

REPUBLIC OF COLOMBIA

MINISTRY OF ENERGY AND MINES

MINING AND ENERGY PLANNING UNIT

LONG-TERM POWER PURCHASE TENDER No. 01 - 2019

LONG-TERM POWER PURCHASE TENDER

SPECIFIC TERMS AND CONDITIONS

Bogotá D. C., January 4, 2019

## SPECIFIC TERMS AND CONDITIONS FOR THE LONG-TERM POWER PURCHASE TENDER

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## **SPECIFIC TERMS AND CONDITIONS FOR THE LONG-TERM POWER PURCHASE TENDER**

### **1 INTRODUCTION**

Decree 570 of 2018 determined that the Ministry of Energy and Mines (hereinafter, MME) must take the corresponding measures to fulfill the objectives set forth in article 2.2.3.8.7.3 of the Sole Regulatory Decree of the MME, in accordance with the analysis carried out by Colombia's National Mining and Energy Planning Unit (hereinafter, UPME), in each reference expansion plan for power generation and transmission.

Within this framework, the MME issued MME Resolution 40791 of 2018, as amended by MME Resolution 41307 of 2018 and MME Resolution 41314 of 2018, to define and implement a mechanism that promotes long-term purchase for power generation projects in the National Interconnected System, which is complementary to those existing in the WHOLESALE ENERGY MARKET.

For this purpose, the MME delegated — to the UPME — the implementation and administration of the mechanism for selecting GENERATORS and DISTRIBUTORS that enter into long-term power purchase AGREEMENTS and ordered a TENDER to be held, after publishing a few specific terms and conditions, contained in this document. The purpose of the TENDER is to allocate long-term ANNUAL AVERAGE ENERGY supply AGREEMENTS between each GENERATOR and DISTRIBUTOR that are AWARDEES.

### **2 INTERPRETATION OF THE SPECIFIC TENDER TERMS AND CONDITIONS**

#### **2.1 Terms and Expressions**

Unless expressly stated otherwise, terms in capital letters used herein shall have the meaning granted to said terms in this section.

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For the purposes of these TENDER DOCUMENTS and the TENDER, it is established that the terms hereunder will have the meanings indicated below. Expressions in the singular comprise, where appropriate, the plural and vice versa.

“CLARIFICATION”: All communications issued in writing by the UPME, in order to clarify, interpret or answer questions related to the TENDER DOCUMENTS, including this document or any of the ANNEXES. In the respective CLARIFICATION, the UPME will indicate to which of the documents the TENDER makes reference.

“ADDENDUM”: All the communications issued by the UPME, in writing, during the TENDER, in order to amend the contents of the TENDER DOCUMENTS. In the respective ADDENDUM, the UPME will indicate to which of the documents the TENDER makes reference. The ADDENDUM, once published, will constitute part of the TENDER DOCUMENTS.

“AWARDEES” or “INVESTORS”: PARTICIPANTS selected by the UPME to execute long-term power supply AGREEMENTS, in accordance with the TENDER DOCUMENTS and as a result of the TENDER.

“COMMERCIAL EXCHANGE SYSTEM ADMINISTRATOR” or “ASIC”: The entity in charge of recording commercial borders and long-term power agreements; settlement, billing, collection and payment of the value of power transactions, agreements, and acts in the stock market, by generators and distributors; maintenance of the information systems and computer programs required; and compliance with the tasks necessary for the proper functioning of the Commercial Exchange System (SIC), in accordance with current regulations. The ASIC service is in charge of the company XM Compañía de Expertos en Mercados S.A. E.S.P.

“ANNEXES”: Attached documents that constitute an integral part of these TENDER DOCUMENTS.

“AWARD HEARING”: The public procedure performed on the specific Award Date, and the award procedures established in MME Resolution 40791 of 2018, as amended by MME Resolution 41307 of 2018, in MME Resolution 41314 of 2018 and in these TENDER DOCUMENTS.

