

Republic of the Philippines
ENERGY REGULATORY COMMISSION
Pasig City

**IN THE MATTER OF THE
PETITION TO INITIATE
RULE-MAKING FOR THE
AMENDMENT OF THE
PROCUREMENT
GUIDELINES FOR THE
REGULATED
TRANSMISSION AND
DISTRIBUTION ASSETS OF
REGULATED UTILITIES
ADOPTED UNDER ERC
RESOLUTION NO. 8, SERIES
OF 2023**

ERC CASE NO. 2024-005 RM

**PRIVATE ELECTRIC POWER
OPERATORS ASSOCIATION
(PEPOA) AND MANILA
ELECTRIC COMPANY
(MERALCO),**

Promulgated:
September 23, 2026

Petitioners.

X-----X

NOTICE OF PROPOSED RULE-MAKING

TO ALL INTERESTED PARTIES:

Notice is hereby given that, on 08 August 2024, Private Electric Power Operators Association (PEPOA) and Manila Electric Company (MERALCO) filed a *Joint Petition for Rule-Making* (Petition), dated 15 July 2024, seeking to amend the Procurement Guidelines for the regulated transmission and distribution assets of regulated utilities adopted under Commission’s Resolution No. 8, Series of 2023.

The docketed copy of the *Petition*, excluding its annexes, and the Proposed Rules are attached as Annexes “A” and “B” of the *Notice of Proposed Rule-Making*, respectively.

ERC CASE NO. 2024-005 RM
NOTICE OF PROPOSED RULE-MAKING
PAGE 2 OF 3

The Commission has set the *Petition* for hearing and public consultation, pursuant to the pertinent rules of the Commission, as follows:

Date and Time	Platform	Activity
20 October 2026 (Tuesday) at nine o'clock in the morning (9:00 A.M.)	Microsoft Team	Determination of compliance with jurisdictional requirements, Expository Presentation and Public Consultation for all Stakeholders
20 October 2026 (Tuesday) at two o'clock in the afternoon (2:00 P.M.)		Public Consultation for all Stakeholders

All interested stakeholders may submit their comments and/or clarifications on the proposed amendment to the guidelines using the prescribed template for comments, attached as Annex “C”, **on or before 02 October 2026 (Friday)**. Electronic copies may be sent to doCKET@erc.ph, and copy furnish the Legal Service through legal@erc.ph. The Commission shall give priority to the stakeholders who have duly submitted their respective comments and/or clarifications, to discuss the same and propound questions during the course of the expository presentation.

All interested parties filing their comments and/or clarifications are required to submit the hard copies thereof through personal service, registered mail or ordinary mail/private courier, **within five (5) working days** from the date that the same were electronically submitted, as reflected in the acknowledgement receipt e-mail sent by the Commission.

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NOTICE OF PROPOSED RULE-MAKING
PAGE 3 OF 3

A copy of the *Petition* may be accessed on the Commission's official website at www.erc.gov.ph.

WITNESS, the Honorable Chairperson and CEO **FRANCIS SATURNINO C. JUAN** and the Honorable Commissioners **FLORESINDA G. BALDO-DIGAL**, **MARKO ROMEO L. FUENTES**, **AMANTE A. LIBERATO** and **PARIS G. REAL**, Energy Regulatory Commission, in Pasig City.

FOR AND BY AUTHORITY
OF THE COMMISSION:

Maria Corazon C. Gines

ATTY. MARIA CORAZON C. GINES
Director III, Legal Service


LSC:RCS/MVM

REPUBLIC OF THE PHILIPPINES
ENERGY REGULATORY COMMISSION
Exquadra Tower, Ortigas Center, Pasig City

IN THE MATTER OF THE
PETITION TO INITIATE RULE-
MAKING FOR THE
AMENDMENT OF THE
PROCUREMENT GUIDELINES
FOR THE REGULATED
TRANSMISSION AND
DISTRIBUTION ASSETS OF
REGULATED UTILITIES
ADOPTED UNDER ERC
RESOLUTION NO. 8, SERIES
OF 2023,

ERC Case No. 2024-005 RM

PRIVATE ELECTRIC POWER
OPERATORS ASSOCIATION
(PEPOA) AND MANILA
ELECTRIC COMPANY
(MERALCO),

August 08, 2024

Petitioners.

X-----X

JOINT PETITION FOR RULE-MAKING

Petitioners **Private Electric Power Operators Association (“PEPOA”)** and **Manila Electric Company (“MERALCO”)**, by counsel, respectfully state that:

1. This Petition is being filed to amend certain provisions in the Procurement Guidelines for the Regulated Transmission and Distribution Assets of Regulated Utilities” (the “Guidelines”) adopted under ERC Resolution No. 8, Series of 2023, entitled: "A Resolution Adopting the Procurement Guidelines for the Regulated Transmission and Distribution Assets of Regulated Utilities” (the “Resolution”).
2. Petitioner PEPOA is an association of privately-owned Distribution Utilities (“DUs”) all over the Philippines, represented by its President, Atty. Ranulfo Ocampo, with office address at 8/F Strata 100, F. Ortigas Jr. Road, Ortigas Center, Pasig City. This Petition stems from the interest of its members who are DUs directly affected by the provisions in said Resolution.

3. Petitioner MERALCO is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office located at Lopez Building, Ortigas Avenue, Barangay Ugong, Pasig City. MERALCO has a legislative franchise to operate and maintain a distribution system in the cities/municipalities of Metro Manila, Bulacan, Cavite and Rizal and certain cities/municipalities/barangays in Batangas, Laguna, Quezon and Pampanga, pursuant to Republic Act No. 9209. As a DU, it stands to be directly affected by the provisions in said Resolution.

4. The Parties may be served with notices and other processes of this Honorable Commission through their respective counsels indicated herein.

5. This Petition is being filed in accordance with said directives and Rule 21 of the Revised Rules of Practice and Procedure.¹

DISCUSSION ON PROPOSED AMENDMENTS

The Guidelines should not be applicable for distribution utilities which have filed already their Capital Expenditure (CAPEX) and/or regulatory reset applications with the Honorable Commission.

6. In promulgating the Guidelines, the Honorable Commission relied on Section 43(f)(v) of Republic Act No. 9136. However, a careful reading thereof provides that said section is only applicable when the rate setting methodology used is Return on Rate Base (RORB).

7. Under Performance-Based Regulation ("PBR"), DUs have been given a forecasted budget in the form of the Annual Revenue Requirement which they must manage prudently. Thus, applying the Guidelines to Regulated Entities under PBR would be tantamount to micromanagement and duplicates existing regulations. It is proposed that a private DU should be exempted from the Guidelines when they file an application for their CAPEX programs and/or the regulatory reset applications, because these are existing processes that mirror the purpose of the submission of the procurement plan and its implementation under the Guidelines. As such, Section 1.3.1 of the Guidelines should be amended as follows:

"1.3.1 These Guidelines shall only apply to privately owned regulated transmission and distribution utilities for procurement of assets and services forming part of the regulatory asset base or

¹ Energy Regulatory Commission Resolution No. 01, Series of 2021, Revised Rules of Practice and Procedure of the Energy Regulatory Commission, Rule 21.

OPEX of the DUs or the NGCP **that have not filed their CAPEX applications and/or their regulatory reset applications with the Honorable Commission.** ~~for procurement of assets and services forming part of the regulatory asset base or OPEX of the DUs or the NGCP, in accordance with RDWR or the RTWR, respectively, and other pertinent laws, rules and regulations of the Commission. These Guidelines shall not be applicable for the procurement of power supply by the DUs."~~

There is a need for transitory provisions to provide Regulated Entities sufficient time to fully implement the Guidelines.

8. The Guidelines became effective on 4 August 2023. Unfortunately, while the Resolution included a provision providing Regulated Entities twelve (12) months from effectivity thereof within which to put up its e-Procurement facilities² and Procurement Management Information System,³ there was no transition period provided in the Guidelines to allow transition of DUs' current processes to adopt to the requirements of the Procurement Guidelines. Hence, a new transitory provision is proposed as follows:

"1.4. Transitory Provisions

All ongoing procurements that commenced prior to the effectivity of the amended Guidelines may proceed in accordance with the Regulated Entities' existing procurement processes; Provided that such procurement process must be completed within one (1) year from the effectivity of the amended Guidelines. Otherwise, the procurement process should comply with the provisions of the amended Guidelines."

The submission of the Annual Asset Procurement Plan ("Plan") should be moved to every 30th of November to align with the Regulated Entities' budgeting process.

