

**APPROVING THE REQUEST OF THE NATIONAL POWER CORPORATION ON THE
USE OF CUSTOMIZED BIDDING DOCUMENTS FOR THE ACCELERATED
HYBRIDIZATION PROJECT FOR THE SMALL POWER UTILITIES GROUP DIESEL
POWER PLANTS**

WHEREAS, Republic Act (RA) No. 9184, otherwise known as the “Government Procurement Reform Act”, took effect on 26 January 2003, while its 2016 revised Implementing Rules and Regulations (IRR) took effect on 28 October 2016;

WHEREAS, Section 63 of RA No. 9184 and its 2016 revised IRR authorize the Government Procurement Policy Board (GPPB) to formulate public procurement policies, rules, and regulations, and amend its IRR, whenever necessary;

WHEREAS, Section 6 of RA No. 9184 provides for the standardization of procurement process and forms, thus: to systematize the procurement process, avoid confusion, and ensure transparency, the procurement process, including the forms to be used, shall be standardized insofar as practicable. For this purpose, the GPPB shall pursue the development of generic procurement manuals and standard bidding forms, the use of which shall be mandatory upon all Procuring Entities (PEs);

WHEREAS, Section 6.2 of the 2016 revised IRR of RA No. 9184 mandates the PEs to use the Philippine Bidding Documents (PBDs); thus, PEs are required to use the Generic Procurement Manuals, PBDs, and other standard forms of the GPPB. However, whenever necessary to suit their particular needs, modifications may be made, particularly for major and specialized procurement, subject to the approval of the GPPB;

WHEREAS, Section 2 of RA No. 9513 or the “Renewable Energy Act of 2008” states the policy of the State to increase the utilization of renewable energy resources by institutionalizing the development of national and local capabilities in the use of renewable energy systems, and promoting its efficient and cost-effective commercial application by providing fiscal and non-fiscal incentives, among others;

WHEREAS, on 1 December 2023, the National Power Corporation (NPC) consulted with the GPPB – Technical Support Office (TSO) regarding their procurement concerns on the implementation of the Accelerated Hybridization Project (Project) for the NPC Small Power Utilities Group (SPUG) Diesel Power Plants, comprising of the construction of renewable energy facility within a maximum period of two (2) years and the operation of the same for twenty (20) years, which the NPC represented to be the first of its kind to be implemented in the country in accordance with RA No. 9513.¹ The GPPB-TSO noted that the NPC’s concerns entail certain changes to the current PBDs; thus, they were advised to submit their proposed customized PBDs to the GPPB, through its TSO, in accordance with the above-cited Section 6.2 of the revised IRR of RA No. 9184;

WHEREAS, on 18 December 2023, the GPPB-TSO received a letter from the NPC² inquiring if the Project’s proposed Approved Budget for the Contract (ABC), Single Largest Completed Contract (SLCC) and Net Financial Contracting Capacity (NFCC) are allowed under RA No. 9184. In a letter dated 27 December 2023, the GPPB-TSO replied that such

¹ NPC Presentation Material dated 01 December 2023.

² Dated 06 December 2023.

proposed changes should be incorporated into the NPC's customized PBDs of the Project to be endorsed to the GPPB for consideration and approval. Consequently, the NPC is required to identify the specific clauses which will be revised in the proposed customized PBDs and to submit the same to the GPPB-TSO,³ including the supporting documents⁴ therefor;

WHEREAS, in January 2024,⁵ the NPC presented its proposed clauses for the customized PBDs of the Project, involving the ABC, SLCC, NFCC, bid and performance security, and bid evaluation criteria. Moreover, the NPC sought further clarification from the GPPB-TSO regarding the requirements for the proposed customized PBDs;⁶

WHEREAS, on 22 and 23 January 2024, the NPC submitted copies of its customized PBDs and the comparative matrix between the clauses of the existing PBDs vis-à-vis their proposed changes. Subsequently, on 29 February 2024 and 11 April 2024, the GPPB-TSO conducted a line-by-line review of the PBD clauses with the NPC to ensure compliance with the rules and address any procurement issues or concerns relating to the Project;

WHEREAS, on 1 March 2024, during the 1st Inter-Agency Technical Work Group (IATWG) meeting,⁷ the GPPB-TSO routed a copy of the research briefer regarding the NPC's request for the use of the proposed customized PBDs, along with the presentation materials prepared by the GPPB-TSO and the NPC, to the IATWG members for their comments and inputs;

