**TENDER DOCUMENTS**

**FOR FOURTH AUCTION OF ELECTRICITY SUPPLY**

**WITH RENEWABLE ENERGY RESOURCES**

**OCTOBER 2015**

|  |
| --- |
| NOTE FOR PARTICIPANTS:  The official tender documents and forms are in Spanish.  This text in English language is only referential. In case any discrepancy is noted between texts in the various languages, the text in Spanish will prevail |

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**1.** **GENERAL INFORMATION**

* 1. **Auction Objective**

The Organismo Supervisor de la Inversión en Energía y Minería, hereinafter **OSINERGMIN**, for this purpose with address at Av. Canada Nº 1460, San Borja, Lima 48, Peru, has called on an Auction for the supply of energy with Renewable Energy Resources (RER), to Sistema Eléctrico Interconectado Nacional (SEIN), for a Time Term of enforcement, according to the norms and procedures specified in these Tender Documents, in the framework of what is indicated in the Supreme Decree N° 012-2011-EM “Bylaws of Legislative Decree N° 1002, of Electricity Generation with Renewable Energies”, hereinafter Bylaws, modified by Supreme Decree N° 024-2013-EM.

The assignment of the Required Energy per technology for the First Round is as follows:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Technology** | **Biomass** | | | | **Wind** | **Photovoltaic Solar** | **Total** |
| **Forestry Residues** | **Solid Agricultural Residues** | **Solid Urban Residues Incineration** | **Solid Urban Residues Biogas** |
| Energy Required (MWh/year) | 125 000 | 125 000 | 31 000 | 31 000 | 573 000 | 415 000 | **1 300 000** |

The Adjudicated Energy for each technology will be the result of the Auction.

Additionally, the RER generation for hydroelectric projects will be up to a maximum of 450 000 MWh/year. This requirement only will be auctioned in one round.

The Referential Date of Commercial Operation Commissioning of the RER generation projects should be, at the latest, on December 31, 2018. For the case of RER generation projects which are connected to busbars that to the date of the adjudication are not part of SEIN, the Referential Date of Commercial Operation Commissioning will be that of its interconnection to the referred system.

For the purposes of the Auction only the projects regarding which, to the date of the calling, COES has not issued the written authorization for the connection to SEIN. The owners of the projects that participate should comply with the requirement and conditions established in these Tender Documents.

The Tender Documents and the Applicable Laws will rule the Auction Process and the Contract, respectively. It should be assumed without admitting proof on the contrary, that all Persons who, in a direct or indirect manner participate in the Auction Process know the Applicable Laws and the uses and customs of the Peruvian market. The indicated stipulations in Legislative Decree Nº 1017, Law of State Contracting and its Bylaws, nor the ones that substitute them, do not apply to the Auction or to the Contract.

The price of the Tender Documents is Five Thousand Dollars of the United States of America (US$ 5 000.00).

**1.2 DEFINITIONS**

For all purposes of this Auction Process, it should be understood that the following terms have the meaning indicated in the following:

**1.2.**1 **Adjudicated Energy**: Is the annual active energy quantity expressed in MWh and stipulated in the Contract that the Concessionaire Society obliges itself to produce with the corresponding RER generation plant which resulted awardee and inject to the electric system up to the Date of End of Contract.

**1.2.2 Applicable Laws**: All juridical norms and linked precedents that constitute the Internal Law of the State and may be modified or supplemented by the Government Authorities.

**1.2.3 Auction:** Process of public contest called by OSINERGMIN in order to assign the Tariff of Adjudication to each project of generation with RER up to covering the Required Energy. It concludes on the Closing Date.

**1.2.4 Awardee**: Is the Bidder to which the contract is awarded. The Auction may have one or more awardees.

**1.2.5 Awarding of Contract**: Is the act by which the contract is awarded and concludes with the signature of the contract on the part of the Peruvian State represented by the Ministry and the Concessionaire Society.

**1.2.6 Banking Company:** For the purposes of the Auction Process is each one of the institutions mentioned in Annex 4 of the Tender Documents.

**1.2.7 Bidder:** Participant that complies with the requirements of numeral 3 of the Tender Documents.

**1.2.8 Busbar**: Is the point of the electric system which is prepared to deliver and/or withdraw electric energy by the Agents operating in SEIN.

**1.2.9 Bylaws Law Electrical Concessions**: Bylaws of Law of Electrical Concessions approved by D.S. N° 009-93-EM.

**1.2.10 Bylaws**: Bylaws of the Law, approved by Supreme Decree Nº 012-2011-EM.

**1.2.11 Circular Letters**: Are the communications in writing issued by the Committee in order to clear, interpret or modify the Tender Documents, or answer questions formulated by the Participants or Bidders, according to what is established in Numeral 2.3.2. By exception, the Circular letters may also modify the Tender Documents as long as they have the previous and favorable opinion of the Grantor.

**1.2.12 Closing Date**: Date established in the Tender Documents for the signature of the Contract and conclusion of the Auction process.

**1.2.13 COES**: (Comité de Operación Económica del Sistema Eléctrico Interconectado Nacional) Is the Economics Operation Committee of the Interconnected Nationwide System.

**1.2.14 Committee:** Is the Committee for Conduction of the Process in charge of conducting the Auction Process up to the Closing Date according to the Schedule of the process established in the Tender Documents

**1.2.15 Concessionaire Society**: Is the juridical mercantile person constituted according to the General Societies Law and what is prescribed in numeral 6.1.1 of the Tender documents, that signs the Contract with the Ministry before the Committee.

**1.2.16 Connection Busbar**: Is the Busbar selected by the RER Generator where it will connect to the System to inject its energy.

**1.2.17 Consolidated Tender Documents**: Final version of the Tender Documents approved by the Committee as result of the phase of analysis of suggestions and questions regarding the Tender Documents, which will be published in Data Room according with the Schedule.

**1.2.18 Consortium:** Grouping of two or more juridical persons that does not have legal status and which is constituted in order to be participant and/or bidder in the Auction Process

**1.2.19 Contract**:Is the Concession Contract for the Supply of Renewable Energy as a result of the Auction, which establishes the commitments and conditions relatives to the construction, operation, energy supply and tariff regime of the generation plants with RER. It starts from the Date of closing and is in force up to the Date of End of Contract.

**1.2.20 Correction Factor:** Is the proportion between net energy injections plus the Energy Not Injected Due to Causes Outside the Scope of the RER Generator with respect to the Adjudicated Energy. This Factor is applied to the Tariff of Adjudication when its value is less than one (1,0).

**1.2.21 Data Room.** Virtual installation through which the OSINERGMIN will give the necessary information for the Auction Process, in the present case Web portal [www.OSINERGMIN.gob.pe](http://www.OSINERGMIN.gob.pe/). Will be available, starting from the Calling to the Auction up to the Awarding of the Contract.

**1.2.22 Date of Contract End**:It is December 31, 2038, date that cannot be modified for any reason, until which it is guaranteed to the Concessionaire the Tariff of Adjudication.

**1.2.23 Days:** The references to “Days” are understood that mean the days that are not Saturday, Sunday or non-working holiday in the city of Lima, except an express stipulation on the contrary contained in the Contract. Also will be consider non-working holidays the days the banks in the city of Lima are not obliged to serve the public according to the Government Authority. All references of hours should be meant as those of the hour in Peru

**1.2.24 DGE**: Dirección General de Electricidad del Ministerio de Energía y Minas. Is the General Electricity Directorate of the Ministry of Energy and Mines.

**1.2.25 DGEE**: Dirección General de Eficiencia Energética del Ministerio de Energía y Minas. Is the General Energy Efficiency Directorate of the Ministry of Energy and Mines.

**1.2.26 Dollar or US$**: Currency or money sign of legal course in the United States of North America.

**1.2.27 Energy Not Injected Due to Causes Outside the Scope of the RER Generator**: It is the energy in MWh that the RER Generator cannot inject to SEIN due to dispositions of COES and/or due to operation conditions of the electric system and/or installations of third parties and /or causes of force majeure qualified by OSINERGMIN. This is determined according the corresponding Technical Procedure of COES.

**1.2.28 Final Concession:** Is the electric right granted by the Competent Authority, according to the rulings established in the Law of Electrical Concessions and the Bylaws of the Law of Electrical Concessions for development of the generation activity with RER

**1.2.29 Financial Closing:** Is the moment in which the financing conditions foreseen in numeral 11.5.9 of the Contract are verified.

**1.2.30-Forestry Residues**: Are those residues that are produced as consequence of the forestry activities made in the Primary Transformation Plants, or that are generated from the plantations in stripped areas defined by SERFOR.

**1.2.31 Government Authority**: Any judicial, legislative, political or administrative authority of Peru, which has the faculty according to the applicable laws to issue or interpret norms or decisions, general or particular with obligatory effects for those that are subjected to their scope. Any mention of a specific Government Authority must be understood, that it means it, or that which succeeds it or whomever this designates to carry on the actions that are contained in the Contract or the Applicable Laws.

**1.2.32 Grantor**: Is the State of the Republic of Peru represented by the Ministry of Energy and Mines.

**1.2.33 Guarantee of Bid Security:** Guarantee Letter, issued by a Banking enterprise, according to Annex 9 of the Tender Documents. Solidary, non-conditioned, irrevocable of automatic realization without the need for prior prosecution of the debtor, granted in favor of OSINERGMIN, with enforcement date until the Closing Date. It guarantees compliance of the obligations assumed by the Awardee up to the signature of the Contract.

**1.2.34 Guarantee of Faithful Compliance of Installation:** Guarantee Letter issued by a Banking enterprise according to Annex 10 of the Tender documents, solidary, non-conditioned, irrevocable, of automatic realization without the need for prior prosecution of the debtor, granted in favor of the Ministry, which guarantees the compliance of the Schedule of Works Execution of the Concessionaire Society. This is submitted on the Closing Date.

**1.2.35 Guaranteed Income**: Is the annual income the Concessionaire Society will have for the net energy injections up to the limit of Adjudicated Energy remunerated at the Tariff of Adjudication. It will be applied only during the Time Term of Enforcement.

**1.2.36 Law:** Legislative Decree Nº 1002, Promotion of the Investment for the Generation of Electricity with the use of Renewable Energies.

**1.2.37 LCE:** Law Decree Nº 25844, Law of Electrical Concessions

**1.2.38 Maximum Price of Adjudication or Basic Tariff**: Is the maximum monomeric tariff that, for the purposes of the Auction, is calculated by OSINERGMIN in USD/MWh, at the Offer Busbar, for each type of RER generation technology, on the date indicated in the Schedule.

**1.2.39 Ministry**: It is Ministerio de Energía y Minas, that signs the Contract on behalf of the State

**1.2.40 Net Energy Injections**: Are equal to the difference between injections less the withdrawals of energy for contractual obligations with third parties.

**1.2.41 Offer**: Is the Proposal formulated by a Bidder according to Annex 7. It includes the annual energy offered with RER generation, expressed in MWh, and the corresponding monomeric price, expressed in USD/MWh, referred to the Offer Busbar. It will also indicate the acceptance or not of a partial assignment in the Auction.

**1.2.42 Offer Busbar**: Is the Busbar selected by each Bidder of the list contained in Annexes 8-1 and 8-2 of the Tender Documents, to which its Offer will refer and in which will be made the economic liquidations. The Concessionaire Society will be responsible of the charges corresponding between the Connection Busbar to SEIN and the Offer Busbar.

**1.2.43 OSINERGMIN:** Organismo Supervisor de la Inversión en Energía y Minería, competent according to the Applicable Laws, to supervise the compliance of the Contract.

**1.2.44 Participant:** Person or Consortium in which at least one of the members has been inscribed in the Participants Registry and has acquired the Tender documents.

**1.2.45 Participants Registry:** Is the registry to which literal c) of Article 7 of the Bylaws refers. Anyone that wishes to participate in the Auction of the Electricity Supply with Renewable Energy Resources should be registered in the Participants Registry, in addition to acquiring the Tender Documents.

**1.2.46 Permitted Creditors:**  Are natural or juridical persons defined as such in Annex 12

**1.2.47 Person:** Any juridical, national or foreign person that can conduct juridical acts and assume obligations with the State.

**1.2.48 Plant Factor**: Is the proportion between the energy that the Plant can produced annually with respect to the Power of the Plant multiplied by the number of hours per year (8 760).

**1.2.49 Power of the Plant**:Is the nominal power of the RER generation plant, expressed in MW that the Bidder will install to guarantee the compliance of its Contract.

**1.2.50 Premium**:Is the annual amount which is required that the Concessionaire Society receives the Guaranteed Income, once the net income received for the transfers determined by COES are discounted. It will only be applied during the Time of Enforcement of the corresponding Tariff of Adjudication.

The first determination of the Premium will be made considering the proportion of Energy Adjudicated corresponding to the aliquot part of the period between the Commercial Commissioning up to the end of the respective Tariff Period.

**1.2.51 Premium Charge**: Is the unit charge determined for each year by OSINERGMIN to ensure that the Concessionaire Society will receive the corresponding Premium. This charge will be included in the toll for Connection of the Main Transmission System, and the respective amounts will be transferred to the Concessionaire Society through the transfers made by COES.

**1.2.52 Real Date of the Commercial Commissioning or Commercial Operation Commissioning**:It is the real date of commercial commissioning of each plant, certified by COES according to its Technical Procedures which cannot exceed two (2) years from the Referential Date of Commercial Operation Commissioning, on the contrary the Contract will automatically be resolved and the Guarantee of Faithful Compliance will be executed.

**1.2.53 Referential Date of Commercial Operation Commissioning**: It is December 31, 2018, date established in Numeral 1.1 of the Tender Documents, considering twenty (20) years until the Date of Contract End.

**1.2.54 Remaining Required Energy**: Is the Required Energy not awarded in the first round (does not include the hydroelectric) which after being accumulated will be auctioned in the second round.

**1.2.55 Required Energy**: Is the total quantity of annual energy expressed in MWh which is the object of the Auction. The Required Energy is determined by the chart indicated in numeral 1.1 of the Tender Documents.

**1.2.56 Schedule:** Temporary Sequence of activities which will be developed during the Auction Process and which are indicated in Annex 1 of the Tender Documents.

**1.2.57 SEIN**:Is Sistema Eléctrico Interconectado Nacional.(Nationwide Interconnected Electric System)

**1.2.58 Tariff of Adjudication**: Is the monomeric price offer of the Awardee in USD/MWh. This tariff is guaranteed to each Awardee for the Net Energy Injections up to the limit of its Adjudicated Energy limit. Each Tariff of Adjudication has the character of firm and is applied only during the Time of Enforcement, applying the Correction Factor and the updating formula established in the Tender documents.

**1.2.59 Tariff Period:**  Period of twelve months that start in May each year.

**1.2.60 Tender Documents**: Is the document elaborated and approved by the Ministry which sets the terms and conditions under which the present process of Auction will be developed, the conduction of which is in charge of OSINERGMIN, including the Annexes and the Circular Letters that the Committee issues.

**1.2.61 Time Term of Enforcement of Tariff of Adjudication** **(Time term of Enforcement)**: Period between the Real Date of Commercial Operation Commissioning and the Date of Contract End (December 31, 2038). During the Time of Enforcement, the Concessionaire Society is committed to supply electricity to the system with RER technology and the payment of the Tariff of Adjudication is guaranteed for the Net Energy Injections produced by its generation plant until the limit corresponding to the Adjudicated Energy.

Every reference made in this document to “Numeral”, “Item”, “Incise” and ”Annex”, should be understood to mean numerals, items, incises, and annexes of these Tender Documents respectively, unless express indication in contrary.

Expressions in singular include in its case the plural and vice versa. The terms which are in capital letters in these Tender Documents and which are not expressly defined in these, corresponds to the definitions included in the Applicable Laws or to terms that are currently used in capital letters.

**1.3 Faculties of the Committee**

**1.3.1** The Committee has the faculty of executing all actions deemed necessary to conduct the process of Auction up to the date of Closing within the framework of these Tender Documents.

**1.3.2** The Committee may modify the time terms indicated in these Tender Documents or the Schedule, suspend and cancel the Auction, until before the granting of the Contract. The Committee will not incur in any responsibility as consequence of these decisions.

In case of cancellation of the Auction Process, before the submission of Envelopes 1 of Qualification, OSINERGMIN will proceed to return the cost of the tender documents to the Participants. If the cancellation is done after the delivery of the Envelopes 1 of Qualification, all documents submitted will be returned, including the Guarantee of Bid Quality. Neither compensations nor indemnities of any kind may be claimed.

**1.3.3** If the Committee, at any moment, considers necessary to clarify, make some precision or perfect the redaction of the Tender Documents for a better interpretation or modify them with the previous favorable opinion of the Grantor, it will do so with Circular letters and these changes will become integral part of the Tender Documents. Without waiving anything of the previous indications, the Circular Letters will be available at the Data Room ([www.osinergmin.gob.pe](http://www.osinergmin.gob.pe/)).

**1.3.4** The sole submission of documents for Qualification does not oblige the Committee to declare the Bidder as apt to participate in the Auction.

The acquisition of the quality of the Participant implies the acceptance of what is indicated in the Tender Documents. without any limitation nor restriction, as well as its irrevocable and non-conditional renouncing to start any action, claim, demand, or requirement of indemnity against the Peruvian State, the Ministry, OSINERGMIN , the Committee and its Advisors or any other entity, organization or officer of the State due to the exercise of the faculties foreseen in the Tender Documents.

