treatment of all Ancillary Service Providers (ASPs) in the procurement of AS through the conduct of CSP that allows wide dissemination of bid opportunities and participation of all companies capable of providing AS;

1.2. Promote competition in the procurement and supply of AS to the grid by extending equal opportunity to eligible and qualified companies to participate in CSP for AS;

1.3. Protect the interest of the general public as it is affected by the rates and services of ASPs by ensuring sufficient and least-cost provision of AS;

1.4. Accountability in the procurement process by ensuring timely observance in the processes involved in the conduct of CSP, particularly the capability testing of generating facilities and issuance of other requisites in accordance with the ease of doing business principles;

1.5. All AS contracts shall be entered into by the SO in accordance with the competitive procurement mechanisms as provided in this Circular; and

1.6. Encourage additional investments through the contracting of future AS requirements as provided under Section 12.6 of DOE Department Circular No. DC2019-12-0018.

SECTION 2. SCOPE OF APPLICATION AND COVERAGE.

2.1. This Circular shall apply to the following:

2.1.1. System Operator (SO);
2.1.2. Market Operator (MO);
2.1.3. Ancillary Service Providers (ASPs);
2.1.4. National Transmission Corporation (TRANSCO);
2.1.5. Energy Regulatory Commission (ERC); and
2.1.6. Distribution Utilities (DUs).

2.2. All AS shall be procured through firm contracts subject to compliance of the threshold under Sections 5 or 6 of DC2019-12-0018, as applicable.

2.3. All ASPA's filed and pending before the ERC, shall not be covered upon the effectivity of this Circular.

SECTION 3. DEFINITIONS OF TERMS

3.1. ***Ancillary Services*** or ***AS*** refers to those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the transmission system in accordance with good utility practice and the Grid Code to be adopted in accordance with the EPIRA;

3.2. ***Ancillary Service Agreement Procurement Plan (ASAPP)*** refers to a plan for the acquisition of AS requirements by the SO to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the transmission system.

3.3. ***Ancillary Service Provider (ASP)*** refers to a person or entity providing or contracted to provide AS, provided that they have secured

certification from the SO or ERC-accredited third-party AS capability testing entities prior to delivery of service.

3.4. ***Ancillary Services Purchase Agreement*** *or* ***ASPA*** refers to a contract covering the provision of AS in accordance with the Open Access Transmission Service Rules.

3.5. ***Grid Users*** refer to any users of the High Voltage backbone system of interconnected transmission lines, substations and related facilities, located in each of Luzon, Visayas and Mindanao, or as may be determined by the ERC in accordance with Section 45 of the Act which may be generation companies, directly connected customers, or distribution utilities.

SECTION 4. ANCILLARY SERVICE AGREEMENT PROCUREMENT PLAN

4.1. The SO shall develop and submit to the DOE its annual ASAPP not later than 31 March of every year which contains the projected AS requirements for the next ten (10) years.

4.2. The ASAPP shall be posted at the SO website within three (3) days from receipt of the review by the DOE but should not be later than 30 April of every year.

4.3. The SO's ASAPP shall contain the following:

a. Type of AS to be procured per grid;
b. Timing of AS requirement per grid (month and year);
c. Existing ASPAs (providing the location and expiration);
d. Monthly levels of AS requirement per grid to account for seasonality;
e. Typical Hourly level for the past five years of the AS requirement per type per grid; and
f. Other information that the DOE may require.