WHEREAS, on 21 March 2024, the GPPB-TSO received comments from the National Economic and Development Authority (NEDA) IATWG representative regarding the economic impact of renewable energy production. In response to the NEDA IATWG representative's comments, the NPC averred that the Project would replace diesel generation set operation with renewable energy resources, which can generate more savings for the NPC. Moreover, the NEDA clarified if the NPC explored procuring the Project under RA No. 11966 or the Public-Private Partnership (PPP) Code of the Philippines⁸ rather than RA No. 9184. The NPC⁹ explained that (i) government procurement under RA No. 9184 is preferred over the PPP Code since the joint market sounding activity with the PPP Center revealed that the cost for each SPUG diesel power plant may not be large enough to attract PPP private sector proponents, and (ii) PPP would require individual feasibility study for each 130 SPUG diesel power plants which could span a considerable period, thus procurement under RA No. 9184 is more expeditious;

WHEREAS, on 16 May 2024,¹⁰ the IATWG members were requested to submit any further comments or recommendations on the NPC's proposed customized PBDs. Considering that no substantial comments¹¹ were received, the IATWG endorsed the request for the customized PBDs for the Project to the GPPB for its consideration and approval;

WHEREAS, on 07 June 2024, during the 2nd GPPB meeting, the GPPB-TSO presented to the Board the NPC's proposal, as follows:

³ Government Procurement Policy Board – Technical Support Office Citizen's Charter Handbook 2024 (2nd Edition).

⁴ Based on the checklist of requirements which provides the following: (i) Funding Source, (ii) Copy of the proposed Customized PBDs, (iii) Matrix of comparison between the provisions of the existing PBDs and those of the proposed customized PBDs with justification, (iv) Procurement arrangement in the note verbale, if applicable, and (v) Matrix that shows the compliance of the customized procurement manual with provisions of RA No. 9184 and its IRR and associated issuances, as well as other applicable laws, policies, rules and regulations.

⁵ Meetings were held last 3 and 10 January 2024.

⁶ E.g., fund source and comparative matrix of proposed changes to the PBD clauses.

⁷ 1st IATWG meeting was conducted asynchronously.

⁸ Effective 23 December 2023.

⁹ Through email dated 24 May 2024.

¹⁰ Schedule for the 2nd IATWG meeting that was conducted asynchronously.

¹¹ The GPPB-TSO only received the email dated 30 May 2023 of the NEDA IATWG representative who reminded the NPC to ensure the Project is consistent with RA No. 9184, given the aforesaid explanation of the NPC in procuring the same under RA No. 9184, instead of the PPP Code.

1. The proposed customized PBDs shall be used for the implementation of the Project for all the SPUG Diesel Power Plants that will be using renewable energy, as detailed in Annex “A”;
2. The methodology for deriving the ABC for the implementation of the Project shall be based on the Subsidized Approved Generation Rate (SAGR), which refers to the approved rate for electricity subsidized by the government in remote or off grid areas in the Philippines. To determine the ABC, the formula shall be the SAGR multiplied by the expected annual energy generation that comprises the total peak demand, number of hours and days of operation, and solar plant capacity, then multiplied by the 20-year contract period. This approach will optimize renewable energy production and provide the highest savings for the government;
3. For the SLCC, bidders may submit a combination of construction and energy supply contracts which include the completed portion of ongoing contracts to accommodate new players in the market, especially since the Project is the first of its kind. This is in light of the NPC’s representation that contracts for the supply for renewable energy are long-term and still ongoing, making it challenging for prospective bidders to meet the required SLCC amounting to at least 50% of the ABC;
4. The bid security shall be based on the annual contract cost of the Project, given that the same is a multi-year contract, in order to avoid higher upfront cost for prospective bidders, thereby encouraging more bid;
5. The performance security shall be based on the ABC of the Project, which shall be renewed annually throughout the 20-year contract period. This would make the cost more manageable for the winning bidder;
6. For the NFCC requirement, the computation will be based on the two (2) - year construction cost or total capital investment for the facility, rather than the ABC of the Project, given that the latter would entail higher upfront cost for the prospective bidders because it would be based on the 20-year cooperation or contract period; and
7. For the bid evaluation, the Highest Rated and Responsive Bid (HRRB) will be used based on the identified selection criteria, in order to ensure that the management of a renewable energy facility will provide optimal energy generation and will result in more savings for the government;

WHEREAS, during the discussion of the above proposal, the GPPB-TSO clarified the following:

1. While there is no need for the Board to approve the methodology for deriving the ABC, as this is based on the determination of the PE concerning the specific requirements of the procurement at hand, it is important for the NPC to inform prospective bidders on how the ABC was computed, being the ceiling price, particularly as it based on the SAGR;
2. It bears noting that the NPC proposed the use of a bid security payable to the same as the PE, as provided in Section 27.1 of the 2016 revised IRR of RA No. 9184. However, the Bid Securing Declaration (BSD) stated in Section 27.2 of the same