9. Section 2.2.2 of the Guidelines provides for the submission of the Plan to the Honorable Commission by 30th June of each year. However, the submission of the Plan should be aligned with the budget approval process of the Regulated Entities. It is proposed that Section 2.2.2 of the Guidelines be amended as follows:

"2.2.2. Accordingly, Regulated Entities shall prepare an Annual Asset Procurement Plan for the year and submit the same to ERC by the 30th ~~June~~ **November of each year. For instance, Regulated Entities shall submit their respective Annual Asset**

² Procurement Guidelines, Section 2.5.1.

³ *Ibid.*, Section 2.3.2.

Procurement Plan covering the period from 01 January 2024 to 31 December 2024, by 30th ~~June~~ November 2023.”

Procurement by lot or item should be recognized as a legitimate and competitive bidding process.

10. The procurement of goods for DUs involve acquisition of technical and/or specialized equipment and a significant volume is needed.⁴ There is a need to expand the supplier base to ensure the steady and continuous supply thereof as, at other times, no single supplier can provide the needed quantity by a prescribed deadline.

11. As such, to be able to expressly recognize procurement by lot/item, the Guidelines are proposed to be revised as follows:

“3.1.7. The Bid Documents shall clearly specify the following:

x x x

b. Minimum quantity to be procured or the number of lots or items specific to the bidding, as well as the basis of evaluation of the project, lots, or items, where applicable.”

Regulated Entities should be allowed to adopt procurement strategies.

12. Regulated Entities should be allowed to implement procurement strategies that are aligned with the Guidelines, which include, among others, the mode it will avail for such procurements, and the workflow or processes involved in such procurement based on the asset or service to be procured. As such, the Guidelines should include a new definition of procurement strategies under the Guidelines’ Glossary as follows:

“Procurement Strategies” refer to the Regulated Entity’s strategy in procuring the assets or services, the mode it will avail for such procurements, and the workflow or processes involved in such procurement.”

13. Section 2.1 of the Guidelines should be revised as follows:

“2.1. Procurement Manual

x x x

⁴ One notable example is the supply of electric watt-hour meters. For some electric meter models, it is recommended that awards are made to at least two (2) vendors to address possible supply chain challenges. Electric meters are considered a critical item which DUs should have readily available stock at any given time.

ii. Modes of Procurement

a. Procurement modes along with conditions for their applicability/use **including the Procurement Strategies to be implemented by the Regulated Entity based on the asset or service to be procured;**"

Procurement below PhP1 million should be exempted from competitive bidding.

14. The significant time, money and resources involved for the conduct of a competitive bidding process under the Guidelines would not be economically viable for the procurement of smaller value items, and thus should be exempt from the same.⁵

15. Petitioners estimate that the initial reasonable threshold is when the value of the asset or service to be procured is One Million Pesos (PhP1,000,000.00). In line with this, Section 3.1.1. of the Guidelines be amended for these instances:

"3.1.1. Procurement of assets, at all times, shall be through Competitive Bidding, except when otherwise provided under Section 3.2 of these Guidelines, **or for procurements of assets and services below One Million Pesos (PhP 1,000,000.00). The threshold shall be revised annually based on the Consumer Price Index.**"

The issuance of the Bid Documents should only be made upon payment of the applicable fees therefor.

16. Section 3.1.6 of the Guidelines provides that fees for the purchase of the Bid Documents should be made payable at the time of Bid Submission. However, this would open up the bidding process to persons or entities who have no intention to seriously participate in the bidding. As such, the Bid Documents should only be provided to potential bidders who have paid for the cost thereof. Section 3.1.6 of the Guidelines should thus be amended as follows:

"3.1.6 The value of fees set by the Procuring Entity, for the purchase of Bid Documents by potential Bidder(s), shall not exceed 0.1% of the approved Budget for a given Procurement ~~and shall be payable at the time of Bid submission.~~ Bid Documents shall be made available to all prospective Bidders **who have paid the bid document fee and have submitted a letter of intent to join the bidding.**"

⁵ Examples of these small value procurements would include purchase of computers, line hardware, office (e.g., shredders, printers, photocopiers and projectors) and janitorial supplies, small construction material purchases, among others.

Regulated entities should not be made to disclose the project budget in the Bid Documents.

17. Section 3.1.7 (c) of the Guidelines provides that the Bid Document shall specify, among other things, the Regulated Entities' Budget or Estimated Cost for the asset or expenditure for procurement. However, by already indicating or disclosing the Regulated Entities' Budget or Estimated Cost in the Bidding Documents, the pricing and bidding behavior of potential Bidders may be affected and may lead to the competitive bidding process not yielding the most optimal results. Given this, Section 3.1.7 of the Guidelines is proposed to be revised by deleting item (c) as follows:

"3.1.7 The Bid Documents shall clearly specify the following:

- a. x x x ;
- b. x x x;
- ~~c. Budget or Estimated Cost;~~
- c.d. Bid security requirement;"

Regulated Entities should be allowed to adjust their budget or estimated costs as necessitated by circumstances.

18. Regulated Entities are required to submit their Annual Asset Procurement Plan which shall cover, among other things, the budgetary cost of each proposed Procurement pursuant to Section 2.2.4 (c) of the Guidelines. Aligned therewith, the Monitoring Report provides that Regulated Entities should indicate the "Budgeted amount as per Annual Asset Procurement Plan (if any)".

19. In order to adjust to market factors, it is recommended that adjustments to the Budget or Estimated Cost should be allowed, subject to justifications that will be included in the Monitoring Report. Furthermore, it is proposed that the Budget or Estimated Cost in the Annual Asset Procurement Plan be submitted and treated as confidential information to ensure the most competitive prices. Thus, new Sections 2.2.4 (c) and 5.3.3 of the Guidelines are proposed as follows:

"2.2.4. The Annual Asset Procurement Plan shall cover:

x x x x

- c. Estimated budgetary cost of each proposed Procurement, which shall be subject to confidential treatment of information;

"5.3. Cost estimation and budget

x x x

5.3.3. The Regulated Entity may make reasonable and justified adjustments to the Budget provided that an explanation is included in the Monitoring Report.”

Regulated Entities should be allowed to undertake Repeat Orders within two (2) years from the end of the contract.

20. Repeat Orders are an accepted alternative mode of procurement which can protect the procuring entity from price fluctuations and help mitigate the risk of budget discrepancies due to unforeseen market changes while ensuring continuity of operations for distribution utilities.

21. The advantages of repeat orders become more flexible when the period is not limited to one (1) year from the termination of the contract. As such, it is proposed that repeat orders be allowed within two (2) years from the end of the original Contract, as follows:

“3.2. Alternative modes of procurement

x x x

Sl.	Mode of Procurement	Boundaries/conditions of Procurement
2.	Repeat order: Procurement of assets from a previously selected Bidder, awarded through Competitive Bidding.	• x x x • x x x • Shall be availed only within one (1) two (2) years from the end of the original Contract. • x x x

The procurement for professional services and technology and network-driven projects should be allowed based on a quality and cost-based process.

22. By way of exception, Section 3.1.13 of the Guidelines acknowledges that procurements related to professional services (capitalized as an asset) may be sourced through a quality and cost-based selection process.

23. Similarly, given the nature of technology-driven projects (regardless of whether to be capitalized or not),⁶ they should likewise

⁶ Examples of these projects include complex platforms such as the Customer Information/Billing System, Customer Relationship Management (CRM), IT Service Management (ITSM), Advance Distribution Management System (ADMS) and other similar platforms which has thousands of features that present hard to quantify or some unquantifiable advantages in terms of the solution offerings.

be evaluated through a quality-based or quality cost-based evaluation process where the technical expertise apart from the commercial price are allocated a score to determine the best bid. Based on the foregoing, a new paragraph under Section 3.1.13 of the Guidelines is proposed to be included as follows:

“3.1.13. All Procurements shall be done based on the most competitive financial Bid submitted by technically qualified Bidders. However, Procurements related to professional services (capitalized as an asset), a Procuring Entity may exercise the option to adopt a quality, and cost-based selection process wherein the highest rated bidder is identified through a composite score of technical and financial bids.

For Procurements related to other professional services and technology and network driven projects, a quality, and cost-based selection process should be followed wherein the highest rated bidder is identified through a composite score of technical and financial bids.”

The renewal of contract for regular and recurring services should be recognized as an alternative mode of procurement.