SECTION 5. THIRD PARTY BIDS AND AWARDS COMMITTEE

5.1. Third Party Bids and Awards Committee (TPBAC).

5.1.1. The SO, through its Board of Directors (BOD), shall establish an independent TPBAC to spearhead and manage the CSP. The TPBAC shall comply with the policy and procedures in the conduct of CSP, as provided for in this Circular. The TPBAC shall be accountable to its decision in the conduct of the CSP; provided however, that the SO shall bear the expenses for any dispute or litigation arising from the CSP;

5.1.2. The SO, through its BOD, shall designate five (5) members of the TPBAC composed of the following:

5.1.2.1 One SO officer or employee knowledgeable in the technical operations of the transmission system;

5.1.2.2 One SO officer or employee with knowledge and/or experience with any local or international competitive bidding procedures and has knowledge on electricity pricing;

5.1.2.3 One SO lawyer knowledgeable in the legal framework of operating the transmission system;

5.1.2.4 One MO representative; and

5.1.2.5 One representative from the TRANSCO.

The MO and TRANSCO shall formally endorse its TPBAC representative to the SO and the DOE.

5.1.3. The BOD of the SO shall only serve as an Observer and not as a member of the TPBAC;

5.1.4. The Chair and Vice Chair of the TPBAC shall be selected by its members. The Chairman shall only vote in case of a tie;

5.1.5. A quorum of the TPBAC shall be composed of a simple majority of all voting members of the TPBAC; and

5.1.6. Matters requiring TPBAC's resolution shall require the majority votes of all the members present in the TPBAC meeting, there being a quorum.

5.2. TPBAC Technical Working Group (TWG) and Secretariat

5.2.1 The BOD of the SO shall designate the TPBAC TWG and Secretariat, each of which shall be headed by a regular or permanent employee of the SO, preferably an officer, to assist the TPBAC in the performance of its functions.

5.2.2 The TWG shall be composed of the technical, legal and financial personnel of the SO.

5.2.3 The TWG shall assist the TPBAC in the technical components of the CSP, such as development of the ASAPP, TOR, eligibility screening, evaluation of bids and post-qualification.

5.2.4 The Secretariat shall provide administrative support to the TPBAC for this purpose and serve as the keeper of all records and documents relating to all CSPs conducted by the SO.

5.2.5 The Secretariat shall fully document each step of the CSP and prepare and keep a written minutes of all the TPBAC meetings and proceedings.

SECTION 6. ANCILLARY SERVICE CSP OBSERVERS

6.1. To assure all parties of the CSP for AS that the process employed is conducted in an open, transparent, effective, efficient, and equitable manner, the TPBAC, shall invite observers in accordance with this Circular.

6.2. Observers shall be extended to the DOE, ERC, and NEA.

6.3. AS CSP Observers shall not participate in the proceedings and have no right to vote. AS CSP Observers shall be given invitations in writing and transmitted formally through any available modes at least seven (7) working days before the date of the procurement stages.

An invitation in writing and e-mail to AS CSP Observers shall be extended at each of the following stages of the AS CSP: Pre-Bid Conference, Submission and Opening of Bids, Bid Evaluation, Post-qualifications, Awarding and Contract Signing.

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

6.5. The SO is required to make and keep, as part of the TPBAC records, a complete and unedited video recording of the proceedings in cases Pre-Bid Conference and Submission and Opening of Bids.

6.6. The absence of AS CSP Observers will not nullify the AS CSP proceedings; Provided, that AS CSP Observers have been duly invited in writing and e-mail within the prescribed period.

SECTION 7. ANCILLARY SERVICE COMPETITIVE SELECTION PROCESS

7.1. Within six (6) months from the effectivity of this Circular, the SO shall conduct a CSP for the procurement of ASPA for a contract period of a maximum of five (5) years.

7.2. The SO shall comply with the standard procurement procedures, documents, and forms in the procurement of AS under this Circular.

7.3. The TPBAC shall prepare the Bid Documents, which shall consist of the following:

7.3.1 The TOR based on the recent ASAPP submission shall at the minimum, contain the information as provided in Annex A:

7.3.2 The Invitation to Bid shall, at the minimum, indicate the following:

a. Cooperation Period/Contract Year;

b. Type of AS;

c. Level of AS required;

d. Eligibility requirements;

e. Information memorandum;

