

LUECO Third Party Bids and Awards Committee (TPBAC)
Quezon Avenue, San Fernando City

BID BULLETIN No. 13

17 April 2021

FINAL COPY OF ANNEX 9 AS AMENDED


Please find herein below the final copy of ANNEX 9 "Bid Security" of the IPB as amended for your perusal and reference.

Likewise, Bidders are hereby informed that this will be the last SBB to be issued by the TPBAC pursuant to DOE DC No. 2018-02-0003 Section 8 Competitive Selection Process, Item 8.6.4 which states that:

"The TPBAC, Joint TPBAC or TPA amending any provision of the Bidding Documents shall be issued in writing through a Supplemental/Bid Bulletin at least seven (7) working days before the deadline for the submission and receipt of bids."

For your information and guidance.

For TPBAC:


Elnora Z. Balagot
Secretariat

ANNEX 9

[Letterhead of Issuing Bank]

BID SECURITY

LA UNION ELECTRIC COMPANY, INC
LUECO Bldg., Quezon Avenue, Brgy. III,
City of San Fernando, La Union,
Philippines

Standby Letter of Credit No.

Date:

Dear Sirs:

We, [●], a corporation organized and existing under the laws of the *(insert place of incorporation/registration)* and licensed by the *Bangko Sentral ng Pilipinas* as a bank, (the "Issuer"), hereby establish our Irrevocable Standby Letter of Credit No. [●] (the "Letter of Credit") in your favor relating to the obligations of *[insert name of Bidder]* (the "Bidder") under the IPB for the supply of the Contract Capacity and associated energy for the Cooperation Period beginning on the Commencement Date to LA UNION ELECTRIC COMPANY, INC ("LUECO") (the "Project"), which shall be valid and effective **until the date that is sixty (60) days after Bid Submission Date which is on April 30, 2021**. In the case of the Winning Bidder, this Bid Security shall be kept valid until Commencement Date as defined in the Electric Power Purchase Agreement **template**.

Capitalized terms used in this Letter of Credit shall have the meanings given to them in the IPB except as otherwise expressly defined herein.

1. The maximum aggregate amount available under this Letter of Credit is One Hundred Sixty Million Pesos (Php160,000,000.00) (the "Stated Amount").
2. Subject to the other provisions of this Letter of Credit, LUECO is hereby irrevocably authorized to make one drawing for the entire Stated Amount under this Letter of

Credit by presenting to the Issuer, at its address set forth above, a demand for payment to LUECO in substantially the form ~~to be provided by the Bank attached as ANNEX A~~, duly completed, and is in the form of a letter on LUECO's letterhead signed by any of its authorized signatories, ~~including the original of this Letter of Credit as well as any and all amendments thereto~~, indicating that any of the following conditions, among others cited in Sec. 3.3.2. of the IPB ~~attached as ANNEX B~~, were met:

- a. ~~If~~The bidder ~~withdraws~~ ~~withdrew~~ its bid during the period of bid validity specified by the Bidder ~~on~~ ~~in~~ the bid form; or
 - b. If the bidder having been notified of the acceptance of its bid by the beneficiary during the bid validity period;
 - i) fails or refuses to execute the contract form ~~in accordance with the instruction to bidders~~, if required; or
 - ii) fails or refuses to furnish the performance security in accordance with the instruction to Bidders.
3. The Issuer shall be deemed to have honored a drawing hereunder if the Issuer deposits the amount of such drawing in ~~any of the Bank Accounts bank accounts (the "Designated Account")~~ designated by LUECO, ~~in accordance with~~ from the list of approved banks provided on Annex 11 of the IPB on the demand for payment substantially in the form attached as ANNEX A (the "Designated Account") . Any such drawing made hereunder shall be free and clear of all interest and charges and any sums due to the Issuer.
4. We hereby agree to honor the drawing hereunder made in compliance with this Letter Of Credit notwithstanding any objection that the Bidder might raise against LUECO's entitlement to payment, by transferring in immediately available funds to the Designated Account the amount specified in a demand for payment at the opening of business no later than the second Business Day succeeding the date of such demand. As used herein, the term "**Business Day**" means any day other than (i) a Saturday or Sunday or (ii) a day on which banking institutions in La Union, Philippines ~~and~~ ~~or any city within Metro Manila, Philippines~~ are authorized or obligated by law or executive order to remain closed.
5. If the demand for payment hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give prompt notice (but within the first Business Day succeeding the date of such demand) to LUECO that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons thereof and that we will upon ~~your~~ ~~LUECO's~~ instructions hold the documents at ~~your~~ ~~LUECO's~~ disposal or return the same to ~~you~~ ~~LUECO~~. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, LUECO may attempt to correct the

