

# The Republic of the Philippines

Proposed Sale

Of The

Paco-Manila Property  
Located in Paco, Manila



Process of Negotiation  
Pursuant to PSALM's  
Bidding Procedures  
(Negotiation Procedures)

11 November 2020

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## 1. FAILURE OF THIRD (3RD) ROUND OF BIDDING

- A. As specified under IB-20 (Failure of Bidding) of the Bidding Procedures, dated 11 July 2020, for the third (3rd) round of Bidding of the Paco-Manila Property, there shall be a failure of Bidding in any of the following instances:
1. The Bidding Package is issued to at most one (1) entity;
  2. Less than two (2) Bids are received by Bid Submission Deadline;
  3. All Bidders, except one, withdrew from the Bidding Process prior to Bid Submission Deadline;
  4. All Bidders, except one, withdrew their Bids prior to the Opening of Bids;
  5. No Financial Bid meets the Minimum Bid Price;
  6. No Bid has passed the post-qualification stage;
  7. The Winning Bidder withdrew prior to the issuance of the Notice of Award, or the Winning Bidder refused to accept the same and there is no other post-qualified Bidder;
  8. Winning bidder failed to remit the full payment of the Purchase Price in accordance with the Payment Instruction issued by PSALM;
  9. Winning bidder failed to submit and execute the DOAS; and
  10. Other grounds provided in the Bidding Procedures.
- B. During the 3rd round of bidding for the Paco-Manila Property, no entity has been issued the Bidding Package as of 8 September 2020, the last day for the issuance of the Bidding Package and payment of the Participation Fee. The Privatization Bids and Awards Committee (PBAC) issued a PBAC Resolution No. 2020-007 on 10 September 2020 and declared a failure of bidding.

The PSALM Board of Directors approved the declaration of failure of bidding, on 28 September 2020, for the 3rd round of bidding for the Paco-Manila Property.

## 2. TIMETABLE

- A. After the failure of the 3rd round of bidding and upon the approval of the PSALM Board of Directors during its meeting on 28 September 2020, the PBAC hereby conducts a negotiated sale for Paco-Manila Property with all interested parties (the “Interested Parties”).
- B. The negotiations shall pertain to the Paco-Manila Property as contained in this Negotiation Procedures issued by the PBAC to Interested Parties.

- C. Interested Parties are required to acknowledge receipt of the Negotiation Procedures and accept its terms and conditions through the submission of the form attached as Schedule B (Form of Acceptance of Bidding Procedures). Only those that have submitted the Form of Acceptance of the Bidding Procedures shall be considered eligible and allowed further participation in the negotiation process.
- D. The timetable of the various activities for the negotiation is as follows:

<b>Activity</b>	<b>Schedule</b>
Issuance of Invitation to Negotiate to Interested Parties	11 November 2020
Due Diligence Period	12 November 2020, until 2 days before OSD
Pre-Negotiation Meeting	19 November 2020, 2:00 PM
Offer Submission Deadline (OSD)	2 December 2020, 12:00 PM
Evaluation of Offers	Immediately after OSD
Determination of IPHO	Immediately after evaluation of offers
Post-Qualification of IPHO	3, 4 or 6 December 2020 (w/in 5 days from declaration of IPHO)
Issuance of NOA	21 December 2020 (w/in <b><u>15 working days</u></b> from declaration of IPHO, after PSALM Board approval)
Buyer's Full Payment of Purchase Price/Execution of DOAS	w/in <b><u>10 working days</u></b> from issuance of NOA
PSALM execution of DOAS/turnover of Property	w/in <b><u>5 working days</u></b> from Full Payment of Purchase Price

- E. The PBAC may terminate the negotiations should any or all of the Interested Parties fail to observe the said timetable. Thereafter, the PBAC shall be free to negotiate with any third party.

### 3. SUBJECT OF THE NEGOTIATED SALE

- A. The Negotiated Sale shall cover the sale of 20,975.70 square meter, more or less, of land (the "Paco-Manila Property") as enumerated below and more particularly described in Annexes A to D.