**1.3.5** Except when expressly stipulated in contrary in these Tender Documents, the decisions of the Committee or the Directive Council of OSINERGMIN regarding this Auction Process are final, there will be no indemnity for anything and they cannot be disputed in the administrative or judicial level. Consequently, by the sole participation in this Auction Process, the Persons that are under the scope of these Tender Documents renounce to the presentation of any dispute writ against the decisions that the Directive Council of OSINERGMIN will issue in second and last instance.

**1.3.6** The Committee will have, among others, the following attributes:

1. Establish, operate and maintain the Data Room.
2. Preserve the historic registries in electronic means, of the total of operations made in the development of the Auction.
3. Issue the Minutes of Adjudication, in which it will be expressly indicated what is contained in Article 15 of the Bylaws.
4. Suspend in case it is necessary the Auction according to the stipulations contained in the Tender Documents.
5. Coordinate the actions necessary for the procedures up to the Closing Date.

**1.3.7** The Committee will publish the Maximum Adjudication Price within the fifteen (15) working days before the date of the Submission of the Envelopes. The reports that support the Maximum Prices are confidential.

**1.4 Limits of Responsibility**

**1.4.1** Participants participate in the Auction Process under their own and exclusive responsibility and basing their decision in their own investigations, studies, examinations, inspections, economic calculations, financial calculations and others as part of their own due diligence.

Each Awardee must obtain the Final Concession complying with the dispositions established in the Electric Concessions Law and the Bylaws of the Electric Concessions Law, in case that it does not have such Final Concession, the Awardee is responsible for having the availability of the area of terrain stated for the RER generation plant, according to what is indicated in numeral 4.4 of the Contract.

Consequently, it is of exclusive responsibility of the Awardee to have the titles, licenses, permits, authorizations, as well as all other things that will legally give it the means to achieve the installation of the RER generation plant, in the area of terrain stated for that purpose and make all the works, procedures with respect to it.

The Participant will pay for all its costs or direct or indirect expenses in which it incurs, related with the preparation and submission of its request for Qualification or its Offer. The Peruvian State or any office, organization or officer of this, the Ministry, OSINERGMIN, the Committee or its Advisors will not be responsible in any case for those costs or expenses whichever is the form in which the Auction Process is carried out or its result.

**1.4.2** The Peruvian State or any office, organization or officer of this, the Ministry, OSINERGMIN, the Committee or its Advisors do not guarantee, expressly nor implicitly, the totality, integrity, reliability or veracity of the information, oral or written, which is supplied for or within the Auction Process.

Consequently, none of the Persons that participate in the Auction, directly or indirectly, may attribute any responsibility to any of the entities or persons mentioned before or their representatives, agents or dependents for the use that will be given to such information or for its non-reliability, insufficiency, defect, lack of updating or for any other cause.

**1.4.3** The limitation reaches, in the most ample manner possible all the information regarding the Auction Process, which was duly known, the unknown information and the information that at some moment must have been known, including the possible errors or omissions contained in it, by the Peruvian State or any dependency, organization or officer of this, or by the Ministry, OSINERGMIN, the Committee or its Advisors.

Likewise, that responsibility limitation reaches all the information that is or not supplied or prepared, directly or indirectly by any of the entities or persons previously mentioned.

The responsibility limitation also includes all the information available at the Portal of OSINERGMIN, as well as that, which is given through Circular letters or any other form of communication, and the ones obtained during the visits relatives to the Auction and the ones mentioned in these Tender Documents.

**1.4.4** The sole submission of the Envelope of Qualification, will imply without the necessity of any posterior act, full knowledge, acceptance and unconditional subjecting of the Participant to all which is indicated in the Tender Documents, as well as its irrevocable and unconditional renunciation, in the most ample manner that the Applicable Laws permit, to present any action, reconvention, exception, claim, demand or request of indemnity against the Peruvian State or any dependency, organization or officer of this, the Ministry, OSINERGMIN , the Committee, and its Advisors.

**1.4.5** The information submitted by the Participants or by the Bidders will be maintained in reserve until after the Closing Date, and may only be requested in its opportunity to the Ministry

**2. ATTENDANCE TO THE PROCESS**

* 1. **Authorized Agents**

**2.1.1** Each Participant may designate up to two natural persons, with common domicile in the Metropolitan Lima as its Authorized Agents regarding the Auction Process.

The designation of Authorized Agents, should be done through a simple letter addressed to the Committee, signed by a Legal Representative of the Participant, in which it is indicated that the faculties indicated in Numeral 2.1.2 are granted as well as the following information: name, document of identification, common domicile in Metropolitan Lima, electronic mail, as well as telephone and facsimile numbers. The letter will be submitted at the first opportunity that any of the faculties mentioned in Numeral 2.1.2 are exerted and will be understood as received on the date corresponding to its reception.

**2.1.2** The Authorized Agents, may act individually under the exclusive responsibility of the Participant, and will be the only persons with the faculties given by the Participant, according to what corresponds for: (i) deal with the Committee regarding all matters with exception of those which are exclusive competence of the Legal Representative according to Numeral 2.2, (ii) formulate the consultations regarding the Tender Documents, (iii) answer on behalf of the Participant and with commitment effect for it, all the questions the Committee formulates; (iv) receive judiciary or extra judiciary notifications; and, (v) request the Qualification and submit the Offer.

**2.1.3** Notifications directed to the Participants or Bidders may be made remitting them to any of the Authorized Agents through:

a) Electronic mail, in which case they will be considered as valid for all effects, from the date and hour of their remittance, or:

b) Facsimile with confirmation of complete transmission issued by the facsimile machine of the one remitting the message. In this case will be understood as received on the date the transmission is completed, or,

c) By letter delivered by hand or by public notary, in which case it will be understood as received the notification on the date of its delivery.

* 1. **Legal Representatives**

Participants may designate up to two natural persons that will indicate common address in the city Metropolitan Lima, as their Legal Representatives, jointly or individually in the Auction Process.

* 1. **Questions and Suggestions Regarding Tender Documents and Contract**

**2.3.1** Only the Participants or Bidders may make consultations and suggestions regarding the Tender Documents or the Contract through the Form, which is attached, in Annex 5 and within the time terms established in the Schedule, through written communications in Spanish language and directed to:

COMITÉ SUBASTA RER

Av. Canadá N° 1460, San Borja (Lima-41)

Phone: (511) 224-0487

Email: [g.subastaRER@osinergmin.gob.pe](mailto:g.subastaRER@osinergmin.gob.pe)

Observations and suggestions made to the Tender Documents are understood as made also to the Model of Contract (Annex 12) in what is considered pertinent

It is expressly established, that the dates indicated in the Schedule (Annex 1) are only referential. The Committee may modify any of such dates with a Circular Letter until before the Contract Adjudication

**2.3.2** Without waiving what is mentioned before, the answers to all consultations formulated will be available in the Data Room**.**

* 1. **Delivery of Envelopes and their Contents**

**2.4.1** On the date and at the time established according to the Schedule, each Participant will submit the Envelope of Qualification (Envelope 1) for each project it will submit to the Auction. Envelope 1 will contain the Envelope of the Offer (Envelope 2). Delivery of Envelope 1 will be done to the Committee with participation of only Public Notary: i) at the offices of OSINERGMIN , at Av. Canada Nº 1460, San Borja, Lima 41, Peru; and, ii) through the Authorized Agent or Legal Representative.

**2.4.2** Envelopes should be submitted closed and clearly marked outside with the following:

(i) Name of the Auction Process,

(ii) Name or company name of Participant

(iii) Name of the project,

(iv) Type of RER technology, and

(v) Marked as Envelope 1 or Envelope 2 according to what corresponds

**2.4.3** The documents contained in both Envelopes should: i) be submitted in original, each page (face) numbered in correlation, and two (2) copies, with the exception of Envelope 2 (of Offer) which will be submitted only in original; ii) they must be signed by the Legal Representative, or initialed in each page if it does not correspond to be signed; and iii) be written in Spanish language or accompanied with simple translation to Spanish. In case there is a discrepancy noted between texts in different languages, the text in Spanish will prevail. In case there is any discrepancy between a figure expressed in numbers and letters, what is expressed in letters will prevail.

**2.4.4** Only documents without corrections, striking outs, neither reserves nor conditions of any type will be taken in consideration.

**2.4.5** TheOffer containing any document with corrections, striking outs, reserves or conditions of any type, cannot be remedied and thus the Bidder will be disqualified.

* 1. **Contents of Envelope of Qualification (Envelope 1) (for each project)**

In the outer part of the Envelope of Qualification should be written what is indicated in Numeral 2.4.2 of the Tender Documents and will contain the following documents:

* + 1. Copy of electronic mail remitted by the Committee through which it is communicated that it has acquired the quality of Participant

**2.5.2** Accreditation of the faculties of the Legal Representative of the Participant[[1]](#footnote-2)

**2.5.3** In the case of Consortium, letter of constitution of Consortium signed by the Legal Representatives of each one of the members of the Consortium, in which is manifested their intention of participating together in the Auction (Annex 6-1).

**2.5.4** Sworn Declaration of the Participant, or in its case, of each one of the participants of the Consortium (Annex 6-2)

**2.5.5** Information of the Participant (Annex 6-3)

**2.5.6** Commitment of confidentiality (Annex 6-4**)**

**2.5.7** Commitment of non-collusion (Annex 6-5)

**2.5.8** Participant must submit aSworn Declaration of No Impediment (Annex 6-6)

**2.5.9** Sworn declarations and commitments regarding the project of the RER plant.

1. Sworn declaration of Compliance of Technical Requirements (Annex 6-7).
2. Sworn declaration of having made the measurements and/or studies of the renewable resource during a period of not less than one (1) year. (Annex 6-8).
3. Sworn declaration that the equipment to be installed will be new and in no case the date of manufacture will be greater than two (2) years more than the date of the calling (Annex 6-8). The certificate of the manufacturer that will certifies the contents of such sworn declaration will be required by OSINERGMIN during the construction phase.
4. For the case of hydroelectric projects, sworn declaration that the maximum electric generation capacity that is possible to use of the energy resource in the plant as a whole, including the existing or future installations is not greater than 20 MW and that the implementation of the project does not mean an obstacle for the optimum hydro energy use of the hydrographic basing (Annex 6-8). Its noncompliance is a cause to resolve the Contract with full right.
5. For the specific case of projects of generation with Forestry Residues, sworn declaration of the commitment to: (i) collect residues of strict legal origin, and coming from the primary transformation plants duly formalized and registered at the competent Forest Authority (ii) use of the plantations in a sustainable and renewable manner within the framework of the current standards in force (iii) conduct activities of reforestation in stripped zones defined by SERFOR, taking special care of not affecting the ecosystem and the biodiversity of the zone to be reforested. For that purpose with Circular Letter will be established the parameters under which will be materialized this commitment (Annex 6-8).
6. For the specific case of projects of generation with solid urban residues buy incineration, sworn declaration with the commitment to optimize its processes of handling and discarding of such residues, especially after their use in the activity of generation, guaranteeing that the final disposal of such residues will be treated according to the Applicable Laws; in such a manner that they will not affect the health, landscape, biodiversity and sustainability of its environment (Annex 6-8).
7. Express acknowledgement of the non-modifiable character of the date of Contract End (Annex 6-9).
8. Sworn declaration of certification of minimum experience of two (2) years in electric generation (Annex 6-10). This experience may be certified through the participant itself, its shareholders or owners of the society capital or through consortium or association in participation with a company that has the expertise in the respective generation activity in the country or overseas.

In the case of consortium, that declaration will include an irrevocable commitment of maintaining the consortium for at least three years after the Real Date of Commercial Operation Commissioning.

**2.5.10** Submit for each project the following:

1. Location of the project at district level and location map of the installations and works of the project to comply with the supply of energy which is the object of the offer (scale 1:50000).
2. One line diagram for each project in which is indicated explicitly the name and level of voltage of the connection Busbar.
3. Power of the Plant.
4. Plant Factor.
5. Project budget

**2.5.11** Envelope 2 (Offer).

**2.5.12** Three (3) sets of Annex 12 (Contract)[[2]](#footnote-3), for each Offer, duly initialed in each page and signed by the Legal Representative of the Bidder and filled in the corresponding spaces.

* 1. **Contents of the Envelope of Offer (Envelope 2)**

In the outer part of each Envelope of Offer should be indicated what is established in Numeral 2.4.2 of the Tender Documents and will include the following documents:

1. Guarantee of Bid Security equivalent to fifty thousand Dollars of the United States of America (USD 50 000) for MW to be installed, with enforcement up to the Closing Date.
2. The Annex 7-A (Economical Offer) duly filled in, indicating:

b.1 Monomeric price offered in the First Round (USD/MWh).

b.2 Power of the Plant (MW).

b.3 Annual Energy Offered (MWh).

b.4 Minimum energy percentage that it is willing to accept in case of partial adjudication.

b.5 Offer Busbar (name of busbar and the voltage level).

1. The Document of Non Objection issued by COES, when it corresponds (see Annex 8-1).

The Offer for the Second Round (Annex 7-B), will be submitted in the Public Act of Adjudication of the Contract as it is established in Annex 2.

The outer part of each Envelope 2 (Envelope of Offer) should be labeled according to what is established in Numeral 2.4.2 of the Tender Documents and will include the following documents:

1. Guarantee of Bid Security according to what is indicated in Annex 9 of the Tender Documents
2. Economic Offer according to what is established in Annex 6 of the Tender Documents

**3. QUALIFICATION OF PARTICIPANTS (Opening of Envelope 1)**

* 1. **Requirement**

In order to be declared Bidder, the Participant has the obligation of complying with submitting the requirements established in numeral 2.5.

The Participant will submit the Annexes 6-1 to 6-10, duly signed by its Legal Representative, same that have the nature and effects of sworn declaration.

* 1. **Qualification Procedure**

**3.2.1** Opening of the Envelope of Qualification will be done in a private act in presence of a Public Notary.

The Notary will initial the documents contained in Envelope and will hand them over to the Committee.

**3.2.2** The Notary will separate the Envelope of Offer (Envelope 2) verifying that it is duly labeled and totally sealed, and will keep it in custody until the date foreseen in the Schedule for its Opening and the Granting of the Contract.

**3.2.3** The Committee will review the documents submitted in Envelope of Qualification. In case the Participant has complied with all the requirements needed, its qualification as Bidder will be notified individually by electronic mail. In contrary, the Committee will notify the Participant the observations to be remedied by the date indicated in the schedule; if the observations are not remedied by that date, it will not be able to continue participating and will be disqualified.

**3.2.4** Without waiving the civil and penal responsibility, the lack of veracity of the data or the information submitted in Envelope of Qualification will exclude the Participant from the Auction Process, even after the Granting of the Contract, until the Closing Date.

**3.2.5** Once the time term established in the Schedule is due or if the observations presented have been remedied, the Committee will inform that the Minutes of Bidders has been approved or instead will publish a Final Minutes of Bidders, according to the case may be which will be signed by the members of the Committee and the Public Notary.

**3.2.6** The non-qualified Participants may request the return of the documentation presented, at the address indicated in numeral 2.3.1.

**4. ASSESSMENT OF OFFERS (Opening of Envelope 2)**

**4.1** Will be done in one only public act, which will be attended by a Public Notary who will hand over to the Committee the Envelopes 2 of the Offers that he/she had in custody

**4.2** After the opening, the Envelopes of Offer will be ordered by the Committee by technology, from lesser to larger price without being more than the Maximum Price of Adjudication of each technology. The hydroelectric technology will be the last one.

**4.3** Envelopes 2 will be opened by technology, in the same order established in the previous numeral, and the procedure will be as follows:

1. The Offers that are greater than the Maximum Price of Adjudication of the respective technology will be discarded from the Auction.
2. For Adjudication of the Contract will be applied the selection and adjudication procedures of offers according to Annex 2 which comprise two rounds.
3. If it is the case that some bidder wishes to participate with an offer in the Second Round, it will accompany to its first offer, the respective envelope containing the “Offer of Monomeric Price for the Second Round (Optional)” (Annex 7-B).

**4.4** In cases where the one hundred percent (100%) of the Required Energy in the Auction is not covered, this will be declared partially or totally deserted, according to what corresponds. If it is the case, this fact will be consigned in the Minutes of Adjudication.

**4.5** The Economic offers will remain in force up the Closing Date according to the Schedule

**4.6** The Minutes of Adjudication will be written out will contain the results of the Process and which will be signed by the members of the Committee, the Public Notary and the Bidders that wish to do so.

**4.7** The Minutes of Adjudication will be published in the system of information at the Internet Portal of OSINERGMIN, at the latest on the day following the adjudication.

**5. DISPUTES**

**5.1 Disputable Acts**

At administrative level is only disputable the decision of turning down the qualification of a Participant as Bidder, and the Adjudication of the Contract. In the first case, only may be disputed the Participant that was not qualified as Bidder. In the second case, only will be disputed the Bidder that has indicated the intention of impugnation in the Minutes of Adjudication.

**5.2 Time terms for disputes**

Disputes and their supporting documents should be submitted within the time term of two (2) Days according to the Schedule together with the Guarantee for Dispute issued according to Numeral 5.3. A process address[[3]](#footnote-4) in Metropolitan Lima should be indicated. Once that time term is due, the decisions made by the Committed are consented

The Committee will have to pass on to the Directive Council of OSINERGMIN the disputes within the time term of three (3) Days, and this will resolve the claim within a maximum time term of five (5) Days, and should notify it to the process address within the following five (5) days. With its resolution will end the administrative procedure.

**5.3 Guarantee for Dispute**

The Guarantee for Dispute will be submitted according to Annex 11, as the case may be and issued by one of the Banking Enterprises indicated in Annex 4, for an amount of Twenty Thousand Dollars of the United States of America (US$· 20 000) be it for dispute of qualification or for the case of dispute for Adjudication of Contract. Not presenting the Guarantee will render the dispute non admissible.