24. GPPB Resolution No. 06-2022 dated 12 September 2022 approved the Guidelines on the Renewal of Regular and Recurring Services and recognized the renewal of regular and recurring services⁷ as a legitimate alternative mode of procurement. Thus, a similar recognition should be made for renewal of regular and recurring services under Section 3.2.1 of the Guidelines, as follows:

“3.2. Alternative modes of procurement

x x x

Sl.	Mode of Procurement	Boundaries/conditions of Procurement
4.	<u>Renewal of Regular and Recurring Services: Essential, indispensable, and necessary services to</u>	<ul style="list-style-type: none">• <u>Contracts are deemed essential, indispensable, or necessary to the day-to-day operations of the Regulated Entity (RE);</u>• <u>Procured repeatedly by the RE in the last three (3) years;</u>• <u>The original contract covering the Regular and Recurring Services was awarded through a</u>

⁷ GPPB Resolution 06-2022 provides that Regular and Recurring Services refer to those: (a) defined under DBM NBC No. 570, s. 2017 and other issuances⁵ that may be issued for the purpose, such as (i) janitorial services; (ii) security services; (iii) telecommunication requirements; (iv) supply of drinking water; and (v) rental of office space, venue, and equipment; (b) which by their nature are deemed essential, indispensable, or necessary to the day-to-day operations of the Procuring Entity (PE); or (c) procured repeatedly by the PE in the last three (3) years.

	support the operations of the Regulated Entity or for the enhancement of the welfare of its personnel.	<p><u>Competitive Bidding Process following the conditions outlined in Clause 3.1.1 to 3.1.14 of the Guidelines;</u></p> <ul style="list-style-type: none"> • <u>A Cost-Benefit-Analysis (CBA) was undertaken by to show the comparative advantage of renewal over the conduct of another procurement;</u> • <u>A performance evaluation conducted on the Service Provider showed a satisfactory performance by the Vendor;</u> • <u>The duration of the renewal shall not exceed two (2) years</u>
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The five (5%) percent threshold for alternative modes of procurement should be relaxed for proprietary or single source procurement.

25. Section 3.2 of the Guidelines provides a 5% limit on procurements that can be made under alternative modes. However, DUs frequently engage in single-source procurement or repeat orders because many of their existing assets are proprietary⁸ in nature or require single-source procurement⁹ due to the highly specialized types of equipment where only a few suppliers or specified brands are available.

26. Section 3.2.2. of the Guidelines is proposed to be amended as follows:

“3.2.2. Total value of Procurements made through alternative modes shall not exceed five (5%) percent of the total value (in Pesos) of all Procurements done in the previous year.
NOTWITHSTANDING THE FOREGOING, THE THRESHOLD DOES NOT APPLY FOR:

- a. **Proprietary, Exclusive and Negotiated/Single Source Requirements;**
- b. **Land and Right of Way Acquisitions and Office Rentals;**
- c. **Fees for Legal Services;**
- d. **Tax Advisors;**
- e. **Professional Fees for Lineman Trainers;**
- f. **Media and Advertising Services / Information and Education Campaigns;**
- g. **Audit and Appraisal Fees;**

⁸ Proprietary requirements are those which can only be obtained from a proprietary source, i.e., when patents, trade secrets and copyrights prohibit others from manufacturing the same item.

⁹ Single-source requirements are those items where only one vendor passed the technical evaluation or have approved samples (SF6 Gas, Fired Wedge Connectors with Cartridges, Intelligent Electronic Device (IED) Meters), or only one factory is accredited to supply the requirement since other vendors are either inactive or have pending issues on previously supplied items (115 kV GIS, Power Circuit Breakers, 34.5 kV Indoor Modular GIS). Equipment such as power transformers, switchgears, power circuit breakers, and other substation equipment, among others, which have asset lives ranging from twenty-five (25) to forty (40) years, include associated systems and platforms which are considered proprietary in nature.

- h. Appraisal Fees;
- i. Pilot Projects;
- j. Training;
- k. Purchase of Insurance;
- l. Airfare;
- m. Accommodations;
- n. Payment of Utilities;
- o. Membership and Association Dues;
- p. Advertisements and Placements; and
- q. All other similar expenses

27. In addition, Repeat Orders and Renewal of Regular and Recurring Services, as discussed above, should also be exempted from the 5% cap. A new Section 3.2.4 is therefore proposed:

“3.2.4. Repeat Order and Renewal of Regular and Recurring Services shall also be excluded from the value of procurements done using alternate modes for assessing compliance to Section 3.2.2 of these Guidelines.”

Instead of shortlisting, the pre-qualification process should be done through an accreditation process.

28. Shortlisting suppliers is important in ensuring the quality and cost effectiveness of participants during the bidding process. However, the shortlisting of suppliers should be done through an accreditation process instead of during the Competitive Bidding process. In existing DU procurement, part of the technical prequalification is factory assessment which takes some time especially if done outside the country.¹⁰

Hence, shortlisting should be done wherein the DU can evaluate potential suppliers or contractors beyond what they can show on paper via accreditation. As such, the definition of Shortlisting should be amended as follows:

“Shortlisting of Suppliers/Vendors” refers to a process of pre-selecting—pre-qualifying Supplier(s)/Vendor(s), through a Competitive Bidding—an accreditation process, who meet eligibility and technical requirements set under the bidding documents/contract—where the DU invites prospective Vendors/Suppliers to submit an Application to Pre-Qualify with attached Eligibility and Technical requirements. The DU shall approve or disapprove the Vendor’s application based on the submitted eligibility and technical requirements and a site visit to the Supplier’s/Vendor’s Facility. The DU shall invite prospective Suppliers/Vendors for shortlisting every year.

¹⁰ By way of example, the factory capability assessment power transformers is based on CIGRE530.

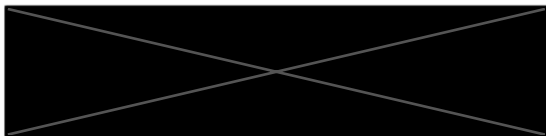
29. Considering the foregoing, it is respectfully prayed that the amendments as proposed in the instant Application be considered and approved. The proposed amendments, as well as a more detailed discussion on the same, are summarized in the attached Annex "A" and made an integral part hereof.

PRAYER

WHEREFORE, Petitioners PEPOA and MERALCO, respectfully pray that this Honorable Commission issue an Order amending the Guidelines, and for this purpose, adopting the proposed amendments detailed in the Application.

Other relief, just or equitable, are likewise prayed for.

Pasig City, 15 July 2024.



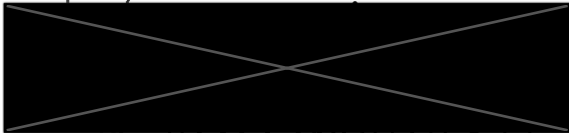
RANULFO M. OCAMPO
President, PEPOA

7/F STRATA 100 Bldg. | F. Ortigas Jr. Road | Ortigas Center | Pasig City
Roll No. 33872 | IBP Lifetime No. 1025756 | 18 January 2016 | RSM
PTR No. 9759411 | 03 January 2024 | Marikina City | MCLE Compliance No. VII-0018049 valid until 14 April 2025
Smart: 0920-938-4470 / Globe: 0917-301-2455 | Email: ranulfoocampo@outlook.com

MANILA ELECTRIC COMPANY
Petitioner

Lopez Building, Ortigas Avenue
Barangay Ugong, Pasig City

By:



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PTR No. 1705879; 01/18/2024; Pasig City
IBP No. 372610; 12/22/2023; RSM
MCLE Compliance No. VII-0001788; 02 December 2019



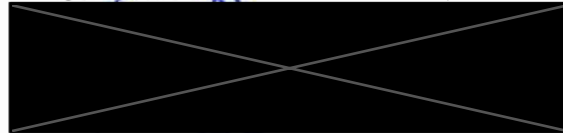
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Ortigas Avenue, Barangay Ugong, Pasig City

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Email: regaffairs@meralco.com.ph

VERIFIED DECLARATION

I, **RANULFO M. OCAMPO**, of legal age, with office address at 8/F STRATA 100, F. Ortigas Jr. Road, Ortigas Center, Pasig City, depose and state under oath that:

1. I am the President of Private Electric Power Operators Association (PEPOA), and that I have been authorized by PEPOA to verify and certify under oath the foregoing Joint Petition for Rule-Making to Amend ERC Resolution No. 08, Series of 2023 entitled: *A Resolution Adopting the Procurement Guidelines for the Regulated Transmission and Distribution Assets of Regulated Utilities*.
2. On behalf of PEPOA, I caused the preparation of the foregoing petition.
3. I have read and understood the allegations contained therein and attest that all the facts stated therein are true and accurate based on my own knowledge.
4. The petition is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation and that the factual allegation therein have evidentiary support or, if specifically, so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.
5. PEPOA has not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agency; and that to the best of my knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals, or different Divisions thereof, or any other tribunal or agency. If I should learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, I undertake to promptly inform this Honorable Commission within five (5) days from receipt of such knowledge of such fact.


