

Q & A

Pre-Bid Conference: 1st Green Energy Auction Program in the Philippines

Date: 01 June 2022

9:00am-12NN via Zoom

PERFORMANCE

BOND

NAME and AFFILIATION	QUESTIONS/COMMENTS	RESPONSES
SCBP, NNBP - Arthur Aguilar	What is the duration of the performance bond and is the amount which needs to be secured the same for the duration of the bid bond period? If a Plant has already secured WESM registration and a Commercial Operations Date, does the amount, or duration of, or requirement for, the performance bond change?	<p>This will be clarified under the Bid Bulletin. (For the Bid Bond, it should be valid for at least 90 days from the date of Auction Proper.</p> <p>For the performance bond, it should be valid for at least 60 days until after the Committed Date of plant. For RE Plant that has already achieved COD, Performance Bond is required to guarantee delivery of obligations under the GEAP and shall be valid for at least 60 days until after the Committed Date)</p>
Dakila Maniquis, COHECO	If we win, the required performance bond is 5% of contract price in the form of an SBLC. Securing an SBLC is like applying for a new loan which might be difficult. Can we consider an alternative like an insurance policy similar to the previous performance bond submitted to the DOE under the service contract?	The TOR is just an example of SBLC. You can submit any performance bond in acceptable form.
SCBP, NNBP - Arthur Aguilar	May the GEAC consider other forms of security as performance bond, i.e., similar to those forms of security allowed for the bid bond?	Yes, any form acceptable will be allowed
Kire, ELPI	If the winning bidder cannot deliver the power generation at the promised delivery date, can the winning bidder find an alternative power supply to avoid default obligation under PB? Thank you	No, the performance bond will be called
Triconti ECC, Theo Sunico	Is it acceptable for a partner to be the one to issue the required bid bonds/ performance bonds?	The performance bond is posted for the RE Project being offered in the bid stating "for the account of the (state name of RE Developer) in favor of the DOE"

SCBP, NNBP - Arthur Aguilar	Will the performance bond for biomass plant be based on gross capacity or net export capacity?	Based on Capacity Offer which is the Net export capacity (Pmax)
SOLARACE1 Henry Liqueste	For solar projects, what happens if we commit to a 50 MW AC capacity in the auction then the Pmax upon testing by the time the project is commissioned is only 49 MW AC?	only if the reduction is more than 10% of the capacity offer, the bond will be drawn partially.
AREC - Christine Gale Paras	May we clarify, does Section 2.1.2 of Annex B under the TOR mean that the Qualified Bidder shall have 1 year from the Delivery Commencement Date to deliver the capacities it offered, before its Performance Bond is drawn?	This will be addressed through a Bid Bulletin.
AREC - Christine Gale Paras	We suggest deletion of the clause in Section 2.2 of the TOR since it is a repetition of the first clause in 2.2.1 and to ensure proper interpretation of the provision.	This will be addressed through a Bid Bulletin.
AREC - Christine Gale Paras	As a follow-up to the question on Section 2.1.2 of Annex B of the TOR, will Section 2.1.2 then be deleted if the Performance Bond will be drawn once the Supply Commencement Date is not met? *Annex B.2 (Performance Bond) Section 2.1.2	This will be addressed through a Bid Bulletin.
Joel Lubguban, Lumino Biomass	Will the performance bond be encashed in full in the event of a delay in the commencement date - even by 1 day? Or will it be partially encashed?	This will be addressed through a Bid Bulletin.
CSDP Date received: May 29, 2022	1, Qualified Suppliers who are participating in the GEA- I should be allowed to post for the Performance Bond the same types of bonds and other credit instruments, which are allowed to be posted for the Bid Bond, i.e., surety bond and bankguarantee. 1.1 Under the TOR, only an irrevocable standby letter of credit is acceptable as Performance Bond.	Yes, any form acceptable will be allowed

