

**The Republic of the Philippines**

**NEGOTIATION PROCEDURES**

For the Sale of the  
Paco-Manila Property  
located at  
Isla de Provisor, Paco, Manila



30 July 2021

---

## TABLE OF CONTENTS

---

<b>PART I - INSTRUCTIONS TO NEGOTIATING PARTIES.....</b>	<b>3</b>
<i>IB-01</i> <i>REQUIREMENTS FOR ISSUANCE OF THE NEGOTIATION PACKAGE .....</i>	<i>3</i>
<i>IB-02</i> <i>ADDENDA AND CLARIFICATIONS TO THE NEGOTIATION PROCEDURES .....</i>	<i>4</i>
<i>IB-03</i> <i>NEGOTIATED SALE SCHEDULE .....</i>	<i>5</i>
<i>IB-04</i> <i>SUBJECT OF THE NEGOTIATED SALE /BACKGROUND OF THE PROPERTY .....</i>	<i>6</i>
<i>IB-05</i> <i>CONDITIONS OF THE SALE .....</i>	<i>6</i>
<i>IB-06</i> <i>ELIGIBLE NEGOTIATING PARTY .....</i>	<i>8</i>
<i>IB-07</i> <i>DUE DILIGENCE .....</i>	<i>9</i>
<i>IB-08</i> <i>PRE-NEGOTIATION CONFERENCE.....</i>	<i>10</i>
<i>IB-09</i> <i>PREPARATION AND CONTENTS OF OFFERS.....</i>	<i>10</i>
<i>IB-10</i> <i>SEALING AND MARKING OF OFFERS.....</i>	<i>13</i>
<i>IB-11</i> <i>OFFER VALIDITY PERIOD.....</i>	<i>14</i>
<i>IB-12</i> <i>OFFER SECURITY.....</i>	<i>14</i>
<i>IB-13</i> <i>SUBMISSION OF OFFERS.....</i>	<i>16</i>
<i>IB-14</i> <i>DISQUALIFICATION OF OFFERS.....</i>	<i>16</i>
<i>IB-15</i> <i>MINIMUM OFFER PRICE .....</i>	<i>17</i>
<i>IB-16</i> <i>OPENING AND PRELIMINARY EVALUATION OF SEALED OFFERS .....</i>	<i>17</i>
<i>IB-17</i> <i>POST-QUALIFICATION .....</i>	<i>19</i>
<i>IB-18</i> <i>AWARD TO THE WINNING NEGOTIATING PARTY.....</i>	<i>19</i>
<i>IB-19</i> <i>RIGHTS AND RESPONSIBILITIES OF THE PARTIES.....</i>	<i>20</i>
<i>IB-20</i> <i>FAILURE OF NEGOTIATED SALE.....</i>	<i>20</i>
<i>IB-23</i> <i>EFFECTIVITY OF THE DEED OF ABSOLUTE SALE (DOAS).....</i>	<i>21</i>
<i>IB-24</i> <i>CANCELLATION OF DEED OF ABSOLUTE SALE (DOAS) .....</i>	<i>21</i>
<i>IB-25</i> <i>TURNOVER OF THE POSSESSION OF THE PROPERTY.....</i>	<i>22</i>
<i>IB-26</i> <i>GENERAL CONDITIONS .....</i>	<i>22</i>
<b>PART II - DEFINITIONS AND CONSTRUCTION.....</b>	<b>29</b>
<i>DEFINITIONS.....</i>	<i>29</i>
<i>CONSTRUCTION .....</i>	<i>32</i>

**NEGOTIATION PROCEDURES FOR THE SALE OF THE  
PACO-MANILA PROPERTY LOCATED AT ISLA DE PROVISOR, PACO,  
MANILA**

**OFFER TERMS AND SPECIFICATIONS**

**PART I - INSTRUCTIONS TO NEGOTIATING PARTIES**

**IB-01 REQUIREMENTS FOR ISSUANCE OF THE NEGOTIATION PACKAGE**

1. The Negotiation Package is issued by the Privatization Bids and Awards Committee (PBAC) of the Power Sector Assets and Liabilities Management Corporation (PSALM) to Interested Parties/Negotiating Parties that want to participate in and submit an offer for the sale of PSALM's Paco-Manila Property.
2. The Negotiation Package consists of the following:
  - A. The Negotiation Procedures, which is composed of:
    - i. Offer Terms and Specifications
      - a) Part I - Instructions to Negotiating Parties
      - b) Part II - Definitions and Construction
    - ii. Offer Form (Form No. 1)
    - iii. Site Visit Request Form (Form No. 2)
    - iv. Form of Waiver of Rights to Seek Legal Remedies (Form No. 3)
    - v. Representations and Warranties Form (Schedule 1)
    - vi. Form of Acceptance of the Negotiation Procedures (Schedule 2)
    - vii. Statement Under Oath (Schedule 3)
    - viii. Form of Authorization to Verify (Schedule 4)
    - ix. Tabular Form of Negotiating Party's Comments to the Negotiation Procedures and Deed of Absolute Sale (Schedule 5)
    - x. Form of Offer Security Issued by a Bank Licensed to Do Business and is Operating in the Philippines (Schedule 6)
    - xi. Draft Deed of Absolute Sale (DOAS) (Schedule 7)
  - B. Property Profile
3. Interested parties may download the Negotiation Package through the PSALM website (<https://www.psal.gov.ph>). The Negotiation Package will be available for downloading starting on 30 July 2021 until two (2) Business Days prior to Offer Submission Deadline. Alternatively, an electronic copy of the Negotiation Package may be sent by PSALM through electronic mail to interested parties.
4. Interested parties are required to acknowledge receipt of the Negotiation Procedures and accept its terms and conditions through submission (via email or

hardcopy) of the accomplished form attached as Schedule 2 (Form of Acceptance of the Negotiation Procedures). Only those that have submitted the Form of Acceptance of the Negotiation Procedures shall be considered eligible and allowed further participation in the Negotiated Sale Process.

## **IB-02 ADDENDA AND CLARIFICATIONS TO THE NEGOTIATION PROCEDURES**

1. The PBAC reserves the right to amend, revise, supplement, modify, or clarify the Negotiation Procedures through a Supplemental Negotiation Bulletin (SNB), a copy of which will be made available to all Negotiating Parties. The SNB, upon its issuance, shall automatically be incorporated in and made an integral part of the Negotiation Procedures. It shall be the Negotiating Party's responsibility to inquire into and secure the SNB that the PBAC may issue.
2. Failure of a Negotiating Party to secure the SNB and acknowledge receipt and acceptance of the terms and conditions of each SNB on the space provided in the transmittal letter shall constitute a waiver of its right to be informed of its contents. The Negotiating Party shall take into account the information and procedure set forth in the Negotiation Package, including the Negotiation Procedures and SNBs, in preparing its Offer.
3. Any request for clarification on any of the provisions of the Negotiation Procedures should be immediately relayed to the PBAC Chairperson on or before the Pre-Negotiation Conference. Any further revision or clarification on the Negotiation Procedures shall be contained in an SNB for the general information of all Negotiating Parties.
4. Any deviation of an Offer from the Negotiation Procedures shall render the Offer unresponsive, resulting in the disqualification and/or rejection of the Offer.
5. Nothing contained in this Section shall impair the rights reserved by the PBAC in the Invitation to Negotiate and the Negotiation Procedures.