f. Instruction to Bidders; and

g. Schedule and Deadlines up to the Notice to Proceed

7.3.3 Corporate Profile of the bidders;

7.3.4 Technical Proposal's requirements;

7.3.5 Financial Proposal's requirements;

7.3.6 Method and Criteria for evaluation;

7.3.7 Bidding Procedure;

7.3.8 Awarding, Signing of Contract, and Notice of Implementation;

7.3.9 Acceptable Form of Bid and Performance Securities;

7.3.10 Proposed Timelines or Milestones;

7.3.11 ASPA Template

7.3.12 Notarized Statement attesting to the information submitted for the bid;

7.3.13 Protest Mechanism; and

7.3.14 Other documents required and mandated by any government agencies.

7.4. Prior to the publication of the Invitation to Bid, the SO shall submit to the DOE for approval the following documents:

7.4.1 The TOR, if consistent with the CSP Policy; and

7.4.2 Draft Instruction to Bidders, if consistent with the final TOR.

In the event that agreements are made during the pre-bid conference that entail revision of the TOR, the DOE shall review the Supplemental/Bid Bulletin, revised

TOR, and the CSP schedule prior to the issuance and publication of such bid bulletin.

7.5. Publication and Posting

The TPBAC shall cause the publication and posting of the Invitation to Bid for the procurement opportunity in accordance with the periods specified in this Circular.

7.5.1 TPBAC shall post the Invitation to bid, all bid bulletins and related announcements in its website, the DOE website or DOE AS CSP E-based Portal if available, and through other means of publication and posting.

7.5.2 The TPBAC shall also cause the publication of the Invitation to Bid in a newspaper of general circulation once weekly for two (2) consecutive weeks.

For transparency, the TPBAC shall continuously update the DOE on the status of the CSP (all stages of the procurement process) through posting in the SO website and the DOE website or DOE AS CSP E-based Portal if available, including but not limited to the Bid Bulletins relating to the following: Invitation to Bid, Pre-bid Conference, Submission and Opening of Bids, Bid Evaluation, Post-qualification, Awarding and Contract Signing and Joint filing before the ERC.

7.6. Pre-Bid Conference

7.6.1 The TPBAC shall conduct a pre-bid conference to address the queries from the prospective bidders, within fourteen (14) calendar days after the publication of Invitation to Bid.

7.6.2 The Pre-Bid conference shall discuss, among other things, the eligibility requirements, the TOR, and the technical, legal, and financial components of the ASPA to be bid out.

7.6.3 Requests for clarification to the TPBAC from prospective bidders shall be made in writing or through e-mail before the conduct of the Pre-bid Conference, or after three (3) days from the scheduled Pre-bid Conference, and through manifestation(s) during the Pre-bid Conference.

7.6.4 Decisions/clarifications of the TPBAC clarifying or amending any provision of the TOR or Bidding Documents, shall be issued through a Supplemental/Bid Bulletin, at least fourteen (14) calendar days before the deadline for the submission and receipt of bids, and shall be posted in the SO's website, and DOE website or DOE AS CSP E-based Portal if available. A copy of such decision/clarification shall be furnished to all prospective bidders by fastest possible means (*i.e.,* e-mail) or through their authorized representative.

7.6.5 Supplemental Bid Bulletins may be issued in the following circumstances.

7.6.5.1 Request of the prospective bidders for clarification(s) on, or for an interpretation of any part of the Bid Documents; and

7.6.5.2 Upon the initiative of the TPBAC for purposes of clarifying or modifying any provision of the Bidding Documents. Any modification to the Bid Documents shall be identified as an amendment, as the case may be.

7.7. Bid Evaluation Criteria and Process

7.7.1 The TPBAC shall evaluate the bidder's legal, technical, and financial qualifications based on the criteria indicated in the Bid Documents.

7.8. Receipt and Opening of Bids.

7.8.1 Bidders shall be required to submit their bids on or before the deadline stipulated in the Bid Documents and/or in the Supplemental/Bid Bulletins.

7.8.2 Bidders shall submit their bids through their duly authorized representative using the forms specified in the Bidding Documents in two (2) separate sealed bid envelopes, and which shall be submitted simultaneously. The first shall contain the legal and technical components of the bid, including the eligibility requirements, and the second shall contain the financial component of the bid.

