



Republic of the Philippines
DEPARTMENT OF ENERGY
(Kagawaran ng Enerhiya)

DEPARTMENT CIRCULAR NO. DC2022-06-0027 ✓

PROVIDING THE GUIDELINES FOR THE ACCREDITATION OF THIRD PARTY AUCTIONEER PURSUANT TO SECTION 5 OF DEPARTMENT CIRCULAR NO. DC2021-09-0030

WHEREAS, Republic Act (RA) No. 9136 or the *Electric Power Industry Reform Act of 2001* (EPIRA), Section 2 (b) and (c), declares that it is the policy of the State to ensure the quality, reliability, security and affordability of the supply of electric power; and to ensure the transparent and reasonable prices of electricity in a regime of free and fair competition and full accountability to achieve greater operational and economic efficiency and enhance the competitiveness of Philippine products in the global market;

WHEREAS, Section 2 (f) of the EPIRA declares that it is also the policy of the State to protect the public interest as it is affected by the rates and services of electric utilities and other providers of electric power;

WHEREAS, the Department of Energy (DOE) issued Department Circular (DC) No. DC2018-02-0003¹, which requires all Power Supply Agreements (PSA) to be procured through Competitive Selection Process (CSP) to be managed by a Third Party Bids and Awards Committee (TPBAC), Joint TPBAC or Third Party Auctioneer (TPA);

WHEREAS, the DOE issued DC No. DC2021-09-0030², which amends and supplements DC No. DC2018-02-0003. Section 6.3 thereof provides that the DOE shall issue the guidelines for the accreditation of TPA within one hundred twenty (120) calendar days upon its effectivity;

WHEREAS, the DOE conducted Public Consultations³ with various stakeholders.

NOW, THEREFORE, premises considered, and pursuant to its authority under the EPIRA and its Implementing Rules and Regulations, the DOE hereby adopts and promulgates the guidelines for the accreditation of the TPA, to conduct and manage the CSP of the distribution utilities (DUs) for the procurement of PSA for the captive market.

Section 1. General Policies and Principles. The accreditation of the TPA shall be governed by the following principles:

¹ Entitled "Adopting and Prescribing the Policy for the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market"

² Entitled "Amending Certain Provisions of and Supplementing Department Circular No. DC2018-02-0003 on the Competitive Selection Process in the Procurement by the Distribution Utilities of Power Supply Agreement for the Captive Market"

³ Virtual Public Consultations on 14 – 15 February 2022.

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- 1.1 Consistent with Section 23 of EPIRA, all DUs shall have the obligation to supply electricity in the least-cost manner to its captive market, subject to the collection of retail rate duly approved by the Energy Regulatory Commission (ERC).
- 1.2 Transparency, competitiveness, least cost manner and accountability in the conduct of CSP through an independent and qualified auctioneer, in lieu of or in the absence of a TPBAC.

Section 2. Accreditation of a Third-Party Auctioneer.

- 2.1. The TPA shall be accredited based on the following qualifications:
 - 2.1.1. A private individual or a private corporation duly recognized in the Philippines with actual experience in competitive bidding and with sufficient knowledge in the electric power industry;
 - 2.1.2. With comprehensive knowledge of the legal, technical, electricity pricing and regulatory framework of the Philippine electric power industry;
 - 2.1.3. Have not been convicted criminally, or found liable civilly or administratively, of any act, offense or crime involving moral turpitude, graft and corrupt practices, or any unethical behavior related to the TPA member's field; and
 - 2.1.4. Disclosure that the individual or corporate TPA had prior or existing engagement, employment, or affiliation, either directly or indirectly with any DU and/or power supplier.
- 2.2. All accredited TPAs shall be posted in the CSP E-based Portal at the DOE Website for the DU's consideration and selection for the conduct of its respective CSP.
- 2.3. Accreditation of the TPA will be valid for a period of five (5) years, subject to renewal and re-accreditation.
- 2.4. The DU shall select from a pool of accredited TPA which shall be composed of three (3) or five (5) individually accredited members or in case of a corporate TPA, it shall be composed of three (3) or five (5) appointed members.

Section 3. Categories of Accreditation.

- 3.1. "*Individual*" Accreditation refers to that of a single private natural person meeting the legal and/or technical qualifications to be a TPA and is permitted to join or be selected by a DU to be one of the CSP auctioneers.

For individual-categorized TPA, the accredited person should not be directly or indirectly employed by the DU or related within the fifth degree of consanguinity or affinity to any director or officer of the DU, or in any way engaged, affiliated or related to any power supplier.

- 3.2. A "Corporate" Accreditation is awarded to a private corporation which shall be legally, technically and financially qualified to be a TPA and is permitted to be engaged by a DU(s). All members of the corporate TPA must possess the qualifications as indicated in Section 2.1.