### IB-03 NEGOTIATED SALE SCHEDULE

1. The indicative schedule and process for the Negotiated Sale (Negotiated Sale Schedule) is as follows:

Activity	Schedule
Issuance of Invitation to Negotiate to Interested Parties	30 July 2021 (Thursday) [after PSALM Board Approval of commencement of sale]
Due Diligence Period	30 July 2021 (Friday) until 2 days before OSD
Pre-Negotiation Conference	10 August 2021 (Tuesday)
Offer Submission Deadline (OSD)	31 August 2021 (Tuesday)
Evaluation of Offers	Immediately after OSD
Determination of Negotiating Party with the Highest Offer (NPHO)	Immediately after evaluation of Offers
Post-Qualification of NPHO	Within 5 working days from declaration of NPHO (up to 7 Sept 2021, Tuesday)
Issuance of NOA	Within 15 working days from declaration of NPHO, after the PSALM Board Approval (up to 28 September 2021, Tuesday)
Buyer's Full Payment of Purchase Price/Execution of DOAS	w/in 10 working days from issuance of NOA (up to 12 October 2021, Tuesday)
PSALM Execution of DOAS/Turnover of Property	Within 5 working days from Full Payment of Purchase Price (up to 19 October 2021)

2. The PBAC may change the Negotiated Sale Schedule without prior notice. Negotiating Parties will be notified promptly of any change thereto through an SNB.
3. Unless otherwise expressly specified in writing, all references to time and date shall refer to Philippine Standard Time. Should any of the above dates fall on a non-working day/holiday, the deadline shall be extended to the same time of the immediately succeeding Business Day. Unless otherwise expressly specified in writing, the venue for all of the above shall be the PSALM Office with address at the 24th Floor Vertis North Corporate Center 1, Astra corner Lux Drives, North Avenue, 1105 Quezon City, Philippines.

#### **IB-04 SUBJECT OF THE NEGOTIATED SALE/BACKGROUND OF THE PROPERTY**

1. The Property subject of this sale consists of eight (8) lots with a total area of 20,975.70 square meters more or less, as enumerated and described in the Property Profile issued to Negotiating Parties as part of the Negotiation Package.
2. The Property is located adjacent to and in close proximity to the MERALCO Tegen Substation, which include distribution equipment, overhead lines, and electric pole/distribution gantry erected over a portion of Lot No. 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, would need to maintain its right-of-way and unimpeded access to said facilities.
3. Lot Nos. 5, 6, 21, 9 and 10 are currently utilized as access roads by the following adjacent property occupants:
  - A. MERALCO
  - B. Cebu Oversea Hardware
  - C. Wangly Trading
  - D. Philman Corporate Distribution Corporation
4. It shall be the responsibility of the Winning Negotiating Party to negotiate and enter into the necessary arrangements with the adjoining property occupants with respect to access and right-of-way requirements.
5. PSALM reserves the right to withdraw, without prior notice, any or all properties offered for sale at any time before the Offer Submission Deadline.

**[See Property Profile]**

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

1. **The sale shall be on an “As Is, Where Is” basis.**
  - A. The sale of the Property is on an “As Is, Where Is” basis. The descriptions in the Invitation to Negotiate and in the Property Profile are based on documents in the custody of PSALM, which might differ from the actual description, status, and physical condition of the Property. In all cases, Negotiating Parties should conduct their own investigation and analysis of the Property, their condition and prospects, and of the data set forth in the Property Profile.
  - B. The term “As Is, Where Is” shall refer not only to the description and physical condition of the Property and its contents or inclusions at the time of the negotiated sale, if any is declared to be part of the sale, but also to the

condition of the title of the Property or other evidence of ownership and the extent and state of whatever rights, interest, and participation over the property PSALM may have at the time of the negotiated sale.

- C. The term “As Is, Where Is” shall also include the Winning Negotiating 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, association or condominium fees and/or assessments, and all other expenses and charges, as applicable, to cause the transfer of the title to the Winning Negotiating Party/Buyer.
  - D. PSALM shall not be liable in any way for the presence of any unauthorized person or illegal occupant on the Property or removal of any structure, improvement, receptacle, and waste, if any, it being clearly agreed upon that it shall be the responsibility of the Winning Negotiating Party, at its/his/her own expense, to evict/clear said illegal occupant, structure, receptacle, and waste from the premises. Identification, location, and survey of the Property shall be the responsibility of the Winning Negotiating Party at its/his/her sole expense.
  - E. The Negotiating Party/ies shall be responsible in taking steps to determine the actual condition, site, area, shape, and other circumstances of the Property.
2. **Currency.** All Offers shall be expressed in Philippine Pesos only.
3. **Offer Security.** The Offer Security shall be in an amount equal to at least ten percent (10%) of the Offer Price, valid for at least forty-five (45) Calendar days from Offer Submission Deadline, and in the form of:
- A. Cash;
  - B. Cashier’s or manager’s check;
  - C. Stand-by letter of credit issued by any commercial or universal bank licensed to do business and operating in the Philippines; or
  - D. Surety bond callable upon demand, issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.

Negotiating Parties that opt to submit the Offer Security in the form of cash shall deposit the same through telegraphic transfer subject to submission of proof of fund transfer. The Offer Security in the form of Manager’s Check/Cashier’s Check shall be submitted as part of the Second Envelope (Financial Component).

4. **Payment.** Within ten (10) Business Days from the date of receipt of the Notice of Award, the Winning Negotiating Party/Buyer shall pay a one-time full payment

of the Purchase Price in accordance with the payment instruction to be issued by PSALM.

5. In case the Winning Negotiating Party/Buyer fails to submit the DOAS and the full payment of the Purchase Price within ten (10) business days from the receipt of the Notice of Award and the DOAS for signing, PSALM shall cancel the sale and forfeit the Offer Security.

#### **IB-06 ELIGIBLE NEGOTIATING PARTY**

1. 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.
  - A. Individual Buyer/Sole Proprietorship (Filipino Citizen)
  - B. Corporations/partnerships duly registered and organized under the laws of the Philippines and at least 60% Filipino-owned.
  - C. 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.
  - D. 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 Property, 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 Negotiating Party/Buyer, it shall organize or incorporate under Philippine Laws to qualify with the constitutional requirement to contract and acquire real property in the Philippines, within a non-extendible period of thirty (30) working days from the date of receipt of the Notice of Award.
  - E. Government corporate entities may be eligible to participate only if they can establish that they (a) are legally and financially autonomous, (b) operate under commercial law, and (c) are not dependent agencies of the Government of the Philippines or of PSALM.
  - F. Local Government Units (LGUs) may be eligible to participate only if they can provide (a) Resolution of the Sanggunian authorizing the Local Chief Executive to enter into a contract of sale, (b) Ordinance appropriating the amount to pay for the purchase of the Property, and (c) a Certification of the Local Treasurer as to availability of funds to pay for the purchase of the Property.
2. PSALM personnel and their relatives up to the 2nd degree of affinity or consanguinity shall be ineligible to participate in the Negotiated Sale Process, including corporations, partnerships or joint ventures owned or partially owned



by PSALM personnel and their relatives within the 2nd degree of affinity or consanguinity.