Lot/Block No.	TCT No.	Lot Area (sq. m.)	Registered Owner	Tax Dec. No.		
Lot 2	002-2018002578	510.50	Power Sector Assets and Liabilities Management (PSALM)	AD-05661-00046		
Lot 3		7,336.70				
Lot 4		10,025.40				
Lot 5, Blk. 918	002-2018002579	547.80				
Lot 6, Blk. 921	002-2018002580	2,217.90				
Lot 21, Blk. 921		36.20				
Lot 9, Blk. 921		002-2018002581			297.40	
Lot 10, Blk. 921		3.80				
	Total area=	20,975.70				

- B. The Paco-Manila Property is located in close proximity to the MERALCO Tegen Substation, which consists of distribution equipment, overhead lines and electric pole/distribution gantry erected over a portion of Lot. 4 integral and indispensable to its operations. The Tegen Substation supplies electric power to critical and vital installations in Manila such as the Malacañang Palace and the U.S. Embassy. MERALCO, in the performance of its maintenance, emergency repair, upgrade and improvement work on the Tegen Substation will require right-of-way and unimpeded access to said facilities.
- C. Lot Nos. 5, 6, 9, 10, and 21 are currently utilized as access road by adjacent property occupants. It shall be the responsibility of the Winning Interested Party to enter into whatever necessary arrangement with the adjoining property occupants with respect to access and right-of-way requirements

#### 4. CONDITIONS OF THE SALE

- A. The sale of Paco-Manila Property is on an “as is, where is” basis. “As is, where is” shall refer to the description, physical condition, and titling status of the Paco-Manila Property at the time of the Negotiated Sale. It shall also include the Winning Interested Party’s assumption of all unpaid taxes, fees and/or expenses such as but not limited to, capital gains tax or creditable withholding tax, whichever is applicable, documentary stamp tax, registration and transfer fees and/or other assessments, and all other expenses and charges to cause the transfer of the title to the Winning Interested Party.
- B. The Interested Party shall be responsible for taking steps in determining the actual condition, site, area, shape, and other circumstances of the Paco-Manila Property. For this purpose, Interested Parties shall be allowed to

conduct due diligence during Business Days from 12 November 2020 until two (2) Business Days prior to Offer Submission Deadline.

- C. All offers shall be expressed in Philippine Pesos only and shall be valid for at least forty-five (45) Calendar Days from Offer Submission Deadline.
- D. Within ten (10) Working Days from the issuance of the Notice of Award, the WIP shall pay a one-time full payment of the Purchase Price in accordance with the payment instructions to be issued by PSALM.

## **5. ELIGIBLE INTERESTED PARTY**

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

partnerships or joint ventures owned or partially owned by PSALM personnel and their relatives within the 2nd degree of affinity or consanguinity.

## **6. NEGOTIATION PROCEDURES**

A. The negotiations shall be in accordance with the following procedures:

- I. The PBAC shall ask Interested Parties to submit the following on or before the Offer Submission Deadline:
  - a. First Envelope - Eligibility Component
    - i. Eligibility Documents, as provided in Schedule “A” of this Negotiation Procedures
    - ii. Negotiation Security
  - b. Second Envelope - Financial Offer Component
    - i. Form No. 1 - Financial Offer Form
- II. The First Envelope (Eligibility Component) submitted by each Interested Party shall be opened and evaluated using a non-discretionary “pass-fail” criterion to ascertain the completeness of the submitted documents.
- III. If the First Envelope of an Interested Party is rated “failed”, the Second Envelope (Financial Offer Component) of that Interested Party shall be returned to the Interested Party unopened.
- IV. The Second Envelopes (Financial Offer Component) of Interested Parties whose First Envelopes were rated “passed” shall be opened. Offers which are equal to or higher than the Minimum Offer Price shall be ranked from highest to lowest to identify the order of Offers and the Interested Party with the Highest Offer.
- V. If only one (1) Offer is received on or before the Offer Submission Deadline, the First Envelope is rated “passed”, and the Financial Offer is equal to or higher than the Minimum Offer Price, the PBAC will enter into the Negotiated Sale with that Interested Party.
- VI. If more than one (1) Offer is received on or before the Offer Submission Deadline, the First Envelopes are rated “passed”, and only one (1) Interested Party meets the Minimum Offer Price, the PBAC shall enter into the Negotiated Sale with that Interested Party who submitted a Financial Offer that meets the Minimum Offer Price.

- VII. In case of a tie between or among the Interested Parties, such Interested Parties shall be required to submit a revised Financial Offer Form bearing their revised Financial Offers, which should be higher than the original Financial Offers. This process shall be repeated until the tie is broken. Each Interested Party must ensure that it has an authorized representative who has authority to bind the Interested Party.
- VIII. Thereafter, the PBAC shall declare the Interested Party who submitted the highest Financial Offer, which should more than or equal to the Minimum Offer Price, as the Interested Party with the Highest Offer.

## **7. MINIMUM OFFER PRICE**

- A. The Minimum Offer Price (MOP) is equal to Philippine Pesos Four Hundred Fifty-Eight Million Three Hundred Thirty-Seven Thousand Two and 20/100 (PHP458,337,002.20).
- B. The Financial Offer of the Interested Party with the Highest Offer must be equal to or higher than the MOP in order to qualify for the award of the Paco-Manila Property.