7.8.3 The Opening of Bids shall take place in the presence of all qualified bidders, and/or their duly authorized representatives and AS CSP Observers. Absence of a qualified bidder shall not be a ground for the postponement of the Opening of Bids or disqualification of the qualified bidder.

7.8.4 The TPBAC shall open the bids after the deadline for the submission and receipt of bids. The time, date, and place of the opening of bids shall be specified in the Bidding Documents. The bidders or their duly authorized representatives may attend the opening of bids. The TPBAC shall ensure the integrity, security, and confidentiality of all submitted bids.

7.8.5 In case the bids cannot be opened as scheduled due to justifiable reasons, the TPBAC shall take custody of the bids submitted and reschedule the Opening of Bids on the next working day or at the soonest possible time through the issuance of a Notice of Postponement to be posted in the SO's website, and the DOE website or DOE AS CSP E-based Portal if available.

7.8.6 The TPBAC shall proceed to determine the lowest calculated bidder using the valuation criteria prescribed in the Bid Documents.

7.8.7 The lowest calculated bid shall undergo a post-qualification process to determine its compliance with all the requirements and conditions as specified in the TOR and other pertinent bidding documents.

7.9. The TPBAC, through a Resolution, shall recommend the award of the contract to the BOD of the SO within five (5) calendar days from the receipt of the TPBAC's recommendation.

7.10. Within fifteen (15) working days upon signing of the ASPA, the SO and the winning bidder shall jointly file the ASPA to the ERC.

7.11. Each AS CSP shall be completed within ninety (90) calendar days from the time of posting/publication of Invitation to Bid until the award and signing of the ASPA. Non-observance of this prescribed period will be subject to penalties to be imposed by the ERC.

7.12. All expenses incurred in the conduct of the CSP shall be shouldered by the SO. The SO may, however, recover these expenses from the costs in the acquisition of the bid documents by prospective bidders.

7.13. In addition to the reports that the DOE requires from the SO under Section 12.3 of the DC2019-12-0018, the SO shall submit the status and key provisions of the ASPAs, for purposes of monitoring compliance of DC2019-12-0018 and this Circular.

The DOE may require submission of the duly approved ASPAs as may be deemed necessary.

SECTION 8. DIRECT NEGOTIATION IN FAILED CSPs

8.1 Direct negotiation may be made after at least two (2) failed CSPs and there is no outstanding dispute on the conducted CSP.

8.2 A CSP, after following the process as contemplated in this policy, is considered failed only when, during its conduct, any of the following circumstances exists:

8.2.1 No proposal was received by the SO;

8.2.2 Only one bidder submitted an offer, in case of RR, CR, and DR types of AS;

8.2.3 Competitive offers of prospective ASP failed to meet the requirements prescribed in the bid documents.

SECTION 9. REGULATORY SUPPORT

9.1 The ERC, in the exercise of its powers and functions under the EPIRA shall establish and impose existing fines/ and or penalties for non-compliance of SO to support the enforcement of this Circular.

9.2 The ERC shall have the power to review whether the parties have complied with the requirements of CSP for AS and shall issue appropriate regulations as may be necessary.

SECTION 10. PROTEST MECHANISM

10.1 Decisions of the TPBAC at any stage of the CSP may be questioned by filing a written request for reconsideration within three (3) calendar days upon receipt of written notice or upon verbal notification. The TPBAC shall decide on the request for reconsideration within seven (7) calendar days from receipt thereof, providing the concerned bidder and the DOE, a copy of the decision.

10.2 In the event that the request for reconsideration is denied, decisions of the TPBAC may be protested in writing to the BOD or its duly authorized officer/s. The protest must be filed within seven (7) calendar days from receipt of the resolution denying its request for reconsideration. A protest shall be made by filing a verified position paper with the BOD or its duly authorized officer/s, and serving a copy of the position paper to the DOE. The verified position paper must be accompanied by the payment of a non-refundable protest fee which shall be determined by the concerned TPBAC.