#### **IB-07 DUE DILIGENCE**

1. Negotiating Parties shall be allowed to conduct due diligence during Business Days from 30 July 2021 until two (2) Business Days prior to Offer Submission Deadline, subject to compliance with PSALM's COVID-19 health and safety standards.
2. Each Negotiating Party shall be solely responsible for its own due diligence of the Property and all matters relating to this Negotiation Procedures which may, in any manner, affect the nature of its Offer. PSALM shall not be responsible for any erroneous interpretation or conclusion by the Negotiating Party out of the data furnished or indicated in this Negotiation Procedures and official eligibility and offer forms, including addenda, amendments, or Negotiation Bulletins issued by the PBAC. Failure of the Negotiating Parties to examine and inform itself shall be at its sole risk and no relief for error or omission shall be given.
3. The Negotiating Party shall investigate the Property, existing structures and improvements, if any, facilities, and utilities as to all topographical, geological, and other conditions thereat that may affect, directly or indirectly, the full implementation of the proposed sale and to carefully examine conditions of the Property and its surrounding vicinities affecting the actual execution of the sale and such other information as to allow the Negotiating Party to make a competitive estimate. The Negotiating Party, by the act of submitting its Offer, acknowledges that it has inspected the Property, its existing structures and improvements, if any, facilities, and utilities and accepted all the terms and conditions for this Negotiated Sale as set forth in the Negotiation Procedures.
4. No verbal agreement or conversation with, nor any verbal clarification from, PSALM, NPC, the PBAC, their directors, officers, employees, advisors, consultants, and agents shall affect or modify any of the terms and conditions contained in this Negotiation Procedures. Only amendments, supplements, or clarifications to this Negotiation Procedures that are set down in the Supplemental Negotiation Bulletin/s issued to Negotiating Parties who have submitted the Form of Acceptance of the Negotiation Procedures shall be relied upon as authorized.
5. The Negotiating Parties are responsible for having taken steps to carefully examine this Negotiation Procedures including its attachments and deemed to have become familiar with all existing laws, decrees, ordinances, acts, rules, and regulations which may affect this Negotiation Package.
6. A Negotiating Party that shall opt to conduct its due diligence shall accomplish Form No. 2 - Site Visit Request Form. The Negotiating Party shall bear all costs

and risks associated with the conduct of due diligence and preparation and submission of its Offer.

7. The Negotiating Parties shall, at all times, comply with PSALM's COVID-19 health and safety standards while in PSALM's premises.

#### **IB-08 PRE-NEGOTIATION CONFERENCE**

1. The Pre-Negotiation Conference will be conducted to discuss the Negotiation Procedures and other possible questions and/or clarifications from prospective negotiating parties on 10 August 2021 at 1:00 PM through video conferencing/webcasting via Zoom, MS Teams, or other platforms, details of which will be communicated to prospective Negotiating Parties. Prospective Negotiating Parties may manifest their intent to join the Pre-Negotiation Conference by sending an email to the PBAC Secretariat. Thereafter, the Meeting ID will be sent out to the prospective Negotiating Party/ies prior to the schedule of the Pre-Negotiation Conference.
2. Any statement made at the Pre-Negotiation Conference shall not modify the terms of the Negotiation Procedures, unless such statement is issued through an SNB.

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

1. Offers shall be composed of two (2) separate envelopes containing the First Envelope (Eligibility Component) and the Second Envelope (Financial Component).
  - A. The First Envelope shall be marked "Eligibility Component" and shall contain the following Eligibility Documents:
    - i. For Individuals
      - a) Duly accomplished Representations and Warranties Form (Schedule 1);
      - b) Copies of Two (2) valid government-issued IDs;
      - c) Certificate of Employment and Compensation, if employed;
      - d) Certification from at least one (1) commercial/universal bank, legally operating in the Philippines, stating that the Negotiating Party is known to them, maintains a deposit account with them, and is in good financial credit standing, and that, should the Negotiating Party be declared as the Winning Negotiating Party, they will provide sufficient credit facilities as required in the Winning Negotiating Party's Offer Price;
      - e) Letter authorizing PSALM representative/s to verify the validity of all documents submitted (Schedule 4);

- f) Certification under oath of the Negotiating 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 3); and
- g) 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 Negotiating Party/Buyer (PSALM Form No. 3).

ii. For Sole Proprietorship

- a) Duly accomplished Representations and Warranties Form (Schedule 1);
- b) Certified True Copy of DTI Registration and Business Profile;
- c) Certified True Copy of Latest Audited Financial Statement. The latest audited financial statements for fiscal year 2020 filed in 2021;
- d) Certified True Copy of Mayor's/Business Permit issued by the City or Municipality where the principal place of business of the Negotiating Party is located. Expired Mayor's/Business Permits shall not be acceptable;
- e) Certification from at least one (1) commercial/universal bank, legally operating in the Philippines, stating that the Negotiating Party is known to them, maintains a deposit account with them, and is in good financial and credit standing, and that, should the Negotiating Party be declared as the Winning Negotiating Party, they will provide sufficient credit facilities as required in the Winning Negotiating Party's Offer Price;
- f) Letter authorizing PSALM representative/s to verify the validity of all the documents submitted (Schedule 4);
- g) Certification under oath of the Negotiating 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 3); and
- h) 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 Negotiating Party/Buyer (PSALM Form No. 3).

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

- a) Duly accomplished Representations and Warranties Form (Schedule 1);
- b) Certified True Copy of SEC Registration and Company Profile of the Negotiating Party; or in case of a foreign entity, at least 60% Filipino-owned and licensed to do business in the Philippines;
- c) Certified True Copy of Articles of Incorporation/Partnership, By-Laws of the Negotiating Party, as amended, if any;
- d) Certified True Copy of Mayor's/Business Permit issued by the City or Municipality where the principal place of business of the Negotiating

Party is located. Expired Mayor's/Business Permits shall not be acceptable;

- e) Certification from at least one (1) commercial/universal bank, legally operating in the Philippines, stating that the Negotiating Party is known to them, maintains a deposit account with them, and is in good financial and credit standing, and that, should the Negotiating Party be declared as the Winning Negotiating Party, they will provide sufficient credit facilities as required in the Winning Negotiating Party's Offer Price;
- f) Board Resolution duly certified by the Negotiating Party's Corporate Secretary expressly authorizing the Negotiating Party's participation in the Negotiated Sale Process, nominating, appointing, and authorizing a representative to communicate, represent, sign, and execute contracts and other documents relative thereto;
- g) If a JV or Consortium, the Negotiating Party (including all its JV/Consortium members) shall submit a copy of the duly notarized JV Agreement/Memorandum of Agreement (MOA)/Understanding (MOU) which:
  - 1. Briefly describes the JV/Consortium, the individual members of the JV/Consortium and the extent of the participation of each member;
  - 2. 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
  - 3. Provides that the members shall be jointly and severally liable for the obligations of the Negotiating Party under the award/contract.
- h) Letter authorizing PSALM representative/s to verify the validity of all documents submitted (Schedule 4);
- i) 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 Negotiating Party/Buyer (PSALM Form No. 3);
- j) A declaration of any legal or other impediments which may affect the Negotiating Party's (and its JV or Consortium members) ability to participate in the Negotiated Sale Process or a certification to be submitted by the Negotiating Party (and its JV or Consortium members) stating the absence of such legal impediments;
- k) Certification under oath by the Negotiating Party that each document submitted in satisfaction of the eligibility requirements is original/authentic copy of the original, and that all statements and information provided therein are true and correct (Schedule 3).