## **8. OFFER SECURITY**

- A. Each Interested Party shall submit as part of the First Envelope (Eligibility Component) an Offer Security at least 10% of Offer Price in any of the following forms:
  - I. Cashier's or Manager's check issued by any universal or commercial bank licensed to do business and operating in the Philippines;
  - II. Irrevocable stand-by letter of credit issued by any universal or commercial bank licensed to do business and operating in the Philippines;
  - III. Surety bond, callable upon demand, issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.
- B. The Offer Security must be valid for a period of at least forty-five (45) days from Offer Submission Deadline.
- C. PSALM may draw on and forfeit the Offer Security submitted by such Interested Party for the full amount of the Offer Security in any of the following instances:



- I. Any misrepresentation, error and/or fraudulent declaration made by the Interested Parties in the negotiation documents or any of the required attachments discovered at any time after the preliminary assessment of Eligibility Documents;
- II. Withdrawal or modification, whether conditional or otherwise, of the Offer after the Offer Submission Deadline;
- III. Any material inconsistencies, errors or misrepresentations in the submitted documents of the Interested Party with the Highest Offer;
- IV. Post-disqualification of the Interested Party with the Highest Offer due to misrepresentation, fraudulent acts, falsification, submission of spurious/fake documents or commission of offense in connection with the negotiation process;
- V. Failure of the Winning Interested Party to pay the Purchase Price and/or to submit the necessary documents upon written notification from PSALM of the approval of the Offer or the required submission of the necessary documents;
- VI. Any judicial or extrajudicial action by the Winning Interested Party that shall delay the execution of the Deed of Absolute Sale (DOAS) and/or its compliance with its obligations as set out in the Negotiation Procedures.

## **9. POST-QUALIFICATION**

- A. Within five (5) Business Days after the declaration of the Interested Party with the Highest Offer (IPHO), PSALM shall conduct a post-qualification evaluation of the submitted documents of the IPHO to verify the accuracy, authenticity, and completeness of all the documents submitted during the Negotiation Process, including but not limited to the Eligibility Documents referred to in "Annex A".

## **10. AWARD TO THE WINNING INTERESTED PARTY**

- A. Within fifteen (15) Business Days after the declaration of the Interested Party with the Highest Offer (IPHO) and subject to post-qualifications, the PBAC shall then serve a notice ("Notice of Award") to the IPHO of its selection as the Winning Interested Party (WIP).
- B. In the event that the PBAC determines that the IPHO has not completely, fully and faithfully complied with the Negotiation Procedures, the PBAC shall not serve the Notice of Award. In such event, PSALM may, at its option, issue the Notice of Award to the Interested Party with the Next Highest Offer (IPNHO) provided that the said IPNHO's Financial Offer is higher than or equal to the Minimum Offer Price; provided further, that the IPNHO passes the Post-Qualification Evaluation. This procedure shall be repeated until an award is made, and the Paco-Manila Property is turned over to the Winning Interested Party.

## 11. FAILURE OF NEGOTIATION

- A. Should the negotiations with all of the Interested Party/ies be declared a failure, the Negotiation Security/ies of the Interested Parties shall be returned without any interest thereon within sixty (60) days.

## 12. WAIVER

- A. Interested Parties shall hold PSALM free and harmless from any liability, costs and expenses, suit or allegation arising out of its participation in this negotiation process. All Interested parties waive their right to seek legal action (e.g. temporary restraining orders, lawsuits, etc.) to prevent PSALM from awarding and executing a contract with the Winning Interested Party.

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**Financial Offer Form**  
(To be submitted on the Bidder's letterhead)

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

THE CHAIRMAN  
Privatization Bids and Awards Committee (PBAC)  
Power Sector Assets and Liabilities  
Management Corporation  
24<sup>th</sup> Floor, Vertis North Corporate Center 1  
Astra corner Lux Drives, North Avenue  
Quezon City, Philippines 1105

Gentlemen and/or Ladies:

Having examined the Negotiation Procedures dated \_\_\_\_\_, including Supplemental Negotiation Bulletin Numbers *[insert numbers]*, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to purchase *Paco-Manila Property located in Isla de Provisor, Paco, Manila* in conformity with the said Negotiation Procedures, for the sum of *[Total Offer Amount, in words]*, as follows:

PARTICULARS	AMOUNT IN PHILIPPINE PESOS (PHP)
A. <i>[Name of Property]</i>	
<b>TOTAL OFFER AMOUNT</b>	

We agree to abide by this Offer for the Offer Validity Period specified in item 4.C (Conditions of Sale) of the Negotiation Procedures and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

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

We certify/confirm that we comply with the eligibility requirements as provided under the Negotiation Procedures.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2020.