This Guarantee will be executed in case the Directive Council of OSINERGMIN declares not founded or not admissible the interposed dispute.

In case the dispute is declared founded, the guarantee will be returned by OSINERGMIN to the dispute part, without generating any interest in its favor.

**5.4** Once the time terms to resolve without express pronunciation of the Directive Council has elapsed, the positive silence will have been produced.

**6. CLOSING DATE**

The Auction Process is finished with the signing of the Contract by the Ministry and the Concessionaire Society. This will take place with the participation of Public Notary on the sole date indicated in the Schedule and at the time indicated by the Committee

**6.1 Requirements**

In order that the closing is produced in a valid manner on the date foreseen the following will take place:

**6.1.1** The Successful Bidder will certify at the Committee that it has constituted a Concessionaire Society according to the General Societies Law, its inscription and that of its legal representatives in the Public Registries and that in the Social Bylaws is expressly stated the following

a) That the social purpose will include the development of activities of electric generation.

b) That the social capital subscribed and paid is as minimum One hundred thousand Dollars of the United States of America (US$ 100 000), or its equivalent in Nuevos Soles[[4]](#footnote-5) for each MW to be installed to generate the energy offered, including all the projects to be developed by the same Concessionaire Society.

c) Ratification of all the acts made and documents signed by the Authorized Agents and Legal Representatives during the process of Auction Process, especially the preparation and presentation of the Offer, the signing of the Contract and any other right or obligation that corresponds to that Bidder according to the Tender Documents and contract.

**6.1.2** The delivery on the part of the Concessionaire Society of the Guarantee of Faithful Compliance issued by one of the Banking Companies indicated in Annex 4 according to form of the Annex 10

**6.1.3** Devolution of the Offers to Bidders that were not successful will be done within the five (5) Days following the date of the Adjudication of the Contract having to communicate the date, hour and place in which the devolution of Envelopes 1 and 2 will take place. In case there were disputes submitted, that devolution would be made once these are resolved. Likewise, within the same time term, the Committee will hand over to the Ministry the documents submitted by the Awardees.

**6.1.4** Delivery on the part of the Concessionaire Society of the following documents in the case of generation with forestry residues:

1. The contracts signed with suppliers of forestry residues that are duly certified by the competent forestry authorities.
2. The irrevocable commitment of conducting reforestation works in the zones, minimum extensions and forestry species that will be indicated afterwards with circular letter.

**6.1.5** On the Closing Date the Ministry will sign the three (3) copies of the final version of the Contract that the Awardee handed over included in Envelope 1. On that same date, the Ministry will return to the Awardee Guarantee of Bid Security.

**6.2 Noncompliance of requirements**

**6.2.1** The noncompliance on the part of the Awardee or Concessionaire Society of the requirements established in numerals 6.1.1 and 6.1.2 for the Closing Date will cause the immediate execution of the Guarantee of Bid Security and the disqualification as Awardee, without any need of previous notification to the Awardee.

**6.2.2** Without waiving what is indicated in the precedent numeral, the Ministry may start all legal actions that the applicable Laws permit as direct or indirect consequence of the noncompliance by the Awardee.

**6.3 Minutes of Public Notary on closing date**

On the Closing Date will be written down a Public Notary Minutes in which will be indicated the compliance or noncompliance, according to what the case may be of the requirements established in the Tender Documents by the Awardee or Concessionaire Society.

**7. CHARACTERISTICS OF THE SUPPLY**

* 1. **Date of Contract End**

December 31, 2038, according to what is foreseen in numeral 1.2.33 of the Tender Documents.

* 1. **Connection Busbar and Offer Busbar**

The Concessionaire Society will inject energy to the Connection Busbar. The Adjudicated Energy will be accounted for in the Offer Busbar.

* 1. **Costs for use of Networks**

The Concessionaire Society will assume the corresponding costs for the use of the Secondary Systems of Transmission and Supplementary Transmission Systems, according to what is indicated in the Law of Electrical Concessions and the Bylaws of the Law of Electrical Concessions.

The RER generation plant that has the characteristics of Distributed Generation and/or Co-Generation will pay for the use of distribution only in the incremental cost incurred by the Distributor, according to what established in the Bylaws.

* 1. **Safety and Service Quality**

The Concessionaire Society is obliged to guarantee the supply of the Adjudicated Energy according to what is established in the Law of Electrical Concessions in compliance of Technical Procedures and dispositions of COES which are dictated under the Applicable Laws.

Likewise, it is obliged to comply with the technical standards of electrical services (Norma Técnica de Calidad de los Servicios Eléctricos (NTCSE)).

* 1. **Cases of Force Majeure**

The definition, scope and effects of the cases of force majeure will be according to what is established in the Contract

**8. CONDITIONS OF THE OFFER**

* 1. **Offer Busbar**

The Bidders, for the effects of the Auction, will make their Offers at the Offer Busbar.

* 1. **Prices to be Applied**

The prices to be acknowledged for the Concessionaire Society during the Time of Enforcement will be determined according to the following:

1. Tariff of Adjudication will be updated according to Annex 3 and will be affected by the Correction Factor, according to what the case may be.
2. Net Energy Injections, up to the limit of Adjudicated Energy, will be remunerated at the Tariff of Adjudication.
3. Net Energy Injections in excess of the Adjudicated Energy, will be remunerated at Marginal Cost at Short Term in the Offer Busbar according to the Technical Procedure of COES.
4. When Net Energy Injections in a Tariff Period plus the Energy Not Injected Due to Causes Outside the Scope of the RER Generator are less than the Adjudicated Energy, the Adjudication Tariff will be reduced applying the Correction Factor for this Tariff Period.
5. As from the second year of the Real Date of Commercial Operation Commissioning, if the annual average of the net energy injects of a RER generation plant is less than its Adjudicated Energy, the Concessionaire Society may request the Ministry the readjustment of its Adjudicated Energy to reduce it for one sole time, in not more than fifteen percent (15%) of the original Adjudicated Energy. In that case, the determination of the Premium will correspond to the readjusted Energy Adjudicated same which may not be modified further on.
6. The income for power established by COES, will be applied as part payment of the Guaranteed Income.

Income and charges for reactive energy will be those established by OSINERGMIN and/or COES, considering the values in force on the date the invoicing is done.

* 1. **Monthly Payment of Supply**
     1. The monthly payment for energy and power to Concessionaire Society constitutes a part payment of the Guaranteed Income.
     2. Calculation of the monthly payment for energy will be made at the Offer Busbar at Marginal Short Term Cost (Costo Marginal de Corto Plazo (CMCP)) of SEIN. Payment for power will correspond to the Firm Power determined according to the Technical Procedures of COES.
     3. At the end of each Tariff Period will be established the liquidation for the total amount corresponding to the Premium calculated according to the Procedure approved by OSINERGMIN.
     4. The Premium calculated at the end of the Tariff Period, will mean a charge in favor or against the Concessionaire Society, according to what corresponds, which will be liquidated in monthly quotas along the twelve (12) months immediately following the period of annual liquidation, applying a monthly interest rate equivalent to the annual rate of updating established in article 79 of the Law of Electrical Concessions.
     5. The reactive energy will be invoiced at the Offer Busbar, according to the criteria and tariffs set by OSINERGMIN and/or COES, according to what corresponds.
     6. Payment of the transfers ruled by COES will be done in the form at the opportunity established in the respective Technical Procedure COES.
  2. **Formulas of Price Updating**

The formula for updating of the Adjudication Tariff will be that indicated in Annex 3.

The formula for updating will be applied on an annual basis on the opportunity of the determination of the Premium, when the factor is increased or decreased in more than 5% with respect to the value of the same factor employed in the last updating.

* 1. **Withdrawals without Contracts**

The withdrawals without contract will ba assigned on the Net Energy Injections that are made in excess of the Adjudicated Energy.

**9. GUARANTEE OF FAITHFUL COMPLIANCE**

* 1. **Amount of the Guarantee of Faithful Compliance**
  2. The amount of the Guarantee of Faithful Complianc**e** is Two Hundred Fifty Thousand Dollars of the United States of America) (USD 250 000) per MW to be installed, according to what is indicated in the Offer. The Guarantee of Faithful Compliance should have a time of enforcement of at least one hundred eighty (180) calendar days, having to be renewed by the same time term and handed over to the Grantor before its falling due, and thus successively, having to be maintained in force up to the Real Date of Commercial Operation Commissioning.
  3. **The Not Opportune Renewal**

If the renewal is not done of the Guarantee of Faithful Compliance granted, on the date of its falling due, the Concessionaire Society must deliver a new Guarantee of Faithful Compliance but for an amount increased in 20%, which must be done within the time term of five (5) calendar days from the date of falling due of the guarantee that was not renewed, without any request. The time term of enforcement of this new Guarantee of Faithful Compliance, will start to be computed on the due date of the guarantee that was not renewed, it will be as the previous one of not less than one hundred eighty (180) days; and the same as that must be renewed at the latest on the date this time term is due, and thus successively.

In case of noncompliance in the delivery of the new Guarantee of Faithful Compliance in the conditions indicated in the previous paragraph, the Grantor will execute the non-renewed Guarantee of Faithful Compliance, and will have the faculty of resolving the contract with full right with only a communication sent to the Concessionaire Society indicating its intention of making this attribute valid.

* 1. **Delays in the Schedule of Works**

In the cases in which the framework of the supervision of OSINERGMIN verifies that there are delays in the compliance of the Schedule of Works Execution (with quarterly milestones), in a maximum time term of five (5) days, OSINERGMIN will request the Concessionaire Society to increase the Guarantee of Faithful Compliance in 20% with respect to the amount in force on the date of the verification.

The increase required by OSINERGMIN should be complied with by the Concessionaire Society within the ten (10) days of receipt. In case the Concessionaire Society does not increase the referred guarantee within the time term the Grantor will execute the non-increased Guarantee of Faithful Compliance.

In these cases the Concessionaire Society is obliged to submit, without any requirement, a new Guarantee of Faithful Compliance for an amount equal to 120% of the original guarantee, within the time term of ten (10) days from the due date of the time term that OSINERGMIN granted to present the increase. In case of noncompliance, the Contract will be resolved of full right.

* 1. **Reduction of the Guarantee**

Once the 75% of the amount of investment has been completed, according to the report from OSINERGMIN, the Guarantee of Faithful compliance will be reduced to the equivalent of 50% of the amount in force at the date of such report, without waiving the application, in what is pertinent, of the stipulations that are previous to this clause.

* 1. **Destination of the Amounts of the Guarantees Executed**

The Guarantee of Faithful Compliance executed according to what is foreseen in the Contract will be executed for the amount guaranteed at the moment of its execution and the amount of its execution will constitute a resource for Rural Electrification according to the Law in this respect.

* 1. **Substitution of Guarantee and Schedule of Works Execution**

The Guarantee of Works Execution to which refers the Law of Electrical Concessions is substituted on the Closing Date for the Guarantee of Faithful Compliance. Likewise, the Calendar of Works Execution to which refers the Law of Electrical Concessions will be substituted by the Schedule of Works Execution to which refers the Contract.

* 1. **Procedure of OSINERGMIN**

To the Contracts that are signed as result of this Auction will not be of application the Procedure for Executing the Guarantee of Faithful Compliance approved by Resolution Nº 201-2009-OS/CD, published on November 1, 2009.

**10. OTHER STIPULATIONS**

**10.1 Communications to Committee**

For every purpose, the reception slip of communication by letter and/or confirmation of the reception of electronic mail will be sufficient proof of its remittance, and of the date and hour, this was done.

**10.2 Communications to Bidders**

All communications from the Committee to the Bidders will be done with Circular letters. The delivery of all Circular letters will be made by electronic mail.

**11. FINAL DISPOSITIONS**

**11.1 Acceptance of Lima Jurisdiction**

The Bidders and their shareholders, or the companies which are associated to the Bidders, are subjected and accept irrevocably the jurisdiction and competence of the judges and tribunals of the city of Lima, Peru to resolve any of the conflicts that could arise with respect to the Tender Documents or the Auction, renouncing expressly and irrevocably to any diplomatic claim as well as any right to start actions of any nature before any other court or jurisdiction.

**11.2. Compliance of Stipulations of Law Nº 26876**

Signing of the Contract does not affect the obligation of the Concessionaire Society or its associated companies of complying if the case may be the conditions to which were subjected the authorizations of operations of concentration according to the Law Nº 26876, or the conditions of equal nature that the Government Authority will impose further on.

**11.3 Delivery of Schedule of Works Execution**

Annex Nº 2 of the Contract will be submitted, in its opportunity to the Ministry and OSINERGMIN.

In a maximum time term of six (6) months as of the Closing Date, the Concessionaire Society must submit the Schedule of Works Execution indicating the sufficient elements, to the satisfaction of OSINERGMIN, which will permit to make the control of quarterly progress of the project execution. The Schedule should contain, as minimum, the following milestones: Financial Closing, start of civil works, arrival to the site of the work of the main electro mechanical equipment, start of electromechanical equipment, Commercial Operation Commissioning, and it should be submitted in a printed version and a digital version (MS Project), and will clearly show the critical route of the works.

**11.4 Mechanism of Clean Development**

The Concessionaire Society, if it considers necessary, may apply the Mechanism of Clean Development (MDL) to generate benefits through the commercialization of the Certificates of the Emissions Reductions (CERs). It is responsibility of the Concessionaire Society the verification of all the ruling in the bylaws of MDL and the estimates of resulting benefits.

12. ANNEXES

**ANNEX 1 SCHEDULE**

The auction process schedule to be followed is:

|  |  |  |  |
| --- | --- | --- | --- |
| **Item** | **Activity** | **Start date** | **Maximum date** |
| **1** | **Calling for Auction** | **Sept. 3, 2015** | **Sept. 3, 2015** |
| 2 | Registry of Participants | Sept. 4, 2015 | Nov. 9, 2015 |
| 3 | Sales of Tender Documents | Sept. 7, 2015 | Nov. 9, 2015 |
| 4 | Suggestions and Consultations on the Tender Documents | Sept. 7-15 | Sept. 22, 2015 |
| 5 | Analysis of suggestions and consultations | Sept. 23, 2015 | Oct. 2, 2015 |
| 6 | Publication of Circular letter with answers to suggestions and consultations | Oct. 5, 2015 | Oct. 5, 2015 |
| 7 | Publishing of Consolidated Tender Documents in the Web Portal | Oct. 6, 2015 | Oct. 6, 2015 |
| 8 | Publication of Circular letter with time table for submission of Envelopes | Nov.10, 2015 | Nov.10, 2015 |
| 9 | Publication of Maximum Auction Price for each technology | Nov.26, 2015 | Nov. 26, 2015 |
| **10** | **Presentation of Envelopes** | **Dec. 18, 2015** | **Dec. 18, 2015** |
| 11 | Assessment of Qualification Envelopes (Envelope 1) | Dec. 21, 2015 | Jan. 06, 2016 |
| 12 | Notification of qualification of Bidders and of observations to Participants | Jan. 7, 2016 | Jan. 07, 2016 |
| 13 | Presentation of remedies | Jan. 22, 2016 | Jan. 22, 2016 |
| 14 | Publication of Minutes of Bidders | Jan. 29, 2016 | Jan. 29-, 2016 |
| 15 | Dispute of rejection of Qualification | Feb. 1, 2016 | Feb. 2, 2016 |
| 16 | Resolution of disputes and publication of final Minutes of Bidders, if the case may be. | Feb.12, 2016 | Feb.12, 2016 |
| **17** | **Opening of Envelope 2 and Public Act of Granting of Contract** | **Feb. 16, 2016** | **Feb.16, 2016** |
| 18 | Publication of the results of the Auction in the Web Portal of OSINERGMIN | Feb. 17, 2016 | Feb. 17, 2016 |
| 19 | Closing Date | May 17, 2016 | May 17, 2016 |

**ANNEX 2 PROCEDURES FOR SELECTION AND GRANTING OF BIDS**

1. Assessment and granting of Bids for each RER Energy Required which are competing, is done considering the following:

First Round

1. Economic Offers will be ordered according to merit of the Offer Price proposed from lower to higher. In case of a tie in Prices, priority will be given to the offer with greater energy offered. If the situation continues, the order of merit will be defined by raffle.

2. In the case of Aeolian technology and photovoltaic solar energy, each Offer will be assigned by order of merit to the Busbar indicated by the Bidder, with the verification of the following:

* 1. That the accumulated Offer will not exceed the maximum power (MW) of injection in each Busbar according to Annex 8-1; or,
  2. In case that with the Offer under assessment the maximum power (MW) injection in that Busbar is exceeded according to Annex 8-1 or the Offer Busbar is not included in that Annex, it should have the “Non Objection Document” from COES to which reference is made in the Notes of Annex 8-1. If the “Non Objection Document” is not available, the Offer will be discarded.