iv. For Government Corporations/Entities

- a) Duly accomplished Representations and Warranties Form (Schedule 1);

- b) Board resolution duly certified by the Negotiating Party’s Corporate Secretary expressly authorizing the Negotiating Party’s participation in the Negotiated Sale Process, nominating, appointing, and authorizing a representative to communicate, represent, sign, and execute contracts and other documents relative thereto;
  - c) Certified True Copy of Charter or applicable law on the creation of the entity; and
  - d) Bank Certification or any proof of funds availability.
- v. For Local Government Units
- a) Duly accomplished Representations and Warranties Form (Schedule 1);
  - b) Resolution of the Sanggunian authorizing the Local Chief Executive to enter into a contract of sale;
  - c) Ordinance appropriating the amount to pay for the purchase of the property; and
  - d) Certification of the Local Treasurer as to availability of funds.
- B. The Second Envelope shall be marked “Financial Component” and shall contain the duly accomplished Form No. 1- Offer Form together with the Offer Security (Schedule 6).
2. Negotiating Parties are required to submit one (1) set of original Offers and three (3) sets of copies thereof, with each set contained in a sealed envelope. In the event of any discrepancy between the original and the copies, the original shall prevail.
  3. Interlineations, erasures, overwriting, alterations, or modifications in the Offer and documents accompanying the same shall not be allowed and shall invalidate the Offer.
  4. A Negotiating 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 entity by an authorized partner or authorized officer, followed by the name, signature and designation of the person authorized to sign the Offer.
  5. All Offers, documents, specifications, and related information shall be prepared and submitted in the English language.

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

1. Negotiating Parties shall enclose their original Eligibility Documents in one sealed envelope marked “ORIGINAL - Eligibility Component”, and the original of their financial component in another sealed envelope marked “ORIGINAL - Financial

Component”, sealing them together in an outer envelope marked “ORIGINAL OFFER”.

2. Each copy of the first and second envelopes shall be similarly sealed, with inner envelopes duly marked as “COPY No. \_\_\_ - Eligibility Component” and “COPY No. \_\_\_ - Financial Component”, and the outer envelope as “COPY NO. \_\_\_” respectively.
3. The envelopes containing the original and the copies shall then be enclosed in one single envelope. All envelopes shall:
  - A. contain the name of the Property subject of the Negotiated Sale in capital letters;
  - B. bear the name and address of the Negotiating Party in capital letters;
  - C. be addressed to “The CHAIRPERSON, Privatization Bids and Awards Committee” as identified in the Invitation to Negotiate; and
  - D. bear a warning “DO NOT OPEN BEFORE \_\_\_”, the date and time of the Offer Submission Deadline.
4. PSALM shall assume no responsibility for the misplacement or premature opening of the Offers should the envelopes be not sealed and marked as required.

#### **IB-11 OFFER VALIDITY PERIOD**

1. The Offers shall be valid for a period of at least forty-five (45) Calendar Days from Offer Submission Deadline.

#### **IB-12 OFFER SECURITY**

1. Each Negotiating Party shall submit as part of its Offer, an Offer Security equivalent to a minimum of ten percent (10%) of the Offer Price. The Offer Security shall be in any of the following acceptable forms:
  - A. Cash;
  - B. Cashier’s or manager’s check;
  - C. Stand-by letter of credit issued by any commercial or universal bank licensed to do business and operating in the Philippines; or
  - D. Surety bond callable upon demand, issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.
2. Negotiating Parties that opt to submit an Offer Security in the form of cash shall deposit the same through telegraphic transfer to the following PSALM LBP account subject to presentation/submission of proof of deposit/fund transfer:

Name of Bank : Land Bank of the Philippines  
Branch : Paseo de Roxas Branch  
Account Name : Power Sector Assets and Liabilities  
Management Corporation (PSALM)  
Account Number : 1802-1019-68  
LBP Swift Code : TLBPPHMM

3. The Offer Security shall be payable to PSALM Corporation and shall be valid throughout the Offer Validity Period or any extension thereof.
4. If in the form of cash, cashier's, or manager's check, the Offer Security of the Winning Negotiating Party shall be treated as part of the Purchase Price.
5. Except for the Offer Security of the Negotiating Party with the Second Highest Offer, the Offer Security of all losing Negotiating Party/ies shall be returned immediately without interest after the Negotiating Party with the Highest Offer has been determined. The receipt by the losing Negotiating Party/ies of its/his/her Offer Security shall be deemed a waiver on its/his/her part to contest the result of the negotiated sale. However, should a losing Negotiating Party contest/protest/appeal the outcome of the Negotiated Sale, its/his/her Offer Security shall be retained until the resolution thereof. Once the contest/protest/appeal is resolved, the Offer Security of the losing Negotiating Party shall be returned without interest. The Offer Security of the Negotiating Party with the Second Highest Offer shall be returned immediately after the Winning Negotiating Party has remitted its full payment of the Purchase Price.
6. An Offer submitted without the required Offer Security, or with a non-compliant Offer Security, shall be rejected outright and returned to the Negotiating Party. The Negotiating Party shall be disqualified from participating further in the Negotiated Sale Process.
7. The Offer Security shall be forfeited in any of the following instances:
  - A. Any misrepresentation, error and/or fraudulent declaration made by the Negotiating Party in the submitted negotiation documents or any of the required attachments discovered at any time after the preliminary assessment of Eligibility Documents;
  - B. Withdrawal or modification, whether conditional or otherwise, of the Offer after the Offer Submission Deadline;
  - C. Any material inconsistencies, errors, or misrepresentations in the submitted documents of the Negotiating Party with the Highest Offer;
  - D. Post-disqualification of the Negotiating Party with the Highest Offer due to misrepresentation, fraudulent acts, falsification, submission of spurious/fake documents, or commission of offense in connection with the Negotiated Sale Process;
  - E. When Offer is below the Minimum Offer Price specified in IB-15 of this Negotiation Procedures;

- F. Failure of the Winning Negotiating 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;
- G. Any judicial or extrajudicial action by the Winning Negotiating 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; and
- H. Any circumstances or reason that provides PSALM a reasonable and valid basis to believe the Negotiating Party is or has been rendered incapable of completing its obligation under the Negotiation Procedures.

8. The decision of the PBAC shall be final.

### **IB-13 SUBMISSION OF OFFERS**

1. The Offers must be submitted on or before the Offer Submission Deadline, to:

**THE CHAIRPERSON**

PSALM Privatization Bids and Award Committee

Sale of Paco-Manila Property

Power Sector Assets and Liabilities Management Corporation

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

Astra corner Lux Drives, North Avenue,

1105 Quezon City, Philippines

- 2. The venue for the submission of Offers shall be the PSALM Office, 24th Floor Vertis North Corporate Center 1, Astra corner Lux Drives, North Avenue, 1105 Quezon City, Philippines.
- 3. PSALM reserves the right to change the date, time, and venue for the submission, opening, or evaluation of Offers.
- 4. Offers submitted after the Offer Submission Deadline shall not be accepted.