“S-CURVE AUDITOR”: The individual or legal entity with recognized experience in audit processes, who will be responsible for monitoring the construction and startup of the NEW GENERATION PROJECTS, in accordance with MME Resolution 40791 of 2018, as amended by MME Resolution 41307 of 2018 and MME Resolution 41314 of 2018.

“TENDER AUDITOR”: The individual or legal entity with recognized experience in audit processes, who will be responsible for monitoring the implementation and effectiveness of TENDER plans or procedures and that this is done in accordance with the TENDER DOCUMENTS and with MME Resolution 40791 2018, as amended by MME Resolution 41307 of 2018 and MME Resolution 41314 of 2018.

“AUTHORITY”: Any person or entity vested with public power in Colombia, empowered pursuant to the APPLICABLE PROVISIONS to issue or construe rules or decisions, either general or particular, with mandatory effects for those who are subject to their scopes.

“QUALIFICATION”: The evaluation of each PROJECT carried out by the UPME based on the criteria defined in the MME DUR and in MME Resolution 40791 of 2018, as amended by means of MME Resolution 41307 of 2018 and MME Resolution 41314 of 2018. These include the criteria of resilience, complementarity, national energy security and emissions reduction.

“DISTRIBUTOR”: An agent of the WHOLESale ENERGY MARKET, which at the DATE OF SUBMISSION is registered as power distributors in the ASIC.

“EVALUATING COMMITTEE”: The set of PEOPLE designated by the UPME to evaluate, where appropriate, (i) compliance with the prequalification and qualification requirements and (ii) the PROPOSALS submitted by the PARTICIPANTS.

“BUYERS”: Distributing agents of the WHOLESale ENERGY MARKET who have met the prequalification requirements to participate in the long-term power purchase TENDER and that are AWARDEES.

“COMPETITIVE CONDITIONS”: The minimum conditions to guarantee an efficient interaction process between QUALIFIED PARTICIPANTS who make VALID BIDS. Said conditions will be determined by the CREG through an administrative record in accordance with article 22 of MME Resolution 40791 of 2018, as amended by article 15 of the MME Resolution 40791 of 2018, as amended by means of MME Resolution 41307 of 2018, and will be verified by the UPME and by the TENDER AUDITOR during the AWARD process.

“INQUIRY”: All communications issued in writing by the Interested Parties and addressed to the UPME, in order to request clarifications, interpretations or formulate questions related to any of the TENDER DOCUMENTS, including its Annexes.

“CONTRACTOR”: The Participant that is the successful bidder and enters into the AGREEMENT, subject matter hereof.

“LONG-TERM ANNUAL AVERAGE ENERGY AGREEMENT”: AGREEMENT for the supply of energy made by and between DISTRIBUTING and GENERATING agents, which is settled in the power exchange, and which must include at the very least: the identity of the contracting parties; THE GENERATION PROJECT AWARDED; the volume of contracted annual average energy; the effective term; clear rules or procedures to determine hour by hour throughout the enforcement of the AGREEMENT, the amounts of power to be allocated and the respective price, in accordance with the settlement procedures set forth in CREG Resolution 024 of 1995 or those that amend or replace it. This AGREEMENT will be executed in the minutes defined by the Ministry of Energy and Mines in accordance with article 14 of MME Resolution 40791 of 2018.

“CONTROL”: a) The power or ability of a person or group of persons to directly or indirectly impose decisions in the general meeting of shareholders, associates or equivalent bodies, or appoint or dismiss the majority of the members of the board of directors, directors, administrators or their equivalents, of a legal entity; b) hold the ownership of rights that allow, either directly or indirectly, to exercise voting rights regarding more than 50%, plus a share, stocks, or interest in which the capital stock of a person is divided; and c) the power or ability of a person or group of persons to direct, either directly or indirectly, the administration, strategy or main policies of a legal entity, either through participation in the capital stock, by agreement or any other way.

“CREG”: The Colombian Commission for the Regulation of Energy and Gas, an entity organized pursuant to Laws 142 and 143 of 1994 and 489 of 1998, attached to the Ministry of Energy and Mines.