\_\_\_\_\_  
*[signature]*

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

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

### SITE VISIT REQUEST FORM

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

**WAIVER OF RIGHT TO SEEK LEGAL REMEDIES**  
(To be submitted on the Bidder's letterhead)

**Date**

THE CHAIRMAN

PSALM Privatization, Bids and Award Committee  
Power Sector Assets & Liabilities Management Corporation  
24<sup>th</sup> Floor, Vertis North Corporate Center 1  
Astra corner Lux Drives, North Avenue  
Quezon City, Philippines 1105

**Subject: Sale of Paco-Manila Property Through Negotiated Sale**

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Sir/Ma'am:

As a duly authorized representative of *[Name of Company]*, (hereinafter referred to as the "Company"), and in connection with the negotiated sale of the Paco-Manila Property with an aggregate area of 20,975.70 square meters, located at Isla de Provisor, Paco, Manila, the undersigned on behalf of the Company, hereby expressly and formally commits to abide by the decision of the PSALM-PBAC for the Paco-Manila Property to determine the eligibility of Interested Parties as well as the eventual Winning Interested Party among them.

Accordingly, and in accordance with the Negotiation Procedures for the negotiated sale of the Paco-Manila Property, the Company hereby holds PSALM, its Board of Directors, officers, and employees free and harmless from any liability, costs and expenses, suit or allegation arising out of the Company's participation in the sale process. This also serves as a formal waiver by the Company of any right to file any form of legal remedy or action before any court, tribunal or administrative body to prevent, restrain, or prohibit PSALM from continuing the sale proceedings related thereto and from awarding and executing a DOAS with the Winning Interested Party as determined by the PSALM-PBAC.

Very truly yours,

Authorized representative (Please enclose letter of authority)

Name and Signature : \_\_\_\_\_  
Title/Position : \_\_\_\_\_  
Date : \_\_\_\_\_

## Schedule A

### CONTENTS OF OFFER

Offers shall be composed of two (2) separate envelopes, namely the First Envelope (Eligibility Component) and the Second Envelope (Financial Component).

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

a. For Individuals

- i. Duly accomplished Representations and Warranties Form (*form C*).
- ii. Copies of Two (2) valid government-issued IDs
- iii. Certification from at least one (1) commercial/universal bank, legally operating in the Philippines, stating that the Interested Party is known to them, maintains a deposit account with them and is in good financial and credit standing, and that, should the Interested Party be declared as the Winning Interested Party, they will provide sufficient credit facilities as required in the Winning Interested Party’s Financial Offer.
- iv. Letter authorizing PSALM representative/s to verify the validity of all documents submitted (Schedule E)
- v. Certification under oath of the Interested Party that all documents submitted in satisfaction of the eligibility requirements is original/authentic copy of the original, and that all statements and information provided therein are true and correct (Schedule F)
- vi. Waiver of Rights to seek legal remedies (e.g. Temporary Restraining Order (TRO), law suits, etc.) to prevent PSALM from awarding and executing a contract with the Winning Interested Party; (*PSALM Form No. 3*)

b. For Sole Proprietorship

- i. Duly accomplished Representations and Warranties Form (Schedule C)
- ii. Certified True Copy of DTI Registration and Business Profile
- iii. Certified True Copy of Latest Audited Financial Statement. The latest audited financial statements for fiscal year 2019 filed in 2020.
- iv. Certified True Copy of Mayor’s/Business Permit issued by the City or Municipality where the principal place of business of the prospective Interested Party is located.
- v. Certification from at least one (1) commercial/universal bank, legally operating in the Philippines, stating that the Interested Party is known to them, maintains a deposit account with them and is in good financial and credit standing, and that, should the Interested Party be declared as the Winning Interested Party, they will provide sufficient credit facilities as required in the Winning Interested Party’s Financial Offer.
- vi. Letter authorizing PSALM representative/s to verify the validity of all the documents submitted (Schedule E).

