

Philippine Bidding Documents Republic of the Philippines



Procurement of Supply and Delivery of Industrial Fuel Oil for Malaya Thermal Power Plant for CY 2020

Project Reference No.
2020-PB-IFO-MTPP-001-02

21 February 2020

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Section I. Invitation to Bid

for the Procurement of Supply and Delivery of Industrial Fuel Oil for Malaya Thermal Power Plant for CY 2020

1. The Power Sector Assets and Liabilities Management (PSALM) Corporation, through the 2020 Corporate Operating Budget, intends to apply the sum being the respective Approved Budget for the Contract (ABC) to payment for each of the project listed below. Bids received in excess of the ABC shall be automatically rejected at bid opening.

| Name of Project | Project Reference Number | Quantity (in Liter) | Approved Budget for the Contract (ABC) | Applicable Fee for the Bidding Document |
|---|--------------------------|---------------------|--|---|
| Supply and Delivery of Industrial Fuel Oil for Malaya Thermal Power Plant for CY 2020 | 2020-PB-IFO-MTPP-001-02 | 37,500,000 | PhP 1,343,000,000.00 | PhP 75,000.00 |

2. PSALM now invites bids for the procurement of **Supply and Delivery of Industrial Fuel Oil for Malaya Thermal Power Plant for CY 2020**. Delivery of the Goods is required as indicated in Section VI. Schedule of Requirements of the Bidding Document. Bidders must have completed, within three (3) years from the date of submission and receipt of bids, a single contract similar to the Project, value of which is equivalent to at least twenty-five (25%) of the ABC. The description of an eligible bidder is contained in the Bidding Documents, particularly, in Section II. Instructions to Bidders.
3. Bidding will be conducted through open competitive bidding procedures using a non-discretionary "pass/fail" criterion as specified in the 2016 Revised Implementing Rules and Regulations (IRR) of Republic Act (RA) 9184, otherwise known as the "Government Procurement Reform Act".

Bidding is restricted to Filipino citizens/sole proprietorships, partnerships, or organizations with at least sixty percent (60%) interest or outstanding capital stock belonging to citizens of the Philippines, and to citizens or organizations

of a country the laws or regulations of which grant similar rights or privileges to Filipino citizens, pursuant to RA 5183.

4. A complete set of Bidding Documents may be acquired by interested bidders beginning on 21 February 2020 from the address below and upon payment of an applicable fee for the Bid Documents, pursuant to the latest guidelines issued by the GPPB.

It may also be downloaded free of charge from the websites of the Philippine Government Electronic Procurement System (PhilGEPS) (<https://www.philgeps.gov.ph>) and PSALM (<https://www.psalm.gov.ph>), provided that Bidders shall pay the applicable fee for the Bidding Document not later than the submission of their bid.

5. Interested bidders may obtain further information from PSALM and inspect the Bidding Documents at the address given below, from 9:00 AM to 4:00 PM, Monday to Friday.
6. PSALM will hold a Pre-Bid Conference and Bid Opening based on the table below, which shall be open to prospective bidders:

| Name of Project | Project Reference Number | Pre-Bid | Bid Submission | Bid Opening |
|---|--------------------------|--------------------------|-------------------------|--------------------------|
| Supply and Delivery of Industrial Fuel Oil for Malaya Thermal Power Plant for CY 2020 | 2020-PB-IFO-MTPP-001-02 | 02 March 2020 10:00AM | 16 March 2020 9:30AM | 16 March 2020 10:00AM |

7. Bids must be duly received by the BAC Secretariat at the address below on or before the bid submission deadline indicated above. All Bids must be accompanied by a bid security in any of the acceptable forms and in the amount stated in ITB Clause 18.

Bid opening shall be at the 24th Floor Vertis North Corporate Center 1, Astra Corner Lux Drives, North Avenue, 1105 Quezon City. Bids will be opened in the presence of the bidders' representatives who choose to attend. Late bids shall not be accepted.

8. Provisionary Tax Clearance is not acceptable.
9. PSALM reserves the right to accept or reject any and all bids, declare a failure of bidding, or not award the contract at any time prior to contract award in accordance with Section 41 of RA 9184 and its IRR, without thereby incurring any liability to the affected bidder or bidders.

10. For further information, please refer to:

THE SECRETARIAT

Bids and Awards Committee

Power Sector Assets and Liabilities Management Corporation

24th Floor Vertis North Corporate Center 1, Astra cor. Lux Drives

North Avenue, 1105 Quezon City

Telephone No.: (02) 8248 4861

e-mail: FMBAC2019@psalm.gov.ph

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HELENA C. TOLENTINO

Chairperson

BIDS AND AWARDS COMMITTEE

Section II. Instructions to Bidders

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A. General

1. Scope of Bid

- 1.1. The Procuring Entity named in the BDS invites bids for the supply and delivery of the Goods as described Section VII. Technical Specifications.
- 1.2. The name, identification, and number of lots specific to this bidding are provided in the BDS. The contracting strategy and basis of evaluation of lots is described in ITB Clause 28.

2. Source of Funds

The Procuring Entity has a budget or has received funds from the Funding Source named in the BDS, and in the amount indicated in the BDS. It intends to apply part of the funds received for the Project, as defined in the BDS, to cover eligible payments under the contract.

3. Corrupt, Fraudulent, Collusive, and Coercive Practices

- 3.1 Unless otherwise specified in the BDS, the Procuring Entity as well as the bidders and suppliers shall observe the highest standard of ethics during the procurement and execution of the contract. In pursuance of this policy, the Procuring Entity:
 - (a) defines, for purposes of this provision, the terms set forth below as follows:
 - (i) "corrupt practice" means behavior on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves, others, or induce others to do so, by misusing the position in which they are placed, and includes the offering, giving, receiving, or soliciting of anything of value to influence the action of any such official in the procurement process or in contract execution; entering, on behalf of the government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby, and similar acts as provided in RA 3019.
 - (ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring Entity, and includes collusive practices among Bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive

the Procuring Entity of the benefits of free and open competition.

- (iii) "collusive practices" means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Procuring Entity, designed to establish bid prices at artificial, non-competitive levels.
 - (iv) "coercive practices" means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract;
 - (v) "obstructive practice" is
 - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to an administrative proceedings or investigation or making false statements to investigators in order to materially impede an administrative proceedings or investigation of the Procuring Entity or any foreign government/foreign or international financing institution into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the administrative proceedings or investigation or from pursuing such proceedings or investigation; or
 - (bb) acts intended to materially impede the exercise of the inspection and audit rights of the Procuring Entity or any foreign government/foreign or international financing institution herein.
- (b) will reject a proposal for award if it determines that the Bidder recommended for award has engaged in any of the practices mentioned in this Clause for purposes of competing for the contract.
- 3.2 Further, the Procuring Entity will seek to impose the maximum civil, administrative, and/or criminal penalties available under applicable laws on individuals and organizations deemed to be involved in any of the practices mentioned in ITB Clause 3.1(a).
- 3.3 Furthermore, the Funding Source and the Procuring Entity reserve the right to inspect and audit records and accounts of a bidder or supplier in the bidding for and performance of a contract themselves or through independent auditors as reflected in the GCC Clause 3.

4. Conflict of Interest

4.1. All Bidders found to have conflicting interests shall be disqualified to participate in the procurement at hand, without prejudice to the imposition of appropriate administrative, civil, and criminal sanctions. A Bidder may be considered to have conflicting interests with another Bidder in any of the events described in paragraphs (a) through (c) below and a general conflict of interest in any of the circumstances set out in paragraphs (d) through (g) below:

- (a) A Bidder has controlling shareholders in common with another Bidder;
- (b) A Bidder receives or has received any direct or indirect subsidy from any other Bidder;
- (c) A Bidder has the same legal representative as that of another Bidder for purposes of this bid;
- (d) A Bidder has a relationship, directly or through third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder or influence the decisions of the Procuring Entity regarding this bidding process;
- (e) A Bidder submits more than one bid in this bidding process. However, this does not limit the participation of subcontractors in more than one bid;
- (f) A Bidder who participated as a consultant in the preparation of the design or technical specifications of the Goods and related services that are the subject of the bid; or
- (g) A Bidder who lends, or temporarily seconds, its personnel to firms or organizations which are engaged in consulting services for the preparation related to procurement for or implementation of the project, if the personnel would be involved in any capacity on the same project.

4.2. In accordance with Section 47 of the IRR of RA 9184, all Bidding Documents shall be accompanied by a sworn affidavit of the Bidder that it is not related to the Head of the Procuring Entity (HoPE), members of the Bids and Awards Committee (BAC), members of the Technical Working Group (TWG), members of the BAC Secretariat, the head of the Project Management Office (PMO) or the end-user unit, and the project consultants, by consanguinity or affinity up to the third civil degree. On the part of the Bidder, this Clause shall apply to the following persons:

- a. If the Bidder is an individual or a sole proprietorship, to the Bidder himself;

- b. If the Bidder is a partnership, to all its officers and members;
- c. If the Bidder is a corporation, to all its officers, directors, and controlling stockholders;
- d. If the Bidder is a cooperative, to all its officers, directors, and controlling shareholders or members; and
- e. If the Bidder is a joint venture (JV), the provisions of items (a), (b), (c) or (d) of this Clause shall correspondingly apply to each of the members of the said JV, as may be appropriate.

Relationship of the nature described above or failure to comply with this Clause will result in the automatic disqualification of a Bidder.

5. Eligible Bidders

5.1. Unless otherwise provided in the BDS, the following persons shall be eligible to participate in this bidding:

- (a) Duly licensed Filipino citizens/sole proprietorships;
- (b) Partnerships duly organized under the laws of the Philippines and of which at least sixty percent (60%) of the interest belongs to citizens of the Philippines;
- (c) Corporations duly organized under the laws of the Philippines, and of which at least sixty percent (60%) of the outstanding capital stock belongs to citizens of the Philippines;
- (d) Cooperatives duly organized under the laws of the Philippines; and
- (e) Persons/entities forming themselves into a Joint Venture (JV), *i.e.*, a group of two (2) or more persons/entities that intend to be jointly and severally responsible or liable for a particular contract: Provided, however, that Filipino ownership or interest of the joint venture concerned shall be at least sixty percent (60%).

5.2 Foreign bidders may be eligible to participate when any of the following circumstances exist, as specified in the BDS:

- (a) When a Treaty or International or Executive Agreement as provided in Section 4 of the RA 9184 and its IRR allow foreign bidders to participate;
- (b) Citizens, corporations, or associations of a country, the laws or regulations of which grant reciprocal rights or privileges to citizens, corporations, or associations of the Philippines;

- (c) When the Goods sought to be procured are not available from local suppliers; or
 - (d) When there is a need to prevent situations that defeat competition or restrain trade.
- 5.3 Government owned or -controlled corporations (GOCCs) 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 attached agencies of the Procuring Entity.
- 5.4 Unless otherwise provided in the **BDS**, the Bidder must have completed a Single Largest Completed Contract (SLCC) similar to the Project and the value of which, adjusted, if necessary, by the Bidder to current prices using the Philippine Statistics Authority (PSA) consumer price index, must be at least equivalent to a percentage of the ABC stated in the **BDS**.

For this purpose, contracts similar to the Project shall be those described in the **BDS**, and completed within the relevant period stated in the Invitation to Bid and ITB Clause 12.1(a)(ii).

- 5.5 The Bidder must submit a computation of its Net Financial Contracting Capacity (NFCC), which must be at least equal to the ABC to be bid, calculated as follows:

NFCC = [(Current assets minus current liabilities) (15)] minus the value of all outstanding or uncompleted portions of the projects under ongoing contracts, including awarded contracts yet to be started, coinciding with the contract to be bid.

The values of the domestic bidder's current assets and current liabilities shall be based on the latest Audited Financial Statements submitted to the BIR.

For purposes of computing the foreign bidders' NFCC, the value of the current assets and current liabilities shall be based on their audited financial statements prepared in accordance with international financial reporting standards.

If the prospective bidder opts to submit a committed Line of Credit, it must be at least equal to ten percent (10%) of the ABC to be bid. If issued by a foreign universal or commercial bank, it shall be confirmed or authenticated by a local universal or commercial bank.

6. Bidder's Responsibilities

- 6.1 The Bidder or its duly authorized representative shall submit a sworn statement in the form prescribed in as required in ITB Clause 12.1(b)(iii).

6.2 The Bidder is responsible for the following:

- (a) Having taken steps to carefully examine all of the Bidding Documents;
- (b) Having acknowledged all conditions, local or otherwise, affecting the implementation of the contract;
- (c) Having made an estimate of the facilities available and needed for the contract to be bid, if any;
- (d) Having complied with its responsibility to inquire or secure Supplemental/Bid Bulletin(s) as provided under ITB Clause 10.4.
- (e) Ensuring that it is not “blacklisted” or barred from bidding by the GOP or any of its agencies, offices, corporations, or LGUs, including foreign government/foreign or international financing institution whose blacklisting rules have been recognized by the GPPB;
- (f) Ensuring that 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;
- (g) Authorizing the HoPE or its duly authorized representative/s to verify all the documents submitted;
- (h) Ensuring that the signatory is the duly authorized representative of the Bidder, and granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the Bidder in the bidding, with the duly notarized Secretary’s Certificate attesting to such fact, if the Bidder is a corporation, partnership, cooperative, or joint venture;
- (i) Complying with the disclosure provision under Section 47 of RA 9184 and its IRR in relation to other provisions of RA 3019;
- (j) Complying with existing labor laws and standards, in the case of procurement of services; Moreover, bidder undertakes to:
 - (i) Ensure the entitlement of workers to wages, hours of work, safety and health and other prevailing conditions of work as established by national laws, rules and regulations; or collective bargaining agreement; or arbitration award, if and when applicable.

In case there is a finding by the Procuring Entity or the DOLE of underpayment or non-payment of workers’ wage and wage-related benefits, bidder agrees that the performance security or portion of the contract amount

shall be withheld in favor of the complaining workers pursuant to appropriate provisions of Republic Act No. 9184 without prejudice to the institution of appropriate actions under the Labor Code, as amended, and other social legislations.

- (ii) Comply with occupational safety and health standards and to correct deficiencies, if any.

In case of imminent danger, injury or death of the worker, bidder undertakes to suspend contract implementation pending clearance to proceed from the DOLE Regional Office and to comply with Work Stoppage Order; and

- (iii) Inform the workers of their conditions of work, labor clauses under the contract specifying wages, hours of work and other benefits under prevailing national laws, rules and regulations; or collective bargaining agreement; or arbitration award, if and when applicable, through posting in two (2) conspicuous places in the establishment's premises; and

- (k) Ensuring that it did not give or pay, directly or indirectly, any commission, amount, fee, or any form of consideration, pecuniary or otherwise, to any person or official, personnel or representative of the government in relation to any procurement project or activity.

Failure to observe any of the above responsibilities shall be at the risk of the Bidder concerned.

- 6.3 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents.
- 6.4 It shall be the sole responsibility of the Bidder to determine and to satisfy itself by such means as it considers necessary or desirable as to all matters pertaining to the contract to be bid, including: (a) the location and the nature of this Project; (b) climatic conditions; (c) transportation facilities; and (d) other factors that may affect the cost, duration, and execution or implementation of this Project.
- 6.5 The Procuring Entity shall not assume any responsibility regarding erroneous interpretations or conclusions by the prospective or eligible bidder out of the data furnished by the procuring entity. However, the Procuring Entity shall ensure that all information in the Bidding Documents, including bid/supplemental bid bulletin/s issued, are correct and consistent.

- 6.6 Before submitting their bids, the Bidder is deemed to have become familiar with all existing laws, decrees, ordinances, acts and regulations of the Philippines which may affect this Project in any way.
- 6.7 The Bidder shall bear all costs associated with the preparation and submission of his bid, and the Procuring Entity will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.
- 6.8 The Bidder should note that the Procuring Entity will accept bids only from those that have paid the applicable fee for the Bidding Documents at the office indicated in the Invitation to Bid.

7. Origin of Goods

Unless otherwise indicated in the **BDS**, there is no restriction on the origin of goods other than those prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, subject to ITB Clause 27.1.

8. Subcontracts

- 8.1. Unless otherwise specified in the **BDS**, the Bidder may subcontract portions of the Goods to an extent as may be approved by the Procuring Entity and stated in the **BDS**. However, subcontracting of any portion shall not relieve the Bidder from any liability or obligation that may arise from the contract for this Project.
- 8.2. Subcontractors must submit the documentary requirements under ITB Clause 12 and comply with the eligibility criteria specified in the **BDS**. In the event that any subcontractor is found by the Procuring Entity to be ineligible, the subcontracting of such portion of the Goods shall be disallowed.
- 8.3. The Bidder may identify the subcontractor to whom a portion of the Goods will be subcontracted at any stage of the bidding process or during contract implementation. If the Bidder opts to disclose the name of the subcontractor during bid submission, the Bidder shall include the required documents as part of the technical component of its bid.

B. Contents of Bidding Documents

9. Pre-Bid Conference

- 9.1. (a) If so specified in the **BDS**, a pre-bid conference shall be held at the venue and on the date indicated therein, to clarify and address the Bidders' questions on the technical and financial components of this Project.

(b) The pre-bid conference shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of bids, but not later than seven (7) calendar days from the posting of the invitation to bid/bidding documents in the PhilGEPS website. If the Procuring Entity determines that, by reason of the method, nature, or complexity of the contract to be bid, or when international participation will be more advantageous to the GOP, a longer period for the preparation of bids is necessary, the pre-bid conference shall be held at least thirty (30) calendar days before the deadline for the submission and receipt of bids, as specified in the **BDS**.

- 9.2. Bidders are encouraged to attend the pre-bid conference to ensure that they fully understand the Procuring Entity's requirements. 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 Documents as recorded in the minutes of the pre-bid conference and the Supplemental/Bid Bulletin. The minutes of the pre-bid conference shall be recorded and prepared not later than five (5) calendar days after the pre-bid conference. The minutes shall be made available to prospective bidders not later than five (5) days upon written request.
- 9.3. Decisions of the BAC amending any provision of the bidding documents shall be issued in writing through a Supplemental/Bid Bulletin at least seven (7) calendar days before the deadline for the submission and receipt of bids.

10. Clarification and Amendment of Bidding Documents

- 10.1. Prospective bidders may request for clarification on and/or interpretation of any part of the Bidding Documents. Such request must be in writing and submitted to the Procuring Entity at the address indicated in the **BDS** at least ten (10) calendar days before the deadline set for the submission and receipt of Bids.
- 10.2. The BAC shall respond to the said request by issuing Supplemental/Bid Bulletin, to be made available to all those who have properly secured the Bidding Documents, at least seven (7) calendar days before the deadline for the submission and receipt of Bids.
- 10.3. Supplemental/Bid Bulletins may also be issued upon the Procuring Entity's initiative for purposes of clarifying or modifying any provision of the Bidding Documents not later than seven (7) calendar days before the deadline for the submission and receipt of Bids. Any modification to the Bidding Documents shall be identified as an amendment.
- 10.4. Any Supplemental/Bid Bulletin issued by the BAC shall also be posted in the PhilGEPS and the website of the Procuring Entity concerned, if available, and at any conspicuous place in the premises of the Procuring Entity concerned. It shall be the responsibility of all Bidders

who have properly secured the Bidding Documents to inquire and secure Supplemental/Bid Bulletins that may be issued by the BAC. However, Bidders who have submitted bids before the issuance of the Supplemental/Bid Bulletin must be informed and allowed to modify or withdraw their bids in accordance with ITB Clause 23.

C. Preparation of Bids

11. Language of Bids

The eligibility requirements or statements, the bids, and all other documents to be submitted to the BAC must be in English. If the eligibility requirements or statements, the bids, and all other documents submitted to the BAC are in foreign language other than English, it must be accompanied by a translation of the documents in English. The documents shall be translated by the relevant foreign government agency, the foreign government agency authorized to translate documents, or a registered translator in the foreign bidder's country; and shall be authenticated by the appropriate Philippine foreign service establishment/post or the equivalent office having jurisdiction over the foreign bidder's affairs in the Philippines. The English translation shall govern, for purposes of interpretation of the bid.

12. Documents Comprising the Bid: Eligibility and Technical Components

12.1. Unless otherwise indicated in the **BDS**, the first envelope shall contain the following eligibility and technical documents:

(a) Eligibility Documents -

Class "A" Documents:

- (i) PhilGEPS Certificate of Registration and Membership in accordance with Section 8.5.2 of the IRR, except for foreign bidders participating in the procurement by a Philippine Foreign Service Office or Post, which shall submit their eligibility documents under Section 23.1 of the IRR, provided, that the winning bidder shall register with the PhilGEPS in accordance with section 37.1.4 of the IRR.
- (ii) Statement of all its ongoing government and private contracts, including contracts awarded but not yet started, if any, whether similar or not similar in nature and complexity to the contract to be bid; and

Statement of the Bidder's SLCC similar to the contract to bid, in accordance with ITB Clause 5.4, within the relevant period as provided in the **BDS**.

The two statements required shall indicate for each contract, the following:

- (ii.1) name of the contract;
 - (ii.2) date of the contract;
 - (ii.3) contract duration;
 - (ii.4) owner's name and address;
 - (ii.5) kinds of Goods;
 - (ii.6) For Statement of Ongoing Contracts - amount of contract and value of outstanding contracts;
 - (ii.7) For Statement of SLCC - amount of completed contracts, adjusted by the Bidder to current prices using PSA's consumer price index, if necessary for the purpose of meeting the SLCC requirement;
 - (ii.8) date of delivery; and
 - (ii.9) end user's acceptance or official receipt(s) or sales invoice issued for the contract, if completed, which shall be attached to the statements.
- (iii) NFCC computation in accordance with ITB Clause 5.5 or a committed Line of Credit from a universal or commercial bank.

Class "B" Document:

- (iv) If applicable, the Joint Venture Agreement (JVA) in case the joint venture is already in existence, or duly notarized statements from all the potential joint venture partners in accordance with Section 23.1(b) of the IRR.
- (b) Technical Documents -
- (i) Bid security in accordance with ITB Clause 18. If the Bidder opts to submit the bid security in the form of:
 - (i.1) a bank draft/guarantee or an irrevocable letter of credit issued by a foreign bank, it shall be accompanied by a confirmation from a Universal or Commercial Bank; or
 - (i.2) a surety bond, it shall be accompanied by a certification by the Insurance Commission that the surety or insurance company is authorized to issue such instruments;

- (ii) Conformity with technical specifications, as enumerated and specified in Sections VI and VII of the Bidding Documents; and
- (iii) Sworn statement in accordance with Section 25.3 of the IRR of RA 9184 and using the form prescribed in Section VIII. Bidding Forms.
- (iv) For foreign bidders claiming eligibility by reason of their country's extension of reciprocal rights to Filipinos, a certification from the relevant government office of their country stating that Filipinos are allowed to participate in their government procurement activities for the same item or product.

13. Documents Comprising the Bid: Financial Component

13.1. Unless otherwise stated in the **BDS**, the financial component of the bid shall contain the following:

- (a) Financial Bid Form, which includes bid prices and the Price Schedules, in accordance with ITB Clauses 15.1 and 15.4;
- (b) If the Bidder claims preference as a Domestic Bidder, a certification from the DTI issued in accordance with ITB Clause 27, unless otherwise provided in the **BDS**; and
- (c) Any other document related to the financial component of the bid as stated in the **BDS**.

13.2. (a) Unless otherwise stated in the **BDS**, all bids that exceed the ABC shall not be accepted.

(b) Unless otherwise indicated in the **BDS**, for foreign-funded procurement, a ceiling may be applied to bid prices provided the following conditions are met:

- (i) Bidding Documents are obtainable free of charge on a freely accessible website. If payment of Bidding Documents is required by the procuring entity, payment could be made upon the submission of bids.
- (ii) The procuring entity has procedures in place to ensure that the ABC is based on recent estimates made by the responsible unit of the procuring entity and that the estimates reflect the quality, supervision and risk and inflationary factors, as well as prevailing market prices, associated with the types of works or goods to be procured.

