

14 January 2012

**REQUEST FOR PROPOSALS FOR THE ENGAGEMENT OF SERVICES OF LEGAL COUNSEL IN  
RELATION TO PSALM'S CLAIM AGAINST LBSF**

The Power Sector Assets and Liabilities Management (PSALM) Corporation requests for your firm's proposal for the engagement of services of legal counsel in relation to PSALM's claim against Lehman Brothers Special Financing Inc. (LBSF) in the United States Bankruptcy Court for the Southern District of New York with respect to the US\$100 Million Principal-Only-Swap (POS) transaction between PSALM and LBSF.

To be considered for engagement, the firm must have the following applicable experience:

1. Must have handled at least five (5) cases relating to NY, USA Chapter 11 bankruptcy, preferably representing the creditor;
2. Must have handled at least three (3) cases or engagements relating to the 2002 International Swaps and Derivatives Association (ISDA) agreement; and
3. Must have an expert with at least three (3) years experience in English law related to ISDA.

**TERMS OF REFERENCE**

**1.0 Background Information**

National Power Corporation (NPC) entered into a USD 100 Million Principal-Only-Swap (POS) transaction with Lehman Brothers Special Financing Inc. (LBSF) on 12 September 2007.

The POS transaction involves a currency exchange in 2028, with NPC receiving USD 100 million and paying the peso equivalent at an exchange rate of 44.78 Php to a USD. In return, NPC agreed to pay LBSF an annual swap premium of 2.687%, payable semi-annually until 2026.

On 15 September 2008, Lehman Brothers Holdings Inc. (LBHI), the parent company and guarantor of LBSF, filed for Chapter 11 Bankruptcy. This is an "Event of Default" under the 2002 ISDA Master Agreement which grants the non-defaulting party (in this case, NPC/PSALM) a right to designate an "Early Termination Date" in respect to the POS transaction.

On 17 October 2008, NPC served a termination notice designating 03 November 2008 as the Early Termination Date. A demand notice of NPC dated 26 January 2009 was served to LBSF with Close-out Amount of USD 3,461,590.93 plus interest.

Considering that no payment was received, NPC filed a Proof of Claim against LBSF and LBHI on 31 August 2009 with the US Bankruptcy Court for the Southern District of New

York. Notice of Transfer of Claim from NPC to PSALM was subsequently filed on 11 September 2009.

On 14 June 2011, a Derivatives Alternative Dispute Resolution (ADR) Notice was sent by LBSF to NPC/PSALM pursuant to the 17 September 2009 Order of the US Bankruptcy Court with a settlement demand of USD 18,053,778.00 plus USD 354,469.07 interest. PSALM responded to the Notice on 15 July 2011 maintaining its claim. A reply to the response was sent by LBSF on 29 July 2011 referring the same to mediation.

Mediation is scheduled on 22 February 2012 in New York, USA.

## **2.0 Objectives**

- a. To obtain representation and legal analysis/advice/opinion in relation to PSALM Corporation's claim against LBSF filed before the United States Bankruptcy Court for the Southern District of New York with respect to PSALM's USD 100 Million POS transaction with LBSF under the 2002 ISDA documentation governed by English law; and
- b. To secure legal analysis/advice/opinion in relation to the mediation and possible sale of PSALM Corporation's claim to interested parties.

## **3.0 Scope of Services**

The services of the firm shall include, but not limited to, the following:

- a. Provide legal advice and representation on PSALM Corporation's claim against LBSF with regard to the POS transaction;
- b. Provide analysis of documents related to the 2002 ISDA transaction;
- c. Provide legal analysis/advice/opinion on documents relating to the possible sale of PSALM Corporation's claim against LBSF to interested parties;
- d. Prepare such documents as may be necessary to protect/defend the interests of PSALM/NPC in the proceedings involving US bankruptcy court process, including but not limited to, arbitration, mediation and litigation;
- e. Provide legal advice and representation in relation to proceedings involving US bankruptcy court process, including but not limited to, arbitration, mediation and litigation; and
- f. Provide all legal work, assistance and advice in connection with above items.