- vii. Certification under oath of the Interested Party that all documents submitted in satisfaction of the eligibility requirements is original/authentic copy of the original, and that all statements and information provided therein are true and correct (Schedule F).
  - viii. Waiver of Rights to seek legal remedies (e.g. Temporary Restraining Order (TRO), law suits, etc.) to prevent PSALM from awarding and executing a contract with the Winning Interested Party; (*PSALM Form No. 3*)
- c. For Corporation/Cooperative/Partnership/Joint Venture (JV)/Consortium
- i. Duly accomplished Representations and Warranties Form (Schedule C)
  - ii. Certified True Copy of SEC Registration and Company Profile of the Interested Party; or in case of a foreign entity, at least 60% Filipino-owned and licensed to do business in the Philippines
  - iii. Certified True Copy of Articles of Incorporation/Partnership, By-Laws of the Interested Party, as amended, if any and updated General Information Sheet; or equivalent document for cooperative;
  - iv. Certified True Copy of Mayor's/Business Permit issued by the City or Municipality where the principal place of business of the prospective Interested Party is located. Expired Mayor's/Business Permits shall not be acceptable;
  - v. Certification from at least one (1) commercial/universal bank, legally operating in the Philippines, stating that the Interested Party is known to them, maintains a deposit account with them and is in good financial and credit standing, and that, should the Interested Party be declared as the Winning Interested Party, they will provide sufficient credit facilities as required in the Winning Interested Party's Financial Offer.
  - vi. Board Resolution duly certified by the Interested Party's Corporate Secretary expressly authorizing the Interested Party's participation in the negotiation process, nominating, appointing, and authorizing a representative to communicate, represent, sign and execute contracts and other documents relative thereto;
  - vii. If a JV or Consortium, the Interested Party (including all its JV/Consortium members) shall submit a copy of the duly notarized JV Agreement/Memorandum of Agreement (MOA)/Understanding (MOU) which:
    - a. Briefly describes the JV/Consortium, the individual members of the JV/Consortium and the extent of the participation of each member;
    - b. Identifies the lead member of the JV/Consortium who is authorized by all the members to represent and sign any and all documents related to this process, receive notices/instructions and to make payments for and in behalf of the JV/Consortium; and
    - c. Provides that the members shall be jointly and severally liable for the obligations of the Interested Party under the award/contract.

- viii. Letter authorizing PSALM representative/s to verify the validity of all documents submitted (Schedule E);
  - ix. Waiver of Rights to seek legal remedies (e.g. Temporary Restraining Order (TRO), law suits, etc.) to prevent PSALM from awarding and executing a contract with the Winning Interested Party; (*PSALM Form No. 3*)
  - x. A declaration of any legal or other impediments which may affect the Interested Party's (and its JV or Consortium members) ability to participate in the negotiation or a certification to be submitted by the Interested Party (and its JV or Consortium members) stating the absence of such legal impediments;
  - xi. Certification under oath of the Interested Party that all documents submitted in satisfaction of the eligibility requirements is original/authentic copy of the original, and that all statements and information provided therein are true and correct (Schedule F).
- d. For Government Corporations/Entities
- i. Duly accomplished Representations and Warranties Form (Schedule C)
  - ii. Board resolution duly certified by the Interested Party's Corporate Secretary expressly authorizing the Interested Party's participation in the negotiation process, nominating, appointing and authorizing a representative to communicate, represent, sign and execute contracts and other documents relative thereto;
  - iii. Certified True Copy of Charter or applicable law on the creation of the entity;
  - iv. Bank Certification or any proof of funds availability.
- e. For Local Government Units
- i. Duly accomplished Representations and Warranties Form (Schedule C)
  - ii. Resolution of the Sanggunian authorizing the Local Chief Executive to enter into a contract of sale;
  - iii. Ordinance appropriating the amount to pay for the purchase of the property;
  - iv. Certification of the Local Treasurer as to availability of funds.
2. The Second Envelope shall be marked "Financial Component" (the "Second Envelope") and shall contain three (3) sets of the duly accomplished Form No. 1- Financial Offer.

Interested Parties are required to submit one (1) set of original, and two (2) sets of copies of the Eligibility Documents, with all 3 sets contained in the First Envelope. Likewise, the Second Envelope shall also contain 1 set of original and two (2) sets of copies of the Financial Bid Form. In the event of any discrepancy between the original and the copies, the original shall prevail.



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

An Interested Party must type/print its name below its signature or that of its authorized representative on the Offer Form. Offers of a partnership or a corporation shall be signed in the name of the Interested Party by an authorized partner or authorized officer, followed by the name, signature and designation of the person authorized to sign the Offer.

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

**SCHEDULE B**

**ACCEPTANCE OF THE NEGOTIATION PROCEDURES**

\_\_\_\_\_ hereby declares, represents and warrants that:

1. it has read and understood each and every section and page of the Negotiation Procedures dated \_\_\_\_\_ including all the Schedules and Annexes thereto, if any, as amended or otherwise supplemented (collectively, the “Negotiation Procedures”) for the Proposed Sale of the Paco-Manila Property located in Isla de Provisor, Paco, Manila; as well as the decisions of the PBAC; and accepts and agrees to be bound and fully abide by and comply with the terms and conditions of the Negotiation Procedures and any amendment, supplement or modification thereto, as well as the decisions of the PBAC;
2. it unconditionally and irrevocably waives any right it may have to seek and obtain a writ of injunction or prohibition or restraining order against the PBAC, PSALM, NPC and/or any third party to prevent or restrain the negotiations or any proceedings related thereto, the performance of the Negotiation Sale and any draw on or forfeiture of the Negotiation Security. Such waiver shall, however, be without prejudice to the right of the undersigned to question the lawfulness of any disqualification or the rejection of their offer by appropriate administrative or judicial processes not involving the issuance of a writ of injunction or prohibition or restraining order;
3. it shall at all times comply with Philippine Law; and
4. it unconditionally and irrevocably waives any defect, deviation, fault or infirmity in the negotiation process conducted by the PBAC or by PSALM up to and including the date hereof.