10.3 The verified position paper shall contain the following information: name of the bidder, address, name of project, brief statement of facts, issue to be resolved and such other matters and information pertinent and relevant to the proper resolution of the protest.

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

10.4. Protests shall be resolved within seven (7) calendar days from receipt thereof. Decision of the BOD or its duly authorized officer/s shall be final. An entity with jurisdiction on the matter shall decide or resolve the issue upon initiation of the concerned parties.

In no case shall any protest taken from any decision treated in this Circular stay or delay the CSP process: Provided, However, that protests must first be resolved before any award is made. Court action may be resorted to only after the protests contemplated in this Circular shall have been completed, i.e., resolved by the BOD with finality. Cases assailing or questioning the final decisions of the BOD regarding the protest may be initiated by an aggrieved

party in a court of law, pursuant to Rule 65 of the 2019 Amendments to the 1997 Rules of Civil Procedure. This provision is without prejudice to any law conferring to a cognizant court of law the jurisdiction to issue temporary restraining orders and injunctions.

SECTION 11. TRANSITORY PROVISION

11.1. All non-firm ASPAs not converted to firm ASPAs upon effectivity of this Circular shall be valid and effective. However, for purposes of dispatching of AS, the firm ASPAs will be prioritized over non-firm ASPAs.

11.2. All firm AS applications that have successfully completed SO's accreditation test for the applicable AS type, prior to the effectivity of this Circular, and subject to similar terms and conditions with existing ASPAs approved by the ERC, shall not be covered by this Circular.

SECTION 12. REPEALING CLAUSE

All rules and regulations, or any portion thereof, that are inconsistent with this Circular are hereby repealed or modified accordingly.

Provisions of DC2019-12-0018 not affected by this Circular shall remain in effect.

SECTION 13. SEPARABILITY CLAUSE

If for any reason that any section of this Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

SECTION 14. EFFECTIVITY

This Circular shall take effect fifteen (15) calendar days upon its publication in at least two (2) newspapers of general circulation. Copies thereof shall be filed with the University of the Philippines Law Center – Office of National Administrative Register (UPLC-ONAR).

Issued on OCT 04 2021 at Energy Center, Bonifacio Global City, Taguig City.

ALFONSO G. CUSI
Secretary

Republic of the Philippines
DEPARTMENT OF ENERGY
IN REPLYING PLS. CITE:
DOE-AGC-21005738

ANNEX A
ASPA TERMS OF REFERENCE (TOR)

A. GENERAL INFORMATION

1. **Name of Contracting Party (Buyer): National Grid Corporation of the Philippines (SO)**

2. **Grid to be Served**
   - ❑ Luzon
   - ❑ Visayas
   - ❑ Mindanao

3. **Current Year of Filing: _____**

B. REQUIREMENTS

1. **General Supply Description** *Note: Proposed technology must be consistent with supply requirements.*

   1.1 Purpose of Procurement
   - ❑ Regulating Reserve (RR) Requirements
   - ❑ Contingency Reserve (CR) Requirements
   - ❑ Dispatchable Reserve (DR) Requirements
   - ❑ Reactive Power Support (RPS) Requirements
   - ❑ Black Start (BS)

   1.2 Supply Profile

2. **Terms of Supply Services:**

   2.1 Contract Capacity: ___ MW (specify per month)

Year	Jan	-	-	Dec
1				
...				
n = # of yrs				

   2.2 Inclusive Dates: From _____ To _____ (max of 5 years)

Note: This likewise applies to forward contracting of AS Requirement

2.3 Conditions Precedent to participate in the CSP:

- ❑ For existing power plants, AS Certificate should be available upon commencement of CSP
- ❑ Commitment to secure AS Certificate, within 6 months after COD, and at least 4 months before the start of target delivery. This is for new plants participating in a CSP conducted to fulfill future AS Requirement. Failure to provide the AS Certificate within prescribed time shall allow SO to declare the supposed winning bidder as invalid and conduct another CSP for the unfulfilled AS Requirement.
- ❑ Ancillary Service tests to be conducted by either SO, or ERC-accredited third-party AS capability testing entities
- ❑ Technical Specifications (based on the relevant ASPP)
- ❑ Minimum size of an Ancillary Service Unit based on the frequency bias per grid
  - ❑ Luzon: 10 MW
  - ❑ Visayas: 5 MW
  - ❑ Mindanao: 5MW