non-conforming demand and re-submit such demand in accordance with the terms and conditions hereof.

6. This Letter of Credit shall expire, unless otherwise extended in accordance with the provisions hereof, on the earliest of (i) **June 29, 2021, 5 p.m.** at the place of presentation ~~[insert date that is sixty (60) days after Bid Submission Date]~~, or **[on August 26, 2021, in case of a Winning Bidder]**, or (ii) the date on which we have honored a drawing in an amount equal to the Stated Amount, or (iii) the date when we receive a written notice from LUECO that a replacement letter of credit, which is in full force and effect, has been substituted for this Letter of Credit, or (iv) the date when we receive a written notice from LUECO that it is cancelling this Letter of Credit (the **"Expiration Date"**).
7. All documents presented to the Issuer in connection with a drawing hereunder, as well as all notices and other communications to the Issuer in respect of this Letter of Credit, shall be in writing and addressed and presented to the Issuer at its address set forth above. Such documents, notices, and communications shall make specific reference to this Letter of Credit by number. Such documents, notices, and other communications may be delivered or sent to the Issuer at its address set forth above, or at such other address as the Issuer shall have specified in writing to LUECO.
8. This Letter of Credit may not be cancelled or amended without the prior written consent of the Issuer and LUECO.
9. This Letter of Credit sets forth our undertaking and our agreement with LUECO and such undertaking and such agreement may not in any way be modified, amended, amplified, or limited by reference to any other document, instrument, or agreement referred to herein.
10. The Issuer hereby agrees that it shall have no recourse to LUECO if the Bidder fails at any time to pay any amounts which may from time to time be due and payable by it to the Issuer in relation to this Letter of Credit.
11. References in this Letter of Credit to the IPB or any other document or instrument, except to the Annexes hereto, are for identification purposes only. The IPB and such other documents and instruments are not incorporated herein, nor are they made a part of this Letter of Credit.
12. This Letter of Credit is issued subject to the International Standby Practices of 1998, International Chamber of Commerce Publication, Publication No. 590 ("**ISP 98**"), the provisions of which are incorporated into this Letter of Credit, except to the extent superseded by the express terms and conditions of this Letter of Credit. If this Letter of Credit should expire during an interruption of our business, the Issuer hereby agrees to honor any demand presented in accordance with this Letter of Credit within thirty (30) days after the resumption of our business.

13. To the extent that the provisions of this Letter of Credit are not governed by ISP 98, this Letter of Credit shall be governed by the laws of the Republic of the Philippines and construed in accordance with said laws, without regard to **conflicts of law principles. of contents of law.**

IN WITNESS WHEREOF, we have caused these presents to be executed in our name on this [•] day of [•].

[Issuing Bank]

By

ACKNOWLEDGMENT

SUBSCRIBED AND SWORN TO before me this (____) day of *(month and year)* at *(place)*, each affiant exhibiting to me his/her *(proof of identity acceptable under Philippines notarial regulations)*, issued at *(city)* on *(date)*.

Notary Public

Doc. No. : _____

Page No.: _____

Book No.: _____

Series of _____.