1. Contracts will be granted to the Offers according to merit established until covering the Energy Required of the corresponding technology with Offers that will have prices not larger than the Maximum Price of the corresponding technology.
2. In case the last offer granted exceeds the Energy Required the Partial Adjudication will be done only if this option has been specified in its offer (Annex 7-A). If this is not the case this offer is discarded and the process continues with the following in order of merit as long as ikt does not more than the Maximum Price, and thus, successively until completing the valid offers or covering the Required Energy of the corresponding technology.
3. The preceding steps will be followed until all RER technologies are concluded.
4. The contract will be granted to the Bidders the offer of which resulted winners after the process of adjudication foreseen in the preceding numerals.
5. If after the process of adjudication mentioned the Required Energy is not covered 100%, in any of the quota(s) of technology/technologies auctioned, a Second Round will have to be conducted. In that case:
   1. The Remaining Energy Required for the Second Round will be the sum of the Required Energies not covered in the first Round of all the technologies, without considering the remaining Required Energy for hydroelectric power projects.
   2. Only the Offers that have not had Total or Partial Adjudication in the First Round may participate.
   3. In case some Bidder wishes to participate with a price offer in the Second Round, that offer will be with a price equal or less than the price of the Offer submitted in the First Round for the same project. For this, the Bidder must, within the maximum time term of 30 minutes counted as of the Granting of the Adjudication already finished, indicated in the previous numeral 6, present a new sealed envelope with its offer of prices for the Second Round, according to Annex 7-B. In case this is not so, it will be disqualified.

Second Round

1. Adjudication will be done according to the following:
   1. Offers will be ordered from lesser to larger price, making the adjudication based on the criterion of lesser price until the Remaining Required Energy is covered and as long as it is not larger in price than the Maximum Price per technology. In case of tie in prices, the priory will be granted to the Offer with greater annual energy offered. If the tie situation continues, the order of merit will be defined by raffle.
   2. In case that the last offer adjudication in this Second Round exceeds the Required Energy, the partial adjudication will be made as long as the Bidder manifests its intention of maintaining that option specified in its offer (Annex 7-B). If this not the case, this offer is discarded and the process continues with the following in order of merit and thus successively until the Accumulated Required Energy is completed or the offers are extinguished.
2. Contracts will be for those Bidders the offers of which were selected according to the preceding numerals.
3. In the case of Offers for Hydroelectric Power Projects the following will apply:
4. The Offers will be ordered according to order of merit of the Offer Price, from less to larger. In case of a tie of Prices the priority will be given to the Offer will larger energy offered. If the tie situation continues, the order of merit will be defined by raffle.
5. The offers will be adjudicated in the order of merit established until the Hydroelectric Required Energy is covered. In case that the last offer adjudicated exceeds the Required Energy the partial adjudication will be done only if this option has been specified in its offer (Annex 7-A). If this is not the case this offer is discarded and the process continues with the following in order of merit and thus successively until the valid offers are completed or the required hydroelectric energy is covered. The eventual remaining quantity of required hydroelectric energy, cannot be accumulated in the procedure of the Second Round foreseen in this Annex.

3. Contracts will be for those Bidders the offers of which were selected according to the preceding numerals.

**ANNEX 3 FORMULAS FOR UPDATING THE TARIFF GRANTED IN AUCTION**

The following Updating Formula will be applied annually when Factore is increased or decreased in more than 5% with respect to the same factor employed in the last updating

The updating factor will be rounded up to four (4) decimal digits.

The updated tariff must be rounded up to two (2) decimals before using it.

**A. Formula for Updating the Tariff Granted in Auction**

**Tariff = Tariff Adjudication \* Factor*e***

Where:

IPP Index WPSSOP3500 (Finished Goods Less Food and Energy), published by the Bureau of Labor of the Government of the United States of North America.

IPPo IPP corresponding to the real date of Start of Commercial Commissioning. The initial index will be the last value available at the real date of Commercial Commissioning.

**ANNEX 4 LISTS OF BANKING ENTERPRISES**

**Local Banks**

The local Banks or Financial Institutions authorized to issue guarantee letters will be those that which have the minimum qualification of CP1 for the obligations of short term; A, Global Financial Strength, and AA, Obligations at long term, among which are the following:

1. BBVA Banco Continental
2. Banco de Crédito del Perú
3. Interamericano de Finanzas
4. Internacional del Perú – INTERBANK
5. Scotiabank Perú
6. Citibank del Perú S.A.
7. Deutsche Bank (Perú) S.A.
8. Santander Perú S.A.

**Foreign Banks**

First Class Banks according to Circular Letter Nº N° 026-2015-BCRP, dated June 25, 2015, or any standard which substitutes it, the guarantee letters of which should be confirmed by one of the local banks mentioned in the previous list.

**ANNEX 5 FORMS FOR SUBMISSION OF QUESTIONS**

1. Bidder:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(name of Bidder),

Legal Representative:

1. Project

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Project name),

1. Reference to Tender documents which are the purpose of the Consultation:

Numeral ,

Annex N° ,

Pages ;

4 Background and support of the Consultation (if it is the case)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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1. Question

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**ANNEX 6-1 LETTER OF CONSORTIUM CONSTITUTION**[[5]](#footnote-6)

Lima,\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2015.

Messrs.

**COMITÉ de la Subasta Pública Internacional para Suministro de Electricidad RER**

Av. Canadá N° 1460, San Borja

Lima, Perú

Reference: Public International Auction for the supply of RER electricity to Sistema Eléctrico Interconectado Nacional - SEIN

**Project**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Technology**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

This is to inform you of the formation of a consortium \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, which will be made up as follows:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Member 1 of the Consortium (............%).

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Member 2 of the Consortium (............%)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Member 3 of the Consortium (............%)

We the members of the Consortium declare that we comply with the requirements established in the Tender Documents.

Very truly yours

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Legal Representative Member 1: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Legal Representative Member 2: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Legal Representative Member 3: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ANNEX 6-2 SWORN DECLARATION OF BIDDER[[6]](#footnote-7)**

**Project**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Technology**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Participant**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Address**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Legal Representative**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**D.N.I. N°**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I DECLARE UNDER OATH that my represented (and/or members of the Consortium, if this is the case), as Participant of the Auction Process called for by OSINERGMIN for the supply of renewable energy to SEIN:

* Has no legal or contractual impediment to participate in this Auction or to celebrate the Contract of same, in case of being a successful bidder.
* That it is not included in any procedure of contest nature, nor judiciary, administrative, tax and/or arbitral process, which was started against the Peruvian State or that has been started against it, regarding a matter of controversy in dispute may affect substantially the compliance of the obligations that we would assume in case of obtaining the contract.

Likewise, it has no sentences nor situation of contest declared, nor decisions of any type (judiciary, administrative, arbitral, etc.). in which the matter of controversy in dispute may affect substantially the compliance of the obligation s assumed in case of obtaining the contract.

* That I know, accept and am subject unconditionally, expressly and undoubtedly to the Tender Documents and other rules of this Auction, as well as the consultations and respective answers. Likewise, acknowledge and declare expressly that the Auction consists in an invitation to offer, according to the Article Nº 1388 of the Civil Code of Peru and that, consequently the proposal which is formulated consists in an offer directed to the Grantor, so the terms contained in the Tender Documents are to be complied with, especially in the project of Contract such as the Annex Nº 12 that is part of the Tender Documents.
* That I am fully responsible of the veracity, exactness and pertinence of the documents and information submitted for the purposes of this Auction.
* That I accept that if granted the Contract in this Auction this cannot be rejected
* That I am committed to comply fully and faithfully all and each one of the stipulations, terms and conditions of the Contract that is celebrated as consequence of the granting of the contract
* We accept totally the terms and conditions established in the Tender Documents
* We renounce irrevocably and without conditions to present or interpose any action or claim, demand or request before any authority of any type or nature against any member, officer, advisor or consultant of the bidding enterprise as consequence of the acts, decisions or events executed, adopted or made during all the phases of the Auction Process up to the celebration of the Contract.
* That I have designated my Legal Representative to sign all documents that correspond and will participate in the activities of the Auction Process, with full updated powers of attorney for this purpose without any limitation

\_**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Signature Legal Representative of Participant

D.N.I. Nº \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ANNEX 6-3 INFORMATION OF BIDDER**[[7]](#footnote-8)

(Participants that act as Consortiums should deliver the declaration of each one of the companies that comprise them)

1. **Project**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. **Technology**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
3. Participant: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
4. Legal Representative :\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
5. Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
6. Telephones: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
7. Fax(\*):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
8. P.O. Box (\*):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
9. Website (\*): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
10. E-mail: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(\*) Optional.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Signature Legal Representative of Participant

**ANNEX 6-4 CONFIDENTIALITY COMMITMENT** [[8]](#footnote-9)

**Project**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Technology**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Participant**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Address**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Legal Representative**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Identification document N°: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Powers of Attorney registered at**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**of the Registry of Juridical Persons of the Public Registries of:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WE DECLARE UNDER OATH THAT WE COMMIT OURSELVES TO COMPLY WITH THE FOLLOWING:

**FIRST.**  We commit ourselves to maintain in reserve and not divulge nor reveal to third parties the Confidential Information provided, as well as not use it for another purpose that is not the participation in the Auction and limit the access to same exclusively to those employees that in each case need to have access to same, ensuring that same will preserve its confidential character. We will be responsible of the compliance of the obligation of confidentiality on the part of our personnel.

To the effect of this Confidential Compromise it will be understood as confidential information any information revealed to the Society, its employees, or advisors or that to which the Society, its employees or advisors could have had access relative to the Auction, be it in writing, verbal in form of informatics programs or any other form or by any other means or support, tangible or intangible, presently known or that will make possible to know the status of the technique in the future through the procedures of the Auction.

Nevertheless, it will not be considered confidential the information:

1. That is of public knowledge at the moment it was revealed to the Society
2. That after having been revealed was published or in another form become of public dominion without having been noncompliance of its obligation of confidentiality
3. That it has been requested by Administrative or Judiciary competent Authorities, in which case, should be communicated such a requirement to the Conductor of the process before revealing the corresponding information

**SECOND** Our advisors, who, due to the nature of their work, should have knowledge of the Confidential Information will have to sign also, with us, a confidentiality agreement under the same terms and conditions than this document, so that the confidentiality of the information is preserved and they do not act as a conductor for the transfer of such information

Nevertheless, in case of revealing the confidential information by our personnel, the administrative sanctions for this noncompliance will be applied jointly among us and our personnel.

**THIRD** Obligations of confidentiality and use of information will maintain their enforcement during the time term of one (1) year from the date of signature of this Compromise or, in case that it happens first, up to the moment of closing of the last calling of the present Auction .

**FOURTH** In case of noncompliance of these confidentiality agreements, without waiving the administrative and penal sanctions that could be applied, we will be disabled for four (4) years to participate in Auctions that are done under the Law and Bylaws.

In the city of \_\_\_\_\_\_\_\_\_\_\_\_\_ on the\_\_\_\_\_\_\_\_ day of the month of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the year 2015

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Signature Legal Representative of Participant

**ANNEX 6-5 NON COLLUSION COMMITMENT**[[9]](#footnote-10)

**Project**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Technology**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Participant**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Address**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Legal Representative: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Identification document N°: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Powers of Attorney registered at: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**of the Registry of Juridical Persons of the Public Registries of:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WE DECLARE UNDER OATH THAT WE COMMIT OURSELVES TO COMPLY WITH THE FOLLOWING:

**FIRST:** We have not celebrated nor will celebrate any agreement of any type, nor have we made or will make any type of communication, we have not provided nor will provide any type of information to any competitor, be it directly or indirectly privately or publicly, with respect to any aspect related to the Auction. Likewise we declare to know that this activities damage the conditions of competence in the Auction and should be subject to the application of administrative and penal sanctions if it is necessary.

**SECOND:** Our advisors who, due to the nature of their work, should have knowledge of the Confidential Information should sign also, with us, an agreement of non-collusion, in the same terms and conditions as the present one.

Nevertheless, in case of incurring our personnel in collusion conduct, the administrative sanctions that this noncompliance will provoke will be applied in a jointly manner between our personnel and ourselves.

**THIRD:** The obligations of this document, will maintain its enforcement during the time term of one (1) year from the date of the signature of this agreement, or in case this happens first, up to the moment of closing of the last calling of the present process of Auction

**FOURTH**: In case of noncompliance of this agreement of non-collusion, without waiving the administrative and penal sanctions that could be applied we will be disabled during four (4) years to participate in auctions that are made under the Law or Bylaws

In the city of on the day of the month of of the year 2015

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Signature Legal Representative of Participant

**ANNEX 6-6 SWORN DECLARATION OF NO IMPEDIMENT** [[10]](#footnote-11)

**Project**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Technology**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Participant**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WE DECLARE UNDER OATH THE FOLLOWING:

1. We do not have advisors, technical personnel, professionals, executives or directives, who have directly or indirectly rendered some type of service in favor of OSINERGMIN or the Ministry during the development of this process, be it full time, partial time or eventual work, regarding this Auction,
2. We have not been sanctioned administratively with temporal or permanent disabling in the conduction of our rights to participate in process of selection called upon by entities of the State, nor for contracting with the State

c) We have no impediment nor are we subject to restriction by contractual, judiciary, arbitral, and administrative legislative or other way, to assume and comply with all the obligations that correspond or are derived from the Tender Documents, submission of Offers or signing of Contract.

d) We renounce to invoke or exert any privilege or diplomatic immunity or of any other type, as well as presenting any claim by diplomatic way and any right of compensation or other regarding any claim that could be invoked by or against the Peruvian State, OSINERGMIN, the Committee, its participants, and Advisors, under Peruvian law or any other legislation with respect of any of the obligations that correspond or could correspond according to the Tender Documents, the Offer or the Contract

e) We have not left without compliance any contractual or legal obligation that have originated the resolution of a contract signed under the process of promotion of the private investment to which refers Legislative Decree, 674, the TUO approved by Supreme Decree Nº 059-96 PCM or the Law Nº 28059 Framework Law of Promotion for Decentralized Investment

f) We are not under the scope of Article Nº 1366 of the Civil Code of Peru

g) We are duly constituted society validly existing according to the laws of the country or place of constitution, and that the Legal Representatives that participate in the Auction are validly provided with the sufficient faculties to represent our society in all acts and declarations regarding the Auction.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Signature Legal Representative of Participant

**ANNEX 6-7 SWORN DECLARATION OF COMPLIANCE OF TECHNICAL REQUIREMENTS [[11]](#footnote-12)**

**Project**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Technology**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Participant: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

WE DECLARE UNDER OATH that the RER generation plant will comply with the technical operation requirements established in the Technical Procedure COES PR-20 “Incoming, Modification and Withdrawal of Installations in SEIN”, indicated in the following web:

<http://www.coes1.org.pe/marco-normativo/Proc%20Tcnicos/20%20Ingreso,%20Modificaci%C3%B3n%20y%20Retiro%20de%20Instalaciones%20en%20el%20SEIN.pdf>

In the city of \_\_\_\_\_\_\_\_\_\_\_, on the \_\_\_\_\_\_\_\_\_ day of the month of \_\_\_\_\_\_\_\_\_\_\_\_\_ of the year 2015

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Signature Legal Representative of Participant

**ANNEX 6-8 SWORN DECLARATION ON THE RER GENERATION PROJECT**[[12]](#footnote-13)

**Project**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Technology**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Participant: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

WE DECLARE UNDER OATH that, for the project of the RER generation plant:

* 1. We have made the measurements and/or studies of the renewal resource during a period of no less than one (1) year.
  2. The equipment to be installed will be new and in no case the time of manufacture will be greater than two (2) with regard the date of the calling for the Auction.
  3. The maximum electric generation capacity that will be able to use from the energy resource of the plant as a whole, including the existing or future installations, is and will be no more than 20 MW, and the implementation of the project will not represent an obstacle for the optimum use for hydric energy of the hydrographic basin. (Declaration applicable only to hydroelectric generation)
  4. For the specific case of generation projects with forest residues and/or forest plantations, our commitment of: (i) collect residues with strict legal origin, and from primary transformation plants duly formalized and registered at the competent Forestry Authority (ii) use the plantations in a sustainable and renewable manner according to the current standards in force (iii) conduct activities of reforestation in zones stripped defined by SERFOR, taking special care not to affect the echo system and the biodiversity of the zone to be reforested. (Declaration applicable only to generation with forest residues)

* 1. For the specific case of generation projects with solid urban residues by incineration, our commitment of optimizing our processes of handling and disposal of such residues, especially after their use in the generation activity, guaranteeing that the final disposal of such residues will be treated according to the Applicable Laws in such a way that no health, landscape, bio diversity or sustainability of the environment will be affected. (Declaration applicable only to generation with solid urban residues by incineration).

In the city of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of the month of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the year 2015

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Signature Legal Representative of Participant

**ANNEX 6-9 SWORN DECLARATION ON ACKNOWLEDGEMENT OF NON MODIFIABLE CHARACTER OF THE END DATE OF CONTRACT COMPLIANCE EVEN WHEN EVENTS OF FORCE MAJEURE MAY ARISE**[[13]](#footnote-14)

Project: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Technology: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# Participant: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# WE DECLARE UNDER OATH that we acknowledge the non-modifiable character of the end date of the contract compliance due to any cause whatsoever.

# In the city of \_\_\_\_\_\_\_\_\_\_ on the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of the month of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the year 2015

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Signature Legal Representative of Participant

**ANNEX 6-10 SWORN DECLARATION OF MINIMUM EXPERIENCE CERTIFICATION IN THE GENERATION MODALITY**[[14]](#footnote-15)

**Project**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Technology**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Participant: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

WE DECLARE UNDER OATH that we have a minimum experience of two (2) years in electric generation, according to the following detail:

|  |  |
| --- | --- |
| Name of enabling authorization, license or concession granted in Peru or in a foreign country | Country and Year of the issuing of enabling authorization, license or concession |
|  |  |
|  |  |

We also declare under oath that in case of a Consortium, we are committed irrevocable to maintain it for at least three (3) years after the Real Date of Commercial Commissioning.