  Note: Minimum frequency bias per grid shall be reviewed on annual basis. An ancillary service unit may be a single generator or an aggregation of several ones to provide a specific AS requirement that passes the Ancillary Service Certification Test.

2.4 Conditions Precedent to Start of Supply (please check as applicable):

- ❑ ERC approval of the ASPA
- ❑ Valid AS Certificate
- ❑ Provisional Authority to Operate (PAO) or Certificate of Compliance (COC). Indicated MW in the AS Certificate should not go above the Pmax as specified in the PAO or COC.

3. Cost and Tariff Structure.

3.1 The bid price or Full AS Payment shall be broken down into:

3.1.1 Capacity Payment Offer. The payment expressed in Php/kW/h, for the capacity offered for the bid; and

3.1.2 Incidental Energy Payment Offer. The gross cost or payment for the scheduled and dispatched capacity, which shall be exclusive of any WESM revenue The Bidder shall provide the detailed calculation of its payment offers including formula and references.

The Incidental Energy Payment shall include the following:

- ❑ Fixed Energy Fee (Php/kWh);

- Indexed Energy Fee (Php/kWh), which shall be based on allowable indices attached in the TOR with corresponding forecasts schedule to be used in the evaluation process. Base indices should be three (3) months prior to the bid submission date. Indices to be used should be specified; and
- Gross pumping or charging costs for Energy Storage Systems (Php/kWh).

3.1.3 Other WESM market charges

- Transmission charges required when providing the AS service;
- Distribution charges required when providing the AS service, if applicable; and
- Taxes including VAT.

3.2 The SO shall only pay the Incidental Energy based on the submitted components (e.g., Fixed and Indexed Energy Fees, other charges, and VAT). AS Payments to the provider relating to intervals with AS dispatch shall be recovered primarily from the sale of incidental energy to the WESM. Any shortfall from the proceeds from WESM sales shall be paid by the SO to the AS provider, while any excess shall be used by the SO to offset the Incidental Energy payment to the AS provider on the next billing period.

For the avoidance of doubt, the surplus/shortfall from the proceeds from WESM sales shall be calculated as follows:

$$IE_{surplus/shortfall} = \sum_{n=1}^{M} G\ x([IE_{paymentOffer} + Capacity_{paymentOffer}] - \text{Actual WESM Price})$$

Where:

G	=	Actual Incidental Energy per Trading Interval
$IE_{payment}$	=	The total IE rate as contemplated in TOR Section 3.1.2
$Capacity_{payment}$	=	The Capacity fee as contemplated in TOR Section 3.1.1
M	=	Number of intervals in a particular billing month
Actual WESM Price	=	WESM price for each trading interval
$IE_{surplus/shortfall}$	=	If positive, shall be paid by NGCP to the AS provider, If negative, shall be used by NGCP to offset the IE payment to the AS provider in the next billing month.

3.3 In the case of Mindanao, and if WESM is not yet in place, Full AS Payment shall be paid directly by SO to the AS Provider on the due date.

4. Assessment of Bids

4.1 Assessment of bids shall take into consideration the Capacity Payment, Incidental Energy Payment and Other Charges. Particularly on the Incidental Energy, assumptions on utilization per AS type, reference indices (e.g. CPI, coal/oil if applicable) should be the same for all Bidders for a comparable bids evaluation. For purposes of evaluation, SO shall make use of the previous year's average load capacity factor (LCF) on a per reserve type basis.

