

**The Republic of the Philippines**

**Sale of  
Paco-Manila Property  
through Negotiated Sale**

*Located in Isla de Provisor, Paco, Manila*

**Project Reference No.:**  
PBAC-REA- NSPMP-202—001- 04.



**Supplemental Negotiation Bulletin No. 2**

**4 December 2020**

**SUPPLEMENTAL NEGOTIATION BULLETIN NO. 2  
FOR THE NEGOTIATED SALE OF THE PACO-MANILA PROPERTY**

**1. NOTICE TO BIDDERS**

Bidders are hereby notified of the amendments, revisions, modifications and clarifications to the Bidding Procedures dated 11 November 2020 for the Negotiated Sale of Paco-Manila Property, located in Isla de Provisor, Paco, Manila with Project Reference No. PBAC-REA- NSPMP-202—001- 04.

In accordance with the Negotiation Procedures, Interested Parties are required to acknowledge the receipt and acceptance of the terms and conditions of the Negotiation Procedures and each Supplemental Bulletin on the space provided in the Letter of Transmittal accompanying this Supplemental Negotiation Bulletin.

Failure to acknowledge receipt and acceptance of the terms and conditions of the Negotiation Procedures and each Supplemental Negotiation Bulletin may cause the Offer to be considered as not responsive to the Negotiation Procedures, which could result in the disqualification and/or rejection of the Offer.

In any case, it is conclusively presumed that the Interested Parties in preparing the Offer has taken into account, understood and accepted the information and procedures set forth herein in the Negotiation Procedures and in the subsequent Supplemental Negotiation Bulletins.

**2. CLARIFICATION ON THE QUERIES RAISED DURING THE PRE-NEGOTIATION CONFERENCE:**

Query	PSALM's Response
1. Under Section 2(C) of the Negotiation Procedures dated 11 November 2020, in order to be allowed to participate further in negotiation process:	
a. Aside from submitting the Acceptance of Negotiation Procedures, there is a need to submit: i) a Board Resolution/ Secretary Certificate regarding the participation by Meralco, and appointment of, our representative/s; and,	Yes. The <b><u>Board Resolution/ Secretary Certificate</u></b> 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 must be submitted <b>on or before the Offer</b>

Query	PSALM's Response
<p>ii) a Letter of Expression of Intent?</p>	<p><b>Submission Deadline as part of the First Envelope - Eligibility Component.</b></p> <p>No. There is no need to submit a Letter of Expression of Intent.</p>
<p>b. Can we submit the Board Resolution/Secretary Certificate until the Offer Submission Deadline (OSD)?</p>	<p>Yes. Please refer to item 1.a.i above.</p>
<p>c. Can we have multiple representatives acting jointly and/or alternately in behalf of the Interested Party?</p>	<p>Yes, provided that the alternate/s is/are also named in the Interested Party's Board Resolution.</p> <p><b><u>Offer Submission and Opening</u></b></p> <p>The Interested Party may send more than one (1) representative to the proceedings for the Offer Submission and opening, subject to the capacity of the venue. The Interested Party must ensure, however, that it has an authorized representative present who has authority to bind the Interested Party.</p> <p>The personnel authorized under the Interested Party's Board Resolution must be the one to sign off on the documents.</p> <p><b><u>Due Diligence</u></b></p> <p>The Interested Party needs to submit an accomplished PSALM Form No. 2 - Site Visit Request Form.</p>
<p>d. Will PSALM allow our representative/s to be joined and accompanied by other personnel in any of the activities of negotiation process?</p>	<p>No. Only authorized representative/s will be allowed in any of the activities of the negotiation process.</p> <p>For due diligence purposes, please refer to 1.a.c above</p>