Very truly yours,

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Signature Legal Representative of Participant

**ANNEX 7 ECONOMICAL OFFER**[[15]](#footnote-16)

Lima, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2015

Messrs

**COMITÉ DE ADJUDICACIÓN**

**Auction Process for Energy Supply to SEIN.**

**Project**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Technology**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Bidder**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dear Sirs,

In compliance of what is stipulated in the Tender Documents we submit our Offer, according to the following terms:

|  |  |  |  |
| --- | --- | --- | --- |
| Offer Busbar  (Name of Busbar and voltage level) | | |  |
| Monomeric Price | In numbers | | …………,……… USD/MWh |
| In letters | | ………………….……………..………………………………..USD/MWh |
| Power of the Plant (MW) | | |  |
| Annual Offered Energy | | In numbers | …………,…..………MWh |
| In letters | ………………………………………………………………………….MWh |

|  |  |  |
| --- | --- | --- |
| Eventual acceptance of partial adjudication | Indicate yes or no | Indicate minimum percentage accepted of the Annual Energy Offered (%) |
|  |  |

Very truly yours,

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Signature Legal Representative of Participant

**Note**:

* The Plant Power and the Energy Offered have to be sole values, which cannot be divided by units of electric generation, stages, phases or any other form for the effects of the Real Date of Commercial Commissioning.
* The power associated to the adjudicated energy, cannot be transferred under any circumstance and during all the time term of the RER supply contract, to another supply contract

# ANNEX 7-B: Offer of Monomeric Price for Second Round (Optional)[[16]](#footnote-17)

# Lima,\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2015

Messrs.

**COMITÉ DE ADJUDICACIÓN**

Auction Process for the supply of Energy to SEIN

**Project**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Technology**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Bidder**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Dear Sirs

Complying with what is stipulated in the Tender Documents, we present our Price Offer for the Second Round, according to the following terms:

|  |  |  |
| --- | --- | --- |
| Offer Busbar  (Name of Busbar and voltage level) | |  |
| Monomeric Price | In numbers | …………,……… USD/MWh |
| In letters | ………………….……………..………………………………..USD/MWh |

|  |  |  |
| --- | --- | --- |
| Eventual acceptance of partial adjudication | Indicate yes or no | Indicate minimum percentage accepted of the Annual Energy Offered of Annex 7-A (%) |
|  |  |

Very truly yours,

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Signature Legal Representative of Participant

Note:

This form will have validity as Offer as long as it is signed by the Legal Representative.

**ANNEX 8–1 MAXIMUM ACCEPTABLE ADDITIONAL CAPACITY IN THE SEIN BUSBARS**

**A)** The Aeolian and photovoltaic solar generation projects may select their Offer Busbar among the Busbars indicated in the following chart:

**Maximum Capacity of Nonconventional Generation**

**(Wind and Photovoltaic Solar) in SEIN**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **AREA** | **Offer Busbar**  **(1)** | **VOLTAGE [kV]** | **TOTAL SIMPLE INJECTION (MW) (2)** | **TOTAL INJECTION PER AREA (MW) (3)** |
| **NORTH** | ZORRITOS | 220 | 150 | **720** |
| TALARA | 220 | 430 |
| PARIÑAS | 220 | 230 |
| PIURA OESTE | 220 | 540 |
| LA NIÑA | 220 | 600 |
| CHICLAYO OESTE | 220 | 500 |
| FELAM | 220 | 270 |
| GUADALUPE | 220 | 550 |
| CUPISNIQUE | 220 | 340 |
| **CENTRAL** | HUACHO | 220 | 350 | **332** |
| ICA | 220 | 150 |
| MARCONA | 220 | 300 |
| OCOÑA | 500 | 500 |
| **SOUTH WEST** | SAN JOSÉ | 500 | 500 | **604** |
| MONTALVO | 500 | 500 |
| SOCABAYA | 220 | 340 |
| SANTUARIO | 138 | 140 |
| REPARTICIÓN | 138 | 85 |
| MAJES | 138 | 80 |
| CAMANÁ | 138 | 90 |
| ILO3 | 138 | 20 |
| LOS HÉROES | 220 | 70 |

Note 1: Participants with projects in Offer Busbar not included in the Table must request COES their inclusion.

Note 2: Participants may present Offers with greater power than the one indicated min the column “Total Simple Injection (MW)", as long as they accompany the respective written authorization of COES (Non Objection Document).

Note 3: In no case the sum of the power injected in each area may be greater than the value indicated in the column -“Total Injection per Area (MW)”; something that has to be taken into consideration during the Adjudication of the Contract.

Note 4: Maximum Aeolian generation for SEIN cannot be more than 600 MW.

Note 5: Participants should take into consideration that COES will have a time term of 15 calendar days to answer any of the requests indicated in Notes 1 and 2.

B) Projects with technology other than the Aeolian and Photovoltaic Solar have no restrictions of additional capacity.

**ANNEX 8-2 REFERENCE BUSBARS OF SEIN GENERATION**

The projects with hydroelectric generation and with biomass should select its Offer Busbar from the Busbars of Reference of Generation of SEIN (BRG) established by OSINERGMIN, indicated in the following chart:

Chart N° 1

| **BRG** | **Voltage**  **kV** |
| --- | --- |
| Zorritos | 220 |
| Talara | 220 |
| Piura Oeste | 220 |
| La Niña | 220 |
| Chiclayo Oeste | 220 |
| Carhuaquero | 220 |
| Carhuaquero | 138 |
| Cutervo | 138 |
| Jaen | 138 |
| Guadalupe | 220 |
| Guadalupe | 60 |
| Cajamarca | 220 |
| Trujillo Norte | 220 |
| Chimbote 1 | 220 |
| Chimbote 1 | 138 |
| Paramonga Nueva | 220 |
| Paramonga Nueva | 138 |
| Paramonga Existente | 138 |
| Huacho | 220 |
| Zapallal | 220 |
| Carabayllo | 220 |
| Ventanilla | 220 |
| Chavarría | 220 |
| Los Industriales | 220 |
| San Juan | 220 |
| Santa Rosa | 220 |
| Cantera | 220 |
| Chilca | 220 |
| Independencia | 220 |
| Ica | 220 |
| Marcona | 220 |
| Mantaro | 220 |
| Huayucachi | 220 |
| Pachachaca | 220 |
| Pomacocha | 220 |
| Huancavelica | 220 |
| Callahuanca | 220 |
| Cajamarquilla | 220 |
| Huallanca | 138 |
| Vizcarra | 220 |
| Tingo María | 220 |
| Aguaytía | 220 |
| Aguaytía | 138 |
| Aguaytía | 22,9 |
| Pucallpa | 138 |
| Pucallpa | 60 |
| Aucayacu | 138 |
| Tocache | 138 |
| Tingo María | 138 |
| Huánuco | 138 |
| Paragsha II | 138 |
| Paragsha | 220 |
| Yaupi | 138 |
| Yuncán | 138 |
| Yuncán | 220 |
| Oroya Nueva | 220 |
| Oroya Nueva | 138 |
| Oroya Nueva | 50 |
| Carhuamayo | 138 |
| Carhuamayo Nueva | 220 |
| Caripa | 138 |
| Desierto | 220 |
| Condorcocha | 138 |
| Condorcocha | 44 |
| Machupicchu | 138 |
| Cachimayo | 138 |
| Dolorespata | 138 |
| Quencoro | 138 |
| Combapata | 138 |
| Tintaya | 138 |
| Ayaviri | 138 |
| Azángaro | 138 |
| San Gabán | 138 |
| Mazuco | 138 |
| Puerto Maldonado | 138 |
| Juliaca | 138 |
| Puno | 138 |
| Puno | 220 |
| Callalli | 138 |
| Santuario | 138 |
| Chilina | 138 |
| Socabaya | 138 |
| Socabaya | 220 |
| Cotaruse | 220 |
| Cerro Verde | 138 |
| Repartición | 138 |
| Mollendo | 138 |
| Montalvo | 220 |
| Montalvo | 138 |
| Ilo ELP | 138 |
| Botiflaca | 138 |
| Toquepala | 138 |
| Aricota | 138 |
| Aricota | 66 |
| Tacna (Los Héroes) | 220 |
| Tacna (Los Héroes) | 66 |

**Notes:**

(1) Substations Base Chavarría 220 kV, Santa Rosa 220 kV, San Juan 220 kV and Los Industriales 220 kV constitute the BRG Lima.

(2) Substations Base Dolorespata 138 kV and Quencoro 138 kV constitute the BRG Cusco.

(3) Substations Base Socabaya 138 kV and Chilina 138 kV constitute the BRG Arequipa.

Source: Resolution N° 067-2015-OS/CD, published on April 15, 2015, and its modifications.

**ANNEX 9 GUARANTEE OF BID SECURITY[[17]](#footnote-18)**

Lima,\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2015.

Messrs.

**OSINERGMIN**

Av. Canadá N° 1460, San Borja

Lima, Perú

Reference: Public International Auction for the supply of RER electricity to Sistema Eléctrico Interconectado Nacional - SEIN

By this letter, and at the request from our clients, Messrs. **[name of the Bidder]** we constitute this solidary, irrevocable, no conditioned, without benefit of discussion and of automatic realization for the sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars of the United States of America (US$\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) in favor of OSINERGMIN , to guarantee the validity enforcement and bid security which was submitted by [name of the Bidder]**,** according to the terms and conditions established in the Tender Documents of the above mentioned Auction in which it is participating with the Project \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ RER Technology.

Also we state that this guarantee will be made effective in case that [name of the Bidder] has submitted false information or, if it has been declared Successful Bidder and does not comply with all and every one of the obligations which correspond so the Auction can be closed.

Payment of this guarantee will be made with a cashier’s check, automatically and without requiring any further action on your part, when we receive a written request for it in a notarized letter, which should be signed by the General Manager of OSINERGMIN or an authorized representative and sent to [**include office and address].**

Our obligations, under this guarantee, including the payment of the guaranteed amount, will not be affected by any dispute between OSINERGMIN, the Committee, its advisors or any entity of the Peruvian State and our clients.

This guarantee must be maintained in force, until the Closing Date that is until \_\_\_\_\_

Any delay on our part to pay the amount of this guarantee as from the date in which it is required by you, according to the terms that are indicated here, will accrue an interest equivalent to the LIBOR rate at one year plus a margin of 3%. The LIBOR rate applicable will be established by the daily Cable Reuter, which is received in Lima at 11:00 a.m., having to accrue the interests as from the date that the compliance is required up to the date of the effective payment.

Except if there is an express indication on contrary, the terms used in this guarantee have the same meaning they have in the Tender Documents

Very truly yours,

**ANNEX 10 GUARANTEE OF FAITHFUL COMPLIANCE[[18]](#footnote-19)**

Lima, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2015

Messrs.

**MINISTERIO DE ENERGÍA Y MINAS**

Av. Las Artes N° 260, San Borja

Lima, Perú

Reference: Public International Auction for the supply of RER electricity to Sistema Eléctrico Interconectado Nacional - SEIN

By this letter, and at the request from our clients, Messrs. [**name of the Concessionaire Society**] we constitute this solidary, irrevocable, non-conditioned, of automatic realization without the need for prior prosecution of the debtor guarantee, for the sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Dollars of the United States of America (US$ \_\_\_\_\_\_\_\_\_\_\_\_) In favor of Ministerio de Energia y Minas, to guarantee the faithful compliance of the execution of the project of RER electric generation which will supply the energy which is the object of the adjudication and all the obligations assumed by **[name of the Concessionaire Society],** according to the terms and conditions established in the Tender Documents of the above mentioned Auction of which it is the successful winner with the Project \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ RER Technology.

The time term of enforcement of this guarantee will be one hundred eighty (180) calendar days, as of the Date of Closing, so it will expire on \_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201 . Its enforcement is renewed each one hundred eighty (180) calendar days until the real date of commercial commissioning of the RER generation plant indicated in the previous paragraph and will be executed in case of non-compliance of the commitments assumed according to the Auction Tender Documents.

Payment of this guarantee will be made with a cashier’s check, automatically and without requiring any further action on your part, when we receive a written request for it in a notarized letter which should be signed by the General Director of Administration of Ministerio de Energía y Minas or other authorized person, submitted within the fifteen (15) days following the expiration of the time term of enforcement and sent to the following address\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

According to what it is established in article 1898 of the Civil Code, the guarantor who is committed for a determined time term, is free of responsibility if the debtor does not require with a notarized document or judicially the compliance of the obligation within the fifteen days following the expiration of the time term or abandons the initiated action.

Our obligations, under this guarantee, including the payment of the guaranteed amount, will not be affected by any dispute between OSINERGMIN, the Ministry, the Committee, its advisors or any entity of the Peruvian State and our clients.

Any delay on our part to pay the amount of this guarantee as from the date in which it is required by you according to the terms that are indicated here, will accrue an interest equivalent to the LIBOR rate at one year plus a margin of 3%. The LIBOR rate applicable will be established by the daily Cable Reuter which is received in Lima at 11:00 a.m., having to accrue the interests as from the date that the compliance is required up to the date of the effective payment.

Except if there is an express indication on contrary, the terms used in this guarantee have the same meaning they have in the Tender Documents

Very truly yours,

**ANNEX 11 GUARANTEE OF DISPUTE**

(For dispute of qualification or of adjudication of the contract)

Lima,\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2015

Messrs.

**OSINERGMIN**

Av. Canadá N° 1460, San Borja

Lima, Perú

Reference: Public International Auction for the supply of RER electricity to Sistema Eléctrico Interconectado Nacional – SEIN

By this letter and at the request from our clients, Messrs. [name of the Bidder] we constitute this solidary, irrevocable, non-conditioned, of automatic realization without the need for prior prosecution of the debtor, for the sum of Twenty Thousand Dollars of the United States of America (US$ 20 000) In favor of OSINERGMIN , to guarantee the writs of dispute of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ according to the terms and conditions established in the Tender Documents of the above mentioned Auction in which it participates with Project \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of the RER Technology\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Also, we state that this guarantee will be made effective in case that the dispute writ submitted is declared not supported or it does not proceed.

Payment of this guarantee will be made with a cashier’s check, automatically and without requiring any further action on your part, when we receive a written request for it in a notarized letter which should be signed by the General Manager of OSINERGMIN or an authorized representative and sent to [include office and address].

Our obligations, under this guarantee, including the payment of the guaranteed amount, will not be affected by any dispute between OSINERGMIN, the Committee, its advisors or any entity of the Peruvian State and our clients.

The time term of enforcement of this guarantee is thirty (30) calendar days, counted as of the date of the submission of the dispute.

Any delay on our part to pay the amount of this guarantee as from the date in which it is required by you according to the terms that are indicated here, will accrue an interest equivalent to the LIBOR rate at one year plus a margin of 3%. The LIBOR rate applicable will be established by the daily Cable Reuter which is received in Lima at 11:00 a.m., having to accrue the interests as from the date that the compliance is required up to the date of the effective payment.

Except if there is an express indication on contrary, the terms used in this guarantee have the same meaning they have in the Tender Documents

Very truly yours,

# ANNEX 12: CONCESSION CONTRACT FOR SUPPLY OF RER ENERGY

**CONCESSION CONTRACT FOR THE SUPPLY OF RENEWABLE ENERGY TO**

**SISTEMA ELÉCTRICO INTERCONECTADO NACIONAL**

**(SEIN)**

Lima, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_2016

**Concession Contract for the Supply of Renewable Energy to Sistema Eléctrico Interconectado Nacional**

By this document is stated the Concession Contract for the Supply of Renewable Energy (hereinafter, Contract) celebrated between the State of the Republic of Peru, acting through the Ministry of Energy and Mines (hereinafter, the Grantor), and the Concessionaire Society; under the terms and conditions that follow:

1. PRELIMINARY DISPOSITIONS

1.1 The Contract is the result of the Process of Public Auction conducted by OSINERGMIN within the framework of Supreme Decrees N° 012-2011-EM and Nº 024-2013-EM Bylaws of Legislative Decree Nº 1002 for the Promotion of the Investment for Generation of Electricity with the Use of Renewable Energies

1.2 Integral part of this contract are: the Consolidated Tender Documents, and the Applicable Laws as well as the dispositions and following acts:

1. Resolution N° 042-2015-OS/CD of OSINERGMIN and Ministerial Resolution N° 358-2015-MEM/DM of the Ministry of Energy and Mines, designating the participants of the COMMITTEE for the Conduction of the Process of Auction of Electricity Supply with Renewable Energy Resources.
2. Ministerial Resolution Nº \_\_\_\_\_\_\_\_\_\_\_\_\_, authorizing the General Electricity Director to sign the Contract.
3. The Notarized Minutes of Adjudication of the Contract signed by the Committee.

1.3 The Contract was written and signed according to the Applicable Laws of the Republic of Peru and its contents, execution and other consequences which may originate from it will be ruled by those Laws.

1.4 The signature of the Contract does not eliminate nor affects the obligation of the Concessionaire Society, of requesting, signing and complying with the requirements to obtain the Final Concession of the Generation Plant the Concessionaire Society must request at the Ministry.

1.5 In the present Contract, the terms that are in capital letters, and which are indicated in the following, both used in singular or plural, will have the following meanings:

**1.5.1 Adjudicated Energy**: Is the annual active energy quantity expressed in MWh and stipulated in the Contract that the Concessionaire Society obliges itself to produce with the corresponding RER generation plant which resulted awardee and inject to the electric system up to the Date of End of Contract.

**1.5.2 Applicable Laws**: All juridical norms and linked precedents that constitute the Internal Law of the State and may be modified or supplemented by the Government Authorities

**1.5.3 Busbar**: Is the point of the electric system which is prepared to deliver and/or withdraw electric energy by the Agents operating in SEIN.