### **IB-14 DISQUALIFICATION OF OFFERS**

1. The PBAC shall disqualify the following Offers:

- A. Offers of parties who are barred or blacklisted from participating in any bidding/Negotiated Sale by a government entity or entering any kind of contract with a Government Entity;
- B. Offers submitted without an Offer Security or which do not comply with the requirements in Section IB-12 (Offer Security);
- C. Offers with prices expressed in currencies other than Philippine Peso;



- D. The Offer of a Negotiating Party that breaches the warranty against offering or paying commission or consideration to any government officer or any PSALM official or employee provided in Paragraph 12 (K) of Section IB-26;
- E. The Offer of a Negotiating Party that breaches the warranty against conflict, dispute, or unsettled issue provided in Paragraph 15 (B) of Section IB-26;
- F. Offers from Negotiating Parties that breached the warranty on Compliance with Philippine Law, as provided in Paragraph 15 (C) of Section IB-26;
- G. When PSALM determines that there is a material change in the information provided in the Eligibility Documents;
- H. There is a subsequent event that causes a material adverse change in the information provided in the Eligibility Documents;
- I. Any other ground for disqualification of an Offer and/or a Negotiating Party as provided for in the Negotiation Procedures; or
- J. Any other analogous cases.

#### **IB-15 MINIMUM OFFER PRICE**

1. The Minimum Offer Price for the sale of the Property is **Five Hundred Twenty-Seven Million Eighty-Seven Thousand Five Hundred Fifty-Two Philippines Pesos (PHP 527,087,552.00)**.
2. The Offer Price of the Negotiating Party with the Highest Offer must meet or exceed the Minimum Offer Price in order to qualify for the Award of the Property.

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

1. Due to the current COVID-19 situation, PSALM shall allow a maximum of two (2) representatives to witness the opening and evaluation of Offers. Negotiating Parties' representative/s who opt to attend and witness the opening and evaluation of offers shall at all times comply with PSALM's COVID-19 health and safety standards.
2. The PBAC shall open the first envelopes of Negotiating Parties in public, at the time, date, and place specified by the PBAC, to determine each Negotiating Party's compliance with the prescribed eligibility documents. For this purpose, the PBAC shall check the documents submitted by each Negotiating Party against a checklist of required documents to ascertain if all are present, using a non-discretionary "pass/fail" criterion. If the Negotiating Party submits the required document, it shall be rated as "passed" for that particular requirement. Offers that fail to include any requirement or are incomplete or patently insufficient shall be considered as "failed."
3. Immediately after determining compliance with the requirements in the first envelope, the PBAC shall open the second envelope of each remaining Negotiating Party whose first envelope was rated "passed." In case one or more

of the requirements in the second envelope of a particular Offer is missing, incomplete, or patently insufficient, and/or if the submitted Offer Price is lower than the Minimum Offer Price, the PBAC shall rate the particular Offer as “failed.” Only Offers that are determined to contain all the offer requirements for both components shall be rated “passed” and shall immediately be considered for evaluation and comparison.

4. The Offers which is at least equal to or higher than the Minimum Offer Price shall be ranked from highest to lowest to identify the order of Offers.
5. A tie for the Highest Offer shall be resolved immediately through an auction conducted by the PBAC among the Negotiating Parties. The Negotiating Parties shall each submit a revised and signed Offer Form. A Negotiating Party shall not submit an Offer lower than its original Offer. This process shall be repeated until the tie is broken. Each Negotiating Party must ensure that its representative has the authority to bind the Negotiating Party in case of an auction. The PBAC shall declare the Negotiating Party that submits the highest Offer Price as the Negotiating Party with the Highest Offer. The highest among the Offer Price that a Negotiating Party submitted shall be deemed as its Offer Price.
6. In case there is a tie for Second Highest Offer, and the Negotiating Party with the Highest Offer has been disqualified, the two Negotiating Parties which submitted the Second Highest Offer shall each submit a revised and signed Offer Form. The two Negotiating Parties that submitted the Second Highest Offer shall not submit an Offer lower than their original Offer. This process shall be repeated until the tie is broken.
7. The PBAC has the sole discretion to allow the correction of innocuous or clerical errors.
8. If none of the Offers meet the Minimum Offer Price, the PBAC shall declare all the Offers to be non-compliant and declare a failure of negotiated sale.
9. The decision of the PBAC may be questioned by filing a request for reconsideration within three (3) calendar days upon receipt of written notice or upon verbal notification. The PBAC shall decide on the request for reconsideration within seven (7) calendar days from receipt thereof. The Negotiating Party shall not be allowed to submit additional documents to correct any defects in the Offer submitted. If a failed Negotiating Party signifies its intent to file a request for reconsideration, the PBAC shall keep the offer envelopes of the said failed Negotiating Party unopened and/or duly sealed until such time that the request for reconsideration has been resolved.

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

1. The PBAC shall conduct post-qualification within a period of five (5) Business Days from declaration of the Negotiating Party with the Highest Offer to verify the accuracy and authenticity of all the documents and information submitted by the Negotiating Party with the Highest Offer. Any material inconsistency, error, or misrepresentation in the submitted documents shall be a ground for disqualification and forfeiture of the Offer Security.
2. If the Negotiating Party with the Highest Offer passes post-qualification, its offer shall be declared as the Highest Responsive Offer. The PBAC shall recommend to the PSALM Board, through the PSALM President and CEO, that the sale of the Property be awarded to the Negotiating Party with the Highest Responsive Offer as the Winning Negotiating Party.
3. If the Negotiating Party with the Highest Offer fails the post-qualification due to misrepresentation, fraudulent acts, falsification, submission of spurious/fake documents, or commission of an offense in connection with the Negotiated Sale Process, the PBAC shall notify the Negotiating Party of the results thereof and forfeit its Offer Security, without prejudice to other remedies available to PSALM.
4. Immediately after the PBAC has notified the Negotiating Party with the Highest Offer of its post-disqualification, notwithstanding any request for reconsideration, or after post-qualification, if the Winning Negotiating Party withdrew prior to the issuance of the Notice of Award, or refused to accept the same, the PBAC shall initiate and complete the post-qualification of the Negotiating Party with the Second Highest Offer, provided the Second Highest Offer is not lower than the Minimum Offer Price. Otherwise, the PBAC shall declare a failure of negotiated sale.

## **IB-18 AWARD TO THE WINNING NEGOTIATING PARTY**

1. Within fifteen (15) Business Days from the declaration of the Negotiating Party with the Highest Responsive Offer, the PBAC shall serve a Notice of Award through electronic mail to the Negotiating Party with the Highest Responsive Offer as the Winning Negotiating Party.
2. The Notice of Award shall be sent together with the Deed of Absolute Sale for signature of the Winning Negotiating Party.
3. The Winning Negotiating Party shall submit through email to the PBAC its/his/her confirmation of receipt of the Notice of Award within two (2) Business Days from receipt thereof.

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

### **1. Rights and Responsibilities of the Winning Negotiating Party**

- A. The Winning Negotiating Party shall:
  - i. Strictly comply with the terms and conditions of the DOAS to be executed between PSALM and the Winning Negotiating Party and maintain all warranties and representations in good standing until PSALM's execution of the DOAS.
  - ii. Pay all applicable taxes, licenses, fees, and charges due on the sale transaction.
  - iii. Deliver the duly signed DOAS to PSALM together with the full payment; and if the Winning Negotiating Party/Buyer is a corporation, its Board Resolution/Secretary's Certificate approving the DOAS and appointment of its authorized signatory/ies shall be submitted as additional supporting document.
  
