



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

DEPARTMENT CIRCULAR NO. DC2022-\_\_-\_\_\_\_

**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. DC2018-02-0003<sup>1</sup> 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. DC2021-09-0030<sup>2</sup> which amends and supplements 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;

**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 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:

- 1.1 Consistent with Section 23 of EPIRA, all distribution utilities (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 Third-Party Bids and Awards Committee.

**Section 2. Accreditation of a Third-Party Auctioneer.**

2.1. The TPA shall be accredited based on the following qualifications:

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<sup>1</sup> "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"

<sup>2</sup> "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"

- 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 and regulatory framework of the Philippine electric power industry; and
  - 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.
- 2.2. All accredited TPAs shall be posted in the CSP E-based Portal 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 due to any changes in the qualification of the accredited TPA.
  - 2.4. The TPA shall be composed of at least three (3) members.

### **Section 3. Categories of Accreditation.**

- 3.1. "Individual" Accreditation refers to that of a single private natural person possessing 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 auctioneer.

The individual 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. "Group" Accreditation is granted to a group of natural persons all of whom must possess the legal and technical qualifications to be a TPA and is permitted to be selected by the DU as the TPA.
- 3.3. "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). The representatives chosen by the accredited corporation shall be assumed to possess the required qualifications, unless otherwise opposed.

The board of directors or officers of the corporation should not be directly or indirectly affiliated or related to the DU or any power supplier.

The Accreditation is further classified to:

- 3.4. "Absolute" when the accredited person, group or corporation possesses all the qualifications and has no reported conflict of interest with a DU or a power supplier.
- 3.5. "Conditional" when the accredited person, group, or corporation possesses all the qualifications but has reported conflict of interest with a DU or a power supplier. Such entity is prohibited to be a TPA in CSPs where it has conflict of interest.

**Section 4. Duration of Accreditation.** The accreditation of a person, group or corporation as a TPA shall be 5 years.

- 4.1. For those that will be accredited during the first 5 years of this Circular, it shall be a requirement that the person, group 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 5 years of this Circular or will be re-accredited, the person, group or entity 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, group or corporation may have its accreditation revised on the following grounds:

- 5.1. Change in the profile of such person, group or entity that will affect the nature of his/its accreditation including, but not limited to, change of marital status, change of address, change of employment, or change in qualifications; or
- 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 to 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 (TWG) 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.

### **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 \_\_\_\_\_ at Energy Center, Bonifacio Global City, Taguig City.

**ALFONSO G. CUSI**  
Secretary