RANULFO M. OCAMPO
Affiant

JURAT

SUBSCRIBED AND SWORN to before me this
JUL 15 2024, affiant exhibited to me his Unified Multi-
Purpose ID No. CRN-0113-0148104-7.

Doc. No. 205;
Page No. 42;
Book No. 5;
Series of 2024.


ATTY. JOMAR M. HIZOLA
NOTARY PUBLIC
Cities of Pasig, San Juan and Pateros, Metro Manila
21k Strata 100 Bldg., Don F. Ortigas St., Pasig City
Appointment No. 150; Until Dec. 31, 2024
SC. Roll No. 81022/ 05-21-2022
IBP No. 423716 / 01/16/2024; IBP Manila 1
PTR No. 1716816 / 01/16/2024; Pasig City
MCLE No. VIII-0006903 02/20/2024-04/14/2028

Republic of the Philippines)
Pasig City) S.S.

VERIFICATION and CERTIFICATION OF NON-FORUM SHOPPING

I, **JOSE RONALD V. VALLES**, of legal age, married, and with office address at Manila Electric Company (MERALCO), 12th Floor, Lopez Building, MERALCO Center, Ortigas Avenue, Barangay Ugong, Pasig City, hereby state under oath that:

- 1. I am the Senior Vice President and Head of Regulatory Affairs and DU Regulatory Management Office of MERALCO, and is authorized to represent it in this Joint Petition for Rule-Making as per the attached Secretary's Certificate;
- 2. I have caused the preparation of the instant Joint Petition for Rule-Making with Private Electric Power Operators Association (PEPOA) and read the contents thereof, and I attest that the allegations herein contained are true and correct based on my personal knowledge and on authentic records made available to me;
- 3. The Joint Petition for Rule-Making is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
- 4. The factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery;
- 5. I have not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals or any court, tribunal, or quasi-judicial agency and, to the best of my knowledge, no such other action or claim is pending therein; and
- 6. Should I hereinafter learn that the same or a similar action or claim has been filed or is pending in the Supreme Court, the Court of Appeals or any court, tribunal, or quasi-judicial agency, I shall report said fact within five (5) days from discovery thereof to this Honorable Commission.

IN WITNESS WHEREOF, I have hereunto affixed my signature this ____ day of ____ 2024 at Pasig City, Philippines.

16 JUL 2024


JOSE RONALD V. VALLES
Affiant

SUBSCRIBED and SWORN to before me this 16th day of JUL 2024,
at Pasig City, Philippines, affiant having exhibited to me his Social Security
System ID bearing the number 33-10900088.



ATTY. MADELYN C. DELLOS SANTOS
NOTARY PUBLIC

Appointment No. 138 (2023-2024)
Pasig, San Juan and Pateros
Roll No. 64977 IBP No. 371237; 12/21/2023; RSM Chapter
PTR No. 1705888; 01/18/2024; Pasig City
MCLE Compliance No. VII-0001999; 05 December 2019
7th Floor, Lopez Bldg., Ortigas Ave., Pasig City

Doc. No. 01 ;
Page No. 20 ;
Book No. 4 ;
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POSITION PAPER ON PROPOSED AMENDMENTS TO THE PROCUREMENT GUIDELINES

I. BACKGROUND

On 30 May 2023, the Honorable Commission issued the Resolution which adopted the Procurement Guidelines. The Resolution took effect on 4 August 2023.

On 26 October 2023, PEPOA met with the Honorable Commission regarding the Procurement Guidelines. Subsequently, PEPOA wrote a letter dated 20 November 2023 wherein it requested for clarifications that were discussed during the 26 October 2023 meeting as well as provided suggestions to further improve the Procurement Guidelines. A copy of the letter is attached hereto as Annex “A”.

On 25 January 2024, the Honorable Commission responded and advised PEPOA that it may file an amendment to the provisions of the Procurement Guidelines by initiating a Rule-Making Petition. A copy of the letter is attached hereto as Annex “B”.

Similarly, in a letter dated 10 October 2023, MERALCO, among other things, requested for the adoption of a transitory provision that would govern ongoing bidding process currently being undertaken by MERALCO, and a provision granting sufficient time for the regulated entity to comply with said guidelines. In its reply dated 1 March 2024, the Honorable Commission noted that MERALCO may file for an amendment of the Procurement Guidelines by initiating a Rule-Making Petition. Copies of MERALCO’s letter and the letter reply from the Honorable Commission are attached hereto as Annexes “C” and “D”, respectively.

Hence, this Petition is being filed in accordance with the Honorable Commission’s directives and Rule 21 of the Honorable Commission’s Revised Rules of Practice and Procedure.¹

II. DISCUSSION OF PROPOSED AMENDMENTS

THE GUIDELINES SHOULD NOT BE APPLICABLE FOR DISTRIBUTION UTILITIES WHICH HAVE FILED ALREADY THEIR CAPITAL EXPENDITURE (CAPEX) AND/OR REGULATORY RESET APPLICATIONS WITH THE HONORABLE COMMISSION.

Under Section 1.1.1 in relation to Section 1.1.3 of the Procurement Guidelines for the Regulated Transmission and Distribution Assets of Regulated Utilities” (the “Guidelines”), it was explained that the promulgation of the Guidelines was based on the mandate prescribed to the Honorable Commission under “Section 43 (f) (v)” of Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (the “EPIRA”). However, a careful reading of the EPIRA shows that said section is only applicable when the rate setting methodology used is Return on Rate Base (RORB) methodology. For reference, Section 43 (g) (v) of the EPIRA provides:

¹ Energy Regulatory Commission Resolution No. 01, Series of 2021, Revised Rules of Practice and Procedure of the Energy Regulatory Commission, Rule 21.

“Section 43. Functions of the ERC. – x x x Towards this end, it shall be responsible for the following key functions in the restructured industry:

x x x

(g) x x x The ERC shall determine such form of rate-setting methodology, which shall promote efficiency. In case the rate setting methodology used is RORB, it shall be subject to the following guidelines:

x x x

(v) Any significant operating costs or project investments of TRANSCO and distribution utilities which shall become part of the rate base shall be subject to the verification of the ERC to ensure that the contracting and procurement of the equipment, assets and services have been subjected to transparent and accepted industry procurement and purchasing practices to protect the public interest.”²

Aligned with the foregoing, these Guidelines should therefore not apply to Distribution Utilities (DUs) under Performance-Based Regulation (PBR). Under PBR, DUs have been given a forecasted budget in the form of the Annual Revenue Requirement. DUs must then manage their expenditure prudently. Thus, applying the Guidelines to Regulated Entities under PBR would be tantamount to micromanagement and duplicates existing regulations. It is thus proposed that a private DU should be exempted from the Guidelines when they file an application for their CAPEX programs and/or the regulatory reset applications, because these are existing processes that mirror the purpose of the submission of the procurement plan and its implementation under the Guidelines. As such, Section 1.3.1 of the Guidelines should be amended as follows:

ORIGINAL PROVISION	PROPOSED AMENDMENT
“1.3.1 These Guidelines shall only apply to privately owned regulated transmission and distribution utilities for procurement of assets and services forming part of the regulatory asset base or OPEX of the DUs or the NGCP for procurement of assets and services forming part of the regulatory asset base or OPEX of the DUs or the NGCP, in accordance with RDWR or the RTWR, respectively, and other pertinent laws, rules and regulations of the Commission. These Guidelines shall not be applicable for the procurement of power supply by the DUs.”	“1.3.1 These Guidelines shall only apply to privately owned regulated transmission and distribution utilities for procurement of assets and services forming part of the regulatory asset base or OPEX of the DUs or the NGCP <u>that have not filed their CAPEX applications and/or their regulatory reset applications with the Honorable Commission.</u> for procurement of assets and services forming part of the regulatory asset base or OPEX of the DUs or the NGCP, in accordance with RDWR or the RTWR, respectively, and other pertinent laws, rules and regulations of the Commission. These Guidelines shall not be applicable for the

² Emphasis and underscoring supplied.

	procurement of power supply by the DUs.”
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THERE IS A NEED FOR TRANSITORY PROVISIONS TO PROVIDE REGULATED ENTITIES SUFFICIENT TIME TO FULLY IMPLEMENT THE GUIDELINES.