- B. Failure of the Winning Negotiating Party/Buyer to comply with the requirements shall render the award nullified and the Offer Security forfeited in favor of PSALM.

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

- A. PSALM shall deliver the possession of the Property to the Winning Negotiating Party/Buyer, on an "AS IS, WHERE IS" basis, upon the execution of the DOAS.

## **IB-20 FAILURE OF NEGOTIATED SALE**

There shall be a failure of Negotiated Sale in any of the following instances:

- A. No Offers are received by Offer Submission Deadline;
- B. All Negotiating Parties withdrew from the Negotiated Sale Process prior to Offer Submission Deadline;
- C. All Negotiating Parties withdrew their Offers prior to the Opening of Offers;
- D. No Offer Price meets the Minimum Offer Price;
- E. No Offer has passed the post-qualification evaluation stage;
- F. The Winning Negotiating Party withdrew prior to the issuance of the Notice of Award, or the Winning Negotiating Party refused to accept the same and there is no other post-qualified Negotiating Party;
- G. The Winning Negotiating Party failed to remit the full payment of the Purchase Price in accordance with the Payment Instruction issued by PSALM;
- H. The Winning Negotiating Party failed to submit and execute the DOAS; and
- I. Other grounds provided in the Negotiation Procedures.

## **IB-21 PROTEST MECHANISMS**

1. A Negotiating Party determined as failed/disqualified and/or whose Offer has been found non-compliant may file a request for reconsideration within three (3) calendar days upon receipt of written notice or upon verbal notification. The PBAC shall decide on the request for reconsideration within seven (7) calendar days from receipt thereof.
2. Upon receipt of the PBAC's decision denying the request for reconsideration, a Negotiating Party may file an appeal in writing (Notice of Appeal) to the PBAC. The appeal must be filed within five (5) Business Days from receipt of the written notice denying the Request for Reconsideration. The Notice of Appeal shall be accompanied by a Sworn Statement stating the grounds relied upon for the appeal and the corresponding payment of a non-refundable appeal fee in an amount equivalent to at least one percent (1%) of the Minimum Offer Price or such amount as may be recommended by the PBAC, in the form of a manager's check issued by a local commercial or universal bank.
3. A Negotiating Party may not file a Notice of Appeal without first filing a request for reconsideration.
4. The Negotiated Sale Process will proceed even when the Request for Reconsideration or Appeal was filed, except when the Notice of Award cannot be issued unless a decision has been made.

## **IB-22 WAIVER**

Negotiating Parties shall hold PSALM, its Board of Directors, officers, and employees free and harmless from any liability, costs and expenses, suit or allegation arising out of Negotiating Parties' participation in this Negotiated Sale Process. All Negotiating Parties waive their right to seek legal action (e.g., Temporary Restraining Order, lawsuits, etc.) to prevent PSALM, its Board of Directors, officers, and employees from awarding and executing a contract with the Winning Negotiating Party.

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

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

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

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

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

PSALM shall turnover possession of the Property in accordance with the terms of the DOAS.

## **IB-26    GENERAL CONDITIONS**

1. PSALM, its representatives, the PBAC, and NPC shall not be responsible for the interpretation or conclusion drawn by a Negotiating Party from data or information furnished by PSALM, NPC, the PBAC, their directors, officers, employees, advisors, consultants, or agents, or for the accuracy or completeness of such data or information.
2. A Negotiating Party shall, at all times, comply with Philippine Law.
3. All risks, taxes, costs, fees, expenses, and liabilities incurred, directly or indirectly, by a Negotiating Party in the preparation of its Offer, inclusive of its due diligence effort and the cost incurred in securing the Offer Security, including fees and disbursements of its advisors, shall be borne and paid by such Negotiating Party whether its Offer is accepted or rejected. PSALM, NPC, and/or the PBAC shall not be held liable for such risks, taxes, costs, fees, expenses, and liabilities. PSALM, NPC, the PBAC, their directors, officers, employees, advisors, consultants, and agents shall not be held liable in the event that a court of competent jurisdiction or other Government Entity declares the negotiated sale, selection, and/or award invalid or sets it aside for any reason and at any time.
4. Any request and/or receipt of Offers or any information or document will not constitute an invitation or commitment by PSALM or the PBAC to enter into any agreement, undertaking, or covenant with the Negotiating Party.
5. All deadlines in the Negotiation Procedures and other relevant documents or communications issued during the course of the Negotiated Sale Process must be strictly adhered to. Late submissions will not be accepted.
6. PSALM and the PBAC, at their discretion, reserve the right to: (i) accept or reject any or all Offers or any part thereof; (ii) withdraw from the proposed sale or any part of the Negotiated Sale Process or to vary any of its or their terms at any time without giving any reason therefore; (iii) waive any defect contained therein; (iv) accept the offer which the PBAC deems most advantageous to the Government; (v) draw and forfeit the full amount of the Offer Security upon the occurrence of an Offer Security Drawing Event; (vi) exercise any other remedy granted by Philippine Law or the Negotiation Procedures; and (vii) require the submission of additional documents and/or information in relation to the Negotiated Sale Process.

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

## 12. Disqualification

- A. In addition to the grounds for the disqualification of Offers stated in Section IB-14 (Disqualification of Offers) and other provisions of the Negotiation Procedures, the PBAC shall be entitled, in its sole discretion, and without prejudice to its other rights or remedies, to disqualify a Negotiating Party from participation in this Negotiated Sale Process in any of the following instances:
- i. The Negotiating Party makes a material misrepresentation in any document or information communicated to the PBAC, whether verbal or written;
  - ii. The Negotiating Party submits an Offer which is inconsistent with or fails to comply with the Negotiation Procedures;
  - iii. The Negotiating Party fails to promptly comply with the PBAC's reasonable request for further information or clarification in relation to documents, information, or the Offer submitted by such Negotiating Party;
  - iv. An administrator, supervisor, receiver, liquidator, or other lien holder takes possession of or is appointed over the whole or any part of the Negotiating Party's assets, or any attachment, execution, or other process is enforced upon the whole or a substantial part of its assets;
  - v. If the Negotiating Party is in the process of liquidation, winding up, bankruptcy, dissolution, corporate rehabilitation, or suspension of payments;
  - vi. The Negotiating Party signifies its intention to withdraw or modify its Offer after the Offer Submission Deadline or actually withdraws or modifies its Offer;
  - vii. The Negotiating Party withdraws its Offer during the Offer Validity Period;
  - viii. The Negotiating Party submits an Offer with conditions or delivers an Offer Security that does not comply with the requirements of Section IB-12 (Offer Security);
  - ix. The Negotiating Party or its Affiliate has participated in the valuation of the Property, or their respective advisors in relation to the Negotiated Sale Process of the Property and the Negotiating Party failed to disclose such fact;
  - x. The Negotiating Party breaches any of the conditions of the Negotiation Procedures;
  - xi. The Negotiating Party or anyone on its behalf breaches the warranty against offering or paying commission or consideration to any government officer or pays a PSALM director, official, employee, advisor, consultant, any member of the PBAC, or agent consideration or commission for the Negotiated Sale or DOAS;
  - xii. The Negotiating Party breaches the warranty against compliance with Philippine Law provided in Paragraph 15 (C) of Section IB-26;