ANNEX A - DRAWING CERTIFICATE

Standby Letter of Credit — Beneficiary's Drawing Certificate

Date: _____

(Name of Bank)

(Address)

Re: Standby Letter of Credit No. _____

Gentlemen:

La Union Electric Co., Inc. (LUECO), herein represented by its President/Chairman, **CARLOS L. VALERO**, is the beneficiary under **Irrevocable** Standby Letter of Credit No. _____ (the "Letter of Credit") issued by the _____ (Name of Bank) upon the request of _____ (Indicate Name of Applicant), with the following details (the "SBLC"):

Irrevocable Standby Letter of Credit No.: _____

Amount: _____

Tenor: _____

Expiry Date: _____

Beneficiary: _____

Any term defined in the Letter of Credit shall have the same meaning when used herein.

You are hereby notified that the Bidder has defaulted in its obligations and has failed to comply with its bid conditions **because** _____ (state the reason) _____.

The Beneficiary demands payment of _____ (Indicate Amount) under the SBLC. Payment shall be made to _____ (Indicate Account instructions) upon submission of this Certificate together with the originals ~~copy~~ of the SBLC, ~~or any~~ and its amendments, if any.

This demand is made in accordance with the terms of the aforesaid SBLC.

LA UNION ELECTRIC COMPANY, INC.

By:

CARLOS L. VALERO

Chairman/President

LUECO Bldg. Quezon Avenue, Brgy. III, City of San Fernando, La Union

(072) 607-4770

lueco@luecoinc.com

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES}

_____ }S.S.

BEFORE ME, a Notary Public in and for _____, Philippines, personally appeared:

Name	Government Issued ID	Expiry Date/Place & Date of Issue

who is personally known to me and to me known to be the same person who executed the foregoing document and exhibited to me the above Government Issued ID; and was identified by me through competent evidence of identity. It was acknowledged to me that the execution of this document is the free and voluntary act and deed of said person and has the Authority to represent his Company.

The foregoing document is a BENEFICIARY'S DRAWING CERTIFICATE which consists of (___) pages including the page whereon this Acknowledgment is written. This Acknowledgment forms an integral part of the said document.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed hereof my notarial seal this _____ day of _____ 20__, at _____ Philippines.

NOTARY PUBLIC

My commission expires on _____
Commission serial no. _____
Place of commission _____
Office address _____
Roll No. _____ IBP No. _____
PTR No. _____ Place _____ Date _____

Doc. No. _____
Page No. _____
Book No. _____
Series of 20 ____.

ANNEX B – SECTION 3.3.2 OF INSTRUCTION TO PROSPECTIVE BIDDERS

Forfeiture of Bid Security

The Bid Security shall be subject to forfeiture in its entirety in favor of LUECO upon the occurrence of any of the following events:

- a. illegal conduct or attempt to influence the evaluation by the TPBAC of any of the Document Submissions;
- b. a Bidder, after the Bid Submission Deadline, withdraws its participation, or Expression of Interest, or submitted Qualification Documents, Technical Proposal, or Bid;
- c. a Bidder has a Conflict of Interest;
- d. a Bidder is disqualified due to a material or willful misrepresentation in any statement made or document submitted as part of its Document Submissions;
- e. the Winning Bidder fails to submit the documents and evidence set forth in the Electric Power Purchase Agreement template within the period provided or any other document that forms part of the pre-filing requirements with the ERC;
- f. the Winning Bidder fails or refuses to accept the Notice of Award, fails or refuses to sign the Electric Power Purchase Agree template upon the issuance of the Notice of Award and not later than May 29, 2021;
- g. the Winning Bidder fails to extend the validity of the Bid Security in accordance with Section 3.3.1 of this IPB; or
- (h) the Winning Bidder fails to timely submit any additional document that the ERC may require for the successful filing of the relevant ERC application for approval of the Electric Power Purchase Agreement, within five (5) working days from the signing and execution of the Electric Power Purchase Agreement, except if the delay is caused any circumstances beyond the control of the Winning Bidder.

The Bid Security of a Bidder and/or the Winning Bidder who committed any of the above violations will be forfeited through a letter citing the reason therefor, addressed to the issuer of the Bid Security and the concerned Bidder forfeiting the Bid Security within ten (10) days from receipt of written notice of forfeiture.