Query	PSALM's Response
2. Which takes precedence over the disqualification stated in the Invitation to Negotiate and Submit Offer or Schedule C [par. 4 (N).	Please see item No. 3 of this SNB No. 2.
3. What is an "affiliate" and "subsidiary"?	As defined under Rule 4, Par. (e) of the Implementing Rules and Regulation of the Republic Act No. 9136, an <b>affiliate</b> is 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 <b>subsidiary</b> company and parent company and subsidiaries, directly or indirectly, of a common parent.
4. Is there a qualification for a stockholder in terms of stockholdings?	No. There is none.
5. Does the term cover a stockholder even with one or minimal share of the Interested Party which is a corporation?  6. We would like to clarify whether there is a need to trace these thousands of "shareholders" including their relatives up to 4th civil degree of consanguinity and affinity and even common law? Is this not unrealistic and impossible to comply and verify given the short period of time available, i.e. up to OSD?	The term "stockholder" as defined under relevant laws would be controlling.  The execution of the Representations and Warranties is a standard requirement for all of PSALM's disposal activities.  The internal processes that the Interested Parties will need to adopt in order to ensure the faithfulness of their representations and warranties are matters within their discretion.
7. What does an "officer of the interested party" encompass?	The term "officer" as defined under relevant laws would be controlling.
a. How do you define "fourth civil degree of consanguinity or affinity, legitimate or common law"? Verification of	The term/phrase "fourth civil degree of consanguinity or affinity, legitimate or common

Query	PSALM's Response
<p>relationship of a lot of people will take a long time to ensure no violation of warranty is committed. Is not the requirement too tedious and impossible to comply considering the short period of time given, which is until December 2, 2020 offer deadline?</p>	<p><i>law</i>” as defined under relevant laws would be controlling.</p> <p>The execution of the Representations and Warranties is a standard requirement for all of PSALM's disposal activities.</p> <p>The internal processes that the Interested Parties will need to adopt in order to ensure the faithfulness of their representations and warranties are matters within their discretion.</p>
<p>b. What constitutes a “conflict, dispute or unsettled issue” with PSALM, DOE, DOF, NPC, or TRANSCO?</p>	<p>The words “conflict”, “dispute” or “unsettled issue” should be understood as having their usual meanings and/or given definitions.</p>
<p>c. In disqualification provision stated in the Invitation to Negotiate and Submit Offer, does the phrase “<i>arising out of any issue, contractual obligation, or any matter relating to the EPIRA or its Implementing Rules and Regulations</i>” apply to both the “<i>conflict, dispute or unsettled issue</i>” and the “<i>pending litigation case or arbitration case</i>” or just the last one?</p>	<p>Unresolved issues arising from contracts with IPPs include not only cases currently under litigation or arbitration, but also those yet to be filed in court.</p>
<p>d. What does “<i>unresolved issue arising from contracts or renegotiation of contracts with Independent Power Producers</i>” encompass?</p> <p>Does this refer to cases under litigation or arbitration alone?</p>	<p>The term “unresolved issue” should be understood as having its usual meaning and/or given definition.</p> <p>No. Unresolved issues arising from contracts with IPPs include not only cases currently under litigation or arbitration, but also those yet to be filed in court.</p>
<p>e. In Schedule C, what is/are the “<i>inter-agency committee</i>” referred to?</p>	<p>Please refer to Section 68 of R.A No. 9136 (EPIRA).</p>

Query	PSALM's Response
<p>f. What is meant by “unpaid account arising from contractual obligations with PSALM, DOE, DOF, NPC, or TRANSCO”? Does “unpaid account” have a threshold amount?</p>	<p>This refers to any amount due PSALM, DOE, DOF, NPC, or TRANSCO that remains unpaid beyond due date.</p> <p>No. There is no threshold amount.</p>
<p>8. On due diligence under Negotiation Procedures, considering the constraints brought about by the Covid-19 virus, does PSALM have a virtual data room where interested parties can access the pertinent documents and records to conduct their due diligence? If there is, is this available 24/7?</p>	<p>No. PSALM does not have a virtual data room for this particular asset.</p> <p>All pertinent documents relative to the property are contained in the Property Profile. Should the Interested Party require additional information on the asset, PSALM shall provide the same through email.</p>
<p>9. On Article 2D regarding timetable of activities in Negotiation Procedures, kindly confirm if Buyer will pay the purchase price and sign the Deed of Absolute Sale (DOAS) first before PSALM will sign the DOAS.</p> <p>Moreover, in relation to this, Article 10 on Effectivity of DOAS in Schedule 7 of Bidding Procedures dated July 11, 2020 states that “<i>This DOAS shall be effective and bind the SELLER only after the necessary governmental approvals have been obtained</i>”.</p> <p>a. What does this provision mean? Is the DOAS, although already signed by both parties, not binding yet upon them, hence, not a contract, until and unless necessary approvals are obtained? If approvals were eventually obtained, when (at what exact date) did the DOAS take effect then?</p>	<p>The required governmental approval contemplated in the DOAS is the approval of the PSALM Board of Directors to issue the NOA.</p> <p>Once the Notice of Award has been issued, it is understood that all the necessary governmental approvals have been obtained because if any governmental approvals were not first secured, then the</p>
<p>b. What are these governmental approvals that need to be</p>	<p></p>