## **4.0 Reporting Requirements and Deliverables**

The firm shall prepare and submit the following reports and documents:

- a. Comprehensive Legal Study within one (1) week from the issuance of the Notice to Proceed;
- b. Legal analysis/advice/opinion pertaining to Mediation;
- c. Legal analysis/advice/opinion pertaining to bankruptcy case litigation;

- d. Status report pertaining to court appearances and notices and any update on the case; and
- e. Legal analysis/advice/opinion pertaining to the possible sale of PSALM's claim to interested parties.

The firm shall provide all reports and documents in three (3) copies, in English language, both in print and electronic format (MS Excel, MS Word, PDF format, and other electronic form as may be required).

## 5.0 Implementation Arrangement

A team of experts shall be fielded by the firm to undertake the services. The firm should demonstrate actual experience and expertise in bankruptcy proceedings in NY, USA and financial derivative transactions documented under 2002 ISDA agreements governed by English law.

As a minimum requirement, the team shall be composed of the following specialists/experts:

- Bankruptcy Litigation Expert with license to practice law in NY, USA;
- Expert in 2002 ISDA agreement; and
- Expert in English law

The engagement shall have a term of not more than six (6) months from receipt of Notice to Proceed.

The firm shall be under the overall supervision and monitoring of the Liability Management Department (LMD) of PSALM Corporation.

## 6.0 Firm's proposal

- a. Technical Proposal - the firm must submit a technical proposal with a list of team members including their curriculum vitae and assignment schedule.
- b. Financial Proposal - the firm's corresponding cost per man-hours, out-of-pocket expenses and total cost shall be submitted in the following format:

Particulars	Maximum Man-hours (a)	Rate per Hour (b)	Amount (a x b)
Comprehensive Legal Study			
Mediation			
Litigation			
Sale of Claim			
Sub-total			
Maximum Out-of-pocket expenses			
Total			

The team should be able to demonstrate: (i) significant experience in US Bankruptcy proceedings under New York Law, (ii) expertise in 2002 ISDA Agreements; and (iii) expertise in English law related to 2002 ISDA.

## 7.0 Terms of payment

The firm shall be paid for services rendered on the following terms, inclusive of applicable taxes but exclusive of out-of-pocket expenses:

Scope of Work	Payment shall be made upon submission to and acceptance by PSALM of the following :
Comprehensive Legal Study	Comprehensive legal report
Mediation	Order of the mediation body
Litigation	Monthly man-hour reports
Sale of Claim	Legal analysis/advice/opinion

Billing shall be based on the actual man-hours spent multiplied by the rate per hour.

The out-of-pocket expenses shall consist of reasonable and documented expenses that include, but are not limited to the following: (i) filing fees, (ii) notarial fees, (iii) photocopying services, (iv) postage, and (v) courier delivery. Reimbursement of such expenses shall be subject to submission of supporting documents.

Proposals must be received by PSALM on or before 24 January 2012 at 8:00 a.m., Manila time, by courier addressed to:

### **CONRAD S. TOLENTINO**

#### **Chairperson, Bids and Awards Committee**

Power Sector Assets and Liabilities Management Corporation

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Fax No.: (+632)8403896

PSALM website: [www.psalm.gov.ph](http://www.psalm.gov.ph)

In case of any inquiries, you may contact Mr. Exequiel Cempron or Ms. Virginia Reyes at telephone numbers (+632) 893 0961 or (+632) 848 0228.

PSALM Corporation reserves the right to reject any and all proposals, terminate the procurement process, or not award the contract, at any time prior to contract award, without thereby incurring any liability to the affected proponent or proponents.

Very truly yours,

**CONRAD S. TOLENTINO**  
**Chairperson**  
**Bids and Awards Committee**