- (iii) The procuring entity has trained cost estimators on estimating prices and analyzing bid variances.
- (iv) The procuring entity has established a system to monitor and report bid prices relative to ABC and engineer's/procuring entity's estimate.
- (v) The procuring entity has established a monitoring and evaluation system for contract implementation to provide a feedback on actual total costs of goods and works.

14. Alternative Bids

- 14.1 Alternative Bids shall be rejected. For this purpose, alternative bid is an offer made by a Bidder in addition or as a substitute to its original bid which may be included as part of its original bid or submitted separately therewith for purposes of bidding. A bid with options is considered an alternative bid regardless of whether said bid proposal is contained in a single envelope or submitted in two (2) or more separate bid envelopes.
- 14.2 Each Bidder shall submit only one Bid, either individually or as a partner in a JV. A Bidder who submits or participates in more than one bid (other than as a subcontractor if a subcontractor is permitted to participate in more than one bid) will cause all the proposals with the Bidder's participation to be disqualified. This shall be without prejudice to any applicable criminal, civil and administrative penalties that may be imposed upon the persons and entities concerned.

15. Bid Prices

- 15.1. The Bidder shall complete the appropriate Schedules of Prices included herein, stating the unit prices, total price per item, the total amount and the expected countries of origin of the Goods to be supplied under this Project.
- 15.2. The Bidder shall fill in rates and prices for all items of the Goods described in the Schedule of Prices. Bids not addressing or providing all of the required items in the Bidding Documents including, where applicable, Schedule of Prices, shall be considered non-responsive and, thus, automatically disqualified. In this regard, where a required item is provided, but no price is indicated, the same shall be considered as non-responsive, but specifying a "0" (zero) or a dash (-) for the said item would mean that it is being offered for free to the Government, except those required by law or regulations to be accomplished.
- 15.3. The terms Ex Works (EXW), Cost, Insurance and Freight (CIF), Cost and Insurance Paid to (CIP), Delivered Duty Paid (DDP), and other trade terms used to describe the obligations of the parties, shall be governed by the rules prescribed in the current edition of the International

Commercial Terms (INCOTERMS) published by the International Chamber of Commerce, Paris.

15.4. Prices indicated on the Price Schedule shall be entered separately in the following manner:

- (a) For Goods offered from within the Procuring Entity's country:
 - (i) The price of the Goods quoted EXW (ex works, ex factory, ex warehouse, ex showroom, or off-the-shelf, as applicable;
 - (ii) The cost of all customs duties and sales and other taxes already paid or payable;
 - (iii) The cost of transportation, insurance, and other costs incidental to delivery of the Goods to their final destination; and
 - (iv) The price of other (incidental) services, if any, listed in the **BDS**.
- (b) For Goods offered from abroad:
 - (i) Unless otherwise stated in the **BDS**, the price of the Goods shall be quoted DDP with the place of destination in the Philippines as specified in the **BDS**. In quoting the price, the Bidder shall be free to use transportation through carriers registered in any eligible country. Similarly, the Bidder may obtain insurance services from any eligible source country.
 - (ii) The price of other (incidental) services, if any, listed in the **BDS**.

15.5. Prices quoted by the Bidder shall be fixed during the Bidder's performance of the contract and not subject to variation or price escalation on any account. A bid submitted with an adjustable price quotation shall be treated as non-responsive and shall be rejected, pursuant to ITB Clause 24.

All bid prices for the given scope of work in the contract as awarded shall be considered as fixed prices, and therefore not subject to price escalation during contract implementation, except under extraordinary circumstances. Upon the recommendation of the Procuring Entity, price escalation may be allowed in extraordinary circumstances as may be determined by the National Economic and Development Authority in accordance with the Civil Code of the Philippines, and upon approval by the GPPB. Nevertheless, in cases where the cost of the awarded contract is affected by any applicable new laws, ordinances, regulations, or other acts of the GOP,

promulgated after the date of bid opening, a contract price adjustment shall be made or appropriate relief shall be applied on a no loss-no gain basis.

16. Bid Currencies

16.1. Prices shall be quoted in the following currencies:

- (a) For Goods that the Bidder will supply from within the Philippines, the prices shall be quoted in Philippine Pesos.
- (b) For Goods that the Bidder will supply from outside the Philippines, the prices may be quoted in the currency(ies) stated in the **BDS**. However, for purposes of bid evaluation, bids denominated in foreign currencies shall be converted to Philippine currency based on the exchange rate as published in the *Bangko Sentral ng Pilipinas* (BSP) reference rate bulletin on the day of the bid opening.

16.2. If so allowed in accordance with ITB Clause 16.1, the Procuring Entity for purposes of bid evaluation and comparing the bid prices will convert the amounts in various currencies in which the bid price is expressed to Philippine Pesos at the foregoing exchange rates.

16.3. Unless otherwise specified in the **BDS**, payment of the contract price shall be made in Philippine Pesos.

17. Bid Validity

17.1. Bids shall remain valid for the period specified in the **BDS** which shall not exceed one hundred twenty (120) calendar days from the date of the opening of bids.

17.2. In exceptional circumstances, prior to the expiration of the bid validity period, the Procuring Entity may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. The bid security described in ITB Clause 18 should also be extended corresponding to the extension of the bid validity period at the least. A Bidder may refuse the request without forfeiting its bid security, but his bid shall no longer be considered for further evaluation and award. A Bidder granting the request shall not be required or permitted to modify its bid.

18. Bid Security

18.1. The Bidder shall submit a Bid Securing Declaration or any form of Bid Security in the amount stated in the **BDS**, which shall be not less than the percentage of the ABC in accordance with the following schedule:

| Form of Bid Security | Amount of Bid Security (Not Less than the Percentage of the ABC) |
|---|--|
| (a) Cash or cashier's/manager's check issued by a Universal or Commercial Bank. <i>For biddings conducted by LGUs, the Cashier's/Manager's Check may be issued by other banks certified by the BSP as authorized to issue such financial instrument.</i> | |
| (b) Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank. <i>For biddings conducted by LGUs, Bank Draft/Guarantee, or Irrevocable Letter of Credit may be issued by other banks certified by the BSP as authorized to issue such financial instrument.</i> | Two percent (2%) |
| (c) Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security. | Five percent (5%) |

The Bid Securing Declaration mentioned above is an undertaking which states, among others, that the Bidder shall enter into contract with the procuring entity and furnish the performance security required under ITB Clause 33.2, within ten (10) calendar days from receipt of the Notice of Award, and commits to pay the corresponding amount as fine, and be suspended for a period of time from being qualified to participate in any government procurement activity in the event it violates any of the conditions stated therein as provided in the guidelines issued by the GPPB.

- 18.2. The bid security should be valid for the period specified in the **BDS**. Any bid not accompanied by an acceptable bid security shall be rejected by the Procuring Entity as non-responsive.

- 18.3. No bid securities shall be returned to Bidders after the opening of bids and before contract signing, except to those that failed or declared as post-disqualified, upon submission of a written waiver of their right to file a request for reconsideration and/or protest, or upon the lapse of the reglementary period to file a request for reconsideration or protest. Without prejudice on its forfeiture, bid securities shall be returned only after the Bidder with the Lowest Calculated and Responsive Bid (LCRB) has signed the contract and furnished the performance security, but in no case later than the expiration of the bid security validity period indicated in ITB Clause 18.2.
- 18.4. Upon signing and execution of the contract pursuant to ITB Clause 32, and the posting of the performance security pursuant to ITB Clause 33, the successful Bidder's bid security will be discharged, but in no case later than the bid security validity period as indicated in the ITB Clause 18.2.
- 18.5. The bid security may be forfeited:
- (a) if a Bidder:
 - (i) withdraws its bid during the period of bid validity specified in ITB Clause 17;
 - (ii) does not accept the correction of errors pursuant to ITB Clause 28.3(a);
 - (iii) has a finding against the veracity of any of the documents submitted as stated in ITB Clause 29.2;
 - (iv) submission of eligibility requirements containing false information or falsified documents;
 - (v) submission of bids that contain false information or falsified documents, or the concealment of such information in the bids in order to influence the outcome of eligibility screening or any other stage of the public bidding;
 - (vi) allowing the use of one's name, or using the name of another for purposes of public bidding;
 - (vii) withdrawal of a bid, or refusal to accept an award, or enter into contract with the Government without justifiable cause, after the Bidder had been adjudged as having submitted the LCRB;
 - (viii) refusal or failure to post the required performance security within the prescribed time;

- (ix) refusal to clarify or validate in writing its bid during post-qualification within a period of seven (7) calendar days from receipt of the request for clarification;
 - (x) any documented attempt by a bidder to unduly influence the outcome of the bidding in his favor;
 - (xi) failure of the potential joint venture partners to enter into the joint venture after the bid is declared successful; or
 - (xii) all other acts that tend to defeat the purpose of the competitive bidding, such as habitually withdrawing from bidding, submitting late Bids or patently insufficient bid, for at least three (3) times within a year, except for valid reasons.
- (b) if the successful Bidder:
- (i) fails to sign the contract in accordance with ITB Clause 32; or
 - (ii) fails to furnish performance security in accordance with ITB Clause 33.

19. Format and Signing of Bids

- 19.1. Bidders shall submit their bids through their duly authorized representative using the appropriate forms provided in Section VIII. Bidding Forms on or before the deadline specified in the ITB Clause 21 in two (2) separate sealed bid envelopes, and which shall be submitted simultaneously. The first shall contain the technical component of the bid, including the eligibility requirements under ITB Clause 12.1, and the second shall contain the financial component of the bid. This shall also be observed for each lot in the case of lot procurement.
- 19.2. Forms as mentioned in ITB Clause 19.1 must be completed without any alterations to their format, and no substitute form shall be accepted. All blank spaces shall be filled in with the information requested.
- 19.3. The Bidder shall prepare and submit an original of the first and second envelopes as described in ITB Clauses 12 and 13. In addition, the Bidder shall submit copies of the first and second envelopes. In the event of any discrepancy between the original and the copies, the original shall prevail.
- 19.4. Each and every page of the Bid Form, including the Schedule of Prices, under Section VIII hereof, shall be signed by the duly authorized representative/s of the Bidder. Failure to do so shall be a ground for the rejection of the bid.

- 19.5. Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialed by the duly authorized representative/s of the Bidder.

20. Sealing and Marking of Bids

- 20.1. Bidders shall enclose their original eligibility and technical documents described in ITB Clause 12 in one sealed envelope marked "ORIGINAL - TECHNICAL COMPONENT", and the original of their financial component in another sealed envelope marked "ORIGINAL - FINANCIAL COMPONENT", sealing them all in an outer envelope marked "ORIGINAL BID".
- 20.2. Each copy of the first and second envelopes shall be similarly sealed duly marking the inner envelopes as "COPY NO. ___ - TECHNICAL COMPONENT" and "COPY NO. ___ - FINANCIAL COMPONENT" and the outer envelope as "COPY NO. ___", respectively. These envelopes containing the original and the copies shall then be enclosed in one single envelope.
- 20.3. The original and the number of copies of the Bid as indicated in the **BDS** shall be typed or written in ink and shall be signed by the Bidder or its duly authorized representative/s.
- 20.4. All envelopes shall:
- (a) contain the name of the contract to be bid in capital letters;
 - (b) bear the name and address of the Bidder in capital letters;
 - (c) be addressed to the Procuring Entity's BAC in accordance with ITB Clause 1.1;
 - (d) bear the specific identification of this bidding process indicated in the ITB Clause 1.2; and
 - (e) bear a warning "DO NOT OPEN BEFORE..." the date and time for the opening of bids, in accordance with ITB Clause 21.
- 20.5. Bid envelopes that are not properly sealed and marked, as required in the bidding documents, shall not be rejected, but the Bidder or its duly authorized representative shall acknowledge such condition of the bid as submitted. The BAC or the Procuring Entity shall assume no responsibility for the misplacement of the contents of the improperly sealed or marked bid, or for its premature opening.

D. Submission and Opening of Bids

21. Deadline for Submission of Bids

Bids must be received by the Procuring Entity's BAC at the address and on or before the date and time indicated in the BDS.

22. Late Bids

Any bid submitted after the deadline for submission and receipt of bids prescribed by the Procuring Entity, pursuant to ITB Clause 21, shall be declared "Late" and shall not be accepted by the Procuring Entity. The BAC shall record in the minutes of bid submission and opening, the Bidder's name, its representative and the time the late bid was submitted.

23. Modification and Withdrawal of Bids

23.1. The Bidder may modify its bid after it has been submitted; provided that the modification is received by the Procuring Entity prior to the deadline prescribed for submission and receipt of bids. The Bidder shall not be allowed to retrieve its original bid, but shall be allowed to submit another bid equally sealed and properly identified in accordance with ITB Clause 20, linked to its original bid marked as "TECHNICAL MODIFICATION" or "FINANCIAL MODIFICATION" and stamped "received" by the BAC. Bid modifications received after the applicable deadline shall not be considered and shall be returned to the Bidder unopened.

23.2. A Bidder may, through a Letter of Withdrawal, withdraw its bid after it has been submitted, for valid and justifiable reason; provided that the Letter of Withdrawal is received by the Procuring Entity prior to the deadline prescribed for submission and receipt of bids. The Letter of Withdrawal must be executed by the duly authorized representative of the Bidder identified in the Omnibus Sworn Statement, a copy of which should be attached to the letter.

23.3. Bids requested to be withdrawn in accordance with ITB Clause 23.1 shall be returned unopened to the Bidders. A Bidder, who has acquired the bidding documents, may also express its intention not to participate in the bidding through a letter which should reach and be stamped by the BAC before the deadline for submission and receipt of bids. A Bidder that withdraws its bid shall not be permitted to submit another bid, directly or indirectly, for the same contract.

23.4. No bid may be modified after the deadline for submission of bids. No bid may be withdrawn in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Financial Bid Form. Withdrawal of a bid during this interval shall result in the forfeiture of the Bidder's bid security, pursuant to ITB Clause 18.5, and the imposition of administrative, civil and criminal sanctions as prescribed by RA 9184 and its IRR.

24. Opening and Preliminary Examination of Bids

- 24.1. The BAC shall open the bids in public, immediately after the deadline for the submission and receipt of bids, as specified in the **BDS**. In case the Bids cannot be opened as scheduled due to justifiable reasons, the BAC 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 PhilGEPS website and the website of the Procuring Entity concerned.
- 24.2. Unless otherwise specified in the **BDS**, the BAC shall open the first bid envelopes and determine each Bidder's compliance with the documents prescribed in ITB Clause 12, using a non-discretionary "pass/fail" criterion. If a Bidder submits the required document, it shall be rated "passed" for that particular requirement. In this regard, bids that fail to include any requirement or are incomplete or patently insufficient shall be considered as "failed". Otherwise, the BAC shall rate the said first bid envelope as "passed".
- 24.3. Unless otherwise specified in the **BDS**, immediately after determining compliance with the requirements in the first envelope, the BAC shall forthwith open the second bid envelope of each remaining eligible bidder whose first bid envelope was rated "passed". The second envelope of each complying bidder shall be opened within the same day. In case one or more of the requirements in the second envelope of a particular bid is missing, incomplete or patently insufficient, and/or if the submitted total bid price exceeds the ABC unless otherwise provided in ITB Clause 13.2, the BAC shall rate the bid concerned as "failed". Only bids that are determined to contain all the bid requirements for both components shall be rated "passed" and shall immediately be considered for evaluation and comparison.
- 24.4. Letters of Withdrawal shall be read out and recorded during bid opening, and the envelope containing the corresponding withdrawn bid shall be returned to the Bidder unopened.
- 24.5. All members of the BAC who are present during bid opening shall initial every page of the original copies of all bids received and opened.
- 24.6. In the case of an eligible foreign bidder as described in ITB Clause 5, the following Class "A" Documents may be substituted with the appropriate equivalent documents, if any, issued by the country of the foreign Bidder concerned, which shall likewise be uploaded and maintained in the PhilGEPS in accordance with Section 8.5.2 of the IRR;
 - (a) Registration certificate from the Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI) for sole proprietorship, or CDA for cooperatives;
 - (b) Mayor's/Business permit issued by the local government where the principal place of business of the bidder is located; and

- (c) Audited Financial Statements showing, among others, the prospective bidder's total and current assets and liabilities stamped "received" by the Bureau of Internal Revenue or its duly accredited and authorized institutions, for the preceding calendar year which should not be earlier than two years from the date of bid submission.
- 24.7. Each partner of a joint venture agreement shall likewise submit the requirements in ITB Clauses 12.1(a)(i). Submission of documents required under ITB Clauses 12.1(a)(ii) to 12.1(a)(iii) by any of the joint venture partners constitutes compliance.
- 24.8. The Procuring Entity shall prepare the minutes of the proceedings of the bid opening that shall include, as a minimum: (a) names of Bidders, their bid price (per lot, if applicable, and/or including discount, if any), bid security, findings of preliminary examination; and (b) attendance sheet. The BAC members shall sign the abstract of bids as read.
- 24.9. The bidders or their duly authorized representatives may attend the opening of bids. The BAC shall ensure the integrity, security, and confidentiality of all submitted bids. The Abstract of Bids as read and the minutes of the bid opening shall be made available to the public upon written request and payment of a specified fee to recover cost of materials.
- 24.10. To ensure transparency and accurate representation of the bid submission, the BAC Secretariat shall notify in writing all bidders whose bids it has received through its PhilGEPS-registered physical address or official e-mail address. The notice shall be issued within seven (7) calendar days from the date of the bid opening

E. Evaluation and Comparison of Bids

25. Process to be Confidential

- 25.1. Members of the BAC, including its staff and personnel, as well as its Secretariat and TWG, are prohibited from making or accepting any kind of communication with any bidder regarding the evaluation of their bids until the issuance of the Notice of Award, unless otherwise allowed in the case of ITB Clause 26.
- 25.2. Any effort by a bidder to influence the Procuring Entity in the Procuring Entity's decision in respect of bid evaluation, bid comparison or contract award will result in the rejection of the Bidder's bid.

26. Clarification of Bids

To assist in the evaluation, comparison, and post-qualification of the bids, the Procuring Entity may ask in writing any Bidder for a clarification of its bid.

All responses to requests for clarification shall be in writing. Any clarification submitted by a Bidder in respect to its bid and that is not in response to a request by the Procuring Entity shall not be considered.

27. Domestic Preference

27.1. Unless otherwise stated in the **BDS**, the Procuring Entity will grant a margin of preference for the purpose of comparison of bids in accordance with the following:

- (a) The preference shall be applied when the lowest Foreign Bid is lower than the lowest bid offered by a Domestic Bidder.
- (b) For evaluation purposes, the lowest Foreign Bid shall be increased by fifteen percent (15%).
- (c) In the event that the lowest bid offered by a Domestic Bidder does not exceed the lowest Foreign Bid as increased, then the Procuring Entity shall award the contract to the Domestic Bidder at the amount of the lowest Foreign Bid.
- (d) If the Domestic Bidder refuses to accept the award of contract at the amount of the Foreign Bid within two (2) calendar days from receipt of written advice from the BAC, the Procuring Entity shall award to the bidder offering the Foreign Bid, subject to post-qualification and submission of all the documentary requirements under these Bidding Documents.

27.2. A Bidder may be granted preference as a Domestic Bidder subject to the certification from the DTI that the Bidder is offering unmanufactured articles, materials or supplies of the growth or production of the Philippines, or manufactured articles, materials, or supplies manufactured or to be manufactured in the Philippines substantially from articles, materials, or supplies of the growth, production, or manufacture, as the case may be, of the Philippines.

28. Detailed Evaluation and Comparison of Bids

28.1. The Procuring Entity will undertake the detailed evaluation and comparison of bids which have passed the opening and preliminary examination of bids, pursuant to ITB Clause 24, in order to determine the Lowest Calculated Bid.

28.2. The Lowest Calculated Bid shall be determined in two steps:

- (a) The detailed evaluation of the financial component of the bids, to establish the correct calculated prices of the bids; and
- (b) The ranking of the total bid prices as so calculated from the lowest to the highest. The bid with the lowest price shall be identified as the Lowest Calculated Bid.

- 28.3. The Procuring Entity's BAC shall immediately conduct a detailed evaluation of all bids rated "passed," using non-discretionary pass/fail criteria. The BAC shall consider the following in the evaluation of bids:
- (a) Completeness of the bid. Unless the **BDS** allows partial bids, bids not addressing or providing all of the required items in the Schedule of Requirements including, where applicable, Schedule of Prices, shall be considered non-responsive and, thus, automatically disqualified. In this regard, where a required item is provided, but no price is indicated, the same shall be considered as non-responsive, but specifying a zero (0) or a dash (-) for the said item would mean that it is being offered for free to the Procuring Entity, except those required by law or regulations to be provided for; and
 - (b) Arithmetical corrections. Consider computational errors and omissions to enable proper comparison of all eligible bids. It may also consider bid modifications. Any adjustment shall be calculated in monetary terms to determine the calculated prices.
- 28.4. Based on the detailed evaluation of bids, those that comply with the above-mentioned requirements shall be ranked in the ascending order of their total calculated bid prices, as evaluated and corrected for computational errors, discounts and other modifications, to identify the Lowest Calculated Bid. Total calculated bid prices, as evaluated and corrected for computational errors, discounts and other modifications, which exceed the ABC shall not be considered, unless otherwise indicated in the **BDS**.
- 28.5. The Procuring Entity's evaluation of bids shall only be based on the bid price quoted in the Bid Form, which includes the Schedule of Prices.
- 28.6. Bids shall be evaluated on an equal footing to ensure fair competition. For this purpose, all bidders shall be required to include in their bids the cost of all taxes, such as, but not limited to, value added tax (VAT), income tax, local taxes, and other fiscal levies and duties which shall be itemized in the bid form and reflected in the detailed estimates. Such bids, including said taxes, shall be the basis for bid evaluation and comparison.
- 28.7. If so indicated pursuant to ITB Clause 1.2, Bids are being invited for individual lots or for any combination thereof, provided that all Bids and combinations of Bids shall be received by the same deadline and opened and evaluated simultaneously so as to determine the Bid or combination of Bids offering the lowest calculated cost to the Procuring Entity. Bid prices quoted shall correspond to all items specified for each lot and to all quantities specified for each item of a lot. Bid Security as required by ITB Clause 18 shall be submitted for each contract (lot) separately. The basis for evaluation of lots is specified in BDS Clause 28.3.

29. Post-Qualification

- 29.1. The BAC shall determine to its satisfaction whether the Bidder that is evaluated as having submitted the Lowest Calculated Bid complies with and is responsive to all the requirements and conditions specified in ITB Clauses 5, 12, and 13.
- 29.2. Within a non-extendible period of five (5) calendar days from receipt by the bidder of the notice from the BAC that it submitted the Lowest Calculated Bid, the Bidder shall submit its latest income and business tax returns filed and paid through the BIR Electronic Filing and Payment System (eFPS) and other appropriate licenses and permits required by law and stated in the BDS.