Query	PSALM's Response
<p>obtained to make the sale effective?</p>	<p>Notice of Award would not have been issued in the first place.</p>
<p>c. Considering that the purchase price has already been paid by the buyer and a copy of the DOAS already signed by it, is there a possibility that these approvals cannot be obtained?</p>	
<p>d. What if these approvals cannot be obtained, what is the procedure to be followed or remedy to be done?</p>	
<p>10. Regarding warranty on unpaid taxes in Negotiation Procedures:</p> <p>a. What is the nature of pending and unpaid tax liabilities?</p> <p>b. Does the warranty cover tax cases filed for or against the interested parties?</p> <p>c. What if the alleged liabilities are paid under protest or covered by a bond, but still the subject of a court or administrative case, are these covered by the warranty?</p>	<p>All applicable taxes shall be covered by the warranty.</p>
<p>11. On Article 8 (C) on Offer Security of Negotiation Procedure, which states, "<i>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: 1. Any misrepresentation, <u>error</u> 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; xxx</i>", while the words "<i>misrepresentation</i>" and "<i>fraudulent declaration</i>" imply intentional, premeditated</p>	<p>The same article remains.</p> <p>"Error" should be made to cover both the intentional and the unintentional. To ensure the full effectivity of the offer security, we would like to make the coverage of the term "error" as wide as possible if only to ensure that the requisite proper care is taken to avoid any sort of errors from occurring in the first place.</p>

Query	PSALM's Response
<p>and deliberate act, is the intention here of PSALM in adding the word "error" as ground of forfeiture to cover inadvertence, accidental and simple mistakes or immaterial errors?</p> <p>Can we not remove the word "error" and retain only "misrepresentation" and "fraudulent declaration"?</p>	
<p>12. Under Schedule C (4) (L) of the Negotiation Procedures dated 11 November 2020, an Interested Party unconditionally and voluntarily represents and warrants that the <i>"Interested Party, its officers and directors are <u>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.</u>"</i></p> <p>a. How do we define the terms "officers" and "directors"? When we say "officers", is this based on rank, function, position or headship?</p>	<p>The terms "officers" and "directors" as defined under relevant laws would be controlling.</p>
<p>b. How do we define the term "related". We would like to clarify the type and degree of relationship that we need to inquire and trace? Is the clause <i>"consanguinity or affinity up to the fourth civil degree, legitimate or common law"</i> applies to Interested Party, its officers and directors also or only to the Chairman, President and CEO, members of the Board of Directors of PSALM and members of the PBAC?</p>	<p>The terms "consanguinity or affinity up to the fourth civil degree, legitimate or common law" applies to both Interested Party and PSALM.</p>
<p>c. We want to inquire if PSALM would be able to provide us</p>	<p>No. Personal Information of the PSALM President and CEO, the</p>

Query	PSALM's Response
<p>access to the personal information of PSALM's Chairman, President and CEO, members of the Board of Directors and members of the PBAC by consanguinity or affinity up to the fourth civil degree, legitimate or common law in accordance with the Data Privacy Act?</p>	<p>Chairman and members of the PSALM Board are already published in the PSALM website in compliance with the disclosure requirement of Republic Act No. 10149, the GOCC Governance Act of 2011.</p>
<p>d. Verification of relationship of a lot of people will take a long time to ensure no violation of warranty is committed. Is not the requirement too tedious and impossible to comply considering the short period of time given until December 2, 2020 offer deadline?</p>	<p>The execution of the Representations and Warranties is a standard requirement for all of PSALM's disposal activities.</p> <p>The internal processes that the Interested Parties will need to adopt in order to ensure the faithfulness of their representations and warranties are matters within their discretion.</p>
<p>13. Under Schedule C (4) (M) of the Negotiation Procedures dated 11 November 2020, an Interested Party unconditionally and voluntarily represents and warrants that the <i>"The Interested Party and/or its incorporators, <u>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)."</u></i></p> <p>a. How do we define the term "shareholder"? Does the term</p>	