IRR may likewise be utilized for the Project. In this light, the NPC may consider adding a stronger regulatory prescription to the BSD, given the considerable amount of the Project;

3. On bid evaluation, the GPPB-TSO clarified that the Board does not need to approve this as the NPC has the discretion and accountability for using the HRRB, based on the NPC's selection criteria, to ensure that the management of the said renewable energy facility will result to the most optimal energy generation that can provide more savings for the government;

WHEREAS, regarding the SLCC requirement, the GPPB propounded clarifications on the NPC's proposal to consider completed portions of ongoing contracts in determining the SLCC for the Project. Particularly, the Board inquired on whether it would adequately ensure that all bidders meet the necessary experience and technical capability;

WHEREAS, the Department of Energy echoed the concerns of the NPC that since the Project would take ten (10) or twenty (20) years to complete, it would be challenging for new players to comply with the existing SLCC requirement that imposes the submission of a single completed contract with at least fifty percent (50%) of the ABC of the Project;

WHEREAS, the Department of Public Works and Highways representative pointed out that similar projects on energy generation are still ongoing, despite the infrastructure being in place, which indicates that they have not yet reached completion;

WHEREAS, the GPPB-TSO noted that in case of absence or lack of eligible bidders that can result to failure of bidding or monopoly that defeats the purpose of competitive bidding, as the case may be, Section 23.4.1.3 of the 2016 revised IRR of RA No. 9184 states that if market scoping reveals that imposing the SLCC requirement of at least 50% of the ABC of the procurement project at hand would likely result in the foregoing, then the PE may require the prospective bidders to submit (2) similar contracts with an aggregate contract amount of at least 50% of the ABC. Following this rationale, the Board may consider a combination of completed construction and energy supply contracts or the inclusion of a technical requirement for the ongoing contracts to prevent the aforesaid failure of bidding or monopoly in bidding. The GPPB-TSO also suggested, as disclaimer, that the NPC should ensure, prior to posting the customized bidding documents, that all provisions within these documents do not restrict competition and should fully comply with existing procurement laws, policies, rules and regulations, and other relevant issuances;

WHEREAS, the representative from the Department of Budget and Management (DBM) asked if the NPC considered requiring at least one (1) completed project, rather than just allowing ongoing contracts with completed portions, to ensure that bidders have a proven track record relevant to the Project's requirements;

WHEREAS, the GPPB subsequently deliberated on requiring prospective bidders to submit one (1) completed contract amounting to at least 25% of the ABC and one (1) ongoing contract whereby the completed portion amounts to at least 25% of the ABC, provided that the renewable energy facility is operationalized and a certificate of satisfactory performance has been issued by the PE concerned;

WHEREAS, the representative from DBM inquired from the NPC if there are available prospective bidders that could participate in the said Project, and the NPC confirmed that six (6) new players have expressed their interest in participating in this Project. Consequently, the NPC was directed by the Board to submit their basis, particularly the results of the market

study, in order to show the bidders' limitations in complying with the SLCC requirement under the rules;

WHEREAS, regarding performance security, the DBM representative further inquired if the GPPB approved in the past the use of performance security that is renewable annually, based on the annual contract cost. The GPPB-TSO replied that no such proposal had been previously submitted for the Board's consideration but added that the GPPB had allowed the use of the existing liability insurance for the contract instead of requiring a separate performance security¹² in customized PBDs for the procurement of Consulting Services for the National Indemnity Insurance Program of the Government;

WHEREAS, after careful review and deliberation, the Board agreed on the following:

1. Use of the customized PBDs for the Project, covering all the identified SPUGs by the NPC as submitted to the GPPB-TSO, with the following considerations:
 - a. The SLCC may consist of two (2) similar contracts with an aggregate contract amount of at least 50% of the ABC; composed of one (1) completed contract amounting to at least 25% of the ABC, and one (1) ongoing contract with completed portion amounting to at least 25% of the ABC, provided that the renewable energy facility is operationalized and a certificate of satisfactory performance has been issued by the PE concerned;
 - b. The NPC may consider adding a stronger regulatory prescription to the BSD, given the considerable amount of the Project;
 - c. The performance security shall be based on the ABC of the Project, which shall be renewed annually throughout the 20-year contract period; and
 - d. The NFCC will be computed based on the 2-year construction cost or the total capital investment for the renewable energy facility, instead of the ABC of the Project;
2. Direct the NPC to submit the following to the GPPB, through its TSO:
 - a. The NPC's basis, particularly the results of the market study, regarding the bidders' limitations in complying with the SLCC requirement under the rules. Additionally, the NPC shall provide confirmation if allowing the SLCC to cover two (2) contracts, with one (1) completed contract amounting to at least 25% of the ABC and one (1) ongoing contract with completed portion amounting to at least 25% of the ABC, provided that the same is operationalized and a certificate of satisfactory performance has been issued by the PE concerned, would allow the prospective bidders to meet the SLCC requirement for the Project; otherwise, the NPC should provide an alternative proposal to the GPPB to comply with this requirement; and
 - b. Any additional stronger regulatory prescription to be added in the BSD;

¹² Citing GPPB Resolution No. 10-2020 dated 7 May 2020.