Upon effectivity of the Guidelines on 4 August 2023, compliance with the provisions thereof became mandatory. Unfortunately, while the Resolution included a provision providing Regulated Entities twelve (12) months from effectivity thereof within which to put up its e-Procurement facilities³ and Procurement Management Information System,⁴ there was no transition period provided in the Guidelines to allow transition of DUs’ current processes to adopt to the requirements of the Procurement Guidelines. Moreover, there are no transitory provisions which is necessary to address all ongoing procurement of goods and services upon effectivity of the Procurement Guidelines.

It should be noted that Regulated Entities conduct their procurement processes year round to ensure the timely procurement of goods and services in order to effectively serve their customers. As such, at the time of the promulgation and effectivity of the Procurement Guidelines, the procurement processes by various DUs were already ongoing for several projects.

It is emphasized that restarting the procurement process to strictly comply with the Procurement Guidelines for ongoing projects would adversely affect the operations of the Regulated Entities and significantly hamper delivery of service to customers by several months depending on the complexity of project requirements.

Moreover, for contracts that would be expiring as of the promulgation of the Procurement Guidelines and soon thereafter, considering the new requirements and additional processing time to comply, there would not be enough time to complete the new process required under the Procurement Guidelines before the expiry of such contracts.

As such, while the Regulated Entities are putting up their processes to transition to the new requirements under the Procurement guidelines, it is undeniable that a transition is needed to ensure full compliance. This was recognized by the Honorable Commission in its letter dated 1 March 2024 where it was stated:

“We understand that the first two concerns raised in the *Letter* pertain to the transition of Meralco’s current processes to adopt to the requirements of the Procurement Guidelines. x x x

The Commission finds these concerns to be valid and merits consideration. In this regard, please be advised that the Commission is in the process of working on guidelines for transitory arrangements leading to full implementation of the Procurement Guidelines.”

As such, it is proposed that Regulated Entities be allowed to complete the procurement of all ongoing projects and contracts which were initiated prior to the

³ Procurement Guidelines, Section 2.5.1.
⁴ *Ibid.*, Section 2.3.2.

effectivity of the Procurement Guidelines in accordance with the previous procurement processes of the Regulated Entities at the time these projects/ contracts were first initiated. Hence, a new transitory provision is proposed as follows:

ORIGINAL PROVISION	PROPOSED AMENDMENT
N/A	<p><u>“1.4. Transitory Provisions</u></p> <p><u>All ongoing procurements that commenced prior to the effectivity of the amended Guidelines may proceed in accordance with the Regulated Entities’ existing procurement processes; Provided that such procurement process must be completed within one (1) year from the effectivity of the amended Guidelines. Otherwise, the procurement process should comply with the provisions of the amended Guidelines.”</u></p>

THE SUBMISSION OF THE ANNUAL ASSET PROCUREMENT PLAN (“PLAN”) SHOULD BE MOVED TO EVERY 30TH OF NOVEMBER TO ALIGN WITH THE REGULATED ENTITIES’ BUDGETING PROCESS.

Section 2.2.2 of the Guidelines provides for the submission of the Plan to the Honorable Commission by 30th June of each year. By way of example, the Procurement Guidelines provide that the Plan for Calendar Year (CY) 2024 should be submitted by 30 June 2023.

However, the submission of the Plan should be aligned with the budget approval process of the Regulated Entities. This will ensure that the Plan accurately reflects the upcoming projects and assets to be acquired for the succeeding year as determined by the Regulated Entities during its budget evaluation process. It is respectfully asserted that the filing of the Plan by June of the previous year may be too premature as Regulated Entities are still in the process of determining their requirements at that time. As such, it is proposed that Section 2.2.2 of the Procurement Guidelines be amended as follows:

ORIGINAL PROVISION	PROPOSED AMENDMENT
“2.2.2. Accordingly, Regulated Entities shall prepare an Annual Asset Procurement Plan for the year and submit the same to ERC by the 30th June of each year. For instance, Regulated Entities shall submit their respective Annual Asset Procurement Plan covering the period from 01 January 2024 to 31 December 2024, by 30th June 2023.”	“2.2.2. Accordingly, Regulated Entities shall prepare an Annual Asset Procurement Plan for the year and submit the same to ERC by the 30th June November of each year. For instance, Regulated Entities shall submit their respective Annual Asset Procurement Plan covering the period from 01 January 2024 to 31 December 2024, by 30th June November 2023.

PROCUREMENT BY LOT OR ITEM SHOULD BE RECOGNIZED AS A LEGITIMATE AND COMPETITIVE BIDDING PROCESS.

The procurement of goods for DUs involves the acquisition of technical and/or specialized equipment and a significant volume is needed.⁵ There is a need to expand the supplier base to ensure the steady and continuous supply thereof as, at other times, no single supplier can provide the needed quantity by a prescribed deadline.

Procurement by lot or by item is a recognized mechanism under government procurement⁶ which should be similarly recognized under the Guidelines. There are three (3) options that may be chosen in group and evaluating lots, as follows:

- a. Each item to be evaluated and compared with other bids separately and recommended for contract award separately;
- b. All items to be grouped together to form one complete lot that will be awarded to one bidder to form one complete contract; and
- c. Similar items, to be grouped together to form several lots that shall be evaluated and awarded as separate contracts.⁷

As such, to be able to expressly recognize procurement by lot/item, the Guidelines are proposed to be revised as follows:

ORIGINAL PROVISION	PROPOSED AMENDMENT
<p>“3.1.7. The Bid Documents shall clearly specify the following:</p> <p style="text-align: center;">x x x</p> <p>b. Minimum quantity to be procured”</p>	<p>“3.1.7. The Bid Documents shall clearly specify the following:</p> <p style="text-align: center;">x x x</p> <p>b. Minimum quantity to be procured <u>or the number of lots or items specific to the bidding, as well as the basis of evaluation of the project, lots, or items, where applicable;</u>”</p>

REGULATED ENTITIES SHOULD BE ALLOWED TO ADOPT PROCUREMENT STRATEGIES.

Regulated Entities should be allowed to implement procurement strategies that are aligned with the Guidelines, which include, among others, the mode it will avail for such procurements, and the workflow or processes involved in such procurement based on the asset or service to be procured. As such, the Guidelines should include a new definition of procurement strategies under the Guidelines’ Glossary as follows:

⁵ One notable example is the supply of electric watt-hour meters. For some electric meter models, it is recommended that awards are made to at least two (2) vendors to address possible supply chain challenges. Electric meters are considered a critical item which DUs should have readily available stock at any given time.

⁶ Section 21.1(b) of the Implementing Rules and Regulations of RA No. 9184 and the Philippine Bidding Documents for the Procurement of Goods require the Procuring Entities (PEs) to provide the name, identification and numbers of lots specific to the bidding.

⁷ NPM No. 43-2014 dated 10 October 2014.

ORIGINAL PROVISION	PROPOSED AMENDMENT
Glossary	Glossary
N/A	X X X
	<u>“Procurement Strategies” refer to the Regulated Entity’s strategy in procuring the assets or services, the mode it will avail for such procurements, and the workflow or processes involved in such procurement.”</u>

Similarly, Section 2.1 of the Guidelines should be revised as follows:

ORIGINAL PROVISION	PROPOSED AMENDMENT
“2.1. Procurement Manual	“2.1. Procurement Manual
X X X	X X X
ii. Modes of Procurement	ii. Modes of Procurement
a. Procurement modes along with conditions for their applicability/use;”	a. Procurement modes along with conditions for their applicability/use <u>including the Procurement Strategies to be implemented by the Regulated Entity based on the asset or service to be procured;”</u>

PROCUREMENT BELOW PHP1 MILLION SHOULD BE EXEMPTED FROM COMPETITIVE BIDDING.

The competitive bidding process under the Procurement Guidelines requires significant time, money, and resources. Hence, the cost for Regulated Entities to undertake the competitive bidding process may be more than the value of the award. As such, it is proposed that the procurement of certain items below a certain threshold should be exempt from the competitive bidding process. Examples of these small value procurements would include purchase of computers, line hardware, office (e.g., shredders, printers, photocopiers and projectors) and janitorial supplies, small construction material purchases, among others. These goods and services can be procured without going through a competitive bidding process which will save the Regulated Entities time and resources in their procurement. This is akin to the concept of Small Value Procurement recognized under Republic Act No. 9184 and GPPB rules.