	<p>2. We find the amounts prescribed for the Bid Bond and Performance Bond under the TOR to be unreasonably and unrealistically high and beyond the reach of small RE developers. Not only do Qualified Suppliers have to put up back-to-back deposits or other forms of collateral of equivalent value for such bonds, they also have to pay financing fees thereon at the rate of up to 2.5% p.a. based on the total amount of the bonds.</p> <p>2.1 We respectfully submit that the amounts of the Bid Bond and Performance Bond should be high enough to discourage any deliberate non-compliance by Qualified Suppliers but not too high as to preclude or bar small RE developers from being able to participate altogether. Even for an RE facility, with a very modest capacity of 10MW, which is normally the capacity within the reach of small RE developers, the Bid Bond and Performance Bond would amount to -Php1-0 million and Php100 million, respectively.</p>	<p>This will be addressed through a Bid Bulletin.</p>
	<p>3. we find the period within which to post the Performance Bond, as prescribed under the TOR, to be unreasonably short, especially for small RE developers which do not have existing "letter of credit (LC)" lines and/or readily-available collaterals of sufficient value to offer.</p> <p>3.1 For the above-described reasons, we respectfully propose that the period within which to post the Performance Bond be extended to the end of the period from the issuance of the Notice of Award.</p>	<p>This will be addressed through a Bid Bulletin.</p>
<p>Wyeth Sy (AP) Date received: 01 June</p>	<p>What amount shall we use per MW per technology for the Performance Bond? The Project Cost, which is supposed to be the basis of the Performance Bond, was not clearly stated in the Resolution. Hoping we can just be provided the amounts for alignment. Furthermore, we are hoping to get the amounts per MW for solar projects since the amount stipulated in the Resolution is per MWp.</p>	<p>This will be addressed through a Bid Bulletin.</p>
	<p>For the Performance bond, apart from a Standby Letter of Credit, what other forms of performance bond are acceptable? Is a surety bond issued by an insurance or bonding company acceptable?</p>	<p>Yes, any form acceptable will be allowed</p>
	<p>On B.2. Performance Bond (PB) under Annex B: Bonds, can you differentiate the events that will trigger Section 2.1.1 (PB will be fully drawn upon failure to fulfill the Delivery Commencement Date) and Section 2.1.2 (PB will be fully drawn upon failure to deliver for more than 1 year from the effective date of the REPA)?</p>	<p>This will be addressed through a Bid Bulletin.</p>

<p>On B.2. Performance Bond (PB) under Annex B: Bonds, can you differentiate the events that will trigger Section 2.1.1 (PB will be fully drawn upon failure to fulfill the Delivery Commencement Date) and Section 2.2.2 (PB will be drawn in part in case of delay in delivery in respect to the Delivery Commencement Date)?</p>	<p>This will be addressed through a Bid Bulletin.</p>
<p>In relation to Section 2 of B.2. Performance Bond (PB) under Annex B: Bonds, can you confirm the conditions or penalties that will be applied on the following scenarios (all scenarios are not due to Force Majeure or Fortuitous Event):</p> <p>Scenario 1: On Delivery Commencement Date, the delivered capacity of the RE facility is only 10MWac out of the 15MWac indicated in the Offered Capacity submitted by the Winning Bidder.</p> <p>Scenario 2: On Delivery Commencement Date, the delivered capacity of the RE facility is only 10MWac out of the 15MWac indicated in the Offered Capacity submitted by the Winning Bidder. After 30 days from the Delivery Commencement Date, the remaining 5MWac of the Offered Capacity has been delivered by the Winning Bidder.</p> <p>Scenario 3: On Delivery Commencement Date, the Winning Bidder was not able to deliver any capacity out of the 15MWac indicated in the Offered Capacity submitted by the Winning Bidder. After 11 months from the Delivery Commencement Date, the whole 15MWac of the Offered Capacity has been delivered by the Winning Bidder.</p> <p>Scenario 4: On Delivery Commencement Date, the Winning Bidder was not able to deliver any capacity out of the 15MWac indicated in the Offered Capacity submitted by the Winning Bidder. After 13 months from the Delivery Commencement Date, the whole 15MWac of the Offered Capacity has been delivered by the Winning Bidder.</p>	<p>1. Capacity Offer was reduced by more than 10%, bond will be called partially. 2. No partial delivery, call the bond in full for for delay. 3. Call the bond in full for any delay not attributed to Force Majeure. 4. Outside the Delieri Commencement Period, revoke the certificate of winning bidder. (to be addressed in Bid bulletin)</p>