Failure to submit any of the post-qualification requirements on time, or a finding against the veracity thereof, shall disqualify the bidder for award. Provided in the event that a finding against the veracity of any of the documents submitted is made, it shall cause the forfeiture of the bid security in accordance with Section 69 of the IRR of RA 9184.
- 29.3. The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted pursuant to ITB Clauses 12 and 13, as well as other information as the Procuring Entity deems necessary and appropriate, using a non-discretionary "pass/fail" criterion, which shall be completed within a period of twelve (12) calendar days.
- 29.4. If the BAC determines that the Bidder with the Lowest Calculated Bid passes all the criteria for post-qualification, it shall declare the said bid as the LCRB, and recommend to the HoPE the award of contract to the said Bidder at its submitted price or its calculated bid price, whichever is lower.
- 29.5. A negative determination shall result in rejection of the Bidder's Bid, in which event the Procuring Entity shall proceed to the next Lowest Calculated Bid with a fresh period to make a similar determination of that Bidder's capabilities to perform satisfactorily. If the second Bidder, however, fails the post qualification, the procedure for post qualification shall be repeated for the Bidder with the next Lowest Calculated Bid, and so on until the LCRB is determined for recommendation for contract award.
- 29.6. Within a period not exceeding fifteen (15) calendar days from the determination by the BAC of the LCRB and the recommendation to award the contract, the HoPE or his duly authorized representative shall approve or disapprove the said recommendation.
- 29.7. In the event of disapproval, which shall be based on valid, reasonable, and justifiable grounds as provided for under Section 41 of the IRR of RA 9184, the HoPE shall notify the BAC and the Bidder in writing of such decision and the grounds for it. When applicable, the BAC shall

conduct a post-qualification of the Bidder with the next Lowest Calculated Bid. A request for reconsideration may be filed by the bidder with the HoPE in accordance with Section 37.1.3 of the IRR of RA 9184.

30. Reservation Clause

- 30.1. Notwithstanding the eligibility or post-qualification of a Bidder, the Procuring Entity concerned reserves the right to review its qualifications at any stage of the procurement process if it has reasonable grounds to believe that a misrepresentation has been made by the said Bidder, or that there has been a change in the Bidder's capability to undertake the project from the time it submitted its eligibility requirements. Should such review uncover any misrepresentation made in the eligibility and bidding requirements, statements or documents, or any changes in the situation of the Bidder which will affect its capability to undertake the project so that it fails the preset eligibility or bid evaluation criteria, the Procuring Entity shall consider the said Bidder as ineligible and shall disqualify it from submitting a bid or from obtaining an award or contract.
- 30.2. Based on the following grounds, the Procuring Entity reserves the right to reject any and all bids, declare a Failure of Bidding at any time prior to the contract award, or not to award the contract, without thereby incurring any liability, and make no assurance that a contract shall be entered into as a result of the bidding:
 - (a) If there is *prima facie* evidence of collusion between appropriate public officers or employees of the Procuring Entity, or between the BAC and any of the Bidders, or if the collusion is between or among the bidders themselves, or between a Bidder and a third party, including any act which restricts, suppresses or nullifies or tends to restrict, suppress or nullify competition;
 - (b) If the Procuring Entity's BAC is found to have failed in following the prescribed bidding procedures; or
 - (c) For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the GOP as follows:
 - (i) If the physical and economic conditions have significantly changed so as to render the project no longer economically, financially or technically feasible as determined by the HoPE;
 - (ii) If the project is no longer necessary as determined by the HoPE; and
 - (iii) If the source of funds for the project has been withheld or reduced through no fault of the Procuring Entity.

- 30.3. In addition, the Procuring Entity may likewise declare a failure of bidding when:
- (a) No bids are received;
 - (b) All prospective Bidders are declared ineligible;
 - (c) All bids fail to comply with all the bid requirements or fail post-qualification; or
 - (d) The bidder with the LCRB refuses, without justifiable cause to accept the award of contract, and no award is made in accordance with Section 40 of the IRR of RA 9184.

F. Award of Contract

31. Contract Award

- 31.1. Subject to ITB Clause 29, the HoPE or its duly authorized representative shall award the contract to the Bidder whose bid has been determined to be the LCRB.
- 31.2. Prior to the expiration of the period of bid validity, the Procuring Entity shall notify the successful Bidder in writing that its bid has been accepted, through a Notice of Award duly received by the Bidder or its representative personally or sent by registered mail or electronically, receipt of which must be confirmed in writing within two (2) days by the Bidder with the LCRB and submitted personally or sent by registered mail or electronically to the Procuring Entity.
- 31.3. Notwithstanding the issuance of the Notice of Award, award of contract shall be subject to the following conditions:
- (a) Submission of the following documents within ten (10) calendar days from receipt of the Notice of Award:
 - (i) Valid JVA, if applicable; or
 - (ii) In the case of procurement by a Philippine Foreign Service Office or Post, the PhilGEPS Registration Number of the winning foreign Bidder;
 - (b) Posting of the performance security in accordance with ITB Clause 33;
 - (c) Signing of the contract as provided in ITB Clause 32; and
 - (d) Approval by higher authority, if required, as provided in Section 37.3 of the IRR of RA 9184.

- 31.4. At the time of contract award, the Procuring Entity shall not increase or decrease the quantity of goods originally specified in Section VI. Schedule of Requirements.

32. Signing of the Contract

- 32.1. At the same time as the Procuring Entity notifies the successful Bidder that its bid has been accepted, the Procuring Entity shall send the Contract Form to the Bidder, which contract has been provided in the Bidding Documents, incorporating therein all agreements between the parties.
- 32.2. Within ten (10) calendar days from receipt of the Notice of Award, the successful Bidder shall post the required performance security, sign and date the contract and return it to the Procuring Entity.
- 32.3. The Procuring Entity shall enter into contract with the successful Bidder within the same ten (10) calendar day period provided that all the documentary requirements are complied with.
- 32.4. The following documents shall form part of the contract:
 - (a) Contract Agreement;
 - (b) Bidding Documents;
 - (c) Winning bidder's bid, including the Technical and Financial Proposals, and all other documents/statements submitted (*e.g.*, bidder's response to request for clarifications on the bid), including corrections to the bid, if any, resulting from the Procuring Entity's bid evaluation;
 - (d) Performance Security;
 - (e) Notice of Award of Contract; and
 - (f) Other contract documents that may be required by existing laws and/or specified in the **BDS**.

33. Performance Security

- 33.1. To guarantee the faithful performance by the winning Bidder of its obligations under the contract, it shall post a performance security within a maximum period of ten (10) calendar days from the receipt of the Notice of Award from the Procuring Entity and in no case later than the signing of the contract.
- 33.2. The Performance Security shall be denominated in Philippine Pesos and posted in favor of the Procuring Entity in an amount not less than the percentage of the total contract price in accordance with the following schedule:

| Form of Performance Security | Amount of Performance Security (Not less than the Percentage of the Total Contract Price) |
|---|---|
| <p>(a) Cash or cashier's/manager's check issued by a Universal or Commercial Bank.</p> <p><i>For biddings conducted by the LGUs, the Cashier's/Manager's Check may be issued by other banks certified by the BSP as authorized to issue such financial instrument.</i></p> | |
| <p>(b) Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank.</p> <p><i>For biddings conducted by the LGUs, the Bank Draft/Guarantee or Irrevocable Letter of Credit may be issued by other banks certified by the BSP as authorized to issue such financial instrument.</i></p> | <p>Five percent (5%)</p> |
| <p>(c) Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.</p> | <p>Thirty percent (30%)</p> |

33.3. Failure of the successful Bidder to comply with the above-mentioned requirement shall constitute sufficient ground for the annulment of the award and forfeiture of the bid security, in which event the Procuring Entity shall have a fresh period to initiate and complete the post qualification of the second Lowest Calculated Bid. The procedure shall be repeated until the LCRB is identified and selected for recommendation of contract award. However if no Bidder passed post-

qualification, the BAC shall declare the bidding a failure and conduct a re-bidding with re-advertisement, if necessary.

34. Notice to Proceed

Within seven (7) calendar days from the date of approval of the contract by the appropriate government approving authority, the Procuring Entity shall issue the Notice to Proceed (NTP) together with a copy or copies of the approved contract to the successful Bidder. All notices called for by the terms of the contract shall be effective only at the time of receipt thereof by the successful Bidder.

35. Protest Mechanism

Decision of the procuring entity at any stage of the procurement process may be questioned in accordance with Section 55 of the IRR of RA 9184.

Section III. Bid Data Sheet

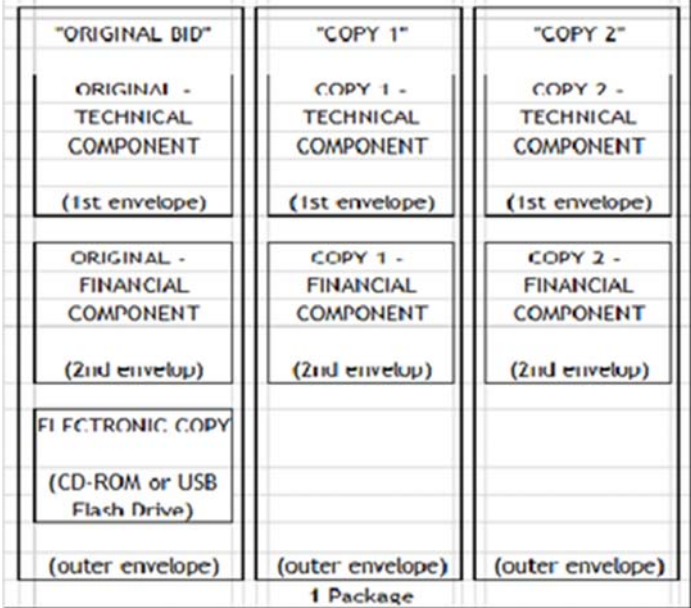
| ITB Clause | |
|------------|---|
| 1.1 | <p>The Procuring Entity is Power Sector Assets and Liabilities Management (PSALM) Corporation.</p> <p>The name of the contract is Procurement of Supply and Delivery of Industrial Fuel Oil for Malaya Thermal Power Plant for CY 2020</p> <p>The identification number of the contract is 2020-PB-IFO-MTPP-001-02.</p> |
| 1.2 | <p>The name and reference number of the project is:</p> <p>Procurement of Supply and Delivery of Industrial Fuel Oil for Malaya Thermal Power Plant for CY 2020</p> <p>(Project Reference No. 2020-PB-IFO-MTPP-001-02)</p> <p>Bids shall be for the supply and delivery of 37,500,000 Liters of Industrial Fuel Oil as specified in Section VI (Delivery Points and Schedule of Requirements) and Section VII (Technical Specifications).</p> <p>a) Contracted Quantity of Fuel</p> <ul style="list-style-type: none"> • The quantity of Fuel to be delivered shall be in accordance with Section VI-Schedule of Requirements, subject to the provisions of <u>GCC 9 (Price)</u> and <u>SCC 10.2 (Contract Amount and Implementation)</u>. <p style="padding-left: 40px;">The monthly breakdown of Fuel requirements is indicated in Section VI-B, Schedule of Monthly Fuel Requirements. Said monthly breakdown is for the Supplier’s planning purposes.</p> <ul style="list-style-type: none"> • The Contract Term shall be until 31 December 2020. In case the contracted quantity cannot be lifted by PSALM during the Contract Term, PSALM shall continue lifting Fuel from the Supplier pursuant to SCC 9.2 (Total Contract Price). On the other hand, if the Total Contract Price has been used up and there is still remaining volume for delivery, the same shall no longer be lifted. <p>In the event of a supply shortage and/or allocation of petroleum supplies imposed by the Philippine Government, or any of its instrumentalities, Supplier shall sell to PSALM the said volumes as a minimum subject to the implementing rules and regulations issued by the Government agency of the Philippines exercising supervision over petroleum utilization and supplies.</p> |

| ITB Clause | |
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| 2 | <p>The Funding Source is:</p> <p>The Government of the Philippines (GOP) through PSALM's 2020 Corporate Operating Budget in the total amount of ONE BILLION THREE HUNDRED FORTY-THREE MILLION PESOS (PhP1,343,000,000.00).</p> <p>The name of the Project is:</p> <p>Procurement of Supply and Delivery of Industrial Fuel Oil for Malaya Thermal Power Plant for CY 2020 (Project Reference No. 2020-PB-IFO-MTPP-001-02)</p> |
| 3.1 | No further instructions. |
| 5.1 | No further instructions. |
| 5.2 | <p>Foreign bidders may participate in this Project in view of the following circumstance(s):</p> <ol style="list-style-type: none"> 1. When a Treaty or International or Executive Agreement as provided in Section 4 of the RA 9184 and its IRR allow foreign bidders to participate; 2. Citizens, corporations, or associations of a country, included in the list issued by the GPPB, the laws or regulations of which grant reciprocal rights or privileges to citizens, corporations, or associations of the Philippines; 3. When the Goods sought to be procured are not available from local suppliers; or 4. When there is a need to prevent situations that defeat competition or restrain trade. |
| 5.4 | The bidder must have completed, within three (3) years from the date of submission and receipt of bids as provided under ITB Clause 12.1(a)(ii), a single contract that is similar to this Project, equivalent to at least twenty-five percent (25%) of the ABC. |
| 7 | No further instructions. |
| 8.1 | Subcontracting is not allowed. |
| 8.2 | Not applicable. |
| 9.1 | The Procuring Entity will hold a pre-bid conference for the Project at 10:00 AM, Monday, 02 March 2020 at the 24 th Floor Vertis North Corporate Center 1, Astra Corner Lux Drives, North Avenue, 1105 Quezon City. |

| ITB Clause | |
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| 10.1 | <p>The Procuring Entity's address is:</p> <p>THE CHAIRPERSON Bids and Awards Committee 24th Floor Vertis North Corporate Center 1, Astra cor. Lux Drives North Avenue , 1105 Quezon City Telephone No.: (02) 8248 4861 Email address: FMBAC2019@psalm.gov.ph BAC Secretariat: BACSec2019@psalm.gov.ph</p> |
| 12.1(a) | <p>A. Bidders whose PhilGEPS registration/membership are not yet under Platinum Category per Section 8.5.2 of the IRR, shall submit the following documents in accordance with Section 23.1(a) of the IRR, in lieu of PhilGEPS Certificate of Registration and Membership:</p> <p>ELIGIBILITY DOCUMENTS</p> <p><u>CLASS "A" DOCUMENTS:</u></p> <ul style="list-style-type: none"> (i) Registration Certificate from SEC, DTI for sole proprietorship, or CDA for cooperatives. (ii) Mayor's/Business Permit for 2020 issued by the City or Municipality where the principal place of business of the prospective bidder is located, or the equivalent document for Exclusive Economic Zones or Areas. <p>In cases of recently expired Mayor's/Business Permits, it shall be accepted together with the official receipt as proof that the bidder has applied for renewal for CY 2020. Provided, that the renewed permit shall be submitted as a post-qualification requirement.</p> <ul style="list-style-type: none"> (iii) Tax Clearance Certificate per E.O. No. 398, s. 2005, issued by the Bureau of Internal Revenue (BIR). <p>Only a valid TCC issued by BIR pursuant to the above related BIR issuances is acceptable. Provisional Tax Clearance Certificate or any other form is not accepted. For the avoidance of doubt, a TCC issued by the Revenue Regional Office and submitted by a Bidder should be issued on or before the date of effectivity of BIR Revenue Memorandum Order No. 46-2018.</p> <p>For further clarification on valid TCC, Tax Clearances for Bidding Purposes shall only be valid after the same have been posted in the BIR Website. In case the TCC is not yet posted in the BIR Website, the Bidder must submit a certified true copy of the TCC issued by the BIR, or its original, which will be returned to the Bidder after the bidding process.</p> |

| ITB Clause | |
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| | <p>(iv) The prospective bidder's Audited Financial Statement, showing, among others, the prospective bidder's total and current and liabilities, stamped "received" by the Bureau of Internal Revenue (BIR) or its duly accredited and authorized institutions, for the preceding calendar year, which should not be earlier than two (2) years from bid submission.</p> <p>The Audited Financial Statement and its composition shall comply with the requirements of Section 2 of the Bureau of Internal Revenue [BIR] Revenue Regulation 07-2007 which states that:</p> <p>"x x x Section 2. COVERAGE. - The Financial Statements shall be composed of the following:</p> <ul style="list-style-type: none"> (iv.1) Balance Sheet; (iv.2) Income Statement/Profit and Loss Statement; (iv.3) Statement of Changes in Equity, showing either: <ul style="list-style-type: none"> a. All changes in equity b. Changes in equity, other than those arising from transactions with equity holders acting in their capacity as equity holders; (iv.4) Statement of Cash Flow; (iv.5) Notes, comprising a summary of significant accounting policies and other explanatory notes; and (iv.6) Schedules attached to the afore-cited statements. <p style="text-align: center;">x x x".</p> <p>B. Bidders may submit either their Class "A" Documents in accordance with Section 23.1(a) of the IRR or the PhilGEPS Certificate of Registration and Membership under Platinum Category, or a combination thereof.</p> |
| 12.1(a)(i) | The bidder's SLCC similar to the contract to be bid should have been completed within three (3) years prior to the deadline for the submission and receipt of bids. |
| 12.1 (b) (ii) | For the Conformity with Section VI (Schedule of Requirements) and Section VII (Technical Specifications), bidder shall use Form No. TEC-04 of Section VIII. Bidding Forms. |
| 13.1 (b) | No further instructions. |
| 13.1(c) | In addition, bidder shall submit the Form No. FIN-01A. |

| ITB Clause | |
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| 13.2 | <p>The ABC is ONE BILLION THREE HUNDRED FORTY-THREE MILLION PESOS (PhP1,343,000,000.00). Any bid with a financial component exceeding this amount shall not be accepted.</p> <p>Any bid with a financial component exceeding this amount shall not be accepted.</p> |
| 15.4 (a) (iv) | <p>Incidental Services</p> <p>The Supplier is required to provide free of charge to PSALM all of the following services, including additional services, if any:</p> <ul style="list-style-type: none"> i. Supervision of delivery of the supplied Oil-Based Fuel requirements; ii. Technical assistance, such as the provision with technical information and operation of instruments, apparatus and equipment necessary for the utilization, handling and disposition of Fuel purchased from the Supplier, including laboratory correlation, if necessary. iii. In-house and field trainings, seminars and technical services relevant to Fuel utilization, supply, transfer, storage, handling, safety and environmental concern activities. |
| 16.1(b) | <p>The Bid prices for Goods supplied from outside of the Philippines shall be quoted in Philippine Pesos.</p> |
| 16.3 | <p>Payment shall be in Philippine Pesos.</p> |
| 17.1 | <p>Bids shall be valid until 14 July 2020.</p> |
| 18.1 | <p>The bid security shall be in the form of a Bid Securing Declaration, or any of the following forms and amount:</p> <ul style="list-style-type: none"> 1. The amount of not less than PhP26,860,000.00 <i>[2% of ABC]</i>, if bid security is in cash, cashier's/manager's check, bank draft/guarantee or irrevocable letter of credit issued by a commercial or universal bank licensed to do business in the Philippines; or 2. The amount of not less than PhP67,150,000.00 <i>[5% of ABC]</i> if bid security is in Surety Bond. <p>If the Bid Security is in the form of cashier's/manager's check, the payee shall be "POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION".</p> <p>If the bidder opts to submit a surety bond callable upon demand by a surety or insurance company, such surety or insurance company must</p> |

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| ITB Clause | <p>be duly certified by the Insurance Commission as authorized to issue such security.</p> <p>In view of the intent of the GPPB to give bidders the freedom to choose any form of acceptable bid security, if the bidder opts to submit surety bond, the required certification to be submitted by the bidder together with the surety bond must:</p> <ul style="list-style-type: none"> i. Unequivocally state that the surety or insurance company is specifically authorized to issue surety bonds callable on demand, and ii. Must be issued by the Insurance Commission. <p>If the Bank Guarantee or SBLC is issued by a foreign bank located abroad, the same needs to be confirmed/authenticated by a commercial or universal bank licensed to do business in the Philippines.</p> |
| 18.2 | The bid security shall be valid until 14 July 2020 . |
| 20.3 | <p>Each Bidder shall submit one (1) original and two (2) copies of the technical and financial components of its bid as illustrated below:</p> <div style="text-align: center;">  </div> <p>In addition, all documents comprising the Technical and Financial Components shall be electronically scanned and recorded in a compact disc-read only memory [CD-ROM] or USB flash drive. This CD-ROM or USB flash drive shall be marked as "ELECTRONIC COPY" and shall be put inside the sealed envelope labeled "ORIGINAL BID".</p> |

| ITB Clause | |
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| | <p>All submissions must be contained and sealed in one (1) package.</p> <p>Each sealed Bid shall be labeled as follows:</p> <div style="border: 1px solid black; padding: 10px; margin: 10px 0;"> <p><HEADER/LABEL> ATTENTION: THE CHAIRPERSON Bids and Awards Committee PSALM CORPORATION 24th Floor Vertis North Corporate Center 1, Astra cor. Lux Drives, North Avenue 1105 Quezon City Tel. No.: (02) 8248-4861 Email address: BAC2019@psalm.gov.ph BACSec2019@psalm.gov.ph</p> <p>NAME OF PROJECT: _____ PROJECT REFERENCE NO. _____ DATE AND TIME OF OPENING OF OPENING OF BIDS: _____ SUBMITTED BY: <u>BIDDER'S NAME AND SIGNATURE</u> ADDRESS: <u>BIDDER'S ADDRESS</u></p> <p><i>"DO NOT OPEN BEFORE DATE AND TIME OF OPENING OF BIDS"</i></p> </div> <p><HEADER/LABEL> shall be:</p> <ol style="list-style-type: none"> 1. "ORIGINAL BID PLUS TWO COPIES INSIDE" - for the bid package 2. "ORIGINAL BID" - for the 1st outer envelope <ol style="list-style-type: none"> 1.1 "ORIGINAL - TECHNICAL COMPONENT" - for the 1st envelope inside the 1st outer envelope 1.2 "ORIGINAL - FINANCIAL COMPONENT" - for the 2nd envelope inside the 1st outer envelope 1.3 "ELECTRONIC COPY" - CD-ROM or USB Flash Drive 3. "COPY 1" - for the 2nd outer envelope <ol style="list-style-type: none"> a. "COPY 1 - TECHNICAL COMPONENT" - for the 1st envelope inside the 2nd outer envelope b. "COPY 1- FINANCIAL COMPONENT" - for the 2nd envelope inside the 2nd outer envelope 4. "COPY 2" - for the 3rd outer envelope <ol style="list-style-type: none"> a. "COPY 2 - TECHNICAL COMPONENT" - for the 1st envelope inside the 3rd outer envelope b. "COPY 2- FINANCIAL COMPONENT" - for the 2nd envelope inside the 3rd outer envelope |
| 21 | <p>The address for submission of bids is:</p> <p>The BAC Chairperson PSALM Corporation 24th Floor Vertis North Corporate Center 1, Astra cor. Lux Drives North Avenue, 1105 Quezon City</p> <p>The deadline for submission of bids is 16 March 2020, 9:30AM.</p> |

| ITB Clause | |
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| 24.1 | <p>The place of bid opening is:</p> <p>PSALM Corporation 24th Floor Vertis North Corporate Center 1, Astra cor. Lux Drives North Avenue, 1105 Quezon City</p> <p>The date and time of bid opening is 16 March 2020 , 10:00AM.</p> |
| 24.2 | No further instructions. |
| 24.3 | No further instructions. |
| 27.1 | No further instructions. |
| 28.3 (a) | No further instructions. |
| 28.3 (b) | Bid modification shall not be allowed. |
| 28.4 | No further instructions. |
| 28.5 | <p>Consistent to GPPB Resolution No. 11-2007 dated 31 May 2007, Revised Guidelines on Index-Based Pricing for Procurement of Petroleum, Oil, and Lubricant Products, the Methodology in the Evaluation and Comparison of Bids to Determine the Lowest Calculated Bid:</p> <p>Evaluation of Bid Offers:</p> <p>The most advantageous bid offer for a particular plant/delivery point shall be determined using the formula below:</p> <p><u>For Fuel Oil :</u></p> $\text{Delivered Price} = \text{Product Cost} + \text{Local Transshipment} + \text{Excise Tax} + \text{EVAT}$ <p>Where :</p> $\text{Delivered Price} = \text{Price of oil-based Fuel at delivery point up to four (4) decimal places, Peso/Liter}$ $\text{Product Cost} = [(\text{MOPS} + \text{Premium}) \times \text{Forex}] / 158.984$ <p>MOPS = Mean of Platts Singapore value for the particular petroleum product as indicated in Section VIII-a) (Bid Form) of the Bidding Documents, US\$/Bbl.</p> <p>Forex = Philippine Peso to the US Dollar exchange rate value as Indicated in Section VIII-a) (Bid Form) of the</p> |