WHEREAS, in accordance with the foregoing Board's agreement in principle on the proposed changes for the customized bidding documents for the Project, subject to the subsequent submissions of the NPC, the GPPB-TSO promptly coordinated with the NPC regarding the abovementioned submissions. The NPC subsequently submitted¹³ the required documents¹⁴ to support their proposal regarding the SLCC requirement. Additionally, the NPC stated that the existing BSD is sufficient, and, thus, did not propose a stronger regulatory prescription anymore;

WHEREAS, the NPC further submitted¹⁵ the market study, which included the following: (i) confirmation that through the market sounding activity conducted, the NPC determined that small energy companies are interested in participating in the Project, especially if ongoing and partially completed contracts are considered; and (ii) clarification that due to lack of access, the NPC does not have exact information on the sizes of the fully completed contracts of small energy companies. Nonetheless, the NPC noted interest from six (6) small energy companies, provided they will be allowed to submit ongoing energy supply contracts with delivered energy;

NOW, THEREFORE, for and in consideration of all the foregoing, **WE**, the Members of the **GOVERNMENT PROCUREMENT POLICY BOARD**, by virtue of the powers vested on **US** by law and other executive issuances, hereby **RESOLVE** to confirm, adopt, and approve, as **WE** hereby confirm, adopt, and approve the NPC's use of the customized PBDs for the Project, covering all the identified SPUGs by the NPC as submitted to the GPPB-TSO, considering the following:

1. The SLCC may consist of two (2) similar contracts with an aggregate contract amount of at least 50% of the ABC; composed of one (1) completed contract amounting to at least 25% of the ABC, and one (1) ongoing contract with completed portion amounting to at least 25% of the ABC, provided that the renewable energy facility is operationalized, and a certificate of satisfactory performance has been issued by the PE concerned;
2. The NPC may consider adding a stronger regulatory prescription to the BSD, given the considerable amount of the Project;
3. The performance security shall be based on the ABC of the Project, which shall be renewed annually throughout the 20-year contract period; and
4. The NFCC will be computed based on the 2-year construction cost or the total capital investment for the renewable energy facility, instead of the ABC of the Project.

This Resolution shall take effect immediately.

APPROVED this 7th day of June 2024 at Quezon City, Philippines.

¹³ Dated 14 June 2024 via email.

¹⁴ The NPC submitted the following: (i) a revised definition of contracts similar to the projects in their customized PBDs, (ii) list of interested private companies with ongoing power supply agreement, with a caveat that the said list is based on NPC data only and does not include ongoing contracts of other interested power producers operating in the main grid; and (iii) a copy of the AHP Market Sounding Report and its corresponding report. In its electronic mail, the NPC further explained that the market sounding was conducted to gather feedback from the market about the proposed Project, however, the SLCC was not discussed during the market sounding as it had not yet been defined at that time. The NPC further clarified that the six (6) interested bidders, as reported during the GPPB meeting, refer to those who have expressed interest in participating in the Project but already have ongoing supply contracts, and thus, these interested bidders can only qualify if the ongoing contracts are considered SLCC compliant.

¹⁵ Received by the GPPB-TSO on 21 June 2024.

SGD

GPPB, Chairperson
DEPARTMENT OF BUDGET AND MANAGEMENT

**NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY**

DEPARTMENT OF EDUCATION

SGD

DEPARTMENT OF ENERGY

DEPARTMENT OF FINANCE

SGD

DEPARTMENT OF HEALTH

**DEPARTMENT OF THE INTERIOR AND
LOCAL GOVERNMENT**

SGD

**DEPARTMENT OF NATIONAL
DEFENSE**

SGD

**DEPARTMENT OF PUBLIC WORKS AND
HIGHWAYS**

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**DEPARTMENT OF SCIENCE AND
TECHNOLOGY**

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DEPARTMENT OF TRADE AND INDUSTRY

DEPARTMENT OF TRANSPORTATION

**DEPARTMENT OF INFORMATION AND
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PHILIPPINE SPACE AGENCY

PRIVATE SECTOR REPRESENTATIVE