“S-CURVE”: Graphical representation of the accumulated progress of the project as a function of time that allows to compare the real progress with the planned progress, in order to establish the deviations of the project and take timely corrective actions. It shows the estimated percentage of project progress during the time of execution in the y-axis and the elapsed time in the x-axis. It explicitly contains the date of entry into commercial operation and must be submitted by the BIDDING GENERATORS with NEW GENERATION PROJECTS, as a requirement to participate in the TENDER.

“QUALIFICATION CRITERIA”: Criteria that must be met by the PARTICIPATING GENERATORS to fulfill the objectives set forth in article 2.2.3.8.7.3 of the MME DUR, and in the TENDER DOCUMENTS, which will be classified by the UPME with the documents delivered in ENVELOPE NO. 1 and those that each PARTICIPANT delivers at the request of the UPME, in case of finding rectifiable faults or requiring clarifications or



additional information. It includes the criteria of resilience, complementarity, regional energy security and emissions reduction. These criteria will be evaluated in the manner indicated in articles 33 through 39 of MME Resolution 40791 of 2018, as amended by MME Resolution 41307 of 2018 and in these TENDER DOCUMENTS, based on the weighting factors defined in MME Resolution 41314 of 2018.

“APPLICABLE PROVISIONS”: These include, but are not limited to, the Colombian Civil Code, the Colombian Code of Commerce, Laws 142 and 143 of 1994, 1665 of 2013, 1715 and 1844 of 2014, the General Procedural Code, the Tax Statute and environmental regulations, in particular, the Code of Natural Resources, Law 99 of 1993, Decree 2041 of 2014 and other applicable environmental provisions, decrees 381 of 2012, 1258 of 2013, MME DUR, MME Resolution 40791 of 2018, as amended by MME Resolution 41307 of 2018 and MME Resolution 41314, the OPERATING RULES and other resolutions of the CREG and the rules that amend, clarify or add them.

“MME DUR”: The Sole Regulatory Decree of the mining and energy sector contained in decree 1073 of 2015 and its amendments.

“ANNUAL AVERAGE ENERGY”: The amount of energy in megawatt-hours per year (MWh/year) that the SELLER undertakes to give BUYER and BUYER undertakes to buy from SELLER, under the terms of the AGREEMENT. This corresponds to the amount awarded by the UPME in the TENDER. In no case may the ANNUAL AVERAGE ENERGY be higher than the one declared by the respective GENERATOR in its BID. The amount of ANNUAL AVERAGE ENERGY to be sold by each SELLER may not be less than the minimum volume declared by the respective GENERATOR in its BID.

“FIRST-CLASS FINANCIAL ENTITY”: a) A financial institution domiciled in Colombia, that has a long-term debt credit risk rating of “investment grade”, as determined by a risk rating agency supervised by the Financial Superintendence of Colombia; or b) an external financial entity included in the list of foreign financial entities contained in Annex No. 1 of External Regulation Letter DCIN-83 of 2003 from the Bank of the Republic or in the regulations that amend, add or replace it and accredit a long-term debt credit risk rating, of at least “investment grade”, issued by an internationally-renowned risk rating agency in accordance with the provisions of Applicable Law.

“DATE OF CALCULATION BASIS”: December 31, 2017.

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“AWARD DATE”: The date on which the BIDDERS who, fulfilling the competitive conditions and submitting a VALID BID, are successful bidders of the AWARD.

“DATE OF EXECUTION”: The date on which BUYERS and SELLERS, that are AWARDEES at the Selection Hearing, enter into the AGREEMENT.

“SUPPLY START DATE”: December 1, 2021.

“BIDDING DATE”: The date on which the BIDDERS must submit a VALID BID to the UPME.

“PREQUALIFICATION DATE”: The date on which the PARTICIPANTS submit ENVELOPE NO. 1 with the PREQUALIFICATION and QUALIFICATION requirements.

“PERFORMANCE BOND” Document issued by a FIRST-CLASS FINANCIAL INSTITUTION that supports SELLER'S fulfillment of obligations undertaken in the AGREEMENT, with the characteristics defined herein and in FORM No. 7 of the TENDER DOCUMENTS, that each AWARDED GENERATOR must deliver to each one of the AWARDED DISTRIBUTORS.