| ITB Clause | |
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| | <p>Bidding Documents.</p> <p>Premium = All applicable and reasonable costs or expenses (i.e., quality premium, ocean freight, marine insurance, bank charges, ocean loss, storage/handling/ throughput fees, profit margins, etc.) to arrive at a landed cost of petroleum Fuel and distribute the same in the Philippines, up to four (4) decimal places, US\$/Bbl.</p> <p>Local Transshipment = Freight Cost from the refinery to the delivery point for deliveries ex-refinery, or freight cost from the depot to the delivery point for deliveries ex-depot. This shall (a) exclude pumping cost in case of tank truck deliveries, and (b) include drum cost in case of packaged Fuel deliveries.</p> <p>Excise Tax = Tax imposed on bunker fuel oil as provided in Section 43 of Republic Act 10963, amending the National Internal Revenue Code of 1997, valued at PhP 6.00/liter for CY2020.</p> <p>EVAT = Expanded Value Added Tax as provided in R.A. 9337, amending the National Internal Revenue Code of 1997 as amended and BIR Revenue Regulations No. 16-2005, up to four (4) decimal places, Peso/liter.</p> <p>= (Product Cost + Local Transshipment + Excise Tax) x 0.12</p> <p>The bidder with the lowest evaluated price shall be considered the Lowest Calculated Bid. The Domestic Preference provision under ITB 27 shall not apply in the determination of the Lowest Calculated Bid.</p> <p>In case, there is a difference in the computation of the Delivered Price (consisting of the Premium, Local Transshipment, Excise Tax and EVAT) by the bidder and PSALM due to rounding off, the computation of the latter shall prevail and be considered for the evaluation.</p> |
| 29.2 | <p>In addition, the bidder with the Lowest Calculated Bid shall submit certified true copy of the following within five (5) calendar days from receipt of notice of post-qualification from the BAC:</p> <ol style="list-style-type: none"> 1. Latest income and business tax returns filed and paid through the BIR Electronic Filing and Payment System (eFPS); |

| ITB Clause | |
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| | <p>The latest income and business tax returns are those filed within the last six (6) months preceding the date of bid submission.</p> <p>Latest Annual ITR shall refer to the ITR for the year 2018 filed in 2019. For new establishments which have no annual ITR yet, it shall refer to the most recent quarter's ITR. Further, for areas where e-filing is yet to be implemented, a Certification to that effect from BIR main office is acceptable.</p> <p>Latest Business Tax Return refers to Value Added Tax (VAT) and/or Percentage Tax Returns, whichever is applicable covering the last quarter and month prior to the bid opening. Bidders filing both the VAT and Percentage Tax Returns must submit both returns.</p> <p>2. Latest General Information Sheet and Articles of Incorporation and By Laws filed with the SEC, if applicable.</p> <p>3. Updated PhilGEPS Certificate of Registration of Membership under Platinum category, if the bidder submitted Class "A" Documents during bid submission deadline.</p> <p>Foreign Bidders shall submit equivalent documents duly authenticated by the Philippine Consulate and Certificate of International Law of Reciprocity under R.A. 5183.</p> <p>During the post-qualification, the Lowest Calculated Bidder shall present the original copies of the following documents:</p> <ul style="list-style-type: none"> a) Department of Trade and Industry (DTI) business name registration or Securities and Exchange Commission (SEC) registration certificate whichever is appropriate under existing laws of the Philippines. b) Articles of Incorporation and By-laws; c) Valid and current Mayor's/Business permit. d) Latest Audited Financial Statement stamped received by the BIR e) For Ongoing Government and Private Contracts: <ul style="list-style-type: none"> 1. Notice of Award and/or Contract; and 2. Notice to Proceed issued by the owner f) For Government & Private Contracts completed which are similar in nature and complexity to the Contract to be Bid <ul style="list-style-type: none"> 1. Contract; and 2. Certificate of Completion/acceptance <p>For items e and f above, the documents shall be translated by the relevant foreign government agency, the foreign government agency authorized to translate documents, or a registered translator in the foreign bidder's country.</p> |
| 32.4(f) | No further instruction. |

| ITB Clause | |
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| 33 | <p data-bbox="440 222 1382 285">Winning Bidders shall submit Performance Security in either of the following form and amount:</p> <ul data-bbox="483 317 1382 554" style="list-style-type: none"><li data-bbox="483 317 1382 422">a) Cash or cashier's/manager's check issued by a Universal or Commercial Bank in the amount equal to five percent (5%) of the Total Contract Price; or<li data-bbox="483 453 1382 554">b) Bank draft/guarantee or irrevocable standby letter of credit (SBLC) issued by a Universal or Commercial Bank in the amount equal to five percent (5%) of the Total Contract Price. <p data-bbox="440 590 1382 722">If the Bank Guarantee or SBLC is issued by a foreign bank located abroad, the same needs to be confirmed/authenticated by a commercial or universal bank licensed to do business in the Philippines.</p> |

Section IV. General Conditions of Contract

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1. Definitions

1.1. In this Contract, the following terms shall be interpreted as indicated:

- (a) "The Contract" means the agreement entered into between the Procuring Entity and the Supplier, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- (b) "The Contract Price" means the price payable to the Supplier under the Contract for the full and proper performance of its contractual obligations.
- (c) "The Goods" means all of the supplies, equipment, machinery, spare parts, other materials and/or general support services which the Supplier is required to provide to the Procuring Entity under the Contract.
- (d) "The Services" means those services ancillary to the supply of the Goods, such as transportation and insurance, and any other incidental services, such as installation, commissioning, provision of technical assistance, training, and other such obligations of the Supplier covered under the Contract.
- (e) "GCC" means the General Conditions of Contract contained in this Section.
- (f) "SCC" means the Special Conditions of Contract.
- (g) "The Procuring Entity" means the organization purchasing the Goods, as named in the SCC.
- (h) "The Procuring Entity's country" is the Philippines.
- (i) "The Supplier" means the individual contractor, manufacturer distributor, or firm supplying/manufacturing the Goods and Services under this Contract and named in the SCC.
- (j) The "Funding Source" means the organization named in the SCC.
- (k) "The Project Site," where applicable, means the place or places named in the SCC.
- (l) "Day" means calendar day.
- (m) The "Effective Date" of the contract will be the date of signing the contract, however the Supplier shall commence performance of its obligations only upon receipt of the Notice to Proceed and copy of the approved contract.

- (n) "Verified Report" refers to the report submitted by the Implementing Unit to the HoPE setting forth its findings as to the existence of grounds or causes for termination and explicitly stating its recommendation for the issuance of a Notice to Terminate.

2. Corrupt, Fraudulent, and Coercive Practices

2.1. Unless otherwise provided in the SCC, the Procuring Entity as well as the bidders, contractors, or suppliers shall observe the highest standard of ethics during the procurement and execution of thisContract. In pursuance of this policy, the Procuring Entity:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) "corrupt practice" means behavior on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves, others, or induce others to do so, by misusing the position in which they are placed, and it includes the offering, giving, receiving, or soliciting of anything of value to influence the action of any such official in the procurement process or in contract execution; entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby, and similar acts as provided in Republic Act 3019.
 - (ii) "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Procuring Entity, and includes collusive practices among Bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the Procuring Entity of the benefits of free and open competition.
 - (iii) "collusive practices" means a scheme or arrangement between two or more Bidders, with or without the knowledge of the Procuring Entity, designed to establish bid prices at artificial, non-competitive levels.
 - (iv) "coercive practices" means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of a contract;
 - (v) "obstructive practice" is

- (aa) deliberately destroying, falsifying, altering or concealing of evidence material to an administrative proceedings or investigation or making false statements to investigators in order to materially impede an administrative proceedings or investigation of the Procuring Entity or any foreign government/foreign or international financing institution into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the administrative proceedings or investigation or from pursuing such proceedings or investigation; or
- (bb) acts intended to materially impede the exercise of the inspection and audit rights of the Procuring Entity or any foreign government/foreign or international financing institution herein.

- (b) will reject a proposal for award if it determines that the Bidder recommended for award has engaged in any of the practices mentioned in this Clause for purposes of competing for the contract.

2.2. Further the Funding Source, Borrower or Procuring Entity, as appropriate, will seek to impose the maximum civil, administrative and/or criminal penalties available under the applicable law on individuals and organizations deemed to be involved with any of the practices mentioned in GCC Clause 2.1(a).

3. Inspection and Audit by the Funding Source

The Supplier shall permit the Funding Source to inspect the Supplier's accounts and records relating to the performance of the Supplier and to have them audited by auditors appointed by the Funding Source, if so required by the Funding Source.

4. Governing Law and Language

- 4.1. This Contract shall be interpreted in accordance with the laws of the Republic of the Philippines.
- 4.2. This Contract has been executed in the English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract. All correspondence and other documents pertaining to this Contract exchanged by the parties shall be written in English.

5. Notices

- 5.1. Any notice, request, or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request, or consent shall be deemed to have been given or made when received by the concerned party, either in person or through an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telex, telegram, or facsimile to such Party at the address specified in the SCC, which shall be effective when delivered and duly received or on the notice's effective date, whichever is later.
- 5.2. A Party may change its address for notice hereunder by giving the other Party notice of such change pursuant to the provisions listed in the SCC for GCC Clause 5.1.

6. Scope of Contract

- 6.1. The Goods and Related Services to be provided shall be as specified in Section VI. Schedule of Requirements.
- 6.2. This Contract shall include all such items, although not specifically mentioned, that can be reasonably inferred as being required for its completion as if such items were expressly mentioned herein. Any additional requirements for the completion of this Contract shall be provided in the SCC.

7. Sub-Contracting

- 7.1. Subcontracting of any portion of the Goods, if allowed in the BDS, does not relieve the Supplier of any liability or obligation under this Contract. The Supplier will be responsible for the acts, defaults, and negligence of any subcontractor, its agents, servants or workmen as fully as if these were the Supplier's acts, defaults, or negligence, or those of its agents, servants or workmen.
- 7.2. If subcontracting is allowed, the Supplier may identify its subcontractor during contract implementation. Subcontractors disclosed and identified during the bidding may be changed during the implementation of this Contract. In either case, subcontractors must submit the documentary requirements under ITB Clause 12 and comply with the eligibility criteria specified in the BDS. In the event that any subcontractor is found by the Procuring Entity to be ineligible, the subcontracting of such portion of the Goods shall be disallowed.

8. Procuring Entity's Responsibilities

- 8.1. Whenever the performance of the obligations in this Contract requires that the Supplier obtain permits, approvals, import, and other licenses from local public authorities, the Procuring Entity shall, if so needed by the Supplier, make its best effort to assist the Supplier in complying with such requirements in a timely and expeditious manner.

- 8.2. The Procuring Entity shall pay all costs involved in the performance of its responsibilities in accordance with GCC Clause 6.

9. Prices

- 9.1 For the given scope of work in this Contract as awarded, all bid prices are considered fixed prices, and therefore not subject to price escalation during contract implementation, except under extraordinary circumstances and upon prior approval of the GPPB in accordance with Section 61 or R.A. 9184 and its IRR or except as provided in this Clause.
- 9.2 Prices charged by the Supplier for Goods delivered and/or services performed under this Contract shall not vary from the prices quoted by the Supplier in its bid, with the exception of any change in price resulting from a Change Order issued in accordance with GCC Clause 29.

10. Payment

- 10.1. Payments shall be made only upon a certification by the HoPE to the effect that the Goods have been rendered or delivered in accordance with the terms of this Contract and have been duly inspected and accepted. Except with the prior approval of the President no payment shall be made for services not yet rendered or for supplies and materials not yet delivered under this Contract. Ten percent (10%) of the amount of each payment shall be retained by the Procuring Entity to cover the Supplier's warranty obligations under this Contract as described in GCC Clause 17.
- 10.2. The Supplier's request(s) for payment shall be made to the Procuring Entity in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and/or Services performed, and by documents submitted pursuant to the SCC provision for GCC Clause 6.2, and upon fulfillment of other obligations stipulated in this Contract.
- 10.3. Pursuant to GCC Clause 10.2, payments shall be made promptly by the Procuring Entity, but in no case later than sixty (60) days after submission of an invoice or claim by the Supplier. Payments shall be in accordance with the schedule stated in the SCC.
- 10.4. Unless otherwise specified in the SCC, the currency in which payment is made to the Supplier under this Contract shall be in Philippine Pesos.
- 10.5. Unless otherwise provided in the SCC, payments using Letter of Credit (LC), in accordance with the Guidelines issued by the GPPB, is allowed. For this purpose, the amount of provisional sum is indicated in the SCC. All charges for the opening of the LC and/or incidental expenses thereto shall be for the account of the Supplier.

11. Advance Payment and Terms of Payment

- 11.1. Advance payment shall be made only after prior approval of the President, and shall not exceed fifteen percent (15%) of the Contract amount, unless otherwise directed by the President or in cases allowed under Annex "D" of RA 9184.
- 11.2. All progress payments shall first be charged against the advance payment until the latter has been fully exhausted.
- 11.3. For Goods supplied from abroad, unless otherwise indicated in the SCC, the terms of payment shall be as follows:
 - (a) On Contract Signature: Fifteen percent (15%) of the Contract Price shall be paid within sixty (60) days from signing of the Contract and upon submission of a claim and a bank guarantee for the equivalent amount valid until the Goods are delivered and in the form provided in Section VIII. Bidding Forms.
 - (b) On Delivery: Sixty-five percent (65%) of the Contract Price shall be paid to the Supplier within sixty (60) days after the receipt of the Goods and upon submission of the documents (i) through (vi) specified in the SCC provision on Delivery and Documents.
 - (c) On Acceptance: The remaining twenty percent (20%) of the Contract Price shall be paid to the Supplier within sixty (60) days after the date of submission of the acceptance and inspection certificate for the respective delivery issued by the Procuring Entity's authorized representative. In the event that no inspection or acceptance certificate is issued by the Procuring Entity's authorized representative within forty five (45) days of the date shown on the delivery receipt, the Supplier shall have the right to claim payment of the remaining twenty percent (20%) subject to the Procuring entity's own verification of the reason(s) for the failure to issue documents (vii) and (viii) as described in the SCC provision on Delivery and Documents.

12. Taxes and Duties

The Supplier, whether local or foreign, shall be entirely responsible for all the necessary taxes, stamp duties, license fees, and other such levies imposed for the completion of this Contract.

13. Performance Security

- 13.1. Within ten (10) calendar days from receipt of the Notice of Award from the Procuring Entity but in no case later than the signing of the contract by both parties, the successful Bidder shall furnish the performance security in any the forms prescribed in the ITB Clause 33.2.

- 13.2. The performance security posted in favor of the Procuring Entity shall be forfeited in the event it is established that the winning bidder is in default in any of its obligations under the contract.
- 13.3. The performance security shall remain valid until issuance by the Procuring Entity of the Certificate of Final Acceptance.
- 13.4. The performance security may be released by the Procuring Entity and returned to the Supplier after the issuance of the Certificate of Final Acceptance subject to the following conditions:
 - (a) There are no pending claims against the Supplier or the surety company filed by the Procuring entity;
 - (b) The Supplier has no pending claims for labor and materials filed against it; and
 - (c) Other terms specified in the SCC.
- 13.5. In case of a reduction of the contract value, the Procuring Entity shall allow a proportional reduction in the original performance security, provided that any such reduction is more than ten percent (10%) and that the aggregate of such reductions is not more than fifty percent (50%) of the original performance security.

14. Use of Contract Documents and Information

- 14.1. The Supplier shall not, except for purposes of performing the obligations in this Contract, without the Procuring Entity's prior written consent, disclose this Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Procuring Entity. Any such disclosure shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.
- 14.2. Any document, other than this Contract itself, enumerated in GCC Clause 14.1 shall remain the property of the Procuring Entity and shall be returned (all copies) to the Procuring Entity on completion of the Supplier's performance under this Contract if so required by the Procuring Entity.

15. Standards

The Goods provided under this Contract shall conform to the standards mentioned in the Section VII. Technical Specifications; and, when no applicable standard is mentioned, to the authoritative standards appropriate to the Goods' country of origin. Such standards shall be the latest issued by the institution concerned.

16. Inspection and Tests

- 16.1. The Procuring Entity or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract specifications at no extra cost to the Procuring Entity. The SCC and Section VII. Technical Specifications shall specify what inspections and/or tests the Procuring Entity requires and where they are to be conducted. The Procuring Entity shall notify the Supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes.
- 16.2. If applicable, the inspections and tests may be conducted on the premises of the Supplier or its subcontractor(s), at point of delivery, and/or at the goods' final destination. If conducted on the premises of the Supplier or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Procuring Entity. The Supplier shall provide the Procuring Entity with results of such inspections and tests.
- 16.3. The Procuring Entity or its designated representative shall be entitled to attend the tests and/or inspections referred to in this Clause provided that the Procuring Entity shall bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.
- 16.4. The Procuring Entity may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Procuring Entity, and shall repeat the test and/or inspection, at no cost to the Procuring Entity, upon giving a notice pursuant to GCC Clause 5.
- 16.5. The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Procuring Entity or its representative, shall release the Supplier from any warranties or other obligations under this Contract.

17. Warranty

- 17.1. The Supplier warrants that the Goods supplied under the Contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials, except when the technical specifications required by the Procuring Entity provides otherwise.
- 17.2. The Supplier further warrants that all Goods supplied under this Contract shall have no defect, arising from design, materials, or workmanship or from any act or omission of the Supplier that may develop under normal use of the supplied Goods in the conditions prevailing in the country of final destination.

- 17.3. In order to assure that manufacturing defects shall be corrected by the Supplier, a warranty shall be required from the Supplier for a minimum period specified in the SCC. The obligation for the warranty shall be covered by, at the Supplier's option, either retention money in an amount equivalent to at least one percent (1%) of every progress payment, or a special bank guarantee equivalent to at least one percent (1%) of the total Contract Price or other such amount if so specified in the SCC. The said amounts shall only be released after the lapse of the warranty period specified in the SCC; provided, however, that the Supplies delivered are free from patent and latent defects and all the conditions imposed under this Contract have been fully met.
- 17.4. The Procuring Entity shall promptly notify the Supplier in writing of any claims arising under this warranty. Upon receipt of such notice, the Supplier shall, within the period specified in the SCC and with all reasonable speed, repair or replace the defective Goods or parts thereof, without cost to the Procuring Entity.
- 17.5. If the Supplier, having been notified, fails to remedy the defect(s) within the period specified in the GCC Clause 17.4, the Procuring Entity may proceed to take such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Procuring Entity may have against the Supplier under the Contract and under the applicable law.

18. Delays in the Supplier's Performance

- 18.1. Delivery of the Goods and/or performance of Services shall be made by the Supplier in accordance with the time schedule prescribed by the Procuring Entity in Section VI. Schedule of Requirements.
- 18.2. If at any time during the performance of this Contract, the Supplier or its Subcontractor(s) should encounter conditions impeding timely delivery of the Goods and/or performance of Services, the Supplier shall promptly notify the Procuring Entity in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Supplier's notice, and upon causes provided for under GCC Clause 22, the Procuring Entity shall evaluate the situation and may extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of Contract.
- 18.3. Except as provided under GCC Clause 22, a delay by the Supplier in the performance of its obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 19, unless an extension of time is agreed upon pursuant to GCC Clause 29 without the application of liquidated damages.

19. Liquidated Damages

Subject to GCC Clauses 18 and 22, if the Supplier fails to satisfactorily deliver any or all of the Goods and/or to perform the Services within the period(s) specified in this Contract inclusive of duly granted time extensions if any, the Procuring Entity shall, without prejudice to its other remedies under this Contract and under the applicable law, deduct from the Contract Price, as liquidated damages, the applicable rate of one tenth (1/10) of one (1) percent of the cost of the unperformed portion for every day of delay until actual delivery or performance. Once the amount of liquidated damages reaches ten percent (10%), the Procuring Entity may rescind or terminate the Contract pursuant to GCC Clause 23, without prejudice to other courses of action and remedies open to it.

20. Settlement of Disputes

- 20.1. If any dispute or difference of any kind whatsoever shall arise between the Procuring Entity and the Supplier in connection with or arising out of this Contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 20.2. If after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Procuring Entity or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.
- 20.3. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under this Contract.
- 20.4. In the case of a dispute between the Procuring Entity and the Supplier, the dispute shall be resolved in accordance with Republic Act 9285 ("R.A. 9285"), otherwise known as the "Alternative Dispute Resolution Act of 2004."
- 20.5. Notwithstanding any reference to arbitration herein, the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and the Procuring Entity shall pay the Supplier any monies due the Supplier.

21. Liability of the Supplier

- 21.1 The Supplier's liability under this Contract shall be as provided by the laws of the Republic of the Philippines, subject to additional provisions, if any, set forth in the SCC.
- 21.2 Except in cases of criminal negligence or willful misconduct, and in the case of infringement of patent rights, if applicable, the aggregate liability of the Supplier to the Procuring Entity shall not exceed the

total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

22. Force Majeure

- 22.1. The Supplier shall not be liable for forfeiture of its performance security, liquidated damages, or termination for default if and to the extent that the Supplier's delay in performance or other failure to perform its obligations under the Contract is the result of a *force majeure*.
- 22.2. For purposes of this Contract the terms "*force majeure*" and "fortuitous event" may be used interchangeably. In this regard, a fortuitous event or *force majeure* shall be interpreted to mean an event which the Supplier could not have foreseen, or which though foreseen, was inevitable. It shall not include ordinary unfavorable weather conditions; and any other cause the effects of which could have been avoided with the exercise of reasonable diligence by the Supplier. Such events may include, but not limited to, acts of the Procuring Entity in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 22.3. If a *force majeure* situation arises, the Supplier shall promptly notify the Procuring Entity in writing of such condition and the cause thereof. Unless otherwise directed by the Procuring Entity in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the *force majeure*.

23. Termination for Default

- 23.1. The Procuring Entity may rescind or terminate a contract for default, without prejudice to other courses of action and remedies available under the circumstances when, outside force majeure, the Supplier fails to deliver or perform any or all of the Goods within the period(s) specified in the contract, or within any extension thereof granted by the Procuring Entity pursuant to a request made by the Supplier prior to the delay, and such failure amounts to at least ten percent (10%) of the contract price;
- 23.2. The Procuring Entity may terminate the contract when, as a result of force majeure, the Supplier is unable to deliver or perform any or all of the Goods, amounting to at least ten percent (10%) of the contract price, for a period of not less than sixty (60) calendar days after receipt of the notice from the Procuring Entity stating that the circumstance of force majeure is deemed to have ceased;
- 23.3. The Procuring Entity shall terminate the contract when the Supplier fails to perform any other obligations under the Contract.

- 23.4. In the event the Procuring Entity terminates this Contract in whole or in part for any of the reasons provided under GCC Clause 23 to 26, the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, Goods or Services similar to those undelivered, and the Supplier shall be liable to the Procuring Entity for any excess costs for such similar Goods or Services. However, the Supplier shall continue performance of this Contract to the extent not terminated.
- 23.5. In case the delay in the delivery of the Goods and/or performance of the Services exceeds a time duration equivalent to ten percent (10%) of the specified contract time plus any time extension duly granted to the Supplier, the Procuring Entity may terminate this Contract, forfeit the Supplier's performance security and award the same to a qualified Supplier.

24. Termination for Insolvency

The Procuring Entity shall terminate this Contract if the Supplier is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Procuring Entity and/or the Supplier.