**1.5.4 Bylaws Law Electrical Concessions**: Bylaws of Law of Electrical Concessions approved by D.S. N° 009-93-EM.

**1.5.5 Bylaws**: Bylaws of the Law, approved by Supreme Decree Nº 012-2011-EM.

**1.5.6 Closing Date**: Date established in the Schedule for the signature of the Contract between the Ministry and the Concessionaire Society, and conclusion of the Auction process.

**1.5.7 COES:** (Comité de Operación Económica del Sistema Eléctrico Interconectado Nacional) Is the Economics Operation Committee of the Interconnected Nationwide System.

**1.5.8 Concession Assets:** Are the movable and immovable property. that include land, buildings, equipment, accessories, concessions, licenses, rights of way to be constituted according to the Applicable Laws, and in general, all the works, equipment, vehicles, spare parts stock, tools, facilities, drawings, studies, software, data banks, handbooks and technical information, provided or acquired by the Concessionaire Society for the adequate construction and operation of the RER Generation Plant, under the terms of this Contract.

**1.5.9 Concessionaire Society**: Is the juridical mercantile person constituted according to the General Societies Law and what is prescribed in numeral 6.1.1 of the Tender documents, that signs the Contract with the Ministry before the Committee.

**1.5.10 Connection Busbar**: Is the Busbar selected by the RER Generator where it will connect to the System to inject its energy.

**1.5.11 Consolidated Tender Documents**: Final version of the Tender Documents, which will be published in Data Room according with the Schedule, as well as the Circular Letters that expressly modify them. They are an integral part of the Contract

**1.5.12 Contract**:Is the present Concession Contract for the Supply of Renewable Energy as a result of the Auction, which establishes the commitments and conditions relatives to the construction, operation, energy supply and tariff regime of the generation plants with RER. It includes the Consolidated Tender Documents and the Circular Letters. It starts from the Date of closing and is in force up to the Date of End of Contract.

**1.5.13 Correction Factor:** Is the proportion between net energy injections plus the Energy Not Injected Due to Causes Outside the Scope of the RER Generator with respect to the Adjudicated Energy. This Factor is applied to the Tariff of Adjudication when its value is less than one (1,0).

**1.5.14 Date of Contract End**:It is December 31, 2038, date that cannot be modified for any reason, until which it is guaranteed to the Concessionaire the Tariff of Adjudication.

**1.5.15 Days:** Except an expressed disposition on the contrary contained in the Contract, the references to “Days” are understood that mean the days that are not Saturday, Sunday or non-working holiday in the city of Lima. Also will be consider non-working holidays the days the banks in the city of Lima are not obliged to serve the public according to the Government Authority.

**1.5.16 DGE**: Dirección General de Electricidad del Ministerio de Energía y Minas. Is the General Electricity Directorate of the Ministry of Energy and Mines.

**1.5.17 Dollar or US$**: Currency or money sign of legal course in the United States of North America.

**1.5.18 Energy Not Injected Due to Causes Outside the Scope of the RER Generator**: It is the energy in MWh that the RER Generator cannot inject to SEIN due to dispositions of COES and/or due to operation conditions of the electric system and/or installations of third parties and /or causes of force majeure qualified by OSINERGMIN. This is determined according the corresponding Technical Procedure of COES.

**1.5.19 Final Concession:** Is the electric right granted by the Competent Authority, according to the rulings established in the Law of Electrical Concessions and the Bylaws of the Law of Electrical Concessions for development of the generation activity with RER

**1.5.20 Financial Closing:** Is understood as complied with when the contract for complete financing of the RER project has been signed by all the parties that participate in the financing and have been complied with all the conditions established in that contract so that the disbursements are produced.

**1.5.21 Government Authority**: Any judicial, legislative, political or administrative authority of Peru, which has the faculty according to the applicable laws to issue or interpret norms or decisions, general or particular with obligatory effects for those that are subjected to their scope. Any mention of a specific Government Authority must be understood, that it means it, or that which succeeds it or whomever this designates to carry on the actions that are contained in the Contract or the Applicable Laws.

**1.5.22 Grantor**: Is the State of the Republic of Peru represented by the Ministry of Energy and Mines.

**1.5.23 Guarantee of Faithful Compliance of Installation:** Guarantee Letter issued by a Banking enterprise according to Annex 10 of the Consolidated Tender documents, solidary, non-conditioned, irrevocable, of automatic realization without the need for prior prosecution of the debtor, granted in favor of the Ministry, which guarantees the compliance of the Schedule of Works Execution of the Concessionaire Society, the supply and the other obligations of the Concessionaire Society, established in the present Contract.

**1.5.24 Guaranteed Debt:** Consists in the commitments of financing that the Concessionaire Society will assume with its Permitted Creditors or financiers; and which are necessary for the compliance of its obligations under this Contract.

**1.5.25 Guaranteed Income**: Is the annual income the Concessionaire Society will have for the net energy injections up to the limit of Adjudicated Energy remunerated at the Tariff of Adjudication. It will be applied only during the Time Term of Enforcement.

**1.5.26 Law:** Legislative Decree Nº 1002, Promotion of the Investment for the Generation of Electricity with the use of Renewable Energies.

**1.5.27 LCE:** Law Decree Nº 25844, Law of Electrical Concessions

**1.5.28 Ministry**: It is Ministerio de Energía y Minas, that signs the Contract on behalf of the State

**1.5.29 Net Energy Injections**: Are equal to the difference between injections less the withdrawals of energy for contractual obligations with third parties.

**1.5.30 Offer Busbar**: Is the Busbar selected by each Bidder of the list contained in Annex 8 of the Consolidated Tender Documents, to which its Offer will refer and in which will be made the economic liquidations. The Concessionaire Society will be responsible of the charges corresponding between the Connection Busbar to SEIN and the Offer Busbar.

**1.5.31 Offer**: Is the Proposal formulated by a Bidder according to Annex 7-A and/or 7-B of the Consolidated Tender Documents. It includes the annual energy offered with RER generation, expressed in MWh, and the corresponding monomeric price, expressed in USD/MWh, referred to the Offer Busbar. It will also indicate the acceptance or not of a partial assignment in the Auction.The Offer constitutes Annex 4 of this Contract.

**1.5.32 OSINERGMIN:** Supervising Organization of the Investment in Energy and Mining (Organismo Supervisor de la Inversión en Energía y Minería), competent according to the Applicable Laws, to supervise the compliance of the Contract.

* + 1. **Parties:** Are. jointly: the Ministry and the Concessionaire Society.

**1.5.34 Party:** According to what the case may be, the Ministry or the Concessionaire Society.

**1.5.35 Permitted Creditors** The concept of Permitted Creditor is only applicable for the Guaranteed Debt described in Numeral 6.4 of the Contract. For that purposes, the Permitted Creditor will be:

1. any multilateral credit institution of which the Peruvian State is member;
2. any institution or any government agency of any country with which the Republic of Peru maintains diplomatic relations:
3. any financial institution approved by the State of the Republic of Peru and designated as First Category Foreign Bank in Circular 026-2015-BCRP, dated June 25, 2015, issued by Banco Central de Reserva del Peru, or any other circular which modifies it and additionally those that substitute it when they incorporate new institutions:

(iv) any other international financial institution approved by the Grantor that has a risk classification of no less than (i) not less than BBB- (or its equivalent) as long as its Common Equity Tier 1 is as minimum of 10%; or, ii) minimum of BBB (or equivalent), as long as its Common Equity Tier 1 is as minimum of 8%, assessed in both cases by a known prestige entity accepted by the Superintendence of Markets and Values (Superintendencia de Mercados y Valores (SMV));

1. any national financial institution approved by the Grantor that has a risk classification of no less than (“A”), assessed by a known prestige entity accepted by SMV;
2. all institutional Concessionaire Society considered thus by the legal norms in place or first category foreign banks [according to what is indicated in literal (iii) before] that (a) acquire direct or indirectly; (b) are holders; or (c) right-holders of any securities or title of debt issued directly or indirectly by the Concessionaire Society:
3. any patrimony in trust or titling society constituted in Peru or overseas;
4. any natural or juridical person that acquires directly or indirectly any type of securities or title of debt issued directly or indirectly by the Concessionaire Society through public or private offer; or,
5. any representative of obligation holders, trust agent or trustee that acts on behalf of the owners of securities or titles of debt issued directly or indirectly by the Concessionaire Society.

The Permitted Creditors should have no type of relationship with the Concessionaire Society, according to the definitions foreseen in Resolution CONASEV Nº 090-2005-EF-94.10, modified by Resolution CONASEV Nº N° 005-2006-EF/94.10, or norm that substitutes it

**1.5.36 Power of the Plant**:Is the nominal power of the RER generation plant, expressed in MW that the Bidder will install to guarantee the compliance of its Contract.

**1.5.37 Premium Charge**: Is the unit charge determined for each year by OSINERGMIN to ensure that the Concessionaire Society will receive the corresponding Premium. This charge will be included in the toll for Connection of the Main Transmission System, and the respective amounts will be transferred to the Concessionaire Society through the transfers made by COES.

**1.5.38 Premium**:Is the annual amount which is required that the Concessionaire Society receives the Guaranteed Income, once the net income received for the transfers determined by COES are discounted. It will only be applied during the Time of Enforcement of the corresponding Tariff of Adjudication.

The first determination of the Premium will be made considering the proportion of Energy Adjudicated corresponding to the aliquot part of the period between the Commercial Operation Commissioning up to the end of the respective Tariff Period.

**1.5.39 Real Date of the Commercial Commissioning or Commercial Operation Commissioning**:It is the real date of commercial commissioning of each plant, certified by COES according to its Technical Procedures which cannot exceed two (2) years from the Referential Date of Commercial Operation Commissioning, on the contrary the Contract will automatically be resolved and the Guarantee of Faithful Compliance will be executed.

**1.5.40 Schedule for Works Execution:** Is the sequence of activities programmed for the execution of the construction and Commercial Operation Commissioning of the RER generation plant.

**1.5.41 SEIN**:Is Sistema Eléctrico Interconectado Nacional.(Nationwide Interconnected Electric System)

**1.5.42 State:** Is the State of the Republic of Peru

**1.5.43 Tariff of Adjudication**: Is the monomeric price offer of the Awardee in USD/MWh. This tariff is guaranteed to each Awardee for the Net Energy Injections up to the limit of its Adjudicated Energy limit. Each Tariff of Adjudication has the character of firm and is applied only during the Time of Enforcement, applying the Correction Factor and the updating formula established in the Consolidated Tender documents.

**1.5.44 Tariff Period:** Is the twelve month period which starts in May each year.

**1.5.45 Time Term of Enforcement of Tariff of Adjudication** **(Time term of Enforcement)**: Period between the Real Date of Commercial Operation Commissioning and the Date of Contract End (December 31, 2038). During the Time of Enforcement, the Concessionaire Society is committed to supply electricity to the system with RER technology and the payment of the Tariff of Adjudication is guaranteed for the Net Energy Injections produced by its generation plant until the limit corresponding to the Adjudicated Energy.

1.6 The terms that are in capital letters. be them used in singular or plural, which are not defined in Clause 1.4 or other sections of the Contract , will have the same meanings in the Consolidated Tender Documents, or the Applicable Laws, or correspond to terms that are commonly employed with capital letters.

1.7 Every reference made in this document to “Clause” and ”Annex”, should be understood to mean clauses and annexes of the Contract, unless express indication in contrary.

1.8 The titles have been only to systematize the text and should not be considered as part of the Contract which limits or extends its contents or to determine the rights and obligations of the Parties.

1.9 The terms in singular will include the same terms in plural and vice versa. The masculine terms include the feminine ones and vice versa.

2. DECLARATIONS OF THE PARTIES

2.1 The Concessionaire Society guarantees the Ministry, on the Closing Date, the veracity and exactness of the following declarations:

2.1.1 The Concessionaire Society: (i) is a duly constituted society and valid exists according to the Applicable Laws; (ii) it is duly authorized and in capacity of assuming the obligations that correspond as consequence of the signing of the Contract in all jurisdictions it is necessary due to the nature of its activities or due to the property, leasing or operation of its commodities except in those jurisdictions in which the lack of this authorization does not have a substantially adverse effect on its businesses or operations; and (iii) that it has complied with all the requirements necessary to formalize the Contract and to comply with the commitments stipulated in it.

2.1.2 The signature, delivery and compliance of the Contract, by the Concessionaire Society, are included in its faculties and have been duly authorized by its board of directors or other similar society body.

2.1.3 Other acts or procedure on the part of the Concessionaire Society are not necessary to authorize the signing and the compliance of the obligations which correspond under the Contract. The Contract has been duly and validly signed and delivered by the Concessionaire Society and constitutes a valid and committing obligation which can be required from the Concessionaire Society.

2.1.4 There are no actions, judgments. arbitrages or other legal procedures in course, against the Peruvian State or that this has started against the Concessionaire Society or any main partner of the society, that have the purpose of prohibiting or in any other manner impede or limit compliance of the commitments or obligations which are foreseen in the Contract .

Likewise there are no sentences, nor situations of declared contest, nor decisions of any class (judiciary, administrative, arbitral, etc.) against the Concessionaire Society or any of its shareholders that have the purpose of prohibiting or of another form impede or limit the compliance of commitments or obligations foreseen in the Contract.

2.1.5 The Concessionaire Society knows the Peruvian juridical framework, as well as the uses and customs of the Peruvian market. .

2.1.6 The Concessionaire Society will optimize its processes of management and discarding of residues, especially after their use in the activity of generation of which it is awardee, guaranteeing that that activity will not affect the health, biodiversity and sustainability of its environment, and will be done within the frameworks of the Applicable Laws on the subject.

2.2 The Ministry guarantees on the Closing Date, the veracity and exactness of the following declarations:

2.2.1 The Ministry is duly authorized according to the Applicable Laws to act Grantor in the present Contract. The signing, delivery and compliance by the Ministry of this Contract, are included in its faculties, are according to the Applicable Laws, and have been duly authorized by the Government Authority.

* + 1. No other action or procedure on the part of the Ministry nor any other Government Authority is necessary to authorize the signing of the Contract or for compliance of the obligations of the Ministry foreseen in it. The Contract has been duly and validly signed by the authorized representative or authorized representatives of the Ministry and, together with the due authorization, signature and delivery of it by the Concessionaire Society, constitutes a valid and committing obligation for the Ministry.

1. SCOPE OF THE CONTRACT
   1. The Concessionaire Society commits itself to supply the Adjudicated Energy to SEIN during the Time Term of Enforcement and under the conditions committed in the Auction.
   2. The Concessionaire Society is committed to manage and comply with all the requirements for obtaining the Final Concession and for the construction of an electric generation plant specified in Annex N° 1.
   3. The Concessionaire Society is committed to design, finance, supply the materials and services required for constructing, operating and maintaining the electric generation plant to which refers Annex Nº 1, for supply of the Adjudicated Energy to SEIN, including the communication systems for its operation control by COES, complying with Applicable Laws.
2. CONSTRUCTION OF THE GENERATION PLANT
   1. The Concessionaire Society will comply with all the norms and procedures foreseen in the Law of Electrical Concessions, the Bylaws of the Law of Electrical Concessions and other norms applicable for the effects of obtaining the Final Concession of RER Generation.
   2. The imposing of rights of way and in general any other authorization or similar which, according to the Applicable Laws requires the Concessionaire Society for the compliance of its obligations according to the Contract, should be requested by the Concessionaire Society according to the procedure and complying with the requirements foreseen in the Applicable Laws.
   3. The Ministry will impose the rights of way which are required according to what is established in the Applicable Laws, but will not cover the costs incurred to obtain such rights of way.

Likewise, if it is required by the Concessionaire Society, the Ministry will make every effort so that it will have access to installations of third parties and, will contribute in the acquiring of permits, licenses, authorizations, concessions, rights of way, rights of use and similar in case these are not granted by the competent Government Authority in the due time, notwithstanding the fact that the requirements and procedures necessary according to the Applicable Laws have been complied with. This, in no case will imply the assumption of any type of responsibility of the Grantor and cannot be considered as a condition for the compliance of the obligations of the Concessionaire Society.

* 1. The Concessionaire Society is responsible of having the availability of the necessary terrain for the generation plant, substations and others, will make compensations for the use of right of way and will acquire and install new equipment and materials and in under no circumstance the time of manufacture will be greater than two (2) years with respect to the date of the calling for the Auction of which this Contract resulted and which comply with the Applicable Laws.
  2. The Concessionaire Society is committed to comply all the Technical Procedures of COES and procedures of OSINERGMIN.
  3. In a maximum time term of six (6) months as of the Closing Date, the Concessionaire Society should submit the detailed Schedule of Works Execution, giving the sufficient elements to the satisfaction of OSINERGMIN, which will permit to control de progress of the project execution. The schedule should contain as minimum the following milestones: Financial Closing, start of civil works, arrival to the site of the work of the main electro mechanical equipment, start of electromechanical equipment, Commercial Operation Commissioning, and it should be submitted in a printed version and a digital version (MS Project), and will clearly show the critical route of the works.

The Concessionaire Society will accompany the Schedule of Works Execution with the request addressed to the Grantor for the assessment of the instrument of pertinent environmental management; or if not this, the number of registry of the corresponding procedure, in case this has been submitted previously. Exceptionally, it will be permitted that the instrument of environmental management be submitted after three (3) additional months to the date of submission of the Schedule, if the Concessionaire Society certifies on that date and to the satisfaction of the Grantor the causes that are responsible for the delay.

OSINERGMIN will approve the Schedule of Works Execution submitted within seven (7) days of having been presented, and must notify such approval within the three (3) days following, with copy of such approval to the Grantor.