\_\_\_\_\_  
[INTERESTED PARTY]

By:

Witnessed by:

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
[Designation/Title]

## SCHEDULE C

### REPRESENTATIONS AND WARRANTIES FORM

(To be submitted on the Bidder's letterhead)

[date of Bid Submission Deadline]

THE CHAIRMAN

PSALM Privatization Bids and Award Committee (PBAC)

Sale of Paco-Manila Property

Power Sector Assets and Liabilities Management Corporation (PSALM)

24<sup>th</sup> Floor, Vertis North Corporate Center 1

Astra corner, Lux Drives, North Avenue

1105 Quezon City, Philippines

Sir:

We refer to the Negotiation Procedures dated \_\_\_\_\_, as amended or supplemented, (*Negotiation Procedures*) for the Sale of the Paco-Manila Property located at Isla de Provisor, Paco, Manila (The Property). We submit this Financial Offer Form - Purchase Price of the Property to the PBAC after having completed a comprehensive and complete business, legal, technical and financial due diligence.

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

We unconditionally, voluntarily and irrevocably state that:

1. This document represents our voluntary offer for the purchase of the Property, all on the basis and terms set forth in the Bidding Procedures.
2. This document constitutes an unconditional and irrevocable offer, which shall be valid and may be accepted by PSALM within forty-five (45) days from the day of the Offer Submission Deadline, regardless of any event including force majeure affecting the *Property*, that may occur within such period or as may be extended, as provided in the Negotiation Procedures.
3. The Offer for the purchase of the Property on the terms set forth in the DOAS for, the *Property* which we executed and delivered, is being made on an “**as-is, where-is**” basis.
4. [Interested Party's name] unconditionally and voluntarily represents and warrants that:
  - A. It has secured, read and understood all sections and pages of the Negotiation Procedures, the Supplemental Negotiation Bulletin/s (SNB/s), their

- respective provisions, undertakings, terms and conditions, and corresponding amendments, supplements or modifications, the PBAC's decisions and the DOAS for the *Property*;
- B. It accepts, agrees to be bound, and shall fully abide by and comply with the terms and conditions of the Negotiation Procedures, the SNB/s, their respective provisions, undertakings, terms and conditions, and corresponding amendments, supplements or modifications, the PBAC's decisions and the DOAS for the *Property*;
  - C. The Interested Party and its representatives have conducted an independent due diligence, investigation, analysis and verification of the quality, quantity and condition of the *Property* and the Interested Party confirms that it and its representatives have been provided adequate access to the *Property*, Data Room, personnel, premises and pertinent records of PSALM and NPC;
  - D. It has fully informed itself and understood all the conditions and matters affecting or that could affect its Offer, participation or undertaking in the Negotiated sale or the implementation of the sale of the *Property* and other contemplated transactions as contained in the DOAS;
  - E. It unconditionally and irrevocably waives all claims and causes of action against the PBAC, PSALM, or any of their advisors and consultants in the event that the Negotiated sale, selection and/or award be: (i) stopped or terminated by PSALM; or (ii) restrained, enjoined, declared invalid or is set aside by a court of competent jurisdiction or any Governmental Entity for any reason;
  - F. It unconditionally and irrevocably waives any defect, deviation, fault or infirmity in the Negotiation Process conducted by the Committee or by PSALM;
  - G. All of the documents submitted in satisfaction of the Negotiation Procedures are original copies or true and faithful reproductions or copies of the original;
  - H. All the documents and information submitted as part of the Documentary Deliverables are true and correct as of the Offer Submission Deadline. Any falsity, error, or misrepresentation shall constitute ground for disqualification from this negotiated sale or revocation of award as determined by the PBAC;
  - I. It will advise the PBAC within two Business Days of any change in the information contained in any portion of its Offer or in previous submissions to PSALM or the PBAC;