It is estimated that the initial reasonable threshold is when the value of the asset or service to be procured is One Million Pesos (PhP1,000,000.00). However, the PhP1,000,000.00 threshold be updated annually to take into account inflation that may affect the price of these small value procurements. In line with this, Section 3.1.1. of the Guidelines be amended for these instances:

ORIGINAL PROVISION	PROPOSED AMENDMENT
“3.1.1. Procurement of assets, at all times, shall be through Competitive Bidding, except when	“3.1.1. Procurement of assets, at all times, shall be through Competitive Bidding, except when otherwise provided under Section 3.2

otherwise provided under Section 3.2 of these Guidelines,”	of these Guidelines, <u>or for procurements of assets and services below One Million Pesos (PhP 1,000,000.00). The threshold shall be revised annually based on the Consumer Price Index.”</u>
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THE ISSUANCE OF THE BID DOCUMENTS SHOULD ONLY BE MADE UPON PAYMENT OF THE APPLICABLE FEES THEREFOR.

Section 3.1.6 of the Guidelines provides that fees for the purchase of the Bid Documents should be made payable at the time of Bid Submission. However, this would open up the bidding process to persons or entities who have no intention to seriously participate in the bidding. Moreover, as Bid Documents contain, among other things, technical specifications, and other proprietary information, the preparation of these Bid Documents takes a substantial amount of time and expense. As such, the Bid Documents should only be provided to potential bidders who have paid for the cost thereof.

This is also aligned with Guidelines on the Sale of Bidding Documents issued by the GPPB⁸ where it was specifically stated that issuance of the bidding documents shall be made upon payment. Thus, Section 3.1.6 of the Guidelines should thus be amended as follows:

ORIGINAL PROVISION	PROPOSED AMENDMENT
“3.1.6 The value of fees set by the Procuring Entity, for the purchase of Bid Documents by potential Bidder(s), shall not exceed 0.1% of the approved Budget for a given Procurement and shall be payable at the time of Bid submission. Bid Documents shall be made available to all prospective Bidders.”	“3.1.6 The value of fees set by the Procuring Entity, for the purchase of Bid Documents by potential Bidder(s), shall not exceed 0.1% of the approved Budget for a given Procurement and shall be payable at the time of Bid submission. Bid Documents shall be made available to all prospective Bidders <u>who have paid the bid document fee and have submitted a letter of intent to join the bidding.</u> ”

REGULATED ENTITIES SHOULD NOT BE MADE TO DISCLOSE THE PROJECT BUDGET IN THE BID DOCUMENTS.

Section 5.3 of the Procurement Guidelines mandates that the Regulated Entities should have: (a) an estimate of the reasonable expenditure for the assets to be procured based on prevalent market rates for similar Procurements and/or expenditures incurred in the past by the Regulated Entity or any other organization; and (b) sufficient budget available for the estimate cost of the procurement.

On the other hand, Section 3.1.7 (c) of the Guidelines provides that the Bid Document shall specify, among other things, the Regulated Entities’ Budget or Estimated Cost for the asset or expenditure for procurement. However, by already

⁸ GPPB Resolution No.04-2012 dated 24 February 2012.

indicating or disclosing the Regulated Entities’ Budget or Estimated Cost in the Bidding Documents, the pricing and bidding behavior of potential Bidders may be affected and may lead to the competitive bidding process not yielding the most optimal results. Given this, Section 3.1.7 of the Guidelines is proposed to be revised by deleting item (c) as follows:

ORIGINAL PROVISION	PROPOSED AMENDMENT
“3.1.7 The Bid Documents shall clearly specify the following: a. x x x ; b. x x x; c. Budget or Estimated Cost; d. Bid security requirement;”	“3.1.7 The Bid Documents shall clearly specify the following: a. x x x ; b. x x x; c. Budget or Estimated Cost; <u>c.d.</u> Bid security requirement;”

REGULATED ENTITIES SHOULD BE ALLOWED TO ADJUST THEIR BUDGET OR ESTIMATED COSTS AS NECESSITATED BY CIRCUMSTANCES.

Regulated Entities are required to submit their Annual Asset Procurement Plan which shall cover, among other things, the budgetary cost of each proposed Procurement pursuant to Section 2.2.4 (c) of the Guidelines. Aligned therewith, the Monitoring Report provides that Regulated Entities should indicate the “Budgeted amount as per Annual Asset Procurement Plan (if any)”.

In order to adjust to market factors, it is recommended that adjustments to the Budget or Estimated Cost should be allowed, subject to justifications that will be included in the Monitoring Report. Furthermore, it is proposed that the Budget or Estimated Cost in the Annual Asset Procurement Plan be submitted and treated as confidential information to ensure the most competitive prices.

Thus, new Sections 2.2.4 (c) and 5.3.3 of the Guidelines are proposed as follows:

ORIGINAL PROVISION	PROPOSED AMENDMENT
“2.2.4. The Annual Asset Procurement Plan shall cover: x x x x c. Budgetary cost of each proposed Procurement;	“2.2.4. The Annual Asset Procurement Plan shall cover: x x x x c. <u>Estimated</u> budgetary cost of each proposed Procurement, <u>which shall be subject to confidential treatment of information</u> ;
5.3. Cost estimation and budget N/A	“5.3. Cost estimation and budget x x x <u>5.3.3. The Regulated Entity may make reasonable and justified adjustments to the Budget provided that an explanation is included in the Monitoring Report.”</u>

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REGULATED ENTITIES SHOULD BE ALLOWED TO UNDERTAKE REPEAT ORDERS WITHIN TWO (2) YEARS FROM THE END OF THE CONTRACT.

Repeat Orders are an accepted alternative mode of procurement under the Guidelines. which can protect the procuring entity from price fluctuations and help mitigate the risk of budget discrepancies due to unforeseen market changes while ensuring continuity of operations for distribution utilities.

Repeat orders can protect the procuring entity from price fluctuations, which helps mitigate the risk of budget discrepancies due to unforeseen market changes while ensuring continuity of operations for distribution utilities.

For Repeat Orders, the price of an item can be fixed based on the previously awarded amount. This can streamline the procurement process, saving time and resources by eliminating the need for re-evaluation of pricing for items that have been previously procured, and reducing administrative costs associated with re-bidding.

Currently, Repeat Orders can only be availed within one (1) year from the end of the contract. However, the advantages of repeat orders become more flexible when the period is not limited to one (1) year from the termination of the contract. As such, it is proposed that repeat orders be allowed within two (2) years from the end of the original Contract, as follows:

ORIGINAL PROVISION			PROPOSED AMENDMENT		
“3.2. Alternative modes of procurement <div>X X X</div>			“3.2. Alternative modes of procurement <div>X X X</div>		
SI .	Mode of Procurement	Boundaries/conditions of Procurement	SI .	Mode of Procurement	Boundaries/conditions of Procurement
2.	Repeat order: Procurement of assets from a previously selected Bidder, awarded through Competitive Bidding.	<ul style="list-style-type: none"> •X X X •X X X •Shall be availed only within one (1) year from the end of the original Contract. •X X X 	2.	Repeat order: Procurement of assets from a previously selected Bidder, awarded through Competitive Bidding.	<ul style="list-style-type: none"> •X X X •X X X •Shall be availed only within one <u>two (2) years</u> from the end of the original Contract. •X X X

THE PROCUREMENT FOR PROFESSIONAL SERVICES AND TECHNOLOGY AND NETWORK-DRIVEN PROJECTS SHOULD

BE ALLOWED BASED ON A QUALITY AND COST-BASED PROCESS.

Section 3.1.13 of the Guidelines acknowledges that procurements related to professional services (capitalized as an asset) may be sourced through a quality and cost-based selection process. This is an exception to the general rule that procurement shall be based on the most competitive financial bid.

Given the nature of technology-driven projects (regardless of whether to be capitalized or not), highly technical, proprietary and/or confidential services are to be provided requiring adequate technical and professional expertise. Examples of these projects include complex platforms such as the Customer Information/Billing System, Customer Relationship Management (CRM), IT Service Management (ITSM), Advance Distribution Management System (ADMS) and other similar platforms which has thousands of features that present hard to quantify or some unquantifiable advantages in terms of the solution offerings.