Likewise, on a quarterly basis should submit to OSINERGMIN a detailed report on the progress of the activities of the project, in the forms and time terms established by OSINERGMIN. The detailed schedule of the works execution, as well as its modifications and progress should be submitted to the Ministry at the same time than it is submitted to OSINERGMIN. The Schedule will be accompanied by the request from the Concessionaire Society addressed to the Grantor, for the approval of the Instrument of Environmental Management.

* 1. OSINERGMIN will supervise the Schedule of Works Execution, for which purpose the Concessionaire Society is obliged to provide the sufficient information that is required.
  2. OSINERGMIN will supervise and technical inspection of the Works in order to verify the compliance with the technical standards, quality and safety standards, for which the Concessionaire Society is obliged to provide sufficient information that is required; this follow up will be made based on the norms of the sector and procedures of OSINERGMIN.

1. COMMERCIAL OPERATION
   1. The energy supply should be rendered according to the Applicable Laws and the Standards and Technical Procedures of COES and procedures of OSINERGMIN, in such way as to guarantee the safety, quality, efficiency and continuity of the electrical service.

The Concessionaire Society should be Registered Participant of COES, with the rights and duties foreseen in the Bylaws and Technical Procedures COES, which include the assumption at its cost of all the expenses that are attributed in the economic liquidations of COES; and will give service according to the disposition s of that organization, under conditions of normal operation, programming of maintenance, as well as when a state of alert, of emergency or of recovery are present according to the definitions that COES attributes to each one of these conditions and taking into account the Applicable Laws.

The Concessionaire Society will assume the corresponding costs for the use of the Secondary Systems of Transmission and Supplementary Transmission Systems, according to what is indicated in the Law of Electrical Concessions, and the Bylaws of the Law of Electrical Concessions.

The RER generation plant which has characteristics of Distributed Generation and/or Co-Generation will pay for the use of the distribution networks only for the incremental cost incurred by the Distributor, according to what the Bylaws establish.

* 1. The Concessionaire Society should provide to the Government Authorities the information and facilities of inspection that these reasonably will require controlling the correct compliance of its obligations under the Contract. The inspections should be made in such a way that they will not affect the operation of the plant of electric generation.
  2. The Concessionaire Society is obliged to hand over to COES on a weekly basis, its projections of production during each day of the following week, in order to be integrated to the scheduling of COES.

1. SUPPLY CONDITIONS
   1. **Measuring Equipment at the Connection Busbar**

The RER generation plant, to which Annex Nº 1 refers, will have the Class 0.2, electronic measuring equipment with facilities to request at distance information through telephone system. It should also have the registry capacity to store a minimum of thirty five (35) days of essential information for invoicing.

This equipment should measure exclusively the energy produced with the adjudicated RER generation. Any auxiliary equipment that produces energy by conventional means should have an independent measurement, which in case that it is injected to the RER plant, or provide this of auxiliary services,, it must be discounted from the RER production of the plant.

The noncompliance of this disposition will determine that the RER generator will not receive the Adjudication Tariff, even in a retroactive manner.

For the monthly invoicing will be used the information registered by the electronic means between 00:00 hours of the first day and 24:00 hours of the last day of each month.

* 1. **Prices to be Applied**
     1. The RER generation plant which is the object of this Contract will receive remuneration for the Power in accordance with the Applicable Laws.
     2. The Tariff of Adjudication will be updated according to Annex Nº 3 of the Contract, affected by the Correction Factor according to what the case may be.
     3. The Net Energy Injections to the limit of the Adjudicated Energy will be remunerated at the Tariff of Adjudication.

The Net Energy Injections in excess of the Adjudicated Energy will be remunerated at the corresponding Marginal Cost of Short Term in the Offer Busbar, according to Technical Procedure COES.

* + 1. When the Net Energy Injections in a Tariff Period plus the Energy Not Injected Due to Causes Outside the Scope of the RER Generator are less than the Adjudicated Energy, the Tariff of Adjudication will be reduced applying the Factor of Correction for this Tariff Period.
    2. From the second year of the Real Date of Commercial Operation Commissioning, if the annual average of the net energy injections of an RER generation plant, is less than its Adjudicated Energy, the Concessionaire Society may request the Ministry the readjustment of its Adjudicated Energy to reduce it for one sole time, in no more than fifteen percent (15%) of the original Adjudicated Energy. In this case, the determination of the Premium will correspond to the readjusted Adjudicated Energy which cannot be modified further on.
    3. The power income established by COES will be applied as partial payment of the Guaranteed Income.
    4. The income and charges for reactive energy will be those determined by COES, considering the values in force to the date in which invoicing is done.
  1. **Invoicing Procedure and Payment of Supply**
     1. The Concessionaire Society will receive monthly partial payments of the Guaranteed Income, corresponding to energy and power injected to SEIN.
     2. Calculation of monthly energy payment will be done at the Offer Busbar at the Marginal Cost of Offer at Short Term (Costo Marginal de Corto Plazo (CMCP)).applying to same procedures that are used for any other generator of SEIN. Power payment will correspond to the Firm Power determined by Technical Procedures COES.
     3. At the end of each Tariff Period will be established the liquidation for a total amount corresponding to the Premium, calculated according to the corresponding Procedure approved by OSINERGMIN.
     4. The Premium calculated at the end of the Tariff Period will give way to a charge, in favor or against the Concessionaire Society, according to what corresponds, which will be liquidated in monthly quotas along the twelve (12) months immediately following the annual liquidation period, applying the monthly interest rate corresponding to the rate of annual updating established in article 79 of the Law of Electrical Concessions.
     5. The reactive energy will be invoiced at the Offer Busbar, according to the criteria and tariffs set by OSINERGMIN and/or COES, according to what corresponds.
     6. Payment of the transfers indicated by COES will be done in the form and opportunity established in the respective Technical Procedure COES.

* 1. **Financing of the Investment** 
     1. Without waiving its exclusive responsibility before its Permitted Creditors; the Concessionaire Society may, with the previous authorization of the Grantor: a) constitute levies on the right of concession or its assets, trusts for security purposes over rights of collection and future income: c) issue securities (bonds, titles, etc.) backed up with real guarantees; and, e) constitute any other real guarantee or personal guarantee permitted byg the Applicable Laws; and in order to back up the payment of the Guaranteed Indebtedness.
     2. What is stipulated in the previous paragraph will not free the Concessionaire Society from its obligation of complying with all and each one of the dispositions of this Contract, of the Final Concession Contract and of the Applicable Laws. The Grantor agrees and convenes that neither the financial entities nor any person that acts in representation of the Concessionaire Society, will be responsible for the noncompliance of the obligations of this under the Contract or the Applicable Laws.
     3. By this instrument and subject to the dispositions established in the Applicable Laws, the Grantor expressly consents that Concessionaire Society will constitute in favor of the Permitted Creditors, real guarantees or personal guarantees over the Contract, the Final Concession Contract, rights of collection and future income of free availability for the concept of Guaranteed Income and other related assets, as well as over any other asset or right of the Concessionaire Society, as long as those collateral are destined only to guarantee or make viable the obtaining of resources for the development of the Project and give the supply of the Concession, and as long as, in addition, the corresponding contracts of Guaranteed Indebtedness contain one or more clauses that will guarantee in an explicit manner the following: (i) the continuity of the rendering of the supply in case of an execution of guarantees; (ii) that the rights of collection and other rights that the Permitted Creditors have with the Concessionaire Society cannot be opposed by the Grantor.
     4. The Concessionaire Society will remit to the Grantor, copy of the contracts that will be signed in application of this Clause, within the fifteen (15) days of their signature in order that the verification of the conditions described in the previous numeral can be verified and the acknowledgement of those Permitted Creditors further on.
     5. Likewise, the Grantor will be informed each semester with respect to the debit balance with each creditor financial entity with which there are qualified debts as Guarantee Indebtedness. In the same manner the Concessionaire Society will inform the Grantor the name and the data of the representatives of the Permitted Creditors of the Concessionaire Society with Guaranteed Indebtedness (the “Representative”).
     6. If the Concessionaire Society requests it, the Grantor will send to the Representative copy of the communications sent by the Grantor to the Concessionaire Society. Nevertheless, if events arise that may occasion the Caducity of the Concession, the Grantor is committed to inform of same to the Representative, without need of approval from the Concessionaire Society. The Grantor will grant in double set, delivered by the Concessionaire Society, the slip of reception of each notification that it sends in regard to operations of Guaranteed Indebtedness.
     7. If there is a noncompliance of the payment of the Guaranteed Indebtedness, the Permitted Creditors, may request the Grantor, the eventual execution of the guarantees described in previous numeral 6.4.1, following the procedures foreseen in the Applicable Laws.
     8. In those cases in which the right to concession is executed, and consequently it is necessary to make a substitution of the Concessionaire Society, the Permitted Creditors will propose to the Grantor one or more technical companies that will comply with the requirements of prequalification of this Auction, so assume the contractual position of the Concessionaire Society and guarantee the continuity of the operation.
     9. The Grantor reserves the right of not accepting any of the substitute companies proposed. That acceptance will not be denied if after verification by the Grantor, the substitute entity or entities proposed comply with the technical, financial, legal and other requirement stipulated in the Consolidated Tender Documents, without waiving what is foreseen in the Applicable Laws regarding antimonopoly and anti-oligopoly in the electricity subsector. The Grantor will have a maximum time term of thirty (30) days to make a pronouncement with respect to the proposed substitution by the Permitted Creditors.
     10. It is expressly established that the Grantor will not assume any financial compromise of payment to Permitted Creditors due to an eventual insufficient resources obtained from the execution of the guarantees that back up the Guaranteed Indebtedness of the Concessionaire Society.
     11. Likewise, the rights of the Concessionaire Society grants or cedes to the Permitted Creditors regarding the guarantees described in numeral 6.4.1, or regarding the cash flows of free availability cannot be opposed by the Grantor; so any controversy or dispute on its eventual constitution or execution should be resolved by the Concessionaire Society and its Permitted Creditors.
     12. In no case the Concession may be given to enterprises that are indicated in the no eligibility list elaborated by The World Bank, according to any modification or the new version when it is replaced.
     13. Without waiving this, the Grantor is committed to send a written notification to the Permitted Creditors, before signing any change or modification to this Contract, the Concession Contract, as long as that change or modification will affect some aspect that has to do with the position of the Permitted Creditors in this present Contract.

1. **CONTRACTUAL RESPONSIBILITY**
   1. None of the Parties is imputable for the non-execution of an obligation or for its partial, late or defective compliance, during the term in which the Party obliged is affected by force majeure and as long as it will certify in a documented manner, within the fifteen (15) days after its presentation, the cause that impeded its due compliance.
   2. Force majeure will mean an extraordinary event, condition or circumstance which cannot be foreseen and irresistible which, as it is out of the scope of reasonable and diligent control of the Party that invokes it, and in spite of the efforts made to prevent it or mitigate its effects; causes a delay or material suspension of any obligation imposed under this Contract, including but not limited to the following:
2. Vandalism against the installations or equipment of the Concessionaire Society, blocking of accesses or of properties by owners or possessors notwithstanding having previously agreed with them the corresponding rights of occupation, invasions, pressures to hire personnel;
3. Any act of external war (declared or not), invasion, armed conflict, blocking, embargo, revolution, mutiny, insurrection, civil commotion, acts of vandalism or delinquency;
4. Any stoppage or strike of workers that will affect directly the Concessionaire due to causes which are out of the reasonable control or which cannot be foreseen.
5. Any earthquake, flood, storm, hurricane, tornado, electric storm or natural events similar; fire, explosion or similar events, as long as they affect directly, totally or partially the execution of the works, the operation of the RER Generation Plant or the supply.
6. The eventual destruction of the works or of the facilities of the RER Generation plant, for causes that cannot be imputed to the Concessionaire.
7. The discovery, of unforeseeable and that could not be forecasted, cultural heritage, according to what is foreseen in Law Nº 28296 – General Law of National Cultural Heritage and other Applicable Laws, during execution of activities, which will originate an interruption of the works.
   1. In the same manner, it is expressly understood that the qualification of Force Majeure will not be applied to any of the following events: (i) economical, financial difficulties, of the Concessionaire Society or of its Permitted Creditors; (ii) changes in the market conditions (iii) the lack of possibility of obtaining conventional or legal rights of way over the properties in which the project will be developed due to the late presentation of the corresponding request; (iv) the lack of environmental impact study due to delays generated by the late submission of the corresponding request; (v) legal actions that eventually may be interposed the owners of rights of other nature, previously constituted over part or total area indicated by Bidder; and (vi) any other event that can be attributed to the Concessionaire and/or that could have been foreseeable with a diligent conduct.
   2. The event of force majeure does not free the Parties from the compliance of their obligations which are not affected by it. The Part that invokes the event of force majeure must make its greatest effort to ensure the restart of the activity in the shortest time possible after those events happen.
   3. The Party that is invoking the event of force majeure should inform the other Party and OSINERGMIN regarding:
8. The events that constitute such condition of force majeure, within the following five (5) days that this happened, according to what the case may be; and
9. The period assessed of total or partial restriction of its activities and the degree of impact foreseen. Additionally, the other Party should be continuously informed on the development of such events.
   1. In case that one of the Parties is not in agreement with the qualification of the event as one of force majeure or of its consequences, it can use the procedure of solution of controversies of Clause 11.
   2. Without waiving the obligation of the Concessionaire Society of submitting the information indicated in Clause 7.5, to the Ministry, the assessment of the temporary variation of the Schedule of Works Execution due to cause of force majeure will be made by OSINERGMIN in accordance with the Applicable Laws.
   3. If a situation of force majeure is verified, the time term acknowledged in the Ministerial Resolution will be granted in favor of the Concessionaire Society.
   4. The investigation, assignment of responsibilities, determination and payment of compensations, review or impugnation as well as any other matter relative to the Technical Standard of Quality of the Electric Services and its supplementary norms will be ruled with this Standard, its supplementary norms, modifications and the Applicable Laws.

**8. GUARANTEE OF FAITHFUL COMPLIANCE**

**8.1 Amount of the Guarantee of Faithful Compliance**

The amount of the Guarantee of Faithful Complianc**e** is Two Hundred Fifty Thousand Dollars of the United States of America) (USD 250 000) per MW to be installed, according to what is indicated in the Offer. The Guarantee of Faithful Compliance should have a time of enforcement of at least one hundred eighty (180) calendar days, having to be renewed by the same time term and handed over to the Grantor before its falling due, and thus successively, at the latest on its expiration date.

**8.2 The Not Opportune Renewal**

If the renewal is not done of the Guarantee of Faithful Compliance granted, on the date of its falling due, the Concessionaire Society must deliver a new Guarantee of Faithful Compliance but for an amount increased in 20%, which must be done within the time term of five (5) calendar days from the date of falling due of the guarantee that was not renewed, without any request. The time term of enforcement of this new Guarantee of Faithful Compliance, will start to be computed on the due date of the guarantee that was not renewed, it will be as the previous one of not less than one hundred eighty (180) days; and the same as that must be renewed at the latest on the date this time term is due, and thus successively.

In case of noncompliance in the delivery of the new Guarantee of Faithful Compliance increased in 20% to which the previous paragraph refers, the Ministry will proceed to execute the non-renewed Guarantee of Faithful Compliance; the Contract will be resolved of full right.

**8.3 Delays in the Schedule of Works until before December 31, 2020**

In the cases in which OSINERGMIN verifies that there are delays during the framework of quarterly supervision of compliance of the Schedule of Works Execution the Concessionaire Society is obliged to increase the amount of the Guarantee of Faithful Compliance in 20% with respect to the amount in force on the date of the verification. This obligation will be complied within the ten (10) days of having received the requirement by OSINERGMIN. In case it is not increased within the indicated time term, with a previous report from OSINERGMIN, the Ministry will execute the non -increased Guarantee of Faithful Compliance. In these cases the Concessionaire Society is obliged to submit, without any requirement, a new Guarantee of Faithful Compliance for an amount equal to that executed within the time term of ten (10) days from the due date of the time term that OSINERGMIN granted to present the increase. In case of noncompliance, the Contract will be resolved of full right.

**8.4 Commercial Operation Commissioning after December 31, 2020**

If as of December 31, 2020, for any reason, the Commercial Operation Commissioning has not taken place of the RER Generation Project which is the object of this Contract, it will be resolved of full right, and the Guarantee of Faithful Compliance will executed.

The resolution of full right to which the previous paragraph refers, will not affect the enforcement of the final generation concessions and that of transmission that have been granted according to the Law of Electrical Concessions and Bylaws of Law of Electrical Concessions.

**8.5 Reduction of the Guarantee**

Once the 75% of the amount of investment has been completed, according to the report from OSINERGMIN, the Guarantee of Faithful compliance will be reduced to the equivalent of 50% of the amount in force at the date of such report, without waiving the application, in what is pertinent, of the stipulations that are previous to this clause.

9. SUBSTITUTION OF THE GUARANTEE OF FAITHFUL COMPLIANCE

The Guarantee of Works Execution, of generation and its associated line to which refers the Law of Electrical Concessions will be substituted on the Closing Date by the Guarantee of Faithful Compliance. Also, the Calendar of Works Execution of generation and its associated line to which refers the Law of Electrical Concessions will be substituted by the Schedule of Works Execution to which refers the Contract.

10 CONTRACT TERMINATION

10.1 The Contract will terminate due to:

1. Agreement of the Parties.
2. Extinction of the Contract of Final Concession of RER Generation
3. Falling due of the Time Term of Enforcement; or,
4. Resolution of the Contract.