For corporate-categorized TPA, its Board of Directors or Officers should not be directly or indirectly employed by the DU or related within the fifth degree of consanguinity or affinity to any director or officer of the DU, or in any way engaged, affiliated, or related to any power supplier.

- 3.3. The Accreditation is further classified as follows, in relation to Section 2.1.4:
- a. "Absolute" when the accredited person or corporation meet all the qualifications and has no reported conflict of interest with a DU or a power supplier.
 - b. "Conditional" when the accredited person or corporation meet all the qualifications but has reported conflict of interest with a DU or a power supplier. Such an entity is prohibited to be a TPA in CSPs where there is conflict of interest.

Section 4. Duration of Accreditation. The accreditation of a person or corporation as a TPA shall be valid for five (5) years.

- 4.1. For those that will be accredited during the first five (5) years of this Circular, it shall be a requirement that the person or corporation has an actual experience in the conduct of any public bidding in relation to Section 2.1.1 of this Circular.
- 4.2. For those accredited beyond the first five (5) years of this Circular or will be re-accredited, the person or corporation shall be evaluated or re-accredited based on its actual experience in handling a CSP, among other requirements.

Section 5. Amendment of Accreditation. An accredited person or corporation may have its accreditation revised on the following grounds:

- 5.1. Change in the profile of such person or entity that will affect the nature of the accreditation. Any changes in the profile of the accredited TPA that does not affect the status of its accreditation or will give rise to any conflict of interest, as indicated in Sections 3.1 and 3.2, need not be reported.
- 5.2. Existence, or discovery, of any conflict of interest.

Section 6. Grounds for Revocation of TPA Accreditation. The accreditation shall be revoked based on the following grounds:

- 6.1. Amendment of the TPA's accreditation, which may result in non-compliance of the qualifications for a TPA.
- 6.2. The TPA has committed a violation of any provision of its Engagement Contract with the DU.

- 6.3. Gross negligence in the conduct of CSP to comply with any of the requirements of the CSP Policy, upon final determination of the ERC.
- 6.4. Conviction in any criminal, or found liable civilly or administratively, of any act, offense or crime involving moral turpitude, graft and corrupt practices, or any unethical behavior related to the TPA member's field.

Section 7. Remuneration of the Third-Party Auctioneer.

The remuneration of the TPA shall be agreed upon with the DU who will avail the services of the TPA. The DU shall devise all the necessary and appropriate ways and means to alleviate from the consumers/end-users the costs of engaging a TPA.

Section 8. Responsibilities of the Distribution Utilities. The DU shall have the following responsibilities in the engagement of a TPA:

- 8.1. The DU may opt to engage a TPA to conduct and manage its CSP if it has no qualified members to compose the TPBAC.
- 8.2. During the review of the terms of reference, the DU shall signify to the DOE its intent to conduct the CSP through TPA.
- 8.3. Enter into an Engagement Contract with an accredited TPA to conduct and manage the CSP for its power supply requirements and submit the Engagement Contract to the ERC, copy furnish the DOE.
- 8.4. Designate the Technical Working Group and Secretariat to assist the TPA in the conduct of CSP, through a Board Resolution.
- 8.5. Engage and recognize a consumer representative for the CSP as a special observer. The consumer representative special observer shall not participate in the proceedings and have no right to vote. The absence of consumer representative will not nullify the CSP proceedings; Provided, that the special observer was duly notified and invited in writing and e-mail at least five (5) working days before the date of the procurement stages.
- 8.6. The DU and the prospected TPA shall observe all the rules and regulations of the DOE and ERC in the selection, creation and reformation or dissolution, if found unqualified or accreditation is revoked, of the TPA.
- 8.7. All other functions and responsibilities of the DU as provided under DC No. DC2018-02-0003, as amended and supplemented by DC No. DC2021-09-0030, shall apply.

Section 9. Regulatory Support

Within one-hundred twenty (120) calendar days upon the effectivity of this Circular, pursuant to its regulatory functions, the ERC shall formulate the necessary policies and procedure for the submission, evaluation, amendment, and revocation of the accreditation of TPAs.

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Section 10. Repealing Clause

- 10.1. Nothing in this Circular shall be construed as to amend, supersede, or repeal any of the mechanisms or institutions already existing or responsibilities already allocated or provided for under any existing law, rule, or contract.
- 10.2. Provisions of DC No. DC2018-02-0003, as amended and supplemented by DC No. DC2021-09-0030, not affected by this Circular shall remain in effect.

Section 11. Separability Clause

If for any reason that any section of this Circular is declared unconstitutional or invalid, such parts not affected shall remain in full force and effect.

Section 12. Effectivity

This Circular shall take effect fifteen (15) calendar days upon its publication in at least two (2) newspapers of general circulation. Copies thereof shall be filed with the University of the Philippines Law Center – Office of National Administrative Register (UPLC-ONAR).

Issued on JUN 20 2022 at Energy Center, Bonifacio Global City, Taguig City.


ALFONSO G. CUSI
Secretary