- J. It is not barred or blacklisted from participating in any bidding/negotiated sale by any Government Entity or in any contract with a Government Entity;
- K. It has not been disqualified from participating in PSALM's bidding/negotiated sale activities by reason of fraudulent acts or has not committed fraud or breach in the provisions of any agreement with PSALM;
- L. The Interested Party, its officers and directors are not related to the Chairman, President and CEO, members of the Board of Directors of PSALM and members of the PBAC by consanguinity or affinity up to the fourth civil degree, legitimate or common law;
- M. The Interested Party and/or its incorporators, past or present shareholders and directors, officers, employees, representatives or agents have not given, authorized or offered any commission or bribe or, in any manner, given or offered any money or other consideration directly or indirectly to any past or present director, officer, employee or agent of any Government Entity, including PSALM, which violates Philippine Law, including the Revised Penal Code (Act Number 3815, as amended) and the Anti-Graft and Corrupt Practices Act (RA 3019, as amended);
- N. The Interested Party and/or its parent company, stockholders, subsidiaries, Affiliates, directors, officers, or any of their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, have no conflict, dispute or unsettled issue, arising out of, or in connection with the EPIRA or its Implementing Rules and Regulations, the DOE, PSALM, NPC or TRANSCO, which affect the privatization of NPC Assets or TRANSCO, namely: (i) an unresolved issue, as determined by the inter-agency committee, arising from the renegotiation of contracts with IPPs mandated by Section 68 of the EPIRA; and (ii) any unpaid account arising from contractual obligations with the DOE, PSALM, NPC or TRANSCO. Any violation of this warranty shall constitute a sufficient ground for the disqualification of the Interested Party, the termination of the DOAS, or forfeiture of the Offer Security, without prejudice to the filing of civil and/or criminal action under Philippine Law against the Interested Party and/or its representatives;
- O. It shall at all times comply with Philippine Law and it accepts Philippine Law as the law governing the Negotiated sale and the DOAS for the Property;
- P. It unconditionally and irrevocably waives any right to seek and obtain a writ of injunction or prohibition or restraining order against the PBAC, PSALM, NPC and/or any third party to prevent or restrain the Negotiation Process or any related proceedings, the issuing bank, confirming or advising bank, the conduct of a bidding or any related proceeding, the selection of the Interested Party with the Highest Offer, Buyer or Winning Interested Party, the performance of the DOAS and the draw on or forfeiture of the Offer Security. The Interested Party commits to abide by the decision of the PBAC, waives its right to seek legal remedies against PSALM officers and

employees, consultants, the PBAC and its Secretariat free and harmless from any liability, cost and expenses, suit or allegation arising from its participation in this Negotiation Process

- Q. In the event it is declared the Winning Interested Party, it commits to comply with the terms and conditions of the sale through negotiated sale and the terms and conditions of the DOAS;
- R. It is qualified under Philippine Law to submit offer for the negotiated sale of the Property and in the event it is declared the Winning Interested Party, it is qualified under Philippine Law to be its Winning Interested Party for the Property;
- S. It has secured the necessary licenses and permits required by Philippine Law to participate in the Negotiated sale process and submit an Offer and all such permits and licenses are valid and existing;
- T. It is not an Affiliate of another Interested Party, or does not hold or acquire any ownership interest in another Interested Party as listed in the General Information Sheet; and
- U. It does not have any Affiliate: (i) who is a Interested Party; or (ii) who holds or acquires any ownership interest in another Interested Party as listed in the latest General Information Sheet.
- V. It has no pending or unpaid tax liabilities in the Philippines
- W. The Interested Party, its Directors, Officers and staff or any representative thereof, shall not attempt to establish any contact with any PSALM officers and employees, consultant, PBAC and its Secretariat on matters concerning the negotiated sale from the date of submission of its offer, up to the conclusion of the negotiated sale process, except for clarifications on proposal which must be in writing and addressed to the PBAC through its Chairperson.
- X. It is not involved in any money laundering activity as defined by the Anti-Money Laundering Act of 2001 (R.A. No. 9160); and
- Y. It authorizes PSALM or its authorized representatives to conduct investigation and verification of the statements, documents and information submitted relative to its Offer.

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

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

[INTERESTED PARTY'S NAME]

Signature  
Printed Name  
Title/Designation

Witnessed by:

\_\_\_\_\_

### ACKNOWLEDGEMENT

SUBSCRIBED AND SWORN TO BEFORE ME on this \_\_\_\_\_ day of \_\_\_\_\_ 2020 at  
the City of \_\_\_\_\_, affiant exhibited to me \_\_\_\_\_ issued at \_\_\_\_\_ on  
\_\_\_\_\_.

Doc No. \_\_\_\_\_;  
Page No. \_\_\_\_\_;  
Book No. \_\_\_\_\_;  
Series of 2020.

## SCHEDULE D

### FORM OF OFFER SECURITY ISSUED BY A BANK LICENSED TO DO BUSINESS AND IS OPERATING IN THE PHILIPPINES

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

#### IRREVOCABLE STANDBY LETTER OF CREDIT

Number:

[.]

Amount: [.]