25. Termination for Convenience

- 25.1. The Procuring Entity may terminate this Contract, in whole or in part, at any time for its convenience. The HoPE may terminate a contract for the convenience of the Government if he has determined the existence of conditions that make Project Implementation economically, financially or technically impractical and/or unnecessary, such as, but not limited to, fortuitous event(s) or changes in law and national government policies.
- 25.2. The Goods that have been delivered and/or performed or are ready for delivery or performance within thirty (30) calendar days after the Supplier's receipt of Notice to Terminate shall be accepted by the Procuring Entity at the contract terms and prices. For Goods not yet performed and/or ready for delivery, the Procuring Entity may elect:
- (a) to have any portion delivered and/or performed and paid at the contract terms and prices; and/or
 - (b) to cancel the remainder and pay to the Supplier an agreed amount for partially completed and/or performed goods and for materials and parts previously procured by the Supplier.
- 25.3. If the Supplier suffers loss in its initial performance of the terminated contract, such as purchase of raw materials for goods specially

manufactured for the Procuring Entity which cannot be sold in open market, it shall be allowed to recover partially from this Contract, on a *quantum meruit* basis. Before recovery may be made, the fact of loss must be established under oath by the Supplier to the satisfaction of the Procuring Entity before recovery may be made.

26. Termination for Unlawful Acts

26.1. The Procuring Entity may terminate this Contract in case it is determined *prima facie* that the Supplier has engaged, before or during the implementation of this Contract, in unlawful deeds and behaviors relative to contract acquisition and implementation. Unlawful acts include, but are not limited to, the following:

- (a) Corrupt, fraudulent, and coercive practices as defined in ITB Clause 3.1(a);
- (b) Drawing up or using forged documents;
- (c) Using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and
- (d) Any other act analogous to the foregoing.

27. Procedures for Termination of Contracts

27.1. The following provisions shall govern the procedures for termination of this Contract:

- (a) Upon receipt of a written report of acts or causes which may constitute ground(s) for termination as aforementioned, or upon its own initiative, the Implementing Unit shall, within a period of seven (7) calendar days, verify the existence of such ground(s) and cause the execution of a Verified Report, with all relevant evidence attached;
- (b) Upon recommendation by the Implementing Unit, the HoPE shall terminate this Contract only by a written notice to the Supplier conveying the termination of this Contract. The notice shall state:
 - (i) that this Contract is being terminated for any of the ground(s) afore-mentioned, and a statement of the acts that constitute the ground(s) constituting the same;
 - (ii) the extent of termination, whether in whole or in part;
 - (iii) an instruction to the Supplier to show cause as to why this Contract should not be terminated; and

- (iv) special instructions of the Procuring Entity, if any.
- (c) The Notice to Terminate shall be accompanied by a copy of the Verified Report;
- (d) Within a period of seven (7) calendar days from receipt of the Notice of Termination, the Supplier shall submit to the HoPE a verified position paper stating why this Contract should not be terminated. If the Supplier fails to show cause after the lapse of the seven (7) day period, either by inaction or by default, the HoPE shall issue an order terminating this Contract;
- (e) The Procuring Entity may, at any time before receipt of the Supplier's verified position paper in item (d) above withdraw the Notice to Terminate if it is determined that certain items or works subject of the notice had been completed, delivered, or performed before the Supplier's receipt of the notice;
- (f) Within a non-extendible period of ten (10) calendar days from receipt of the verified position paper, the HoPE shall decide whether or not to terminate this Contract. It shall serve a written notice to the Supplier of its decision and, unless otherwise provided, this Contract is deemed terminated from receipt of the Supplier of the notice of decision. The termination shall only be based on the ground(s) stated in the Notice to Terminate;
- (g) The HoPE may create a Contract Termination Review Committee (CTRC) to assist him in the discharge of this function. All decisions recommended by the CTRC shall be subject to the approval of the HoPE; and
- (h) The Supplier must serve a written notice to the Procuring Entity of its intention to terminate the contract at least thirty (30) calendar days before its intended termination. The Contract is deemed terminated if it is not resumed in thirty (30) calendar days after the receipt of such notice by the Procuring Entity.

28. Assignment of Rights

The Supplier shall not assign his rights or obligations under this Contract, in whole or in part, except with the Procuring Entity's prior written consent.

29. Contract Amendment

Subject to applicable laws, no variation in or modification of the terms of this Contract shall be made except by written amendment signed by the parties.

30. Application

These General Conditions shall apply to the extent that they are not superseded by provisions of other parts of this Contract.

Section V. Special Conditions of Contract

| GCC Clause | |
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| 1.1(a) | <p>In this Contract, the following terms shall be interpreted as indicated:</p> <ul style="list-style-type: none"> (a) <i>"ASTM"</i> means the American Society for Testing Materials. (b) <i>"BILL OF LADING QUANTITY (B/L)"</i> means the sum of the volume withdrawn from the Supplier's source tank plus the On Board Quantity (OBO) (c) <i>"BIR"</i> means the Bureau of Internal Revenue. (d) <i>"BOC"</i> means the Bureau of Customs. (e) <i>"CARGO INTAKE CERTIFICATE (CIC)"</i> means the document prepared and issued by the Supplier stating the volume of Fuel received by PSALM at the MTPP receiving/storage tank(s) or, in case of hereunder instances, the quantity of Fuel received by PSALM based on the Vessel's Figure Before Discharge (VFBD); <ul style="list-style-type: none"> 1. uncalibrated MTPP's receiving/storage tank(s). 2. no or defective isolating valve in MTPP's receiving/storage tank(s). 3. MTPP's receiving/storage tank in service. (f) <i>"CARGO OUTTURN CERTIFICATE"(COC)</i> means the document prepared and issued by the Supplier stating the volume of Fuel withdrawn from the storage tanks as Supplier's Fuel supply sources. (g) <i>"CONTRACTED QUANTITY"</i> means the quantity of Fuel to be delivered by the Supplier and could possibly be lifted by PSALM. (h) <i>"CRITICAL INVENTORY LEVEL"</i> means the predetermined quantity of Fuel in the PSALM's inventory which if no immediate delivery is made by the Supplier will result to load reduction and subsequently, shutdown of the power plant/unit. |

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| | <p>(i) <i>"DELIVERED PRICE"</i> means the unit price of Fuel at plant site or delivery point as specified in Section VI - Schedule of Requirements.</p> <p>(j) <i>"DELIVERY REFERENCE POINT"</i> means the agreed point of Fuel delivery which is MTPP's receiving flange.</p> <p>(k) <i>"DEPOT/TERMINAL"</i> means the domestic Fuel supply sources of Supplier at various locations other than its refinery.</p> <p>(l) <i>"FIRM QUANTITY"</i> means the volume required by PSALM to be supplied by Supplier.</p> <p>(m) <i>"FUEL"</i> means the Industrial Fuel Oil with Guaranteed Fuel Specifications as specified in Section VII - Technical Specifications.</p> <p>(n) <i>"FUEL SOURCE POINT"</i> means the Supplier's own refinery(ies), terminal(s) or any of its depots including other sources brought about by hospitality arrangements with other oil companies/traders.</p> <p>(o) <i>"FUEL SPECIFICATIONS"</i> means the quality specification of industrial fuel oil as specified in Section VII - Technical Specifications.</p> <p>(p) <i>"ISOLATED TANK"</i> means a Fuel-receiving tank, which is not simultaneously used as a service tank.</p> <p>(q) <i>"ITDI"</i> means the Industrial Technology and Development Institute.</p> <p>(r) <i>"MINIMUM INVENTORY LEVEL"</i> a predetermined quantity of Fuel in the inventory of to ensure continuous operation of the MTPP.</p> <p>(s) <i>"MOPS"</i> means the Mean-of-Platts Singapore used as reference in the pricing of Fuel for the contract.</p> <p>(t) <i>"MTPP"</i> refers to the Malaya Thermal Power Plant.</p> <p>(u) <i>"NON-ISOLATED TANK"</i> means a Fuel-receiving tank which is simultaneously used as a service tank or found not fully isolated during receiving of the Fuel delivery.</p> |
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| | <p>(v) <i>"OIL-BASED FUEL"</i> means the Industrial Fuel Oil (IFO) with Guaranteed Fuel Specifications as specified in Section VII - Technical Specifications.</p> <p>(w) <i>"PER ORDER BASIS"</i> means the payment scheme wherein PSALM advises Supplier to deliver Fuel within a specified period of time, billing and payment of which shall be made on a per delivery basis.</p> <p>(x) <i>"PSALM"</i> means the Power Sector Assets and Liabilities Management Corporation, a government-owned and controlled corporation duly created under the laws of the Republic of the Philippines (Rep. Act No. 9136), with the office located at 24th Floor Vertis North Corporate Center 1, Astra Corner Lux Drives, North Avenue, 1105 Quezon City.</p> <p>(y) <i>"QUALITY CERTIFICATE"</i> means the document issued by Supplier indicating the results of required Fuel quality analyses certifying to the quality of the Fuel for delivery. This may be in the form of a Certificate of Test (COT), Laboratory Inspection Report (LIR), Product Quality Certificate (POC), and/or Laboratory Service Report (LSR), or any mutually acceptable form of certification issued by the Supplier indicating the analysis results of the Fuel delivered.</p> <p>(z) <i>"RECEIVING STORAGE TANKS"</i> means the Fuel storage tanks of MTPP, with capacity as listed in Section VI-A, Table of Delivery Point for Bidding.</p> <p>(aa) <i>"REFINERY"</i> means the Supplier's facilities for the production of various petroleum products.</p> <p>(bb) <i>"ROB"</i> means the Residual on Board Vessel or the quantity of Fuel that remains in the vessel's tanks/compartments after completion of discharge at storage/receiving tank(s).</p> <p>(cc) <i>"SCHEDULE OF MONTHLY FUEL REQUIREMENTS"</i> means the document showing the monthly breakdown of the Contracted Quantity. This is intended to provide Supplier an idea, for planning purposes, of the estimated monthly Fuel requirements of MTPP.</p> <p>(dd) <i>"SOURCE STORAGE TANKS"</i> means the storage facilities at the Supplier's refinery and various depots.</p> |
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| 1.1(g) | The Procuring Entity is Power Sector Assets and Liabilities Management (PSALM) Corporation |
| 1.1(i) | The Supplier is <i>[to be inserted at the time of contract award]</i> . |
| 1.1(j) | The Funding Source is: The Government of the Philippines (GOP) through PSALM's 2020 Corporate Operating Budget in the total amount of ONE BILLION THREE HUNDRED FORTY-THREE MILLION PESOS (PhP1,343,000,000.00) |
| 1.1(k) | The Project Site is defined in Section VII. Schedule of Requirements. |
| 2.1 | No further instructions. |
| 5.1 | PSALM's address for Notices is: IRENE JOY BESIDO-GARCIA President and CEO PSALM Corporation 24 th Floor Vertis North Corporate Center 1, Astra cor. Lux Drives North Avenue, 1105 Quezon City The Supplier's address for Notices is: [Insert address including, name of contact, fax and telephone number] |
| 5.2 | A party may change its address for notice through a written notification by mail or fax to the other party's address at least fifteen (15) days prior to the date when the change of address takes effect. |
| 6.2 | Terms and Conditions The supply and delivery of the Industrial Fuel Oil (IFO) shall be made by the Supplier in accordance with the terms and conditions as stated below: a) Place of Delivery and Source Point Supplier shall deliver the Fuel at MTPP's storage tanks or designated point of receipt as specified in Section VI-A, Table of Delivery Point for Bidding. Such deliveries shall come from the Supplier's nominated Fuel Source Points during the bidding. In case a delivery will come from an alternate source point, delivered price of the Fuel shall be as if the delivery came from the original source point. b) Guaranteed Fuel Specifications The Fuel quality specifications as provided in Section VII - Technical Specifications shall be guaranteed by the Supplier. |

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| | <p>The Supplier shall furnish PSALM the Quality Certificate for each and every Fuel delivery.</p> <p>c) Firm Quantity</p> <p>The Firm Quantity of Fuel for lifting by PSALM from the Supplier shall be the Fuel quantities indicated in the fuel order transmitted by PSALM to the Supplier.</p> <p>Whereas, in case of unusual generation by plant brought about by unforeseen circumstances like hostilities, unpredicted shutdown, etc, the Supplier shall on a best effort basis, provide the necessary deliveries as required by PSALM to preclude Fuel inventory to reach the Critical Inventory Level. However, PSALM and Supplier may adopt measures/remedies, i.e. transfer of the firm quantity from other delivery points to address the additional requirement.</p> <p>d) Delivery of Fuel</p> <p>i. Notice and Schedule of Delivery</p> <p>PSALM shall schedule deliveries based on order and Supplier shall deliver after receipt of order or notice as follows:</p> <ol style="list-style-type: none"> 1. Within forty-eight (48) hours for tank truck deliveries; 2. Within three (3) calendar days for tanker/barge deliveries; <p>In case the Supplier, without any justifiable cause as defined under GCC 24 - Termination for Insolvency, fails to deliver the Fuel within the prescribed period stated above, resulting in delay in Fuel delivery, Supplier shall pay PSALM a penalty in an amount equal to one tenth of one percent (0.1 %) of the cost of the undelivered quantity per calendar day of delay reckoning from the succeeding day of the last day of the prescribed period until actual day of delivery was made. PSALM shall inform Supplier of the occurrence of the penalty and shall also have the right to apply the provisions of GCC 19 - Liquidated Damages.</p> <p>ii. Acknowledgement of Delivery Schedules/ETA Advises</p> <p>Supplier within twenty-four (24) hours upon receipt of notice from PSALM, shall confirm acceptance of the</p> |
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delivery schedule requested by PSALM in writing or through electronic mail or propose an alternative schedule if Supplier is unable to meet PSALM's request. Such an alternative schedule shall be within delivery window requirement of PSALM or the minimum inventory requirement of the plant. Delivery schedules requested on Fridays shall be confirmed the following Monday.

Supplier shall notify PSALM's and the receiving point of the expected arrival of delivery or in case of short haul delivery by seagoing vessels, the expected arrival at MTPP receiving point as the vessel leaves Supplier's supply point. Notice from Supplier should be received at MTPP receiving point and PSALM at least three (3) business days prior to arrival of delivery. Otherwise, all costs in case of delays or non-receipt of the delivery shall be for Supplier's account. The same shall also apply in case of unannounced deliveries.

Where applicable, Supplier shall endeavor to dispatch notices of delivery to be received at PSALM and MTPP receiving point during office hours only.

For tank truck deliveries, and unless requested by PSALM or during emergencies, Supplier shall deliver Fuel during daytime only. However, barge and tanker deliveries can be done any time of the day subject to the receipt of notice of delivery by PSALM as provided above, except for delivery points where arrival of Fuel deliveries is expressly required during daytime only as provided in Section VI-B, Schedule of Monthly Fuel Requirements.

iii. Coordination of Plant Operational Status

PSALM, as necessary, shall advise Supplier of the status of MTPP that will affect scheduling/arrival of the Fuel delivery to the MTPP delivery point. PSALM shall exert efforts to update Supplier on the status of MTPP weekly.

iv. Failure to Deliver Confirmed Delivery Order

In the event the Supplier is unable to deliver all or a portion of the confirmed delivery order under Item c above, PSALM has the option to purchase supply from other sources to preclude any possibility for the Fuel inventory level to reach critical level. Supplier shall reimburse PSALM the reasonable and documented

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| | <p>costs incurred by PSALM over and above what it normally pays Supplier.</p> <p>vi. Failure to Supply the Firm Quantity</p> <p>In the event Supplier fails to deliver wholly or partially the Firm Quantity, PSALM has the option to purchase the undelivered portion of the Firm Quantity from other sources to preclude any possibility for the Fuel inventory to reach critical level.</p> <p>Supplier shall reimburse PSALM the differential cost for said purchase, except if the cause for such failure to deliver is due to force majeure as specified in GCC 22.</p> <p>vii. Critical Fuel Inventory</p> <p>In the event the Fuel inventory of MTPP reaches critical level (below the inventory levels as set and agreed between PSALM and Supplier during the implementation of the contract), and PSALM's firm quantity has not been fully delivered, PSALM has the right to purchase on spot basis Fuel supply from other sources and charge Supplier the differential cost plus 15% surcharge on said differential cost.</p> <p>Moreover, except if the cause or causes for such under-delivery or non-delivery is due to force majeure as specified in GCC 22, Supplier is also liable to pay PSALM penalties and damages as specified in GCC 19 if such critical Fuel inventory situation results to plant load reduction/shutdown.</p> <p>viii. Safety and Integrity of Receiving Ports</p> <p>Accordingly, in the event that Supplier as confirmed by PSALM at any time finds that the MTPP receiving port conditions are unsafe for any cargo receiving operation, Supplier may upon notice to PSALM and upon confirmation of PSALM of the unsafe condition, suspend any delivery to such plant until the unsafe conditions identified by the Supplier are corrected. Supplier, in such event, shall not be held liable under the contract for failure to deliver or supply the required Fuel delivery of PSALM nor liable for any demands, actions or proceedings of third persons in connection therewith.</p> <p>ix. Safety and/or Qualification of Delivery Tank Trucks</p> |
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Supplier warrants that Supplier's tank trucks including all equipment used for delivering Fuel products to PSALM meets all the safety requirements and standards and has undergone the required pre-qualification process and regular safety inspection and maintenance to meet safety requirements and standards of the Philippines.

Likewise, Supplier warrants that it has complied with all laws, rules and regulations pertaining to the environment, such as but not limited to the Philippine Coast Guard Memo Circular(s) on the Prevention, Containment, Abatement and Control of Oil Marine Pollution; DENR/NPCC rules and regulations regarding prohibition on the dumping of oil waste/bilge waters; and the Laguna Lake Development Authority (LLDA) requirements (when applicable).

Supplier shall be responsible and liable for all accidents including but not limited to oil spills attributable to Supplier's vessels/tank trucks and/or crew, and direct costs, charges, penalties and/or damages including loss revenue, shall be for the account of Supplier. Supplier shall indemnify and hold PSALM free and harmless from any and all claims, demands, actions or proceeding of third persons in connection therewith. Supplier's vessels shall be equipped with the required contingency measures and equipment for oil spill, oil fires and the like.

x. Authorized Signatories to Fuel Orders/Receivers

Prior to first delivery, PSALM shall provide Supplier the list including specimen signatures of all its authorized receivers of Fuel deliveries at the MTPP awarded to Supplier. Only authorized receivers shall be allowed to receive the Fuel deliveries and sign the corresponding documents/receipts.

Moreover, PSALM shall also advise Supplier the names and specimen signature of PSALM's officials authorized to issue Fuel orders. On the other hand, Supplier shall provide PSALM the list of its authorized surveyors.

In the event that the PSALM's authorized receivers are not present at the time of delivery, all reasonable and documented incidental expenses due to the delay of discharging and other charges shall be for the account of PSALM provided the notice requirement to PSALM is

complied with, otherwise all expenses incurred due to delays or non receipt of delivery shall be for the account of Supplier.

For Goods Supplied from Within the Philippines, state "The delivery terms applicable to this Contract are delivered at the various delivery points shown in Section VI. Schedule of Requirements. Risk and title will pass from the Supplier to the Procuring Entity upon receipt and final acceptance of the Goods at their final destination."

Incidental Services -

The Supplier is required to provide all of the following services, including additional services, if any, specified in Section VI. Schedule of Requirements:

- i. Supervision of delivery of the supplied Oil-Based Fuel requirements;
- ii. Technical assistance, such as the provision with technical information and operation of instruments, apparatus and equipment necessary for the utilization, handling and disposition of Fuel purchased from the Supplier, including laboratory correlation, if necessary.
- iii. In-house and field trainings, seminars and technical services relevant to Fuel utilization, supply, transfer, storage, handling, safety and environmental concern activities.

Insurance -

The Goods supplied under this Contract shall be fully insured by the Supplier in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery. The Goods remain at the risk and title of the Supplier until their final acceptance by the Procuring Entity.

Transportation -

Where the Supplier is required under Contract to deliver the Goods CIF, CIP or DDP, transport of the Goods to the port of destination or such other named place of destination in the Philippines, as shall be specified in this Contract, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.

Where the Supplier is required under this Contract to transport the Goods to a specified place of destination within the

Philippines, defined as the Project Site, transport to such place of destination in the Philippines, including insurance and storage, as shall be specified in this Contract, shall be arranged by the Supplier, and related costs shall be included in the Contract Price.

Where the Supplier is required under Contract to deliver the Goods CIF, CIP or DDP, Goods are to be transported on carriers of Philippine registry. In the event that no carrier of Philippine registry is available, Goods may be shipped by a carrier which is not of Philippine registry provided that the Supplier obtains and presents to the Procuring Entity certification to this effect from the nearest Philippine consulate to the port of dispatch. In the event that carriers of Philippine registry are available but their schedule delays the Supplier in its performance of this Contract the period from when the Goods were first ready for shipment and the actual date of shipment the period of delay will be considered *force majeure* in accordance with GCC Clause 22.

The Procuring Entity accepts no liability for the damage of Goods during transit other than those prescribed by INCOTERMS for DDP Deliveries. In the case of Goods supplied from within the Philippines or supplied by domestic Suppliers risk and title will not be deemed to have passed to the Procuring Entity until their receipt and final acceptance at the final destination.

The mode of transportation of the Oil-Based Fuel to the point of destinations in the Philippines, including land and sea going vessels requirements, shall be as follows:

The transport of the Oil-Based Fuel to the point of destination or such other named place of destination in the Philippines including vessel requirements are as follows:

a) Mode of Delivery

Supplier shall deliver the Fuel in accordance with the Modes of Delivery as set forth in Section VI-B, Schedule of Monthly Fuel Requirements. Supplier shall assure that the delivery of Fuel shall meet the conditions of the receiving facilities at the delivery points as specified in said Section VI-A.

In case of any deviations in the mode of delivery in order to meet confirmed delivery schedule and/or minimum inventory level of MTPP as set forth herein, any additional cost and logistical requirements to be undertaken for such deviation shall be the responsibility of the Supplier.

During deliveries, Supplier shall ensure availability on necessary calibrated measuring instruments, i.e., cupped-cased thermometer, hydrometer, sampling bucket, water

and product finding paste as well as gauging tape for tanker/barge deliveries.

i. Delivery by Tank Trucks

Tank trucks to be used by the Supplier in the delivery of the Fuel to shall be annually calibrated by the Industrial Technology and Development Institute (ITDI). MTPP receiving points should be equipped with thermometer and specific gravity meter.

Pumping cost shall be charged only whenever the delivery tank truck's pumping equipment is required by PSALM for unloading the Fuel into the MTPP storage tanks.

Supplier shall make deliveries using Supplier's-owned and/or contracted tank truck units at Supplier's expense. For the duration of the Contract and any renewals or extensions thereof, PSALM agrees not to contract itself with any other party for the tank truck delivery of Fuel requirements without prior written consent of the Supplier.

The Supplier, upon delivery of Fuel by tank truck, shall present to PSALM the Original Invoice (or delivery document) covering the particular delivery for PSALM's signature acknowledging receipt of delivery, and provide PSALM duplicate copy of the same. The original copy of the invoice/delivery document shall be retained by the tank truck for submission to Supplier's office for billing purposes and transmitted to PSALM's office together with all the required supporting documents as specified in SCC10.2 not later than the 7th day of the month where payment is due.

For all modes of delivery stated herein, the PSALM and Supplier's representatives should be present for each Fuel delivery or transfer in order to witness, validate and confirm the quality and quantity of Fuel delivered and preclude discrepancies in the processing of payment. The absence of either party to witness, validate and confirm the quality and quantity of the Fuel delivery shall constitute as a waiver on the part of the party absent and thus the quality and quantity determined during the time of delivery shall be final and to be used as basis for payment of Fuel deliveries.