It is recognized that, for these kinds of services, the best evaluation method for procurement is through a quality-based or quality cost-based evaluation process where the technical expertise apart from the commercial price are allocated a score to determine the best bid.

This is akin to the “Highest Rated Bid” recognized under government procurement. For reference, Section 33 of Republic Act No. 9184 provides:

“SEC. 33. Bid Evaluation of Short Listed Bidders for Consulting Services. – For the Procurement of Consulting Services, the Bids of the short listed bidders shall be evaluated and ranked using numerical ratings in accordance with the evaluation criteria stated in the Bidding Documents, which shall include factors such as, but not limited to, experience, performance, quality of personnel, price and methodology. The Bids shall be ranked from highest to lowest in terms of their corresponding calculated ratings. The Bid with the highest calculated rating shall be the **“Highest Rated Bid.”** After approval by the Head of the Procuring Entity of the **Highest Rated Bid**, the BAC shall invite the bidder concerned for negotiation and/or clarification on the following items: financial proposal submitted by the bidder, terms of reference, scope of services, methodology and work program, personnel to be assigned to the job, services/facilities/data to be provided by the Procuring Entity concerned, and provisions of the contract. When negotiations with the first-in-rank bidder fails, the financial proposal of the second rank bidder shall be opened for negotiations: Provided, That the amount indicated in the financial envelope shall be made as the basis for negotiations and the total contract amount shall not exceed the amount indicated in the envelope and the ABC. Whenever necessary, the same process shall be repeated until the bid is awarded to the winning bidder.”

Based on the foregoing, a new paragraph under Section 3.1.13 of the Guidelines is proposed to be included as follows:

ORIGINAL PROVISION	PROPOSED AMENDMENT
“3.1.13. All Procurements shall be done based on the most competitive	“3.1.13. All Procurements shall be done based on the most competitive

financial Bid submitted by technically qualified Bidders. However, Procurements related to professional services (capitalized as an asset), a Procuring Entity may exercise the option to adopt a quality, and cost-based selection process wherein the highest rated bidder is identified through a composite score of technical and financial bids.	financial Bid submitted by technically qualified Bidders. However, Procurements related to professional services (capitalized as an asset), a Procuring Entity may exercise the option to adopt a quality, and cost-based selection process wherein the highest rated bidder is identified through a composite score of technical and financial bids. <u>For Procurements related to other professional services and technology and network driven projects, a quality, and cost-based selection process should be followed wherein the highest rated bidder is identified through a composite score of technical and financial bids.”</u>
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THE RENEWAL OF CONTRACT FOR REGULAR AND RECURRING SERVICES SHOULD BE RECOGNIZED AS AN ALTERNATIVE MODE OF PROCUREMENT.

Another alternative mode of procurement recognized even under public procurement policies is the renewal of contract for regular and recurring services. This should be distinguished from Repeat Orders under the existing Procurement Guidelines which are specific to procurement of assets.

In this regard, GPPB Resolution No. 06-2022 dated 12 September 2022 approved the Guidelines on the Renewal of Regular and Recurring Services. Therein, the GPPB recognized the renewal of regular and recurring services as a legitimate alternative mode of procurement. The said Resolution provides:

- “a. The proposed Guidelines shall apply to all existing contracts for general support services that are regularly procured in accordance with RA No. 9184 and its 2016 revised IRR, and other associated issuances. These Regular and Recurring Services refer to those:
 - i. defined under DBM NBC No. 570, s. 2017 and other issuances⁵ that may be issued for the purpose, such as (i) janitorial services; (ii) security services; (iii) telecommunication requirements; (iv) supply of drinking water; and (v) rental of office space, venue, and equipment;
 - ii. which by their nature are deemed essential, indispensable, or necessary to the day-to-day operations of the PE; or
 - iii. procured repeatedly by the PE in the last three (3) years;”

A similar recognition should be made for renewal of regular and recurring services under Section 3.2.1 of the Guidelines, as follows:

ORIGINAL PROVISION	PROPOSED AMENDMENT						
N/A	<p>“3.2. Alternative modes of procurement</p> <p style="text-align: center;">x x x</p> <table><tr><th>Sl.</th><th>Mode of Procurement</th><th>Boundaries/conditions of Procurement</th></tr><tr><td>4.</td><td><u>Renewal of Regular and Recurring Services: Essential, indispensable, and necessary services to support the operations of the Regulated Entity or for the enhancement of the welfare of its personnel.</u></td><td><ul style="list-style-type: none">• <u>Contracts are deemed essential, indispensable, or necessary to the day-to-day operations of the Regulated Entity (RE);</u>• <u>Procured repeatedly by the RE in the last three (3) years;</u>• <u>The original contract covering the Regular and Recurring Services was awarded through a Competitive Bidding Process following the conditions outlined in Clause 3.1.1 to 3.1.14 of the Guidelines;</u>• <u>A Cost-Benefit-Analysis (CBA) was undertaken by to show the comparative advantage of renewal over the conduct of another procurement;</u>• <u>A performance evaluation conducted on the Service Provider showed a satisfactory performance by the Vendor;</u>• <u>The duration of the renewal shall not exceed two (2) years</u></td></tr></table>	Sl.	Mode of Procurement	Boundaries/conditions of Procurement	4.	<u>Renewal of Regular and Recurring Services: Essential, indispensable, and necessary services to support the operations of the Regulated Entity or for the enhancement of the welfare of its personnel.</u>	<ul style="list-style-type: none">• <u>Contracts are deemed essential, indispensable, or necessary to the day-to-day operations of the Regulated Entity (RE);</u>• <u>Procured repeatedly by the RE in the last three (3) years;</u>• <u>The original contract covering the Regular and Recurring Services was awarded through a Competitive Bidding Process following the conditions outlined in Clause 3.1.1 to 3.1.14 of the Guidelines;</u>• <u>A Cost-Benefit-Analysis (CBA) was undertaken by to show the comparative advantage of renewal over the conduct of another procurement;</u>• <u>A performance evaluation conducted on the Service Provider showed a satisfactory performance by the Vendor;</u>• <u>The duration of the renewal shall not exceed two (2) years</u>
Sl.	Mode of Procurement	Boundaries/conditions of Procurement					
4.	<u>Renewal of Regular and Recurring Services: Essential, indispensable, and necessary services to support the operations of the Regulated Entity or for the enhancement of the welfare of its personnel.</u>	<ul style="list-style-type: none">• <u>Contracts are deemed essential, indispensable, or necessary to the day-to-day operations of the Regulated Entity (RE);</u>• <u>Procured repeatedly by the RE in the last three (3) years;</u>• <u>The original contract covering the Regular and Recurring Services was awarded through a Competitive Bidding Process following the conditions outlined in Clause 3.1.1 to 3.1.14 of the Guidelines;</u>• <u>A Cost-Benefit-Analysis (CBA) was undertaken by to show the comparative advantage of renewal over the conduct of another procurement;</u>• <u>A performance evaluation conducted on the Service Provider showed a satisfactory performance by the Vendor;</u>• <u>The duration of the renewal shall not exceed two (2) years</u>					

THE FIVE (5%) PERCENT THRESHOLD FOR ALTERNATIVE MODES OF PROCUREMENT SHOULD BE RELAXED FOR PROPRIETARY AND/OR NEGOTIATED/SINGLE SOURCE PROCUREMENT.

Section 3.2 of the Guidelines provides a 5% limit on procurements that can be made under alternative modes. However, due to the nature of the distribution utility business, DUs frequently engage in single-source procurement or repeat orders because many of their existing assets are proprietary in nature or require single-source procurement due to the highly specialized types of equipment where only a few suppliers or specified brands are available.

Proprietary requirements are those which can only be obtained from a proprietary source, i.e., when patents, trade secrets and copyrights prohibit others from manufacturing the same item. On the other hand, single-source requirements are those items where only one vendor passed the technical evaluation or have approved samples (SF6 Gas, Fired Wedge Connectors with Cartridges, Intelligent Electronic Device (IED) Meters), or only one factory is accredited to supply the requirement since other vendors are either inactive or have pending issues on previously supplied items (115 kV GIS, Power Circuit Breakers, 34.5 kV Indoor Modular GIS). Equipment such as power transformers, switchgears, power circuit breakers, and other substation equipment, among others, which have asset lives ranging from twenty-five (25) to forty (40) years, include associated systems and platforms which are considered proprietary in nature.