- xiii. The Negotiating Party is barred or blacklisted from participating in any bidding/negotiated sale, or entering into a contract, with a Government Entity;
- xiv. The Negotiating Party is an Affiliate of another Negotiating Party, or holds or acquires any ownership interest in another Negotiating Party as listed in the General Information Sheet;
- xv. The Negotiating Party has an Affiliate, and such Affiliate: (i) is a Negotiating Party; or (ii) holds or acquires any ownership interest in another Negotiating Party as listed in the latest General Information Sheet;
- xvi. Upon the occurrence of an event or omission which is a ground for disqualification in the Negotiation Procedures;
- xvii. The Negotiating Party makes a material change in the information provided in the Eligibility Documents;
- xviii. There is a subsequent event that causes a material adverse change in the information provided in the Eligibility Documents;
- xix. The Negotiating Party or anyone on its behalf exerts or utilizes any corrupt or unlawful influence to secure or solicit the Negotiated Sale Process, or the DOAS for a consideration or commission;
- xx. Any ground for disqualification of an Offer and/or a Negotiating Party provided for in the Negotiation Procedures; or
- xxi. The Negotiating Party has been disqualified from participating in PSALM's bidding/ Negotiated Sale activities due to fraudulent acts or has committed fraud or breach in the provisions of any agreement with PSALM.

13. Whenever an address is required, the full address must be given. The use of Post Office box as an address is prohibited.

14. All submissions to PSALM must be in the English language. If the document is in a foreign language, both the document in the foreign language and its legal translation in English must be submitted and the document must be authenticated before a Philippine consular official authorized to authenticate documents. The official language to be used in the Negotiated Sale Process, Negotiation Procedures, the DOAS, reports, notices, and correspondences shall also be in English.

15. An Interested Party, Negotiating Party, Negotiating Party with Highest Offer, Buyer, or Winning Negotiating Party (collectively referred to as Negotiating Party for purposes of this paragraph) represents and warrants that:

- A. The Negotiating Party, or anyone on its behalf, has neither directly or indirectly offered or paid a PSALM director, official, employee, or any member of the PBAC any consideration or commission for the Negotiated Sale or DOAS, nor exerted or utilized any corrupt or unlawful influence to secure or solicit the Negotiated Sale or the DOAS for any consideration or commission. A violation of this warranty shall constitute sufficient ground for

the disqualification of the Negotiating Party, the termination of the DOAS, and the forfeiture of the Offer Security, without prejudice to the filing of any civil and/or criminal action under Philippine Law, including the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019) against the Negotiating Party and the PSALM director, official, employee, or any member of the PBAC involved;

- B. The Negotiating 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, with 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 Negotiating 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 Negotiating Party and/or its representatives.
- C. A Negotiating Party shall comply with Philippine Law at all times. A violation of this warranty shall constitute sufficient ground for the disqualification of the Negotiating Party, the termination of the DOAS, and the forfeiture of the Offer Security, without prejudice to the filing of civil and/or criminal action under Philippine Law against the Negotiating Party and/or its representatives;
- D. The Negotiating Party shall indemnify PSALM and the PBAC and hold them free and harmless against all losses, claims, liabilities, damages, and expenses arising out of or relating to its fault or negligence in the Negotiated Sale Process, including but not limited to, third party claims for personal injuries, property damage, or consequential damages as provided in the DOAS for the Property;
- E. The Negotiating Party shall pay: (a) all costs, expenses, fees, and taxes, including all documentary stamp taxes payable in connection with the execution, amendment, or modification of the DOAS; and (b) all costs, expenses, fees, and taxes related to and arising from the exercise or performance of its obligations under the Negotiated Sale Process, Negotiation Procedures or the DOAS; and
- F. The Negotiating Party 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

Negotiated Sale Process or any related proceedings, the issuing bank, the conduct of a bidding/ Negotiated Sale or any related proceeding, the selection of the Negotiating Party with the Highest Offer, Buyer, or Winning Negotiating Party, the performance of the DOAS, and forfeiture of the Offer Security.

16. In case of conflict or discrepancy between the Negotiation Procedures and the Offer, the Negotiation Procedures shall prevail.
17. Certified true copies of documents to be submitted under the Negotiation Procedures shall be certified by the entity issuing such documents (e.g., the SEC Certificate of Registration shall be certified by the SEC). In case of documents which the issuing entity does not issue any certification, then the Negotiating Party shall submit a written certification under oath that the document submitted is a true and faithful reproduction of the original and that the original document is in the Negotiating Party's possession.
18. If there is a dispute between (a) PSALM, and (b) any of the Interested Parties, Negotiating Parties, the Negotiating Party with the Highest Offer, Buyer, or Winning Negotiating Party arising from the Negotiation Procedures or in the interpretation of its provisions, the parties shall endeavor to resolve such dispute through negotiations done in good faith. If the parties fail to resolve the dispute, they shall refer the matter to the court of proper jurisdiction of the Republic of the Philippines, which shall have exclusive jurisdiction over any action or proceeding arising from or in connection with the Negotiated Sale Process, the Negotiation Procedures and the DOAS. In case of litigation, the venue of action shall be the proper courts of the Quezon City, Philippines, to the exclusion of any other courts. PSALM, the Interested Party, Negotiating Party, Negotiating Party with the Highest Offer, Buyer, or Winning Negotiating Party voluntarily and irrevocably agree to submit to the jurisdiction of such court.
19. PSALM's failure to exercise, or any delay in the exercise of, its rights under the Negotiation Procedures and the DOAS shall not operate as a waiver of such rights. PSALM's single or partial exercise of a right shall not preclude the exercise of any other right. The right and remedies in this process and related documents are cumulative and not exclusive of any other right or remedy provided by Philippine Law.
20. PSALM, its directors, officers, employees, and the PBAC shall not be liable to the Interested Party, Negotiating Party, Negotiating Party with Highest Offer, Negotiating Party with Highest Responsive Offer, Buyer, Winning Negotiating Party, or any third party in contract, tort or for any loss or damage sustained in connection with the utilization of the Property, including without limitation to any claim for loss of use, lost income, lost profits, or consequential damages.
21. All notices to and communications with PSALM and the PBAC pursuant to the Negotiation Procedures shall be in writing and shall be sent to:

THE CHAIRPERSON

PSALM Privatization Bids and Awards Committee  
Sale of Paco-Manila Property  
Power Sector Assets and Liabilities Management Corporation  
24<sup>th</sup> Floor Vertis North Corporate Center 1,  
Astra corner Lux Drives, North Avenue,  
1105 Quezon City, Philippines

22. PSALM, its directors, officers, employees, and the PBAC shall not be liable for any loss or damage arising from their delay or inability to perform their obligations under the Negotiated Sale Process, Negotiation Procedures and the Final DOAS, if the same is due to causes beyond their reasonable control including, without limitation to, acts of God, accidents, acts of war, labor shortages or labor difficulties, strikes, civil disturbances, insurrections, riots, revolutions, acts of sabotage, governmental actions, delay or failure by the appropriate Government Entity to issue necessary licenses, permits or authorizations, delay or accident occurring in the course of transportation, unavailability of material or equipment, acts or omissions of the Negotiating Party for the Property, their contractors, suppliers, agents, or employees, and/or third parties.
23. No Government official or employee shall directly or indirectly give, nor shall any Negotiating Party be entitled to, any information regarding the Negotiated Sale Process or the other Negotiating Parties, other than what is contained in the Negotiation Procedures, or disclosed in the Pre-Negotiation Conference, SNBs and in the official announcements.
24. If a provision of the Negotiation Procedures or a part of the Negotiation Package is held to be invalid, illegal, or unenforceable, the validity, legality, or enforceability of the remaining provisions will not be affected and shall remain in full force and effect.
25. If the Negotiating Party does not have the officer required by the Negotiation Procedures, the Negotiating Party must certify under oath that the person executing the required document is authorized to execute it and to bind the Negotiating Party.