Supplier shall properly observe the above requirements for convenience and safety. Possible damages resulting

from non-compliance thereof shall be for the account of Supplier.

ii. Delivery by Tanker/Vessel/Barge

Tanker/barges to be used by the Supplier for Fuel delivery to PSALM shall be subject to PSALM's prior approval. Supplier shall for this purpose, submit to PSALM, the vessel particulars, personnel complement, VCFs, calibration tables/trim correction table, certificate issued by concerned regulatory agencies and the like, for the PSALM's approval prior to use.

Supplier, subject to PSALM specific requirements in a particular delivery point, shall determine the appropriate tanker/barge capacity to be used to fulfill PSALM's requirement. It is preferred that the tanker/barge capacity shall not be smaller than that indicated for each delivery point per Section VI-B, Schedule of Monthly Fuel Requirements. However, depending on available ullage at the time of delivery and the draft limitation at the location, Supplier and PSALM may agree to use smaller tanker/barge.

Supplier shall make its deliveries using Supplier's owned and/or contracted vessels at Supplier's expense. For the duration of this Contract and any renewals or extension thereof, PSALM agrees not to contract itself with any other party for the tanker/barge delivery of its Fuel requirements without prior written consent of the Supplier.

The tanker/barge upon and after delivery shall present to PSALM the Cargo Outturn Certificate (COC), Quality Certificate, Cargo Intake Certificate (CIC), Volume Computation Sheet, Cargo Statement (After Loading and Before Discharge), Statement of Facts (Loadport and Disport), BIR Withdrawal Certificate, On Board Quantity and Residual on Board Certificate, Sealing Plan and other documents covering the particular delivery. The PSALM's representative shall affix his signature on the COC signifying receipt of the delivery. Supplier shall provide PSALM a duplicate copy of the above documents and original copy, if required. The COC shall be the basis for the Supplier's invoice preparation. However, volume for payment shall be determined as provided for as specified in SCC 16.1.

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| | <p>The original copy of the invoice including all required supporting documents as specified in SCC10.2 shall be submitted by the Supplier, for billing purposes, to the PSALM office not later than the 7th day of the month where payment is due. Failure of the PSALM's representative to sign these documents to acknowledge receipt of the Fuel delivery within twenty four (24) hours after the required settling time without filing a protest shall mean that PSALM has waived his right to protest the contents of the documents and automatically agrees and adopts all the figures reflected in the said documents (except errors in computation). In case of protest by PSALM, PSALM shall indicate "Under Protest" in the COC of the Supplier or may be done formally in writing in the case of serious situation affecting volume measurements.</p> <p>All tankers/barge shall have a third party convoy surveyor on board and/or a resident surveyor appointed by and at the expense of the Supplier to undertake the volume measurements witnessed and concurred by the PSALM's representative.</p> <p>In case delivery will require installation of a marathon hose to MTPP's receiving flange, the responsibility of installation shall be borne by the Supplier.</p> <p>Start of pumping time for discharging of Fuel shall be between 0500H to 1700H only.</p> <p>Failure of the PSALM's representative to sign the invoice or COC to acknowledge receipt of the Fuel delivery within twenty four (24) hours after the required settling time without filing a protest shall mean that PSALM has waived his right to protest the contents of the documents and automatically agrees to adopt all the figures reflected in the said documents (except errors in computations). In case of protest by PSALM, PSALM shall indicate "Under Protest" in the COC of the Supplier or may be done formally in writing in the case of serious situation affecting volume measurements.</p> <p>For all modes of delivery stated herein, the PSALM and Supplier's representatives should be present for each Fuel delivery or transfer in order to witness, validate and confirm the quality and quantity of Fuel delivered and preclude discrepancies in the processing of payment. The absence of either party to witness, validate and confirm the quality and quantity of the Fuel delivery shall constitute as a waiver on the part of</p> |
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the party absent and thus the quality and quantity determined during the time of delivery shall be final and to be used as basis for payment of Fuel deliveries.

Supplier shall properly observe the above requirements for convenience and safety. Possible damages resulting from non-compliance thereof shall be for the account of Supplier.

b) Demurrage Charges

Demurrage incurred by domestic tankers/barges for Fuel deliveries shall be for the account of Supplier or PSALM based on the following:

| | Berthing arrangements by | |
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| | PSALM | SUPPLIER |
| i. Vessel arrival outside agreed delivery berthing window at point of destination | SUPPLIER | SUPPLIER |
| ii. Vessel arrival within agreed delivery berthing window but in conflict with: | | |
| 1. Other vessels directly or indirectly connected with PSALM | PSALM | PSALM |
| 2. Other vessels not connected with PSALM | PSALM | Supplier |
| iii. Vessel arrival within agreed delivery berthing window: | | |
| 1. but no ullage | PSALM | PSALM |
| 2. no berth available | PSALM | PSALM |
| 3. cannot berth due to problem on vessel and/or crew | SUPPLIER | SUPPLIER |
| 4. low vessel pumping rate | SUPPLIER | SUPPLIER |
| iv. Vessel waiting time due to off-specs delivery | SUPPLIER | SUPPLIER |
| 1. Supplier's quality analysis | | |

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| | a. off-specs (no umpiring needed) | SUPPLIER | SUPPLIER |
| | b. umpiring results | | |
| | - within specs | PSALM | PSALM |
| | - off-specs | SUPPLIER | SUPPLIER |
| | v. Vessel waiting time due to delayed arrival of Supplier's representative and/or surveyor and/or laboratory result | SUPPLIER | SUPPLIER |
| | vi. vessel waiting time due to delayed arrival of PSALM representative and/or laboratory result | PSALM | PSALM |
| | vii. Vessel's prolonged pumping time: | | |
| | 1. due to shore limitations | PSALM | SUPPLIER |
| | - Supplier's and/or Supplier-arranged berthing facilities | SUPPLIER | SUPPLIER |
| | - PSALMS and/or PSALM-arranged berthing facilities | PSALM | PSALM |
| | 2. due to reasons attributable to vessel and/or crew | SUPPLIER | SUPPLIER |
| | viii. Vessel is required to unberth and re-berth due to: | | |
| | 1. problems attributable to PSALM | PSALM | PSALM |
| | 2. problems attributable to vessel and/or crew, or on the initiative of Supplier | SUPPLIER | SUPPLIER |
| | Laytime and demurrage shall be computed based on the actual Charter Party Agreement. This Agreement stipulates the terms and conditions pertaining to freight and demurrage rate and defines the responsibility of the vessel owner and | | |

charterer, in this case the Supplier. Supplier shall furnish PSALM a copy of the pertinent demurrage clause of the Charter Party Agreement in the event a demurrage is filed with PSALM". Vessel arrival should be within berthing window and discharging of cargo should be completed within reasonable time.

In case of a situation where it cannot be established which party is responsible, this matter shall be mutually resolved within ninety (90) calendar days from date of receipt of delivery.

Demurrage charges against the PSALM shall be supported with payment computations and shall be submitted and received by PSALM within sixty (60) calendar days from date of receipt of delivery. Otherwise, Supplier shall have waived its right to claim such demurrage charges.

c. Transfer Costs

Vessel transfer costs shall be absorbed by Supplier or PSALM based on the following conditions:

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| i. Due to PSALM's request/fault | PSALM |
| ii. Due to Supplier's initiative | Supplier |
| iii. Due to rejection of Fuel delivery provided reason is legitimate, example, Fuel does not meet specification, is contaminated, and/or free water is more than 1% by volume (total or per compartment) | Supplier |

d. Transfer of Ownership and Risk

Ownership of the Oil-Based Fuel shall pass to PSALM when the product is received at the MTPP as specified in Section VI-A, Table of Delivery Points for Bidding.

Supplier shall assume risk of loss and/or damage and/or accidents such as but not limited to, oil spills, pilferage and loss due to fire while product is in transit from Supplier's Refinery/Terminal/Depot/Stock Point to MTPP delivery reference points on board product haulers of the Supplier. For this purpose, Supplier shall insure the Fuel while in its custody for the full reinstatement value of the product.

Custody over the Fuel shall pass to PSALM from the Supplier in accordance with the delivery reference points as specified in Section VI-A, Table of Delivery Points.

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| | <p>Patent Rights -</p> <p>The Supplier shall indemnify the Procuring Entity against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof.</p> |
| 9 | <p>1. Prices</p> <p>Delivered Price as stipulated in the contract shall be adjusted for each delivery made by the Supplier using the following formula:</p> $\text{Delivered Price} = \text{Product Cost} + \text{Local Transshipment} + \text{Excise Tax} + \text{EVAT}$ <p>Where:</p> <p style="padding-left: 40px;">Delivered price = Applicable monthly price of oil-based Fuel at delivery point up to four (4) decimal places, Peso/Liter.</p> <p style="padding-left: 40px;">Product Cost = [(MOPS + Premium) x Forex]/158.984</p> <p style="padding-left: 40px;">MOPS = Average of the Mean-of-Platts-Singapore (MOPS) for a particular product within the calendar month immediately preceding PSALM's billing month, e.g., MOPS average 1-31 January 2020 for PSALM's billing month of 26 January 2020 to 25 February 2020, up to four (4) decimal places.</p> <p><i>Note: MOPS shall correspond to the daily high and low price quotations of petroleum products as published in the Platt's Oilgram Report under "Singapore Cargoes" with the following headings and units:</i></p> <p style="padding-left: 40px;">Fuel Oil: HSFO 180 cSt 3.5% Sulfur in US\$/Bbl.</p> <p>MOPS price quotation effectivity date shall follow that which is specified in the Platt's Oilgram Report.</p> <p style="padding-left: 40px;">Premium = Bid Offer for all applicable and reasonable costs or expenses (i.e., quality premium, ocean freight, marine insurance, bank charges, ocean loss, storage/handling/throughput fees, profit margins, etc.) to arrive at a landed cost of petroleum Fuel and distribute the same in the Philippines, up to four (4) decimal places, US\$/Bbl.</p> |

Forex = Monthly average of the Bangko Sentral ng Pilipinas Reference Rates of the Peso to the US Dollar within the calendar month immediately preceding PSALM's billing month, e.g., average BSP Reference Rate 1-31 January 2020 for PSALM's billing month of 26 January 2020 to 25 February 2020, up to four (4) decimal places.

Local Transshipment= Offered transshipment rate based on bidding corresponding to the freight cost from the refinery to the delivery point for deliveries ex-refinery, or freight cost from the depot to the delivery point for deliveries ex-depot, Peso/Liter. The Local Transshipment shall exclude pumping costs in case of tank truck deliveries to MTPP provided with Fuel receiving pump.

Excise Tax = Tax imposed on bunker fuel oil as provided in Section 43 of Republic Act 10963, amending the National Internal Revenue Code of 1997, valued at PhP 6.00/liter.

EVAT = Expanded Value Added Tax as provided in Republic Act No. 9337, amending the National Internal Revenue Code of 1997 as amended and BIR Revenue Regulations No. 16-2005, up to four (4) decimal places, Peso/Liter.

$$= (\text{Product Cost} + \text{Local Transshipment} + \text{Excise Tax}) \times 0.12$$

The delivered price based on the preceding formula shall be paid in Philippine Currency. The conversion factors of *1.0 Metric Ton (MT) = 6.5 Barrels (Fuel Oil)* and *1.0 Barrel = 158.984 liters (Fuel Oil)* will be used, as required. In addition, the delivered price shall also be reckoned on the following:

- a) For tanker/barge/tank truck Fuel deliveries, price shall be the prevailing delivered price at the time of completion of delivery (PSALM shall indicate the date and time of completion of delivery in the invoice while Supplier shall indicate the delivery location).

In cases of Force Majeure as defined in the tender documents, subject to mutual agreement between PSALM and Supplier, the Supplier may source its Fuel supply from

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| | <p>other supply points and the price thereof shall be subject to negotiation between PSALM and Supplier.</p> <p>The Delivered Price of the Oil-Based Fuel per delivery point shall be in Peso per Liter as specified herein and shall be subject to quality adjustment pursuant to SCC-16.1 g, Price Adjustments. The Premium and Local Transshipment costs charged by the Supplier for the Oil-Based Fuel delivered under this Contract shall not vary from the Premium and Local Transshipment quoted by the Supplier in its Bid. Said Premium and Local Transshipment shall be valid for the duration of the supply period of the contract, notwithstanding whether the Contracted Quantity or the Total Contract Price is fully consumed.</p> <p>2. Total Contract Price</p> <p>The Total Contract Price of the Fuel per delivery point shall be computed based on the following formula:</p> $\text{Total Contract Price, Pesos} = \text{Delivered Price} \times \text{Contract Quantity}$ <p>Where the Delivered Price shall be based on the formula in SCC 9, but the MOPS and Forex components shall be as indicated in the Bid Price Proposal Form and the Premium and Local Transshipment as bid. The Contracted Quantity shall be the quantity as also indicated in the Bid Price Proposal Form.</p> <p>The Total Contract Price is expected to be consumed within the contract term. However, should there still be an available amount left after the contract term, said contract term may be extended by PSALM until the full amount is consumed. The contract extension is up to a maximum period of six (6) months.</p> |
| 10.1 | Ten Percent (10%) Retention is not applicable. |
| 10.2 | <p>Payment</p> <p>For and in consideration of the Fuel to be supplied under this Contract and the faithful performance of the other obligations herein of Supplier, PSALM shall pay to Supplier in PSALM's checks a price in accordance with the following :</p> <p>Invoicing and Documentary Requirements (Per Order Basis)</p> <p>Supplier shall bill PSALM for each Fuel delivery and shall submit the billing claim and Fuel ordering notice together with the</p> |

following supporting documents. All documents are original except as indicated herein:

(a) Tank Truck Deliveries

- i. Invoice
- ii. Quality Certificate (last vessel shipment to depot and abbreviated test to depot source tank prior to delivery) - certified copy
- iii. ITDI Calibration Certificate - certified copy

Items (i) to (iii) are required as official supporting documents/attachments for payment processing.

In addition to the above, Supplier shall also provide PSALM, through the Fuel Management Division, not later than the 7th of the current billing month the following documents to support the delivered price of Fuel used by the Supplier in the invoice:

- i. The Mean-of-Platt's Singapore (MOPS) average for the particular product applicable for the Billing Month.
- ii. Bangko Sentral ng Pilipinas Reference Rate (Peso to the US Dollar exchange rate) applicable for the Billing Month.

(b) Tanker/Barge Deliveries

- i. Invoice
- ii. Quality Certificate - certified copy if supply tested was partially delivered and original copy if supply tested was fully delivered.
- iii. Bill of Lading or Cargo Outturn Certificate (COC) or Tanker Bulk Stock Transfer Report (TBSTR)
- iv. Cargo Intake Certificate (CIC)
- v. Volume Computation Sheet
- vi. BIR Withdrawal Certificate (original copy for single port delivery or original copy for the first port and certified copy for the succeeding ports)
- vii. Tanker/Barge Sealing Plan
- viii. Cargo Statement After Loading (Carrier/Surveyor)
- ix. Cargo Statement Before Discharge (Carrier/Surveyor) - original copy if surveyor issue.
- x. Statement of Facts (Load port/Disport) - original duplicate
- xi. On Board Quantity (OBQ) Certificate - original duplicate
- xii. Residual On Board (ROB) Certificate (Certificate of Dryness) - original duplicate.

xiii. Calibration Table of Tanker/Barge (pre-submitted) - certified copy

Only Items (i) to (vii) are required as official supporting documents/attachments for payment processing. Items (viii) to (xiv) shall be submitted by Supplier within ten (10) calendar days after receipt by PSALM of Fuel delivery for operational/control purposes.

In addition to the above, Supplier shall also provide PSALM, through the Fuel Management Division, not later than the 7th of the current billing month the following documents to support the delivered price of Fuel used by the Supplier in the invoice:

- i. The Mean-of-Platt's Singapore (MOPS) average for the particular product applicable for the Billing Month.
- ii. Bangko Sentral ng Pilipinas Reference Rate (Peso to the US Dollar exchange rate) applicable for the Billing Month.

Supplier shall also provide all other documents that may be required by PSALM in connection with the Contract within ten (10) calendar days after receipt of request from PSALM.

Payment Terms

All Fuel deliveries made by Supplier and received by MTPP within a particular billing month shall be paid by PSALM at the end of the following month, provided that all the requirements for payment stated above in SCC10.2 are received by the PSALM not later than the seventh (7th) day of the following month. Otherwise, every day of delay in the submission of the documents, or settling a disputed bill, or due to force majeure as specified in GCC 22 shall extend the payment due date for the same number of days of the delay without penalty. All other billings complying with the payment requirements, undisputed, and not affected by force majeure shall be paid on due date. Otherwise, the late payments shall be subject to interest based on the ninety-one (91) day T-bill rate prevailing on the due date as issued by the Bangko Sentral ng Pilipinas (BSP) for payment until full payment is made. If the due date falls on a holiday or non-working day, payment shall be made on the succeeding business day.

A sample line graph for Fuel supply on Per Order basis, indicating the MOPS and BSP reference rate values to be used and the payment due date, are specified in Annex "A".

Contract Amount and Implementation

PSALM shall make, after every order, an accounting of the amount actually payable to the Supplier. This will determine the allowable unit/volume that may still be ordered from the remaining amount allotted for each oil based-Fuel to conform to the remaining amount in the Total Contract Price.

PSALM is not obligated to lift the total volume in this Contract and shall not be liable to the Supplier for the undelivered volume, if any.

If during contract implementation, the Total Contract Price for this requirement would have been consumed notwithstanding that the said requirements were not fully delivered in the units/volume contemplated, no further order and payments shall be made.

However, the volume to be delivered shall not exceed the Contracted Quantity. No payment shall be made for Fuel deliveries in excess of the Total Contract Price and/or Contracted Quantity.

The Supplier shall closely monitor its deliveries to ensure that the volume to be delivered is within the Total Contract Price and Contracted Quantity.

Delayed/Prompt Payment

Except when due to force majeure as specified in GCC22, non-payment of accounts in full on its due date shall be subject to interest corresponding to the average 91-day T-Bill rate prevailing on due date as issued by the BSP until the account is fully paid.

Likewise, Supplier shall grant PSALM prompt payment discount if PSALM pays before payment due date. The discount shall correspond to the average 91-day T-Bill rate as issued by BSP prevailing on the actual date of prompt payment.

| | |
|---------|---|
| | <p>Payment in Case of Contract Termination</p> <p>In case of termination of this Contract as specified in GCC 23 to 27, PSALM will pay any outstanding obligation on payment due date after the effective date of termination. In case of nonpayment, interest as stipulated above shall accrue on the outstanding amount.</p> |
| 10.4 | No further instructions. |
| 13.4(c) | No further instructions. |
| 16.1 | <p>Inspection and Tests. The inspections and tests that will be conducted are:</p> <p>a) Fuel Compatibility</p> <p>Every Fuel delivery to the MTPP shall be subject to compatibility tests (ASTM D-4570-95 or higher with Reference Spot No. 2 as minimum acceptance limit) to prevent coagulation, stratification and other adverse conditions due to unstable/unsuitable properties of the Fuel.</p> <p>The Fuel source, refining process and stability of the Fuel when co-mingled with existing Fuel stocks shall be declared by the Supplier.</p> <p>The Supplier shall be held liable for costs, expenses and damages, including removal of contaminated stock, resulting in the coagulation and stratification of the Fuel in MTPP storage tanks and/or Fuel pipeline systems due to the Supplier's Fuel deliveries.</p> <p>In case PSALM opts to source from another supplier, the responsibility for Fuel compatibility shall be shifted to the incoming supplier. However, should Supplier advise PSALM of the incompatibility of their Fuel with the PSALM's initial Fuel inventory and PSALM does not heed the Supplier's advise, responsibility for incompatibility problems shall revert to the PSALM.</p> <p>b) Quality Determination</p> <p>The quality of Fuel delivery shall be determined in accordance with applicable ASTM standards/procedures or other mutually accepted standards/procedures as specified in Section VII - Technical Specifications. Fuel to be supplied must be Euro 4 compliant. Supplier shall furnish PSALM the Quality Certificate with the complete set of parameters as specified in Section VII - Technical Specifications for each and every Fuel delivery via tanker/barge and tank truck.</p> |

MTPP, prior to receipt of delivery, shall take samples and composite them into three parts using ASTM-D4057. The three composite samples shall be distributed to PSALM, Supplier and the remaining sample for MTPP safekeeping in case of umpiring.

MTPP shall conduct analysis of its Fuel sample to determine its conformance to the guaranteed specifications. Results of analysis shall be used in making applicable price adjustments under this contract. In cases where the MTPP has no capability to analyze on-site, Supplier's certificate of analysis shall be used as basis of delivery acceptance. However, PSALM has the option to validate the certificate of analysis by taking samples from the Supplier's source tank. The samples shall be analyzed by a third party laboratory acceptable to both parties or at the Supplier's laboratory to be witnessed by PSALM's representative. For purposes of price adjustment, PSALM may use as basis the Certificate of Analysis issued by a third party laboratory designated by PSALM and accepted by the Supplier.

c) Quantity Determination

Quantity/volume measurements of PSALM's receiving tanks and Supplier's source tanks shall be done in accordance with ASTM D-4057 for volume measurements. PSALM shall ensure full isolation of its receiving storage tank during receipt of delivery from Supplier.

PSALM and Supplier must ensure that their tanks are calibrated by duly certified and accredited independent surveyor. PSALM shall provide Supplier copies of calibration tables of MTPP receiving tank. Supplier shall also provide PSALM copies of calibration tables of Supplier's source tank(s) and delivery tanker/barges.

Likewise, Supplier shall also provide PSALM valid ITDI Calibration Certificates of its tank trucks, in case of tank truck deliveries. PSALM and Supplier shall update each other of any changes in calibration tables of their respective tanks and delivery vessels from time to time.

Volume of Fuel deliveries at air shall be net of Free Water content and rounded off to zero (0) decimal places. On the other hand, volume for payment for all modes of delivery shall be corrected to 15°C billing temperature and net of Bottom Sediment Water (BS&W), or Water and Sediment (W&S), using PSALM analysis on BS&W prior to rounding-off to two (2) decimal places.

In cases where PSALM delivery points have no capability to analyze BS&W, the adjustment, if any, shall be based on Supplier's certificate of analysis, which is subject to validation as specified in Item b) above.

Free Water shall refer to the quantity of water inside the compartments of delivery vessels, i.e., oil tanker, vessel, barge and tank truck or lorry. Free water content shall be determined prior to taking samples for analysis pursuant to item b) above. Free Water shall be determined and measured by sounding using steel tape with water finder paste. For tank truck or lorry deliveries, Free Water content shall be measured by draining the tank truck/lorry compartments using graduated containers. Fuel deliveries or Fuel in any compartment of delivery vessels with Free Water content that is more than one percent (1%) by volume shall be rejected outright.

i. Quantity/Volume Reconciliation (*Per Order Basis*)

Quantity/volume of Fuel delivery for payment purposes shall be corrected to 15°C reference temperature and reconciled in accordance with the following procedure:

1. Tanker/Barge/ deliveries:

If PSALM's received volume plus ROB is equal to or above Bill of Lading (B/L) quantity, PSALM shall pay B/L quantity net of ROB.

If PSALM's received volume plus ROB is below B/L quantity, PSALM shall pay actual volume received.

If PSALM's receiving tank is not isolated or is in-service during receipt of delivery.

a) Volume for payment shall be Vessel Figure Before Discharge (VFBD) net of ROB corrected to 15°C if VFBD net of ROB is lower than B/L. Otherwise, if VFBD volume is higher than B/L, volume basis for payment shall be based on B/L quantity net of ROB.

b) In case of tank-to-tank transfers, volume basis for payment shall be based on B/L quantity.