10.2 The Ministry may resolve the Contract, if the Concessionaire Society:

1. Has given false information of any kind.
2. Does not comply with any of the obligations established in numerals 8-2. 9-3 and 8.4
3. Does not operate its installations without a justified cause, for 876 hours accumulated within a period of twelve (12) months
4. Persists, after being sanctioned administratively up to two (2) opportunities for not complying with its obligations of supply of energy generated according to the safety standards and quality standards established in the Contract and in the pertinent technical standards, as long as those sanctions remained firm in administrative seat and in judiciary seat if the respective contention has been interposed.
5. Would transfer partially or totally the Contract, by any title, without previous authorization in writing from the Ministry
6. Was sanctioned by OSINERGMIN with administrative fines of non-firm taxation, that in one (1) calendar year are more than ten percent (10%) of the Annual Invoicing of the previous year. as long as those fines would have been firm at administrative seat and in judiciary seat if the corresponding contention has been interposed. This cause is applicable as of the second year of commercial operation.
7. Would be incorporated, would be separated or transformed, without previous approval in writing from the Ministry.
8. It was declared in insolvency, bankrupt or liquidated.
9. Does not comply with a justification, in a grave and reiterated manner any obligation established in the Contract or the Applicable Laws, other than the ones indicated in the previous literal items.
10. Does not comply any of the obligations or commitments referred to in incises d), e) and f) of Numeral 2.5.9 or the Numerals 9.2 and 9.3 of the consolidated Tender Documents.

It is established that, in the cases that the Consolidated Tender Documents and the Contract stipulate that the resolution will be of full right, the Contract will be resolved immediately and automatically, without it being necessary that the Ministry communicates it to the Concessionaire Society, unless the cases in which there is a resolution condition and the Grantor wants the resolution to operate with previous written communication to the Concessionaire Society. The resolution in no case will generate any responsibility for the Grantor.

10.3 The supposed situations to which literals c) e), g), and i) of Clause 10.2 refer, configure causes for termination, only if they are the product of a requirement in writing, the Concessionaire Society does not remedy to the satisfaction of the Ministry, the situation of noncompliance, within sixty (60) calendar days following the date of the requirement in writing or within the larger time term that has been granted for this purpose.

10.4 If there is no cause for resolution of full right of this Contract, in which case the Contract would conclude due to the sole fact of noncompliance, to resolve it the procedure to be followed is:

1. The Ministry will communicate in writing to the Concessionaire Society, its intention of resolving the Contract, describing the noncompliance or event and indicating the respective clause for resolution.
2. Once received the notarized letter of resolution of the Contract, the Concessionaire Society may manifest its non-conformity with the existence of a cause for resolution, for which it will send the Ministry a notarized letter in a time term of maximum ten (10) days counted from the date of reception of the first notarized letter. In this case, it will be understood that there exists a conflict or controversy with respect to the resolution of the Contract, and the Clause 11 applies.
3. When the time is due without having the Concessionaire Society expressed its disconformity, the Contract will be understood as resolved on the date of reception of the letter.
4. Once the termination is declared with resolution or if what is mentioned in literal c) occurs, the Contract will be resolved.

10.5 The Concessionaire Society may renounce the Contract, after having started the commercial operation of the RER generation plant, unilaterally and without indication of any cause at any moment. For that purpose, it will suffice that the Concessionaire Society will communicate its decision to the Ministry with a time term of six (6) months anticipation.

**11. SOLUTION OF CONTROVERSIES**

**11.1** The conflicts and controversies that could arise between the Parties on the interpretation, execution, compliance and any aspect relative to the existence, validity or resolution of the Contract, should be defined as Technical or non-technical controversies.

If it is agreed that it is a Technical Controversy, this will be resolved according to the procedure stipulated in Clause 11.2, the conflicts or controversies that are not technical (each one, one “non-technical controversy”) will be resolved according to the procedure foreseen in Clause 11.3.

In case the Parties do not agree that the controversy is a technical or non-technical controversy, then such conflict or controversy should be considered a Non-Technical controversy and will be solved according to the respective procedure foreseen on Clause 11.3.

No Technical Controversy may be regarding causes of termination of the Contract, which in all cases will be considered Non-Technical Controversies.

11.2 All and each one of the Technical Controversies that cannot be resolved directly by the Parties, should be subjected to the final and non-appealable decision of one sole Expert in the matter (the “Expert”), who will be designated by the Parties, of mutual agreement within the three (3) days after the determination of the existence of a Technical Controversy.

The Expert may be local or foreigner with ample experience on the matter of the respective Technical Controversy, who should have no conflict of interests with any of the Parties, at the time of his/her designation and while he/she intervenes as Expert .In case that the Parties are not in agreement regarding the designation of the Expert, then the Expert will have to be designated by two persons, each one designated by one of the Parties.

In case those two persons do not agree in the designation of the Expert within the time term of five (5) days following their designation, or if they were not designated within the corresponding time term, then the election of the Expert will be by raffle among three persons that any of the Parties may request to the Center of National and International Arbitrage (Centro de Arbitraje Nacional e Internacional) of the Lima Chamber of Commerce, who will have the same requirements applicable for the Expert designated by the Parties and will resolve in accordance to this Clause 11.

The Expert may request from the Parties the information deemed necessary to resolve the Technical Controversy after learning about it, and as a result will be able to submit to the Parties a proposal for conciliation, which could be or not accepted by them. The Expert may act with all the proofs and request from the Parties or third Persons the proofs deemed necessary. The Expert will prepare a preliminary decision that will be notified to the Parties within thirty (30) calendar days following its designation having the Parties a time term of five (5) days to prepare and hand over to the Expert their comments to such preliminary decision.

The Expert should issue a final decision regarding the Technical Controversy arisen within the ten (10) days following the reception of the comments from the Parties to the preliminary decision or at the time due to submit those comments, whichever happens before. The procedure for the resolution of a Technical Controversy will take place in the city of Lima, Perú, except for the acting of the proofs that the Expert might consider necessary to do so in another place.

The Expert should keep absolute reserve and maintain confidentiality regarding all the information known in its participation on the resolution of a Technical Controversy.

11.3 The Non-Technical Controversies will be resolved through nationwide and international law arbitrage, according to the following:

a) The controversies for amounts of more than twenty million Dollars (US$ 20 000 000) or its equivalent in local currency will be resolved with international law arbitrage through a procedure according to the Rules of Conciliation and Arbitrage of the Center for Arrangement of Differences Relative to Investments (Reglas de Conciliación and Arbitraje del Centro Internacional de Arreglo de Diferencias Relativas a Inversiones (CIADI)), established in the Agreement on Arrangement of Differences Relative to Investments between States and Nationals of other States, approved by Legislative Resolution N° 26210, to which norms the Parties are subjected unconditionally. If the Concessionaire Society does not comply with the requirement to go to CIADI, this controversy will be subjected to the rules to which refers literal b) of this numeral.

The arbitrage will take place in the city of Washington, D.C., or in the city of Lima, at the election of the Concessionaire Society , and it will be conducted in Spanish language, the corresponding arbitral resolution will be issued within ninety (90) days following the date of installation of the Arbiter Court.

The Arbiter Court will comprise three (3) members. Each party will designate one arbiter and the third one, will be designated of mutual agreement by the two arbiters designated by the Parties, who at the same time will preside the Arbiter Court. If the two arbiters do not agree on the designation of the third arbiter within fifteen (15) days following the date of the designation of the second arbiter, the third arbiter will be designated by the CIADI at the request of any of the Parties.

If one of the Parties does not designate its arbiter within the time term of fifteen (15) days from the date of reception of the request for designation of an arbiter, it will be considered that it has forfeited its right and the arbiter will be designated by the CIADI at the request of the other party.

b) The controversies the amount of which is equal or less than twenty million Dollars (US$ 20 000 000) or its equivalent in local currency or which cannot be quantified or be appreciated in currency, will be resolved with law nationwide arbitrage through a procedure according to the Bylaws of Arbitrage of the Nationwide and International Center of Arbitrage of the Lima Chamber of Commerce to which norms the Parties are subjected unconditionally being of complementary application the Legislative Decree N° 1071, which Rules the arbitrage. The arbitrage will take place in the city of Lima, Perú and will be conducted in Spanish language and the arbitral resolution will be issued in a time term of no more than ninety (90) days following the date of installation of the Arbiter Court.

The Arbiter Court will comprise three (3) members. Each party will designate one arbiter and the third one will be designated of mutual agreement by the two arbiters designated by the Parties, who at the same time will preside the Arbiter Court. If the two arbiters do not agree on the designation of the third arbiter within ten (10) days following the date of the designation of the second arbiter, the third arbiter will be designated by the Lima Chamber of Commerce at the request of any of the Parties. If one of the Parties does not designate its arbiter within the time term of ten (10) days from the date of reception of the request for designation of an arbiter, it will be considered that it has forfeited its right and the Lima Chamber of Commerce at the request of the other party will designate the arbiter.

11.4 The Parties agree that the resolution issued by the Arbiter Court will be final and cannot be appealed. Consequently, the Parties forfeit their resources of appeal, cassation or any other impugnation resource against the arbitral resolution declaring that the compliance will be obligatory, of final compliance and immediate execution.

11.5 During the course of the arbitrage, the parties will continue with the execution of its contractual commitments, in the measure it is possible including those that are subjected to arbitrage.

11.6 If the subject of arbitrage is compliance of obligations covered with guarantee letter according to Clause 8, if it is applicable, such guarantee cannot be executed and should be maintained in force during the arbitral procedure.

11.7 All expenses incurred in the resolution of a Technical or Non-Technical Controversy, including the fee of the Expert or the fees of the arbiters that participate in the resolution of one Controversy will be covered by the Party that loses the action, except that the Expert or the Arbiters decide another thing.

11.8 From this clause are excluded the costs and expenses such as fees of advisors, internal expenses and others that result imputable to one party in an individual manner.

11.9 The Concessionaire Society expressly renounces in an unconditional and irrevocable manner to any claim through diplomatic channels.

12 PENALTIES

In case of resolution of the Contract after the Real Date of Commercial Operation Commissioning, the Tariff of Adjudication granted to the Concessionaire Society by this Auction process will be left without effect and the system may continue operating under the conditions of RER Generator not Awardee referred to in the Bylaws.

13 MISCELLANEOUS

13.1 The Concessionaire Society may transfer, assign its rights, and assign its contractual position of all or any of its obligations or rights according to the Contract and the Applicable Laws, as long as it has the previous authorization in writing by the Ministry, which cannot be denied without express basis.

13.2 The renunciation of any of the Parties to one or more of its rights which correspond, according to the Contract will only be effective if this is done in writing and with the due notification to the other Party. If at any moment one of the Parties renounces or does not exert a specific right consigned in the Contract, that conduct cannot be considered by the other party as a permanent renunciation to have a valid claim to that right or any other that corresponds according to the Contract .

13.3 The modifications and clarifications on the Contract will only be valid when they are agreed upon in writing, and signed by the representatives with power of attorney sufficient of the parties and which comply with the pertinent requirements of the Applicable Laws. The deed with the respective addendum will be elevated to public deed. Copy of that public deed will be sent to OSINERGMIN by the Concessionaire Society in a time term of no less than 5 days after the addendum has been done.

13.4 If any stipulation or disposition of the Contract is considered null, no valid or not required by arbitral resolution, that decision will be interpreted as strictly referring to that stipulation or disposition and will not alter the validity of the other stipulations of the Contract.

13.5 Except by express stipulation on the contrary foreseen in the Contract, the notifications, citations, petitions, demands and other communications due and allowed according to the Contract, should be done in writing and with personal notification to the following addresses:

If it is directed to the Ministry:

Name: Ministerio de Energía y Minas.

Address: Av. Las Artes 260, Lima 41, Perú.

Attention:

If it is directed to the Concessionaire Society

Name:

Address:

Attention:

or to any other address or person designated in writing by the Parties according to the first paragraph of this Clause .

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**AWARDEE**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**GRANTOR CONCESSIONAAIRE SOCIETY**

**Annex Nº 1**

**PROJECT SPECIFICATIONS**

**Project**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Location:

Locality:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

District: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Province:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Region:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Technology**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Total Power to be installed (MW)**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Quantity of units to be installed**:\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Connection Busbar**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Barra de Oferta** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The total power to be installed (in MW) may have a variation of ± 10%; in the case of hydroelectric projects, the Power product of such variation may not be more in any case than the limit of 20 MW, according to what is established by Law. Variation of the total power to be installed will not affect the value of the Adjudicated Energy.

In Scheme N° 1, at the end of this annex is illustrated the general configuration of the project (attach scheme).

**Annex Nº 2**

**SCHEDULE OF WORKS EXECUTION**

**Project**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Technology**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |
| --- | --- |
| **Quarter** | **Description of the activities** |
| **1** |  |
| **2** |  |
| **3** |  |
| **4** |  |
| **5** |  |
| **..** |  |
| **..** |  |
| **..** |  |

Each of the quarterly progresses should be indicated, compatible with the date of the corresponding start of Enforcement Time Term.

This document specifies the description of activities and the percentage of progress of the physical investment with respect to the total investment.

**Annex Nº 3**

**FORMULAS FOR UPDATING THE ENERGY PRICES**

**Project**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Technology**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The following Updating Formula will be applied annually when Factore is increased or decreased in more than 5% with respect to the same factor employed in the last updating

The updating factor will be rounded up to four (4) decimal digits.

The updated tariff must be rounded up to two (2) decimals before using it.

**A. Formula for Updating the Tariff Granted in Auction**

**Tariff = Tariff Adjudication \* Factor*e***

Where:

IPP Index WPSSOP3500 (Finished Goods Less Food and Energy), published by the Bureau of Labor of the Government of the United States of North America.

IPPo IPP corresponding to the real date of Start of Commercial Commissioning. The initial index will be the last value available at the real date of Commercial Commissioning.

1. For the assessment of the accreditation of the faculties of the Legal Representative of the Participant, the following criteria will be considered:

   In the case of Consortium: The powers of attorney of each legal representative of the participants of the Consortium will be assessed. (Annex 6-1)

   Company with domicile in Peru: Will be applied the General Societies Law. The enforcement of the Power of attorney issued by the Public Registries should not be more than 2 months old.

   * Company with domicile in a foreign country: at least, through a document granted before a Public Notary of the domicile of the company.

   The documents should be submitted in Spanish language and apostilled in case it corresponds, according to Article 508 of Supreme Decree N° 076-2005-RE, Legislative Resolution N° 29445 and Supreme Decree N° 086-2009-RE. [↑](#footnote-ref-2)
2. The sets of Contract to be submitted in Envelope 1, will be the printed version of Annex 12 contained in the “pdf” of the Tender Documents, available in the Data Room. [↑](#footnote-ref-3)
3. Is the address indicated for the effects of the dispute, at which will be notified the decision regarding that writ. The process address does not require a relationship of ownership with the property nor the place of residence of the one making the dispute. [↑](#footnote-ref-4)
4. Will be taken as Rate of Exchange, the selling value published for Dollar of the United States of America by the Superintendence of Banking and Insurance of Peru, corresponding to the “QUOTATION OF OFFER AND DEMAND AVERAGE WEIGHED RATE OF EXCHANGE”, on the date of the calling for this Auction [↑](#footnote-ref-5)
5. Submit the printed version of this Annex of the “pdf” file of the Consolidated Tender Documents available in the Data Room. That printed form must be filled in in the spaces that correspond. [↑](#footnote-ref-6)
6. Submit the printed version of this Annex of the “pdf” file of the Consolidated Tender Documents available in the Data Room. That printed form must be filled in in the spaces that correspond. [↑](#footnote-ref-7)
7. Submit the printed version of this Annex of the “pdf” file of the Consolidated Tender Documents available in the Data Room. That printed form must be filled in in the spaces that correspond. [↑](#footnote-ref-8)
8. Submit the printed version of this Annex of the “pdf” file of the Consolidated Tender Documents available in the Data Room. That printed form must be filled in in the spaces that correspond. [↑](#footnote-ref-9)
9. Submit the printed version of this Annex of the “pdf” file of the Consolidated Tender Documents available in the Data Room. That printed form must be filled in in the spaces that correspond. [↑](#footnote-ref-10)
10. Submit the printed version of this Annex of the “pdf” file of the Consolidated Tender Documents available in the Data Room. That printed form must be filled in in the spaces that correspond. [↑](#footnote-ref-11)
11. Submit the printed version of this Annex of the “pdf” file of the Consolidated Tender Documents available in the Data Room. That printed form must be filled in in the spaces that correspond. [↑](#footnote-ref-12)
12. Submit the printed version of this Annex of the “pdf” file of the Consolidated Tender Documents available in the Data Room. That printed form must be filled in in the spaces that correspond. [↑](#footnote-ref-13)
13. Submit the printed version of this Annex of the “pdf” file of the Consolidated Tender Documents available in the Data Room. That printed form must be filled in in the spaces that correspond. [↑](#footnote-ref-14)
14. Submit the printed version of this Annex of the “pdf” file of the Consolidated Tender Documents available in the Data Room. That printed form must be filled in in the spaces that correspond. [↑](#footnote-ref-15)
15. Submit the printed version of this Annex of the “pdf” file of the Consolidated Tender Documents available in the Data Room. That printed form must be filled in in the spaces that correspond. [↑](#footnote-ref-16)
16. Submit the printed version of this Annex of the “pdf” file of the Consolidated Tender Documents available in the Data Room. That printed form must be filled in in the spaces that correspond. [↑](#footnote-ref-17)
17. The model in this Annex may be adapted **only**  to indicate the exact dates for the purposes of its enforcement. [↑](#footnote-ref-18)
18. The model in this Annex may be adapted to indicate the exact dates for the purposes of its enforcement. [↑](#footnote-ref-19)