	<p>Questions:</p> <p>7.1 On Scenario 1, will it trigger Section 2.1.1, Section 2.1.2, or Section 2.2.1?</p> <p>7.2 On Scenario 2, will it trigger Section 2.1.1, Section 2.1.2, or Section 2.2.2?</p> <p>7.3 On Scenario 2, if Section 2.2.2 will be triggered, will the penalty imposed be equal to (a) Penalty = $(1/10) \times 1\% \times \text{Project Cost of 15MWac} \times 30 \text{ days}$; or (b) Penalty = $(1/10) \times 1\% \times \text{Project Cost of 5MWac} \times 30 \text{ days}$</p> <p>7.4 On Scenario 3, will it trigger Section 2.1.1, Section 2.1.2, or Section 2.2.2?</p> <p>7.5 On Scenario 4, will it trigger Section 2.1.1, Section 2.1.2, or Section 2.2.2?</p>	<p>This will be addressed through a Bid Bulletin.</p>
<p>Renz J. Ayongao</p>	<p>In Annex D: Bidding Data, Forms, and Templates</p> <p>1.Computation for bid bond is Php1M/MW and then for performance bond is 20% of Project Cost/MW, is it MWac or MWdc?</p> <p>2.Bid bond validity is 90 days, for Winning Bidder it will be returned immediately as long as it posts Performance Bond but for Losing Bidder will it also be returned immediately or shall it wait until the expiration of the validity period?</p> <p>3.Performance bond is based on Project Cost of the technology used in the computation of the GEAR price in Philippine Peso, may we know that project cost used?</p>	<p>The project cost will be indicated in the bid bulletin</p>
<p>Ina Q. Guillermo (Biopower)</p>	<p>Please confirm that a Winning Bidder who is already in possession of WESM registration and a Commercial Operations Date from [PEMC] is only required additionally to provide an Affidavit of Undertaking and Performance Bond in order to comply with post bid requirements? Therefore, if the Affidavit of Undertaking is provided whilst the Bid Bond is still valid, can you confirm that there is no need for a Performance Bond?</p>	<p>Yes, The Affidavit of Undertaking indicates the commitment of plant to deliver the offered capacity on the declared Delivery Date. As per clause 1.3 Delivery Commencement Date (Period) shall be any date between 26 December 2022 & 25 December 2025. As such, posting of performance bond is necessary to assure delivery of power on the Committed Date.</p>

	<p>Please advise on the required duration of the performance bond for a Winning Bidder who is already in possession of WESM registration and a Commercial Operations Date from [PEMC].</p>	<p>Duration of Performance Bond should be until at least sixty (60) days from the Committed Date. It should be noted that Commercial Operation Date of project under GEA shall be indicated in the COE-GET upon validation of Successful Commissioning. As per clause 11.3 of the TOR "The COE-GET shall be processed according to Section 6 of DC 2013-05-0009.</p>
<p>Christine Gale Paras AREC</p>	<p>May we suggest that a parent company, ultimate parent, partner, affiliate, or subsidiary be allowed to secure the Standby Letter of Credit "For the Account" of the Qualified Bidder since it may take a long period of time for the SPVs/Qualified Bidder to establish the credit lines/facility and obtain an SBLC.</p> <p>As an example, for the Bid Bond (SBLC), the Applicant's name would read as "Name of Parent Company/Ultimate Parent Company/Affiliate/Subsidiary for the account of Name of Qualified Bidder".</p>	<p>will be addressed in the Bid Bulletin.</p>

Original:

B.2 Performance Bond

2.1 Bond drawn in full. For reasons attributable to:

2.1.1 The Winning Bidder and not due to Force majeure or Fortuitous Event (FM or FE, failed to fulfill all the conditions for the occurrence of the Delivery Commencement Date as provided for under the GEA Affidavit of Undertaking as specified in Section 9.8 of the GEAP Guidelines; or

2.1.2 Winning Bidder failed to deliver for more than one (1) year from the effective date of the REPA under the GEA.

Comment:

In 2.1.1, the basis for drawing in full may be difficult to implement or monitor until such time that Qualified Bidder actually fails to deliver on the Delivery Commencement Date. It would also seem conflicting with the provision that allows partial drawings. Ample protection is provided in allowing partial drawings in case of delay. We suggest that the drawing in full would occur after partial drawings have been exhausted (which is failure to deliver after 1 year from the intended Delivery Commencement Date).

To ensure clarity in the provision and avoid ambiguity, vagueness, and possible conflicting interpretations in the provision, may we suggest revision of the provision on the drawing of the Performance Bond as follows, to ensure that it captures the intent of the DOE:

2. The Performance Bond may be drawn, in full or in part, in case of any of

to be addressed in the Bid Bulletin.