2. Tank Truck Deliveries:

For tank truck deliveries, volume for payment shall be based on tank truck gauge marker equivalent volume

corrected to 15°C using density and temperature measurements made by PSALM on tank truck oil compartments prior to receipt of delivery and applicable ASTM tables and standards. In the absence of density measurements by PSALM, the density indicated in the Certificate of Analysis provided by Supplier shall be used.

These volume measurements shall be net of Free Water Content and BS&W pursuant to item b) and c) above. Fuel deliveries for payment for each delivery point in the Contract shall be reckoned from the 25th noon of the month immediately preceding the delivery month up to the 25th noon of the delivery month (billing period.)

In addition, if the PSALM's receiving tank is non isolated or in-service during receipt of delivery, the as-received volume (CIC) shall be equal to the Vessel's Figure Before Discharge (VFBD) less ROB.

For concerns or issues regarding Fuel delivery (Quantity and Amount) at MTPP, reconciliation shall commence from the start of the implementation of the contract. Any claims pertaining to reconciliation for the contract shall not be beyond six (6) months from the contract period.

d) Rejection

i. Rejection Limits

Prior to actual discharging of deliveries, PSALM reserves the right to perform tests and quality analyses of the Fuel properties as specified in Section VII - Technical Specifications. If the result of such test or analyses falls outside any of the reproducibility/precision limits defined in the applicable standard, PSALM reserves the right to reject the Fuel delivery.

All costs and charges in connection with the rejection shall be for the account of the Supplier, except when due to the fault of the PSALM.

ii. Delivery Rejection

PSALM shall, at no cost to PSALM, have the right to reject any delivery of Fuel that does not satisfy the Guaranteed Fuel Specifications as specified in Section

VII - Technical Specification. Likewise, PSALM has the right to reject the Fuel delivery or the Fuel in any tank/compartments if this contains Free Water, or is contaminated with water, more than one percent (1%) by volume.

PSALM may exercise its right to reject Fuel delivery prior to its pumping/transfer. The moment the product has been pumped or transferred to PSALM's receiving/storage tanks, PSALM is deemed to have waived its right to reject. The PSALM however reserves the right to stop pumping and reject the remaining product of the delivery in the event of any observed abnormalities or discrepancies affecting product quality. In case of critical Fuel inventory, PSALM may decide to receive the delivery subject to price adjustments as specified in SCC-16.1 g, Price Adjustments.

In the event of a delivery rejection, the Umpire Sample obtained as specified in Item b) above shall be retrieved by the Supplier and/or the third party surveyor from the PSALM. This sample shall then be tested by an independent laboratory mutually acceptable to the parties.

If the results of the above laboratory tests show that the product is within the Guaranteed Fuel Specifications as specified in Section VII - Technical Specifications, testing cost shall be for the account of the PSALM. Otherwise, said costs shall be shouldered by the Supplier.

In the event PSALM rejects a Fuel delivery and Supplier cannot deliver a replacement as required, PSALM may source the equivalent volume of such delivery from other sources and any differential cost shall be for the account of the Supplier. If delays in Fuel replacement or sourcing results to plant load reduction/shutdown, penalties and damages as specified in SCC19.1.a shall also be charged to Supplier.

e. Appeal on Rejections

In case of rejection of any Fuel delivery, Supplier may, within twenty-four (24) hours from notice thereof, appeal in writing such rejection; provided, however, that if the rejected Fuel delivery is immediately transferred at the initiative of the Supplier to other ports/destination prior to completion of the third party analysis, Supplier loses its right of appeal as well

as the right to charge any costs including but not limited to transfer and demurrage costs even if the results of the analysis conform with the Guaranteed Fuel Specifications.

f. Penalty in Oil-Based Fuel Quality

If the quality of the Oil-Based Fuel delivered is not within the guaranteed quality specifications, these shall be subject to rejection per SCC 16.1, or corresponding penalty or adjustment in Item g below.

g. Price Adjustments

The price for products delivered by Supplier and accepted by PSALM not conforming to certain Guaranteed Fuel Specifications as specified in Section VII - Technical Specifications are subject to adjustment (SA) as follows:

a. High Heating Value (HHV) Adjustment

If the High Heating Value of the delivered IFO is less than the guaranteed minimum High Heating Value, Btu/lb., as specified by the Supplier and accepted by the PSALM, price adjustment, up to four (4) decimal places, shall be applied as follows:

$$\text{Adjustment Price HHV, } \frac{\text{Peso/Liter}}{\text{Guaranteed HHV}} = \left(1 - \frac{\text{Actual HHV}}{\text{Guaranteed HHV}}\right) \times \text{Product Cost}$$

No bonus or upward adjustment in price will be allowed when the actual High Heating Value (HHV) of the delivered Fuel is more than the guaranteed minimum. Also, for IFO with LHV below 17,200 BTU/lb, it shall be rejected outright.

b. Off-Specs Fuel Delivery.

PSALM shall impose a penalty of 10% of the delivered price for any Fuel delivery that is subject to Outright Rejection but accepted by the Plant. The ten percent (10%) penalty shall apply to each parameter that is beyond the limits provided in Section VII - Technical Specifications.

This penalty shall apply for off specs deliveries on two (2) occasions only. Otherwise, it shall be a ground for contract termination pursuant to GCC 23.

The above price adjustments shall be applied after full quantity deduction due to Free Water content and Bottom Sediment and Water (BS&W), or Water and Sediment, had

| | |
|------|--|
| | <p>been made from the total volume delivered based on PSALM's or MTPP's analysis result. In case PSALM/MTPP has no capability to analyze % BS&W, then Supplier's submitted certificate of analysis shall be used. Sampling and analysis shall be in accordance with the standard ASTM standards and procedures as specified in SCC 16.1 and Section VII - Technical Specifications.</p> |
| 17.3 | Not applicable |
| 21.1 | No additional provision <i>or, if the Supplier is a joint venture, "All partners to the joint venture shall be jointly and severally liable to the Procuring Entity."</i> |
| 29 | <p>In the event that the ownership, possession, and/or operation of MTPP is transferred to another entity, PSALM shall have the option to exercise the following:</p> <ul style="list-style-type: none"> a) the contractual obligations of PSALM under the Contract shall be transferred to the owner, possessor, and/or operator of the MTPP upon notice by PSALM to the Supplier; and/or b) pre termination of the Contract provided that written notice is given by PSALM to the Supplier at least thirty (30) days prior to its termination. <p>The above shall be without prejudice to payment of claims which were incurred prior to the transfer of the contractual obligations or termination of the Contract. From the date of transfer or termination of the Contract under this Section, PSALM shall not be liable to the Supplier for any claim, cause or action accruing from the date of such transfer or termination.</p> |

Section VI. Schedule of Requirements

A) Table of Delivery Points for Bidding

B) Schedule of Monthly Fuel Requirements

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION

OIL-BASED FUEL REQUIREMENTS FOR PSALM FOR CY 2020

TABLE OF DELIVERY POINTS FOR BIDDING

Table of Delivery Points

| PLANT NAME | Fuel Type | Quantity Kliters | Delivery | | | Delivery Point/Plant Location | Storage Tank Capacity Kliters | Minimum Inventory Kliters | Critical Inventory Kliters | REMARKS |
|------------|-----------|------------------|----------|-------------------------|---------------------------------|-------------------------------|-------------------------------|---------------------------|----------------------------|---------|
| | | | Mode | Pier Depth/Draft meters | Minimum Vessel Capacity Kliters | | | | | |

Luzon

| | | | | | | | | | | |
|---------------|-----|--------|-------|---|-----|----------------|--------|--------|--------|--------------------|
| 1. Malaya TPP | IFO | 37,500 | Barge | 4 | 300 | Pililla, Rizal | 87,553 | 43,777 | 21,888 | double-bottom/hull |
|---------------|-----|--------|-------|---|-----|----------------|--------|--------|--------|--------------------|

Note:

1. Start of delivery shall be formally advised by PSALM to SUPPLIER
2. Fuel Orders shall be confirmed within 24 hours by SUPPLIERS to PSALM
3. Receipt of delivery is during daytime only. However, pumping / discharging will proceed on 24-hour basis
4. Minimum and critical inventories is exclusive of deadstock volume

Power Sector Assets and Liabilities Management Corporation
Industrial Fuel Oil Requirements for CY 2020
Indicative Schedule of Monthly Fuel Requirements in Liters

| Plant Name | CY 2020 | | | |
|------------|------------|------------|------------|-----------|
| | April | May | June | July |
| Malaya | 10,000,000 | 10,000,000 | 10,000,000 | 7,500,000 |

* PSALM is not obligated to lift the total volume in this Contract and shall not be liable to the Supplier for the undelivered volume, if any.

Section VII. Technical Specifications

SECTION VII TECHNICAL SPECIFICATIONS

INDUSTRIAL FUEL OIL SPECIFICATIONS MALAYA TPP

| Property | | Unit | ASTM Method | Standard Specifications | | |
|----------|-------------------------|------|-------------|--|----------|-----------|
| | | | | Min. | Max. | |
| 1. | Density @ 15°C | OR | kg/L | D-1298 / D-4052 | 0.9459 | |
| 2. | Viscosity @ 50°C | OR | cSt | D-445 | | 280 |
| 3. | Flash Point | OR | °C (°F) | D-93 | 65 (149) | |
| 4. | Pour Point | | °C (°F) | D-97 | | 21 (69.8) |
| 5. | Ash | OR | % wt | D-482 | | 0.2 |
| 6. | Sulfur | OR | % wt | D-4294 / D-129 / D-2622 | | 3.0 |
| 7. | Bottom Sediment & Water | OR | % vol | D-1796 | | 1.0 |
| 8. | Calorific Value, HHV | SA | Btu/lb | D-240 / D-4868 | 18,500 | |
| | LHV | OR | Btu/lb | D-240 / D-4868 | 17,200 | |
| 9. | Trace Metals | OR | ppmw | | | |
| | a. Vanadium | | | D-3605 / D-5863 / IP 433 | | 100 |
| | b. Sodium | | | D-1318 / D-5863 | | 33 |
| 10. | Others | | | | | |
| | a. Carbon Residue (CR) | OR | % wt | D-4530-85 / D-189 | | 16 |
| | b. Free Water | OR | % vol | Refer to SCC 16.1 c) for procedure. | | 1.0 |

Note:

OR - Outright Rejection

SA - Subject to Price Adjustment per SCC 16.1(g) of the Bidding Documents.

Section VIII. Bidding Forms

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Checklist/Evaluation Sheet of Requirements for Bidder

The FIRST ENVELOPE shall contain the following eligibility and technical documents:

| PSALM REQUIREMENTS Submitted <input checked="" type="checkbox"/> Not-submitted <input type="checkbox"/> | REMARKS |
|--|---------|
| I. ELIGIBILITY DOCUMENTS | |
| CLASS "A" Documents | |
| 1. PhilGEPS Certificate of Registration and Platinum Membership together with Annex "A" in accordance with Section 8.5.2 of the IRR. | |
| <p>a. Registration certificate from the Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI) for sole proprietorship, or Cooperative Development Authority (CDA) for cooperatives;</p> | |
| <p>b. Mayor's/Business Permit for 2020 issued by the City or Municipality where the principal place of business of the prospective bidder is located, or the equivalent document for Exclusive Economic Zones or Areas.</p> <p>In cases of recently expired Mayor's/Business Permits, it shall be accepted together with the official receipt as proof that the bidder has applied for renewal for CY 2020: Provided, that the renewed permit shall be submitted as a post-qualification requirement;</p> | |
| <p>c. Tax Clearance Certificate per Executive Order 398, issued by the Bureau of Internal Revenue (BIR).</p> <p>Only a valid TCC issued by BIR pursuant to the above related BIR issuances is acceptable. Provisional Tax Clearance Certificate or any other form is not accepted. For the avoidance of doubt, a TCC issued by the Revenue Regional Office and submitted by a Bidder should be issued on or before the date of effectivity of BIR Revenue Memorandum Order No. 46-2018.</p> <p>For further clarification on valid TCC, Tax Clearances for Bidding Purposes shall only be valid after the same have been posted in the BIR Website. In case the TCC is not yet posted in the BIR Website, the Bidder must submit a certified true copy of the TCC issued by the BIR, or its original, which will be returned to the Bidder after the bidding process;</p> | |

| | |
|---|--|
| d. The prospective bidder's Audited Financial Statement, showing, among others, the prospective bidder's total and current and liabilities, stamped "received" by the Bureau of Internal Revenue (BIR) or its duly accredited and authorized institutions, for the preceding calendar year, which should not be earlier than two (2) years from bid submission. | |
| 2. Statement of all its ongoing government and private contracts within the period stated in the BDS, including contracts awarded but not yet started, if any (<i>Form No.: ELIG - 01</i>) | |
| 3. Statement of Single Largest Completed Contract which is Similar in Nature during the Last Three (3) Years (<i>Form No.: ELIG - 02</i>) | |
| 4. NFCC computation in accordance with ITB Clause 5.5 (<i>Form No.: ELIG - 03</i>) or a committed Line of Credit from a universal or commercial bank (<i>Form No.: PSALM - 02</i>) | |
| CLASS "B" Documents | |
| 5. If applicable, the Joint Venture Agreement (JVA) in case the joint venture is already in existence, or duly notarized statements from all the potential joint venture partners in accordance with Section 23.1(b) of the IRR. (<i>Form No.: ELIG - 04</i>) | |
| II. TECHNICAL DOCUMENTS | |
| 6. The Bid Security, in accordance with ITB Clause 18, shall be any of the following: | |
| a. Bid Securing Declaration (<i>Form No.: TEC - 01</i>) | |
| b. Cash or cashier's/manager's check issued by a Universal or Commercial Bank- 2% of ABC | |
| c. Bank Guarantee - 2% of ABC (<i>Form No.: TEC - 02</i>) | |
| d. Irrevocable letter of credit - 2% of ABC (<i>Form No.: TEC - 03</i>) | |
| e. Original copies of the Surety bond and the corresponding Official Receipt. The Surety bond must be callable upon demand and issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security - 5% of ABC | |

| | |
|--|--|
| 7. Conformity with technical specifications, as enumerated and specified in Sections VI and VII of the Bidding Documents <i>(Form No.: TEC - 04)</i> | |
| 8. Sworn statement in accordance with Section 25.3 of the IRR of RA 9184 and using the form prescribed in Section VIII. Bidding Forms <i>(Form No.: TEC - 05)</i> | |

The SECOND ENVELOPE shall contain the following:

| | |
|---|--|
| III. FINANCIAL COMPONENT | |
| 1. Duly Signed and completed Bid Letter Form <i>(Form No. FIN - 01)</i> | |
| 2. Duly Signed and completed Detailed Bid Price Schedule <i>(Form No. FIN - 01A)</i> | |

Form No. ELIG - 01

List of all Ongoing Government and Private Contracts including Contracts Awarded but not yet Started

Business Name : _____

Business Address : _____

| Name of Contract/ Project Cost | a. Owner's Name b. Address c. Telephone Nos. | Nature of Work | Bidder's Role | | a. Date Awarded b. Date Started c. Date of Completion | % of Accomplishment | | Value of Outstanding Works / Undelivered Portion |
|-----------------------------------|--|----------------|---------------|---|---|---------------------|--------|--|
| | | | Description | % | | Planned | Actual | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

Note: The following documents shall be submitted upon post-qualification:

1. Notice of Award and/or Contract
2. Notice to Proceed issued by the owner

Submitted by : _____

(Printed Name & Signature)

Designation : _____

Date : _____

Form No. ELIG - 02

Statement of Single Largest Completed Contract which is similar in nature during the last three (3) years

Business Name : _____

Business Address : _____

| Name of Contract | a. Owner's Name b. Address c. Telephone Nos. | Nature of Work | Bidder's Role | | a. Amount at Award b. Amount at Completion c. Duration | a. Date Awarded b. Contract Effectivity Date |
|------------------|--|----------------|---------------|---|--|---|
| | | | Description | % | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

Note: The following documents shall be submitted upon post-qualification:

1. Contract
2. Certificate of Completion/Acceptance

Submitted by : _____

(Printed Name & Signature)

Designation : _____

Date : _____

Form No. ELIG - 03

Financial Documents for Eligibility Check

A. Summary of the Applicant Supplier's/Distributor's/Manufacturer's assets and liabilities on the basis of the income tax return and audited financial statement, stamped "RECEIVED" by the Bureau of Internal Revenue (BIR) or BIR authorized collecting agent, for the immediately preceding year and a certified copy of Schedule of Fixed Assets particularly the list of construction equipment.

| | | Year 20__ |
|----|---------------------------|-----------|
| 1. | Total Assets | |
| 2. | Current Assets | |
| 3. | Total Liabilities | |
| 4. | Current Liabilities | |
| 5. | Net Worth (1-3) | |
| 6. | Net Working Capital (2-4) | |

B. The Net Financial Contracting Capacity (NFCC) based on the above data is computed as follows:

NFCC = [(Current asset - current liabilities) x 15] minus value of all outstanding or uncompleted portions of the project under ongoing contracts yet to be started coinciding with the contract to be bid.

or

Commitment from a licensed bank to extend to it a credit line if awarded the contract.

Name of Bank: _____ Amount: _____

Submitted by:

Name of Supplier / Distributor / Manufacturer

Signature of Authorized Representative

Date : _____

NOTE:

If Partnership or Joint Venture, each Partner or Member Firm of Joint Venture shall submit Form No. ELIG-03.

Joint Venture Agreement

KNOW ALL MEN BY THESE PRESENTS:

That this JOINT VENTURE AGREEMENT is entered into By and Between _____,
of legal age, (civil status), owner/proprietor of _____
and a resident of _____.

and -

_____, of legal age, (civil status), owner/proprietor of
_____ a resident of _____.

That both parties agree to join together their manpower, equipment, and what is needed to facilitate the Joint Venture to participate in the Eligibility, Bidding and Undertaking of the here-under stated project to be conducted by the PSALM Corporation.

NAME OF PROJECT

CONTRACT AMOUNT

That both parties agree to be jointly and severally liable for the entire assignment.

That both parties agree that _____ and/or _____ shall be the Official Representative of the Joint Venture, and is granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the Joint Venture in the bidding as fully and effectively and the Joint Venture may do and if personally present with full power of substitution and revocation.

That this Joint Venture Agreement shall remain in effect only for the above stated Project until terminated by both parties.

Name and Signature of Authorized
Representative

Name and Signature of Authorized
Representative

Official Designation

Official Designation

Name of Firm

Name of Firm

Witnesses

1. _____

2. _____

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
_____)S.S.

BEFORE ME, a Notary Public for and in _____, Philippines, this ___ day of _____, 2020, personally appeared:

| Name | Identification Document | Issued on | Issued at |
|------|-------------------------|-----------|-----------|
| | | | |
| | | | |

known to me and to me known to be the same person who executed the foregoing instrument consisting of _____ (__) pages, including the page whereon the acknowledgment is written, all pages signed by both parties and their instrumental witnesses, and they acknowledged before me that the same is his free and voluntary act and deed and that of the Corporation he represents.

WITNESS MY HAND AND NOTARIAL SEAL, on the date and place first above written.

Notary Public

Doc. No. _____;
Page No. _____;
Book No. _____;
Series of 2020.

Bid-Securing Declaration

REPUBLIC OF THE PHILIPPINES)
CITY OF _____) S.S.

X-----X

BID SECURING DECLARATION Invitation to Bid: *[Insert Reference number]*

To: Office of the President and CEO
Power Sector Assets and Liabilities
Management Corporation
24th Floor Vertis North Corporate Center 1
Astra Corner Lux Drives, North Avenue
1105 Quezon City

I/We, the undersigned, declare that:

1. I/We understand that, according to your conditions, bids must be supported by a Bid Security, which may be in the form of a Bid-Securing Declaration.
2. I/We accept that: (a) I/we will be automatically disqualified from bidding for any contract with any procuring entity for a period of two (2) years upon receipt of your Blacklisting Order; and, (b) I/we will pay the applicable fine provided under Section 6 of the Guidelines on the Use of Bid Securing Declaration¹, within fifteen (15) days from receipt of the written demand by the procuring entity for the commission of acts resulting to the enforcement of the bid securing declaration under Sections 23.1(b), 34.2, 40.1 and 69.1, except 69.1(f), of the IRR of RA 9184; without prejudice to other legal action the government may undertake.
3. I/We understand that this Bid-Securing Declaration shall cease to be valid on the following circumstances:
 - (a) Upon expiration of the bid validity period, or any extension thereof pursuant to your request;
 - (b) I am/we are declared ineligible or post-disqualified upon receipt of your notice to such effect, and (i) I/we failed to timely file a request for reconsideration or (ii) I/we filed a waiver to avail of said right;

¹ Issued by the GPPB through GPPB Resolution 03-2012 on 27 January 2012, as amended by GPPB Resolution 15-2014 dated 20 June 2014.

(c) I am/we are declared as the Bidder with the Lowest Calculated and Responsive Bid, and I/we have furnished the performance security and signed the Contract.

IN WITNESS WHEREOF, I/we have hereunto set my/our hands this ___ day of _____ 2020 at _____.

[Insert NAME OF BIDDER'S AUTHORIZED REPRESENTATIVE]
[Insert signatory's Title/Designation]
Affiant

SUBSCRIBED AND SWORN to before me this ___ day of *[month]* *[year]* at *[place of execution]*, Philippines. Affiant/s is/are personally known to me and was/were identified by me through competent evidence of identity as defined in the 2004 Rules on Notarial Practice (A.M. No. 02-8-13-SC). Affiant/s exhibited to me his/her *[insert type of government identification card used]*, with his/her photograph and signature appearing thereon, with no. _____ and his/her Community Tax Certificate No. _____ issued on _____ at _____.

Witness my hand and seal this ___ day of *[month]* *[year]*.

NAME OF NOTARY PUBLIC

Serial No. of Commission _____

Notary Public for _____ until _____

Roll of Attorneys No. _____

PTR No. __, *[date issued]*, *[place issued]*

IBP No. __, *[date issued]*, *[place issued]*

Doc. No. _____

Page No. _____

Book No. _____

Series of 2020.

Form No. TEC - 02

BANK LOGO

Form of Bid Security (Bank Guarantee)

WHEREAS, *[insert name of bidder]* (hereinafter called the "bidder") has submitted his bid dated *[insert date]* for the *[insert name of contract]* (hereinafter called the "Bid").

KNOW ALL MEN by these presents that We *[insert name of Bank]* of *[insert name of Country]* having our registered office at *[insert address]* (hereinafter called the "Bank" are bound unto PSALM Corporation (hereinafter called the "Entity") in the sum of *[insert amount]*² for which payment well and truly to be made to the said Entity the Bank binds himself, his successors and assigns by these presents.

SEALED with the Common Seal of the said Bank this _____ day of _____ 2020.

THE CONDITIONS of this obligation are:

1. If the bidder:
 - (a) withdraws his Bid during the period of bid validity specified in the Form of Bid; or
 - (b) does not accept the correction of arithmetical errors of his bid price in accordance with the Instructions to bidder; or
2. If the bidder having been notified of the acceptance of his bid by the Employer during the period of bid validity:
 - (a) fails or refuses to execute the Contract Form in accordance with the Instructions to bidders, if required; or
 - (b) fails or refuses to furnish the Performance Security in accordance with the Instructions to bidders.

We undertake to pay to the Entity up to the above amount upon receipt of his first written demand, without the Entity having to substantiate his demand, provided that in his demand the Entity will note that the amount claimed by him is due to him owing to the occurrence of one or both of the two (2) conditions, specifying the occurred condition or conditions.

The Guarantee will remain in force up to and including the date *[insert days]*³ days after the deadline for submission of Bids as such deadline is stated in the Instructions to bidders or as it may be extended by the Entity, notice of which extension(s) to the Bank is hereby waived. Any demand in respect of this Guarantee should reach the Bank not later than the above date.

DATE _____ SIGNATURE OF THE BANK _____

WITNESS _____ SEAL _____

(Signature, Name and Address)

³ Usually 28 days after the end of the validity period of the Bid. Date should be inserted by the Entity before the bidding documents are issued.