###

## PART II - DEFINITIONS AND CONSTRUCTION

### DEFINITIONS

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

<b>Affiliate</b>	any person which, alone or together with any other person, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person. Affiliate shall include a subsidiary company and parent company and subsidiaries, directly or indirectly, of a common parent.
<b>Negotiating Party</b>	an Interested Party that submits the Acceptance of the Negotiation Procedures
<b>Negotiated Sale or Negotiated Sale Process</b>	the negotiated sale process for the sale of the Property, as outlined in the Negotiation Procedures.
<b>Negotiation Package</b>	the set of documents for the Sale of the Property, as specified in Section IB-01 (Requirements for Issuance of The Negotiation Package).
<b>Negotiation Procedures</b>	shall have the meaning set forth in Section IB-01 (Requirements for Issuance of The Negotiation Package).
<b>Negotiated Sale Schedule</b>	shall mean the schedule for the Negotiated Sale as set out in Section IB-03 (Negotiated Sale Schedule).
<b>Offer</b>	a signed offer or proposal submitted by a Negotiating Party in compliance with Section IB-09 (Preparation and Contents of Offers).
<b>Offer Price</b>	Refers to the amount that the Negotiating Party is willing to purchase the Property.
<b>Offer Security</b>	Refers to an amount which serves as an expression of intent to participate in the public negotiated sale process for the Property, which shall be in an amount equal to at least ten percent (10%) of the Offer, in the form of cash, bank manager's check or cashier's check, or stand-by letter of credit, issued by any commercial or universal bank licensed to do business and operating in the Philippines, or Surety bond callable upon demand, issued by surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.
<b>Offer Security Drawing Event</b>	any occurrence which entitles PSALM to draw upon the Offer Security under IB-12 (Offer Security), including but not limited to: (i) a Negotiating Party's failure to

	completely, faithfully, fully and promptly comply with its obligations under the Negotiation Procedures during the Offer Validity Period, or its extension; or (ii) a violation of the Negotiation Procedures.
<b>Offer Submission Deadline</b>	the deadline for the submission of Offers set forth in Section IB-03 (Negotiated Sale Schedule).
<b>Offer Validity Period</b>	the forty-five (45) Calendar Day period which starts on the Offer Submission Deadline.
<b>Business Day</b>	any day other than a Saturday, Sunday, public holiday in the Republic of the Philippines or Quezon City, or a day on which banks located in Quezon City are authorized by law to be closed.
<b>Business Hours</b>	shall mean 9:00 a.m. to 5:00 p.m. of a Business Day.
<b>Buyer</b>	shall mean the Winning Negotiating Party with whom PSALM enters into the DOAS for the sale of the Property.
<b>Deed of Absolute Sale (DOAS)</b>	shall mean the agreement to be entered into between the PSALM and the BUYER for the sale and purchase of the Property, including the schedules, attachments, and annexes thereto as well as the pertinent attachment, annexes and schedules to such schedules, attachments, and annexes, which was distributed to the Negotiating Parties as part of the Negotiation Package.
<b>DOE</b>	the Department of Energy of the Republic of the Philippines.
<b>ERC</b>	the Energy Regulatory Commission.
<b>Eligible Negotiating Party</b>	Refers to a Negotiating Party that, in response to the Invitation to Negotiate, has submitted Eligibility Documents and was declared “Eligible” based on the provisions set in this Negotiation Procedures.
<b>Government Entity</b>	any government agency, authority, bureau, department, court, tribunal, legislative body, public official, statutory or legal entity or person (whether autonomous or not), commission, corporation or instrumentality, whether national or local, of the Republic of the Philippines having jurisdiction over these Negotiation Procedures, the Negotiated Sale Process, and the DOAS.
<b>Negotiating Party with the Highest Offer</b>	shall have the meaning set forth in IB-16 (Opening and Preliminary Evaluation of Sealed Offers).
<b>Latest Audited Financial Statements</b>	the latest audited financial statements for fiscal year ending 2020.
<b>Minimum Offer Price</b>	Refers to the minimum offer amount which PSALM shall accept as Purchase Price for the Property

<b>Notice of Award</b>	shall have the meaning set forth in Section IB-18 (Award to the Winning Negotiating Party).
<b>NPC</b>	shall mean the National Power Corporation.
<b>PBAC</b>	Shall mean PSALM Privatization Bids and Awards Committee.
<b>Property</b>	Refers to the Paco-Manila Property, referred to in Annex A of this Negotiation Procedures.
<b>Philippine Law</b>	shall mean: (i) the Constitution of the Republic of the Philippines and all Philippine laws, statutes, treaties, rules, codes, ordinances, regulations, certificates, decisions, orders, memoranda, circulars, decrees, resolutions, directives, rulings, interpretations, approvals, licenses, and permits of any Governmental Body; and (ii) judgments, decrees, injunctions, writs, orders or like actions of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction, in each case: (a) that apply to these Negotiation Procedures and the privatization and performance of the DOAS by the parties; and (b) as amended, supplemented, replaced, interpreted by a duly authorized Government Entity, or otherwise modified from time to time.
<b>Philippine Peso</b>	the lawful currency of the Republic of the Philippines.
<b>Philippine Standard Time</b>	shall have the meaning set forth in Republic Act No. 10535.
<b>Pre-Negotiation Conference</b>	shall have the meaning set forth in IB-08 (Pre-Negotiation Conference).
<b>PSALM</b>	the Power Sector Assets and Liabilities Management Corporation created under Republic Act No. 9136.
<b>PSALM Office</b>	shall mean the office of PSALM located at the 24 <sup>th</sup> Floor Vertis North Corporate Center 1, Astra corner Lux Drives, North Avenue, 1105 Quezon City, Philippines
<b>Public Bidding/Negotiated Sale</b>	Refers to a method of disposal which is open to participation by any interested party; public bidding/negotiated sale ensures that PSALM would get the highest selling price for the Property offered for sale.
<b>Purchase Price</b>	Refers to the amount the Buyer is willing to pay in order to purchase the Property.
<b>SBLC</b>	shall have the meaning set forth in Section IB-12 (Offer Security).
<b>Supplemental Negotiation Bulletins (SNBs)</b>	amendments, supplements or clarifications to the Negotiation Procedures or the Negotiated Sale Process that the PBAC may issue, which shall be in writing and numbered sequentially. The SNBs are automatically incorporated into and made an integral part of the Negotiation Procedures.

<b>TRANSCO</b>	the National Transmission Corporation, a government owned and controlled corporation created by virtue of the Republic Act No. 9136.
<b>Winning Negotiating Party</b>	Refers to the eligible Negotiating Party whose Offer Price has been evaluated by the PBAC as the highest responsive Offer, compliant with the requirements of this Negotiation Procedures and approved by the PSALM Board of Directors.

## CONSTRUCTION

In the Negotiation Procedures, unless the context otherwise requires:

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