B2.1 Irrevocable Standby Letter of Credit

For purposes of securing the BID BOND may we suggest revision of the SBLC template since the current template (to be used for a Performance Bond) contemplates an SBLC that is valid for one (1) year. To ensure that the template would also apply for a bid bond (which should have a validity of at least 90 days), we suggest the following revision:

Suggested wording of the fifth (5th) to the last paragraph:

“This Letter of Credit shall expire at 5:00 p.m. (local time) on the stated Expiry Date (or in the case of a renewed letter of credit, each subsequent **renewal or extension** ~~twelve (12) month period~~ at 5:00 p.m. (local time)); provided, that this Letter of Credit shall be renewed by the Applicant for a period of not less than ninety (90) calendar days ~~one (1) year~~ from the then-effective Expiry Date, at least fifteen (15) calendar days ~~thirty (30) days~~ prior to the then-effective Expiry Date.”

to be addressed in the Bid Bulletin.

<p>Cassandra Joy M. Polinar (Puno Law) June 2</p>	<p>It appears that the second (2nd) paragraph, which states that:</p> <p>“If a Drawing Certificate is presented by the Beneficiary before 10:00 a.m. (local time) in accordance with the terms of this Letter of Credit, payment shall be made to the Beneficiary, without proof or condition, of the amount specified therein in immediately available funds, in accordance with the Beneficiary’s payment instructions and without any restrictions, conditions, inquiry or right of objection whatsoever on the Issuer’s part, without the Beneficiary having to further substantiate such demand, by 4:00 p.m. (local time) on the same Banking Day. If a Drawing Certificate is presented by the Beneficiary after 10:00 a.m. (local time), payment shall be made to the Beneficiary by 10:00 a.m. (local time) the following Banking Day. As used herein, “Banking Day” shall mean any day on which banks are open for business in the Philippines.”</p> <p>requires same day transfer if the Beneficiary presents the demand letter before 10am. However, we note that banks typically need at least one (1) business day to operationalize the fund transfer. Hence, may we kindly ask if we can request for an extension of the drawdown timeline by one (1) business day?</p>	<p>Yes. Any provisions, particularly on the timeline not applicable to this GEA-1 may be modified. This will be further addressed through a Bid Bulletin.</p>
	<p>The sixth (6th) paragraph includes the phrase “(or in the case of a renewed letter of credit, each subsequent twelve (12) month period at 5:00 p.m. (local time))”:</p> <p>This Letter of Credit shall expire at 5:00 p.m. (local time) on the stated Expiry Date (or in the case of a renewed letter of credit, each subsequent twelve (12) month period at 5:00 p.m. (local time)); provided, that this Letter of Credit shall be renewed by the Applicant for a period of one (1) year from the then-effective Expiry Date, at least thirty (30) days prior to the then-effective Expiry Date.</p> <p>May we ask if we can remove this statement as this is not applicable in our issuance of Irrevocable Standby Letter of Credit?</p>	<p>to be addressed in the Bid Bulletin.</p>

<p>ACEN GEAP Santa Cruz June 3</p>	<p>As suggested also by the banks we have consulted in securing a bid bond, the clauses stricken off below will ensure clarity on when a bid bond will expire.</p> <p>Upon our inquiries with banks, it is the applicant who will have to inform the Bank and apply for any renewal since there are no automatic renewals of SBLCs. Further, the bid bond validity per the TOR is only for 90 days and not for 1 year.</p> <p>Suggested wording/deletion:</p> <p>“This Letter of Credit shall expire at 5:00 p.m. (local time) on the stated Expiry Date ((or in the case of a renewed letter of credit, each subsequent twelve (12) month period at 5:00 p.m. (local time)); provided, that this Letter of Credit shall be renewed by the Applicant for a period of one (1) year from the then-effective Expiry Date, at least thirty (30) days prior to the then-effective Expiry Date</p>	<p>Agree with the suggestions.</p>
	<p>But the TOR also indicates that the Performance Bond will be drawn if the actual capacity is lower than the Offered Capacity in the auction.</p>	<p>If the reduction exceeds 10% of the Committed Capacity, the bond will be called partially in proportion to the reduced portion. This will be clarified in the Bid Bulletin.</p>