Query	PSALM's Response
<p>cover a shareholder even with one or minimal share of the Interested Party which is a corporation?</p>	<p>The term "shareholder" as defined under relevant laws would be controlling.</p>
<p>b. How do we define the "directors" and "officers"?</p>	<p>The terms "officers" and "directors" as defined under relevant laws would be controlling.</p>
<p>c. Are the terms "representatives" and "agents" limited only to those with written authorizations from the Interested Party?</p>	<p>Yes.</p>
<p>d. How would we consider an act as offering a "commission" or "bribe"?</p>	<p>Any act that will constitute as an act of offering a "commission" and "bribe" as defined under relevant laws would be controlling.</p>
<p>e. How do we define the term "indirectly"?</p>	<p>The term "indirectly" as defined under relevant laws would be controlling.</p>
<p>f. We would like to inquire if we can qualify and/or limit the term "past" considering that it would be difficult to trace all past shareholders, directors, officers, employees, representatives or agents of the Interested Party. What is the exact and definite coverage of this qualifier "past"? Is there a reckoning date or period to start to consider him/her "past"? The same queries apply to director, officer, employee or agent of any Government Entity, including PSALM with the use of the qualifier "past" to these persons or entities.</p>	<p>The term "past" shall not be qualified. The execution of the Representations and Warranties is a standard requirement for all of PSALM's disposal activities.</p> <p>The internal processes that the Interested Parties will need to adopt in order to ensure the faithfulness of their representations and warranties are matters within their discretion.</p>
<p>g. Verification of relationship of a lot of people will take a long time to ensure no violation of warranty is committed. Is not the requirement too tedious</p>	<p>The execution of the Representations and Warranties is a standard requirement for all of PSALM's disposal activities.</p>

Query	PSALM's Response
<p>and impossible to comply considering the short period of time given until December 2, 2020 offer deadline?</p>	<p>The internal processes that the Interested Parties will need to adopt in order to ensure the faithfulness of their representations and warranties are matters within their discretion.</p>
<p>14. The definition under paragraph 2A of the Negotiation Procedures dated 11 November 2020 is too broad. We would like to clarify on what constitutes an "Interested Party"?</p>	<p>Interested Party shall mean the party who submits a duly accomplished "Schedule B - Acceptance of the Negotiation Procedures" and is thus allowed further participation in the Negotiated Sale Process.</p>
<p>15. What is the extent and scope of the term "ownership interest" as mentioned in the <i>Representation and Warranties Form</i> under <i>Schedule C</i>, particularly par. 4 (T) and (U) regarding Affiliate?</p>	<p>The Negotiation Procedures does not specifically define the scope of "ownership interest".</p>
<p>16. The Negotiation Procedures dated 11 November 2020 provides for four (4) titles covering a lot area of about 20,975.70 square meters with the following details.</p> <p>We observed that there were originally five (5) titles, including the 4 titles above-listed. We would like to clarify about the status of/what happened to one title, TCT No. 148555, registered under the name of NAPOCOR with a total area of 324.5 square meters with the following details:</p>	<p>When NPC turned the property over to PSALM, it had already consisted of only four (4) titles which PSALM then registered under its name.</p>
<p>17. In Form 1, Financial Offer Form, paragraph 2 and 3, which states , "xxx (2) 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</p>	<p>Please refer to Item No. 4 of this SNB No. 2</p>