Stated Expiration Date [.] Account Party: [.]

Power Sector Assets and Liabilities Management Corporation (PSALM)  
24<sup>th</sup> Floor, Vertis North Corporate Center  
Astra corner Lux Drives, North Avenue  
1105 Quezon City

Subject: Letter of Credit

No. [.]

We refer to the Negotiation Procedures, dated \_\_\_\_\_, as amended or supplemented, (*Negotiation Procedures*) for the proposed sale of the Paco-Manila Property located in Isla de Provisor, Paco, Manila.

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

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

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



such payment; and, (4) notwithstanding any condition, demand, or objection by the Account Party or any other party, without PSALM having to further substantiate such demand, by 3:00 PM local time on such Business Day. Otherwise, we will honor PSALM's Demand Certificate by 10:00 AM local time on the following Business Day.

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

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

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

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

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

[Insert Date and Place of

Issue] [Issuing Bank]

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

DATE  
D [.]

ANNEX A  
**DEMAND CERTIFICATE** [Date]

[Address of Issuing

Bank] Attention: [.]

Re: Demand for Payment under Letter of

Credit No. Ladies and Gentlemen:

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

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

**POWER SECTOR ASSETS AND LIABILITIES  
MANAGEMENT CORPORATION**

Title

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

## SCHEDULE E

### FORM OF AUTHORITY TO VERIFY

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

[date]

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

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

The Executive Director  
The Cooperative Development Authority  
827 Aurora Blvd., Service Road, Brgy. Immaculate Conception  
Cubao, 1111 Quezon City, Philippines

[Banks]

[Any other appropriate government agency]

Gentlemen:

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

**[BIDDER'S NAME]**

By:  
[Name]  
[Designation]  
[Title]

Witnessed by:  
[Name]

## SCHEDULE F

### STATEMENT UNDER OATH

(To be submitted on the Interested Party's letterhead)

[date]

THE CHAIRMAN

PSALM Privatization Bids and Award Committee

Sale of Paco-Manila Property

Power Sector Assets & Liabilities Management Corporation

24<sup>th</sup> Floor, Vertis North Corporate Center 1

Astra corner, Lux Drives, North Avenue

1105 Quezon City, Philippines

Sir:

We refer to the Negotiation Procedures, dated \_\_\_\_\_, as amended or supplemented, (*Negotiation Procedures*) for the Sale of the Paco-Manila Property (the Property).

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

- A. It is not disqualified or prohibited from participating in any bidding/negotiated sale conducted by a government entity or entering into any kind of contract with a government entity;
- B. The Interested Party, its parent company, stockholders, subsidiaries, Affiliates, directors or officers or any of their relatives within the fourth civil degree of consanguinity or affinity, legitimate or common law, have no conflict, dispute or unsettled issue, arising out of, or in connection with the EPIRA or its Implementing Rules and Regulations, the DOE, PSALM, NPC or TRANSCO, which affect the privatization of NPC Assets or TRANSCO or the appointment of IPPAs, namely: (i) an unresolved issue, as determined by the inter-agency committee, arising from the renegotiation of contracts with IPPs mandated by Section 68 of the EPIRA; and (ii) any unpaid account arising from contractual obligations with the DOE, PSALM, NPC or TRANSCO. Any violation of this warranty shall constitute a sufficient ground for the disqualification of the Interested Party, the termination of the Notice of Award or the Deed of Absolute Sale, and/or forfeiture of the Offer Security, without prejudice to the filing of civil and/or criminal action under Philippine Law against the Interested Party, and/or its representatives;
- C. It is qualified under Philippine Law to bid/negotiate for the Property and in the event it is declared the Winning Interested Party, it is qualified under Philippine Law to own the Property;

- D. Each of the documents submitted in satisfaction of the negotiated sale requirements is an authentic copy of the original, complete, and all statements and information provided therein are true and correct;
- E. It has not been disqualified from participating in PSALM's bidding/negotiated sale activities by reason of fraudulent acts or has not committed fraud or breach in the provisions of any agreement with PSALM; and
- F. It shall at all times fully comply with Philippine Law.

**[INTERESTED PARTY'S NAME]**

Signature  
 Printed Name  
 Title/Designation

Witnessed by:

\_\_\_\_\_

**ACKNOWLEDGMENT**

SUBSCRIBE AND SWORN TO BEFORE ME on this \_\_\_\_\_ day of \_\_\_\_\_ 2020 at the City of \_\_\_\_\_, affiant exhibited to me \_\_\_\_\_ issued at \_\_\_\_\_ on \_\_\_\_\_.

Doc No. \_\_\_\_\_;  
 Page No. \_\_\_\_\_;  
 Book No. \_\_\_\_\_;  
 Series of 2020.