4.2 Bids (Capacity Payment + Incidental Energy Payment Offer + Other Charges) per Reserve Type per Delivery Period shall be stacked in ascending order, up to the required AS Level for the Delivery Period.

4.3 All winning bids shall be paid based on the respective Full AS Payment Offer.

5. Payment Modalities

5.1 Mode of Payment (check as applicable): ☐ Cash ☐ Manager's Check ☐ Others Please specify_____

5.2 Currency of Payment: Philippine Peso

5.3 Billing Period: Monthly

6. Outage Allowance

6.1 Allowed Scheduled Outage: 30 equivalent days per year.

6.2 Allowed Forced Outage: 15 equivalent days per year.

6.3 There will be no carry-over of any unutilized outage allowances from a calendar year on the succeeding years.

Note: Outage Allowance shall be prorated based on the equivalent firm number of hours of AS supply in a year

7. Replacement Reserve Capacity

7.1 Plant Outage / Deratings Due to Plant or Fuel-Related Conditions

a. For outages incurred by the AS provider within its outage allowance, it shall not be obliged by the SO to source a replacement reserve, but at its option only to source replacement reserve.

b. For outages incurred by the AS provider beyond its outage allowance, the AS provider shall procure replacement reserve either from the

Reserve Market or direct from other certified AS providers based on ERC approved rate. The AS provider shall still be paid of the applicable charges at no additional cost to the SO. When the AS provider is not able to provide a replacement reserve due to unavailability of providers, then the AS provider shall pay the SO an amount equivalent to its missed obligation at half its Capacity Payment. In no case shall the AS provider be allowed to renege on its obligation without first exhausting its options to secure replacement reserves.

8. Nominations and Dispatch of Ancillary Services

8.1 The AS Provider shall submit a binding Day-Ahead capacity nomination as basis for the scheduling and dispatch by the SO at prescribed intervals, with consideration of the Market Rules for Central Dispatching and on changes associated with the implementation of the Reserves Market.

8.2 AS Providers will be automatically scheduled by SO upon declaration of plant's availability and capability to supply the AS.

9. Force Majeure

9.1 The events that shall be deemed as Force Majeure and analogous circumstances shall be in accordance with DOE CSP Policies.

9.2 Arrangements in case of any force majeure shall be agreed upon by parties and shall form part of the ASPA.

9.3 There will be no Capacity Payment for such portion of the Contract Capacity and during such intervals affected by Force Majeure.

10. Grounds for Contract Termination

10.1 Valid grounds for termination are *(please check if applicable)*:

Event of Default
Expiration of Cooperation Period
Mutual agreement by both parties
Extended Force Majeure as agreed under the ASPA
Change in circumstances as agreed under the ASPA
Others, please specify. _____

11. Liquidated Damages

11.1 Liquidated Damages in case of default shall be equal to the present value of the Capacity Payment computed on a 365-day basis for the remaining term of the ASPA.

11.2 The discount rate to be used *(please specify)*:

12. Obligations of SO

12.1 SO shall provide assistance to the successful bidder in the processing of documents, applications and other activities in securing ERC approval. SO may also assist in securing permits and similar requirements from all national agencies and local government units especially if the resulting ASPA involves the construction of a new power plant.

13. Bidder's Qualifications

13.1 All forms of business organizations including Joint Ventures are encouraged to participate in the bidding process subject to applicable government licenses and permits;

13.2 Bidders with capacity share not beyond thirty percent (30%) of the installed generating capacity of a grid and/or twenty-five percent (25%) of the national installed generating capacity;

13.3 For new ASPs, the qualification shall be based on: (i) the experience and competence of its proposed personnel to manage and operate the plant; and, (ii) acceptability of its proposed operational management plan;

13.4 Bidders, which are affiliates of each other shall not be disqualified from participating in the bidding process on the basis of any perceived conflict of interest arising solely from such relationship; and

13.5 Only Bidders which are not affiliated to the System Operator are qualified to participate in the bidding process.