As such, in order to efficiently maintain and operate their existing assets, the spare parts, accessories, and services, as well as necessary additional hardware and software licenses, information systems and platforms, for these items must be procured with the same brand as what is currently used or installed in service. Further, this will ensure that warranties/vendor technical support for this equipment are not invalidated. Otherwise, if the spare parts and accessories are procured by competitive bidding and the brand of the winning bidder is different from the existing assets, there will be compatibility issues that will affect the DUs' continuous operations, service to customers and public safety.

It should be noted that a proprietary system provides stability and functionality resulting in better operations as well as 24x7 support, which is a necessity for utility companies. Proprietary requirements include exclusive requirements where the principals nominate an exclusive partner. Since these proprietary requirements are mostly of high value, procuring spare parts and accessories will immediately breach the five percent (5%) cap for alternative modes of procurement if these are not exempted from said threshold.

As such, considering the foregoing, it is respectfully requested for exception of the applicability of Section 3.2.2 of the Procurement Guidelines to procurements due to proprietary or single source requirements, such that the value thereof shall not be counted in the five percent (5%) threshold for Alternative Modes of Procurement.

ORIGINAL PROVISION	PROPOSED AMENDMENT
"3.2.2. Total value of Procurements made through alternative modes shall not exceed five (5%) percent of the total value (in Pesos) of all Procurements done in the previous year.	"3.2.2. Total value of Procurements made through alternative modes shall not exceed five (5%) percent of the total value (in Pesos) of all Procurements done in the previous year. <u>NOTWITHSTANDING THE FOREGOING, THE THRESHOLD DOES NOT APPLY FOR:</u>

	<ul style="list-style-type: none"> a. <u>Proprietary, Exclusive and Negotiated/Single Source Requirements;</u> b. <u>Land and Right of Way Acquisitions and Office Rentals;</u> c. <u>Fees for Legal Services;</u> d. <u>Tax Advisors;</u> e. <u>Professional Fees for Lineman Trainers;</u> f. <u>Media and Advertising Services / Information and Education Campaigns;</u> g. <u>Audit and Appraisal Fees;</u> h. <u>Appraisal Fees;</u> i. <u>Pilot Projects;</u> j. <u>Training;</u> k. <u>Purchase of Insurance;</u> l. <u>Airfare;</u> m. <u>Accommodations;</u> n. <u>Payment of Utilities;</u> o. <u>Membership and Association Dues;</u> p. <u>Advertisements and Placements; and</u> q. <u>All other similar expenses</u>
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In addition, Repeat Orders and Renewal of Regular and Recurring Services, as discussed above, should also be exempted from the 5% cap. A new Section 3.2.4 is therefore proposed:

ORIGINAL PROVISION	PROPOSED AMENDMENT
N/A	<u>“3.2.4. Repeat Order and Renewal of Regular and Recurring Services shall also be excluded from the value of procurements done using alternate modes for assessing compliance to Section 3.2.2 of these Guidelines.</u>

INSTEAD OF SHORTLISTING, THE PRE-QUALIFICATION PROCESS SHOULD BE DONE THROUGH AN ACCREDITATION PROCESS.

Shortlisting suppliers for procurement of all assets in the procurement process is important in ensuring the quality and cost effectiveness of those who will be joining the bidding process for regulated entities. By initially evaluating suppliers through an accreditation process, regulated entities can secure reliable suppliers capable of delivering high-quality goods or services at competitive rates, which is the goal of the Procurement Guidelines.

As such, it is recommended that the shortlisting of suppliers be done through an accreditation process instead of during the Competitive Bidding process. In existing DU procurement, part of the technical prequalification is factory assessment. The assessment takes some time especially if will be done outside

the country. By way of example, the factory capability assessment of power transformers is based on CIGRE530. A lot of information needs to be made from the actual factory to come up with an exhaustive assessment.

Hence, the reframing of how shortlisting is done should be done, wherein the DU can evaluate potential suppliers or contractors beyond what they can show on paper. It is also recommended to invite more suppliers through a shortlisting process via accreditation.

As such, the Glossary of the Procurement Guidelines, specifically on the definition of Shortlisting, should be amended as follows:

ORIGINAL PROVISION	PROPOSED AMENDMENT
<p>Glossary</p> <p>“Shortlisting of Suppliers/Vendors” refers to a process of pre-selecting pre-qualifying Supplier(s)/Vendor(s), through a Competitive Bidding process, who meet eligibility and technical requirements set under the bidding documents/contract.</p>	<p>Glossary</p> <p>“Shortlisting of Suppliers/Vendors” refers to a process of pre-selecting pre-qualifying Supplier(s)/Vendor(s), through a Competitive Bidding <u>an accreditation</u> process, who meet eligibility and technical requirements set under the bidding documents/contract <u>where the DU invites prospective Vendors/Suppliers to submit an Application to Pre-Qualify with attached Eligibility and Technical requirements. The DU shall approve or disapprove the Vendor’s application based on the submitted eligibility and technical requirements and a site visit to the Supplier’s/Vendor’s Facility. The DU shall invite prospective Suppliers/Vendors for shortlisting every year.</u></p>

In addition, it is respectfully proposed that Section 3.1.14 of the Guidelines be amended as follows:

ORIGINAL PROVISION	PROPOSED AMENDMENT
<p>“3.1.14 For Procurement of assets and services which are required routinely, or those repetitively procured items such as, but not limited to, Insulators, Poles, Transformers, Cables, Switchgear, with usual technical specifications, as may be identified and listed under procurement manual, a Regulated Entity may opt for Shortlisting of Vendors or Pre-</p>	<p>“3.1.14 For Procurement of assets and services which are required routinely, or those repetitively procured items such as, but not limited to, Insulators, Poles, Transformers, Cables, Switchgear, with usual technical specifications, as may be identified and listed under procurement manual, a Regulated Entity may opt for Shortlisting of Vendors or Pre-</p>

<p>Qualification, subject to the following:</p> <p>a. Shortlisting is done through a Competitive Bidding process following the conditions outlined in clause 3.1.1 to 3.1.14.</p> <p>b. The period of Shortlisting shall not exceed two (2) years.</p>	<p>Qualification, subject to the following:</p> <p>a. Shortlisting is done through a Competitive Bidding process following the conditions outlined in clause 3.1.1 to 3.1.14. <u>Supplier/Vendor shortlisting or pre-qualification process is as follows:</u></p> <p>i. <u>Annually, the DU shall invite prospective Suppliers/Vendors to apply for Shortlisting to supply items listed in the invitation. Eligibility and Technical requirements to be submitted shall be specified.</u></p> <p>ii. <u>Prospective Supplier/Vendor shall submit an application letter for accreditation together with the eligibility and technical requirements.</u></p> <p>iii. <u>The DU shall evaluate and approve/disapprove the application of a Supplier/Vendor based on the documents submitted and a visit to the Supplier's/Vendor's facility.</u></p> <p>iv. <u>The DU shall issue a Certificate of Accreditation to the Supplier/Vendor, specifying the item/s the Supplier/Vendor can supply. The Certificate of Accreditation shall be valid for two (2) years.</u></p> <p>b. The period of Shortlisting shall not exceed two (2) years. <u>Prior to the expiration of its Accreditation, a Supplier/Vendor shall re-</u></p>
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	<u>submit to the pre-qualification process within one year prior to the expiration of its Accreditation.”</u>
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“3.1.14 For Procurement of assets and services which are required routinely, or those repetitively procured items such as, but not limited to, Insulators, Poles, Transformers, Cables, Switchgear, with usual technical specifications, as may be identified and listed under procurement manual, a Regulated Entity may opt for Shortlisting of Vendors or Pre-Qualification, subject to the following:

- b. ~~Shortlisting is done through a Competitive Bidding process following the conditions outlined in clause 3.1.1 to 3.1.14.~~Supplier/Vendor shortlisting or pre-qualification process is as follows:
 - i. Annually, the DU shall invite prospective Suppliers/Vendors to apply for Shortlisting to supply items listed in the invitation. Eligibility and Technical requirements to be submitted shall be specified.
 - ii. Prospective Supplier/Vendor shall submit an application letter for accreditation together with the eligibility and technical requirements.
 - iii. The DU shall evaluate and approve/disapprove the application of a Supplier/Vendor based on the documents submitted and a visit to the Supplier’s/Vendor’s facility.
 - iv. The DU shall issue a Certificate of Accreditation to the Supplier/Vendor, specifying the item/s the Supplier/Vendor can supply. The Certificate of Accreditation shall be valid for two (2) years.