Form No. TEC - 03

Form of Bid Security
(To be submitted in the stationery of the Issuing Bank)

IRREVOCABLE STANDBY LETTER OF CREDIT

Number: [●]
Amount: [●]
Stated Expiration Date [●]
Account Party: [●]

Office of the President and CEO
Power Sector Assets and Liabilities Management Corporation
24th Floor Vertis North Corporate Center 1
Astra Corner Lux Drives, North Avenue
1105 Quezon City
Philippines

Subject: Letter of Credit No. [●]

We refer to the Philippine Bidding Documents for the Supply and Delivery of Industrial Fuel Oil for Malaya Thermal Power Plant for CY 2020 (Project Reference No. 2020-PB-IFO-MTPP-001-02) dated 21 February 2020, as amended or otherwise supplemented, (the "Bidding Documents").

We hereby establish this Irrevocable Standby Letter of Credit No. [●] (this "SBLC") for the benefit of Power Sector Assets and Liabilities Management Corporation (the "Beneficiary") in an amount not exceeding a total of _____ (PHP _____) (the "Drawing Amount"). Funds under this SBLC are available to you at sight upon our receipt of a certificate in the form of Annex A attached hereto (a "Demand Certificate"), notifying us of the occurrence of a Bid Security Drawing Event as defined in the Instruction to Bidders, *viz*:

1. if the Bidder/Account Party:
 - (a) withdraws his bid during the period of bid validity specified in the Form of Bid;
 - (b) does not accept the correction of arithmetical errors of his bid price in accordance with Instructions to Bidders; or
2. if the Bidder/Account Party having been notified of the acceptance of his bid during the period of bid validity:
 - (a) fails or refuses to execute the Contract Form in accordance with the Instructions to Bidders, if required; or
 - (b) fails or refuses to furnish the Performance Security in accordance with the Instruction to Bidders.
3. If the Bidder/Account Party does not comply with any of the other conditions set forth in Instruction to Bidders Clause 18.5.

The Demand Certificate shall upon presentment be appropriately completed and purportedly signed by your duly authorized officer, employee or signatory on or before the Expiration Date (as hereinafter defined). This SBLC does not contain any condition to drawing other than the confirmation by us that the Demand Certificate appears to comply on its face with the requirements of the immediately preceding sentence.

The SBLC shall be drawable at our office in Metro Manila, Philippines. We will pay amounts drawn hereunder from our general funds.

You shall present one Demand Certificate dated the date of presentation for each drawing hereunder to [name and address of issuing bank]. If you present the Demand Certificate by 10:00 a.m. local time on any day on which we are open for business (each such day, a "**Business Day**"), in strict conformance with the terms and conditions of this SBLC, we will honor the same by making payment in immediately available funds, in accordance with your payment instructions and without any restrictions, conditions, inquiry or right of objection whatsoever on our part, without notice to the Account Party prior to such payment and notwithstanding any conditions, demands, or objections by the Account Party or any other party, without you having to further substantiate such demand, by 4:00 p.m. local time on such Business Day, otherwise we will honor your Demand Certificate by 10:00 a.m. local time the following Business Day.

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

This SBLC shall expire at 5:00 p.m. at our office on the earliest of the following: (i) the Stated Expiration Date; (ii) our honoring of the Demand Certificate/s presented hereunder that, in the aggregate, equal the Drawing Amount, and (iii) the surrender by you of the original SBLC for cancellation. The earliest of the foregoing dates is referred to herein as the "Expiration Date." Except as otherwise expressly provided in this paragraph, this SBLC shall not terminate prior to the Stated Expiration Date for any reason whatsoever. Notwithstanding the occurrence of the Stated Expiration Date, We will honor and pay for the amount drawn by You 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 herein to any document, instrument or agreement, except the Demand Certificate/s referred to herein, shall not in any way amend, modify, amplify or limit our undertaking.

All documents presented to us in connection with any demand for payment hereunder, as well as all notices and other communications to us in respect of 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.

You shall personally deliver such documents, notices and other communications to us or send them to us by facsimile to [●], or such other number as we may specify from time to time in writing to you.

This SBLC shall be subject to International Standby Practices 1998 (“ISP98”) and in case of dispute arising from, or in connection with, the interpretation or implementation thereof, shall be subject to Philippine Law.

[Insert Date and Place of Issue]

Very truly yours,
[Issuing Bank]

Form No. TEC - 04

**Conformity with Section VI (Schedule of Requirements) and
Section VII (Technical Specifications)**

(Name of Bidder) hereby undertakes that it shall COMPLY with the general requirements stated in Sections VI (Schedule of Requirements) and Section VII (Technical Specifications).

Name and Signature of Authorized Official

Position

Date

REPUBLIC OF THE PHILIPPINES)
_____) S.S.

ACKNOWLEDGMENT

BEFORE ME, a Notary Public for and in _____, Philippines, this ___ day of _____, 2020, personally appeared:

| Name | Government-Issued ID & No. | Issued on | Issued at |
|------------|----------------------------|-----------|-----------|
| (SUPPLIER) | | | |

known to me and to me known to be the same person who executed the foregoing instrument consisting of _____ (___) pages, including the page whereon this Acknowledgment is written, all pages signed by both parties and their instrumental witnesses, and they acknowledged before me that the same is their free and voluntary act and deed and that of the Corporation they represent.

WITNESS MY HAND AND NOTARIAL SEAL, on the date and place first above written.

Notary Public

Doc. No. _____;
Page No. _____;
Book No. _____;
Series of 2020.

Omnibus Sworn Statement

REPUBLIC OF THE PHILIPPINES)
CITY/MUNICIPALITY OF _____) S.S.

AFFIDAVIT

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

1. I am the duly authorized and designated representative of *(Name of bidder)* with office address at *(address of bidder)*;
2. I am granted full power and authority to do, execute and perform any and all acts necessary and/or to represent the *(Name of bidder)* in the bidding as shown in the attached *[state title of attached document showing proof of authorization (e.g., duly notarized Secretary's Certificate issued by the corporation or the members of the joint venture)]*;
3. *(Name of bidder)* is not "blacklisted" or barred from bidding by the Government of the Philippines or any of its agencies, offices, corporations, or Local Government Units, foreign government/foreign or international financing institution whose blacklisting rules have been recognized by the Government Procurement Policy Board;
4. 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;
5. *(Name of bidder)* is authorizing the Head of the Procuring Entity or its duly authorized representative(s) to verify all the documents submitted;
6. None of the officers, directors, and controlling stockholders of *(Name of bidder)* is related to the Head of the Procuring Entity, members of the Bids and Awards Committee (BAC), the Technical Working Group, and the BAC Secretariat, the head of the Project Management Office or the end-user unit, and the project consultants by consanguinity or affinity up to the third civil degree;
7. *(Name of bidder)* complies with existing labor laws and standards;
8. *(Name of bidder)* is aware of and has undertaken the following responsibilities as a bidder:

- a) Carefully examine all of the bidding documents;
 - b) Acknowledge all conditions, local or otherwise, affecting the implementation of the Contract;
 - c) Made an estimate of the facilities available and needed for the contract to be bid, if any; and
 - d) Inquire or secure Supplemental/Bid Bulletin(s) issued for the *[Name of the Project]*; and
9. *(Name of bidder)* did not give or pay directly or indirectly, any commission, amount, fee, or any form of consideration, pecuniary or otherwise, to any person or official, personnel or representative of the government in relation to any procurement project or activity.

IN WITNESS WHEREOF, I have hereunto set my hand this __ day of __, 2020 at _____, Philippines.

Bidder's Representative/Authorized Signatory

SUBSCRIBED AND SWORN TO before me this __ day of _____ 2020, Philippines.

Notary Public

Doc. No. _____
 Page No. _____
 Book No. _____
 Series of 2020.

Bid Form

Date: _____

To: The BAC Chairperson
Power Sector Assets and Liabilities Management Corporation
24th Floor Vertis North Corporate Center 1
Astra Corner Lux Drives, North Avenue
1105 Quezon City

Gentlemen and/or Ladies:

Having examined the Bidding Documents including Bid Bulletin Numbers [insert numbers], the receipt of which is hereby duly acknowledged, we, the undersigned, offer to [supply/deliver/perform] [description of Goods] in conformity with the said Bidding Documents for the sum of _____ [total Bid amount in words and figures] or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Bid.

We undertake, if our Bid is accepted, to deliver the goods in accordance with the delivery schedule specified in the Schedule of Requirements.

If our Bid is accepted, we undertake to provide a performance security in the form, amounts, and within the times specified in the Bidding Documents.

We agree to abide by this Bid for the Bid Validity Period specified in **BDS** provision for ITB Clause 17.1 and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Bid, and to contract execution if we are awarded the contract, are listed below:

| Name and address of agent | Amount and Currency | Purpose of Commission or gratuity |
|---------------------------|---------------------|-----------------------------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

(if none, state "None")

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

We understand that you are not bound to accept the lowest or any Bid you may receive.

We certify/confirm that we comply with the eligibility requirements as per ITB Clause 5 of the bidding documents.

We likewise certify/confirm that the undersigned, *[for sole proprietorships, insert: as the owner and sole proprietor or authorized representative of Name of Bidder, has the full power and authority to participate, submit the bid, and to sign and execute the ensuing contract, on the latter's behalf for the Name of Project of the Name of the Procuring Entity][for partnerships, corporations, cooperatives, or joint ventures, insert: is granted full power and authority by the Name of Bidder, to participate, submit the bid, and to sign and execute the ensuing contract on the latter's behalf for Name of Project of the Name of the Procuring Entity].*

We acknowledge that failure to sign each and every page of this Bid Form, including the attached Schedule of Prices, shall be a ground for the rejection of our bid.

Dated this _____ day of _____ 2020.

[signature]

[in the capacity of]

Duly authorized to sign Bid for and on behalf of _____

Form No. FIN - 01A

For Goods Offered From Within the Philippines

DETAILED BID PRICE SCHEDULE

Date: _____

Project : Procurement of Supply and Delivery of Industrial Fuel Oil for Malaya Thermal Power Plant for CY 2020

Code: Project Reference No. 2020-PB-IFO-MTPP-001-02

Bidder's Name/Address/Tel. No.:

Date of Bidding: _____

Time of Bidding: _____

Total Amount of Bid Price in Words inclusive of VAT (amount in words and figures):

(PhP_____).

Authorized Official/Position

Signature/Date

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION
Industrial Fuel Oil Requirements for CY 2020
DETAILED BID PRICE SCHEDULE

INDUSTRIAL FUEL OIL (IFO)

| PLANT NAME/ DELIVERY POINT A | Quantity Kliters B | Fuel Type C | Mode of Delivery D | Source Co. Name / Country of Origin E | Delivery Point (Yes/No) F | Premium US\$/Bbl G | Product Cost PhP/Liter H (see note) | Loc Trans PhP/Liter I | Excise Tax PhP/Liter J (see note) | E-VAT (12%) PhP/Liter K (see note) | Delivered Price PhP/Liter L (see note) | Total Contract Price Pesos M = B x L x 1000 |
|------------------------------------|--------------------------|-------------------|--------------------------|---|------------------------------------|--------------------------|--|-----------------------------|---|---|---|--|
| 1. Malaya | 37,500.00 | IFO | Barge | | | | | | 6.0000 | | | |

NOTES (Letters refer to the column above):

E - Bidder should indicate the following: 1) Local Source - Ex-Refinery, Terminal or Depot, 2) Ex-EPZA, 3) Imported - Origin.

F - In column for Delivery Point, indicate "YES" if fuel shall be delivered at the delivery point as specified in Section IV-A - Table of Delivery Points for Bidding.

Indicate "NO" if different from said Section IV-A or an alternative delivery point, which shall be non-complying and disqualified.

G - Premium as submitted by the Bidder

H - Product Cost = [(MOPS + Premium) x Exchange Rate] / 158.9840 liters/Bbl [Note: Round off to four (4) decimal places.]

where:

- MOPS, IFO = 50.7397 US\$/Bbl (January 2020 average)
- Forex = 50.8262 PhP/US\$ BSP Reference Rate January 2020 average)
- Premium as bidded.
- Conversion Factor: 1 Barrel = 158.9840 Liters

I - Local Transshipment Cost as submitted by the Bidder

J - Tax imposed on bunker oil as provided in Section 43 of Republic Act 10963, amending the National Internal Revenue Code of 1997, valued at Php 6.00/liter for CY 2020

K - Amount of E-VAT at twelve percent (12%) pursuant to R.A. 9337 and BIR Revenue Regulation No. 16-2005.

E-VAT = [Product Cost + Local Transshipment + Excise Tax] x 0.12 [Note: Round off to four (4) decimal places]

L - Delivered Price = Product Cost + Local Transshipment + Excise Tax + E-VAT. [Note: Round off to four (4) decimal places]

M - Total Contract Price, Pesos = Delivered Price x Quantity [Note: Round off to zero (0) decimal places]

The Total Contract Price should not be greater than the Approved Budget for Contract (ABC) . Otherwise, the bid shall be disqualified outright.

 Signature over Printed Name
 Authorized Representative

 Company Name

 Date

CONTRACT

PROCUREMENT OF SUPPLY AND DELIVERY OF INDUSTRIAL FUEL OIL FOR MALAYA THERMAL POWER PLANT FOR CY 2020
(Project Reference No. 2020-PB-IFO-MTPP-001-02)

This CONTRACT is made and executed on the ____ day of _____ 2020 by and between:

The **POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM)**, a government owned and controlled corporation, with principal office address at the 24th Floor, Vertis North Corporate Center 1, Astra Corner Lux Drives, North Avenue, Quezon City 1105, Philippines, represented by its President and CEO, **IRENE JOY BESIDO -GARCIA**, duly authorized for this purpose by virtue of _____, dated _____, a copy of which is attached as Annex "A".

-and-

The _____ (Supplier), a company organized under Philippine law with principal office address at _____, represented by _____, duly authorized for this purpose by virtue of _____ dated _____, a copy of which is attached as Annex "B".

ANTECEDENTS

PSALM invited Bids for certain goods and ancillary services, viz.,

Procurement of Supply and Delivery of Industrial Fuel Oil for Malaya Thermal Power Plant for CY 2020

and has accepted the Bid by the Supplier for the supply of those goods and services in the sum of [*contract price in words and figures*], (hereinafter called "the Contract Price").

The Contract Term shall be until 31 December 2020. In case the contracted quantity cannot be lifted by PSALM during the Contract Term, PSALM shall continue lifting Fuel from the Supplier pursuant to the provisions of the Contract. The said contract term may be extended by PSALM until the full amount is consumed. The contract extension is up to a maximum period of six (6) months. On the other hand, if the Total Contract Price has been used up and there is still remaining volume for delivery, the same shall no longer be lifted.

The Bid shall be for the supply and delivery of *[Quantity of Fuel]* liters of Industrial Fuel Oil. PSALM is not obligated to lift the total volume in this Contract and shall not be liable to the Supplier for the undelivered volume, if any. The volume to be delivered shall not exceed the Contracted Quantity. No payment shall be made for Fuel deliveries in excess of the Total Contract Price and/or Contracted Quantity.

The firm quantity of fuel for lifting by PSALM from the Supplier shall be the fuel quantities indicated in the fuel order transmitted by PSALM to the Supplier. All fuel deliveries made by the Supplier and received by Malaya Thermal Power Plant within a particular billing month shall be paid by PSALM at the end of the following month, provided that all the requirements for payment are received by PSALM not later than the seventh (7th) day of the following month.

ACCORDINGLY, the parties do hereby agree as follows:

1. In this Contract, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to in the Bidding Documents.
2. The following documents shall be deemed to form and be read and construed as part of this Contract, *viz*:
 - (a) Bid Documents;
 - (b) the Bid Forms and the Price Schedule submitted by the Bidder;
 - (c) the Schedule of Requirements;
 - (d) the Technical Specifications;
 - (e) the General Conditions of Contract;
 - (f) the Special Conditions of Contract;
 - (g) the Entity's Notification of Award;
 - (h) Supplemental Bid Bulletins;
 - (i) Performance Security;
 - (j) Bids and Awards Committee (BAC) Resolution pertinent to the bidding process and its approval; and
 - (k) Notice to Proceed.
3. In consideration of the payments to be made by PSALM to the Supplier as hereinafter mentioned, the Supplier hereby covenants with PSALM to provide the goods and services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. PSALM hereby covenants to pay the Supplier in consideration of the provision of the goods and services and the remedying of defects therein, the Contract Price *[(Contract Price)]* or such other sum as may become payable under the provisions of the contract at the time and in the manner prescribed by this contract.
5. The Supplier shall likewise hold PSALM free and harmless from any liability due to any actions, damage or accident arising from the

Supplier's personnel negligence or faulty equipment and/or vehicle used for delivery either in transit or at the delivery point even in the presence of PSALM's personnel.

6. In case of a dispute between the parties, the same shall be resolved in accordance with Republic Act 9285 ("R.A. 9285"), otherwise known as the "Alternative Dispute Resolution Act of 2004".
7. Any action or suit under this Contract or any other document related thereto shall be instituted exclusively in the courts of Quezon City, Philippines.
8. OGCC Approval. This Contract shall be subject to the review and approval of the Office of the Government Corporate Counsel. Any of its ensuing comments, recommendations, or directives shall form part of this Contract.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed in accordance with the laws of the Republic of the Philippines on the day and year first above written.

Signed by the parties on _____ at _____.

[SUPPLIER]

**POWER SECTOR ASSETS AND LIABILITIES
MANAGEMENT CORPORATION**

[designation]

IRENE JOY BESIDO-GARCIA
President/CEO

Signed in the presence of:

[designation]

[designation]

Certification of Funds Availability:

Department Manager, Controllership

Republic of the Philippines)
_____) s.s.

ACKNOWLEDGMENT

BEFORE ME, a Notary Public for and in _____, Philippines, this ___ day of _____, 2020, personally appeared:

| Name | Identification Document | Issued on | Issued at |
|-------------------------|-------------------------|-----------|-----------|
| IRENE JOY BESIDO-GARCIA | | | |
| (SUPPLIER) | | | |

known to me and to me known to be the same person who executed the foregoing instrument consisting of four (4) pages, including the page whereon this Acknowledgment is written, all pages signed by both parties and their instrumental witnesses, and they acknowledged before me that the same is their free and voluntary act and deed and that of the Corporation they represent.

WITNESS MY HAND AND NOTARIAL SEAL, on the date and place first above written.

Notary Public

Doc. No. ____;
Page No. ____;
Book No. ____;
Series of 2020.

Credit Line Certificate

Date: _____

OFFICE OF THE PRESIDENT AND CEO
Power Sector Assets and Liabilities
Management Corporation
24th Floor Vertis North Corporate Center 1,
Astra Corner Lux Drives, North Avenue,
1105 Quezon City

CONTRACT/PROJECT : _____

COMPANY/FIRM : _____
ADDRESS : _____

BANK/FINANCING INSTITUTION : _____
ADDRESS : _____

AMOUNT : _____

This is to certify that the above Bank/Financing Institution with business address indicated above, commits to provide the <Contractor/Distributor/Manufacturer/Supplier>, if awarded the above-mentioned Contract, a credit line in the amount specified above which shall be exclusively used to finance the performance of the above-mentioned contract subject to our terms, conditions and requirements.

The credit line shall be effective within fifteen (15) calendar days after receipt by the <Contractor/Distributor/Manufacturer/Supplier> of the Notice of Award and such line of credit shall be maintained until the project is completed by the Supplier.

This Certification is being issued in favor of said <Contractor/Distributor/Manufacturer/Supplier> in connection with the bidding requirement of __ (Name of the Procuring Entity) __ for the above-mentioned Contract. We are aware that any false statements issued by us make us liable for perjury.

Name and Signature of Authorized Financing Institution Officer: _____

Official Designation: _____

Concurred By:

Name & Signature of <Contractor/Distributor/Manufacturer>

Authorized Representative : _____

Official Designation : _____

Note:

The amount committed should be machine validated.

Republic of the Philippines)

_____) S.S.

ACKNOWLEDGMENT

BEFORE ME, a Notary Public for and in _____, Philippines, this ___ day of _____, 2020, personally appeared:

| Name | Government–issued ID & No. | Issued on | Issued at |
|------------|----------------------------|-----------|-----------|
| (SUPPLIER) | | | |

known to me and to me known to be the same person who executed the foregoing instrument consisting of three (3) pages, including the page whereon this Acknowledgment is written, all pages signed by both parties and their instrumental witnesses, and they acknowledged before me that the same is their free and voluntary act and deed and that of the Corporation they represent.

WITNESS MY HAND AND NOTARIAL SEAL, on the date and place first above written.

Notary Public

Doc. No. _____;

Page No. _____;

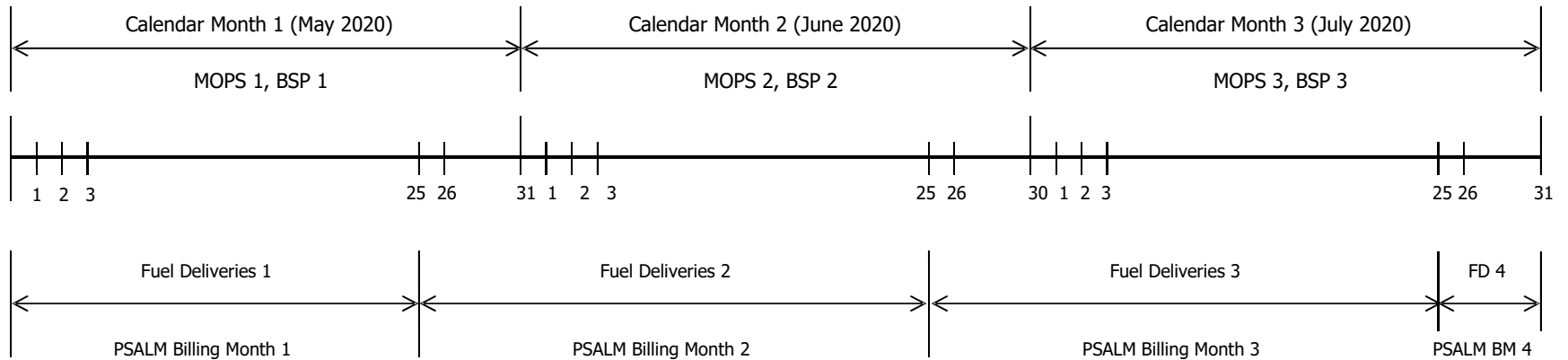
Book No. _____;

Series of 2020.

Section IX. Annexes

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION
LINE GRAPH FOR FUEL SUPPLY ON PER ORDER BASIS

A. Fuel Price (MOPS) and PhPeso/USDollar Exchange Rates (BSP Reference Rate) are based on Calendar days.



B. Fuel Deliveries (FD) are covered under PSALM Billing Month (BM), 26th of previous month to 25th of current month.

C. Example : Fuel Deliveries 2 at PSALM Billing Month 2, Reference fuel price is Calendar Month 1 (MOPS 1 and BSP 1), where MOPS = Mean-of-Platt's Singapore and BSP = Bangko Sentral ng Pilipinas Reference Rate of the PhP/US\$.

D. Processing of Invoice: Delivered Price (Fuel Oil), P/Liter = Product Cost + Local Transshipment + Excise Tax + EVAT

$$\text{where : Product Cost, P/Liter} = \frac{[(\text{MOPS} + \text{Premium}) \times \text{BSP}]}{158.984}$$

- Fuel Deliveries 1 = MOPS and BSP @ May 2020 Averages. Payment due date is end of July 2020
- Fuel Deliveries 2 = MOPS and BSP @ June 2020 Averages. Payment due date is end of August 2020.
- Fuel Deliveries 3 = MOPS and BSP @ July 2020 Averages. Payment due date is end of September 2020.