Query	PSALM's Response
<p><i>before the expiration of that period. (3) 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 find this may be inconsistent with the statement under the Negotiation Procedures dated 11 November 2020, 4(C) , which states , “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”. We would like to know if these two provisions will be harmonized.</i></p>	
<p>18. We would like to clarify if the Paco-Manila Property is the subject of any mortgage, encumbrance or lien.</p>	<p>No mortgage or encumbrance exists over the Paco-Manila Property.</p>
<p>19. On 8. Offer Security</p> <p><i>“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></p> <p><i>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;”</i></p> <p>... we would like to clarify further the parameters of the word “Error” in the forfeiture of the bid security. What would be the errors to be considered, the limitations and the grounds for error, a mere unintentional error (wrong sentence/typographical error and</p>	<p>“Error” should be made to cover both the intentional and the unintentional. To ensure the full effectivity of the offer security, we would like to make the coverage of the term “error” as wide as possible if only to ensure that the requisite proper care is</p>

Query	PSALM's Response
figures) will constitute the forfeiture?	taken to avoid any sort of errors from occurring in the first place.
<p>20. Representations and Warranties Form</p> <p><i>“4. (Interested Party's Name) unconditionally and voluntarily represents and warrants that:</i></p> <p style="padding-left: 40px;"><i>V. it has no pending or unpaid tax liabilities in the Philippines”</i></p> <p>Will the attached “Tax Clearance Certificate” being issued by the BIR for bidding pursuant to Revenue Regulations No. 8-2016 and required by RA 9184 be sufficient?”</p>	<p>No. It will not be sufficient. The Tax Clearance issued by the BIR applies only to taxes imposed by the national government. It does not cover taxes imposed by local government units.</p>
<p>21. Request for copy of Supreme Court Ruling on VAT exemption of PSALM Properties (during selling and transfer of Properties) before Offer Submission Deadline.</p>	<p>Please refer to the case entitled: <i>Power Sector Assets and Liabilities Management Corporation, Petitioner, v. Commissioner of Internal Revenue, Respondent with GR. No. 198146 dated 08 August 2017.</i></p>

3. **AMENDMENT to SCHEDULE C PARAGRAPH 4 (N) OF THE NEGOTIATION PROCEDURES**

Schedule C, paragraph 4 (N) shall be amended to read as follows:

**FROM:**

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;

TO:

N. An 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, who has any conflict, dispute or unsettled issue with PSALM, DOE, DOF, NPC or TRANSCO, or who has a pending litigation case or arbitration case against PSALM, DOE, DOF, NPC or TRANSCO, arising out of any issue, or contractual obligation, or any matter relating to the EPIRA or its Implementing Rules and Regulations, are disqualified from participating in this negotiated sale process. Such disqualification also covers a scenario where there is:

- (i) any unresolved issue arising from contracts or renegotiation of contracts with IPPs; and
- (ii) any unpaid account arising from contractual obligations with PSALM, DOE, DOF, NPC or TRANSCO.

Those who were previously disqualified from participating in other bidding or negotiated sale activities of PSALM by reason of fraudulent acts, or those who committed fraud or breach in the provisions of any agreement with PSALM are also disqualified to participate in this negotiated sale process.

4. AMENDMENT TO ITEM 10. AWARD TO WINNING INTERESTED PARTY OF THE NEGOTIATION PROCEDURES

Item 10 paragraph B shall be amended to add the provision for the extension of offer validity to read as follows:

10. AWARD TO THE WINNING INTERESTED PARTY

- 1. X X X
- 2. X X X This procedure shall be repeated until an award is made, and the Paco-manila property is turned over to the Winning Interested Party.

*PSALM, at its option, may request the IPHO or IPNHO to extend the validity of its Offer and its Offer Security whenever necessary.*

5. MISCELLANEOUS PROVISIONS

- a. Unless inconsistent with the provisions of this Supplemental Negotiation Bulletin No. 2, the provisions of the Negotiation Procedures remain effective and binding upon the Bidders.
- b. If any one or more of the provisions of the Negotiation Procedures or Supplemental Negotiation Bulletin Nos. 1 and 2 (collectively, the "Procedural Documents") is held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of each and all Procedural Documents shall not be affected thereby. To the extent permitted by Philippine Law, each Bidder waives any provision of law which renders any provision of any of the Procedural Documents invalid, illegal or unenforceable in any respect.

Please be guided accordingly.

Quezon City, 04 December 2020.



**IRENE JOY BESIDO-GARCIA**  
Chairperson  
Privatization, Bids and Awards Committee