“STARTUP GUARANTEE”: The bank guarantee, bank surety or standby letter of credit issued by a FIRST-CLASS FINANCIAL ENTITY that covers SELLER'S obligation to construct and timely startup the generation project that is awarded in the TENDER, which will be received, approved and administered by XM, all of which is in accordance with the GUARANTEE REGULATIONS.

“PAYMENT GUARANTEE”: Document issued by a FIRST-CLASS FINANCIAL INSTITUTION that supports BUYER'S fulfillment of payment obligations undertaken in the AGREEMENT, with the characteristics defined herein and in FORM No. 6 of the TENDER DOCUMENTS, that each AWARDED DISTRIBUTOR must deliver to each one of the AWARDED GENERATORS.

“BID BOND”: The bank guarantee or bank surety granted by the PARTICIPANT in favor of the UPME, to ensure the seriousness of the PROPOSAL. The BID BOND shall: (i) be issued by a FIRST-CLASS FINANCIAL ENTITY; (ii) remain in force for a term of at least six (6) months after submitting the PROPOSAL, and (iii) meet the conditions referred to in section 8 of these TENDER DOCUMENTS. FORMS No. 5A and 5B.

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“GENERATORS”: (i) The Wholesale Energy Market Agents, or (ii) the individuals or legal entities that own or commercially represent NEW GENERATION PROJECTS or EXISTING GENERATION PROJECTS.

“MINUTES”: The template of the AGREEMENT adopted by means of administrative record by MME, which will be executed by the Awardees in accordance with the provisions set forth in MME Resolution 40791 of 2018, as amended by MME Resolution 41307 of 2018 and MME Resolution 41314 of 2018.

“MME”: The Ministry of Mines and Energy.

“BIDDERS”: QUALIFIED PARTICIPANTS who make a VALID BID.

“VALID BID”: The BID that complies with the requirements established in MME Resolution 40791 of 2018, as amended by means of MME Resolution 41307 of 2018 and in these TENDER DOCUMENTS and that can be selected through the AWARD HEARING.

“BID”: The ECONOMIC PROPOSAL submitted to UPME, by the QUALIFIED PARTICIPANTS of this TENDER.

“QUALIFIED PARTICIPANTS”: The GENERATORS and DISTRIBUTORS that comply with the PREQUALIFICATION and QUALIFICATION requirements established in MME Resolution 40791 of 2018, as amended by means of MME Resolution 41307 of 2018 and in these TENDER DOCUMENTS.

“PARTICIPANTS”: WHOLESale ENERGY MARKET agents and/or individuals or legal entities, owners or commercial representatives of GENERATION PROJECTS, accredited as BUYERS or SELLERS, in accordance with article 31 of MME Resolution 40791 of 2018, as amended by means of MME Resolution 41307 of 2018, and those who submit prequalification and/or qualification documents on the Submission Date of the TENDER.

“PERSON”: Any individual or legal entity, either national or foreign, who can perform legal acts and assume obligations in Colombia.

“TENDER DOCUMENTS”: This document that contains the specific terms and conditions, together with its ANNEXES, CLARIFICATIONS and ADDENDA, which govern the TENDER and future AGREEMENT, in which the conditions, terms and procedures are indicated within which the PARTICIPANTS must submit, prequalify, qualify and formulate their BIDS to participate in the selection process of the AWARDEES that will enter into AGREEMENTS.

“PREQUALIFICATION”: The requirements demanded by UPME for the PARTICIPANTS to determine their participation in the TENDER. These include the

technical, legal and financial requirements defined in MME Resolution 40791 of 2018, as amended by MME Resolution 41307 of 2018.

“ECONOMIC PROPOSAL”: The proposal included in ENVELOPE NO. 2 of the PARTICIPANTS and that contains their OFFER.

“PROPOSAL”: The documents submitted by a PARTICIPANT and that are contained in ENVELOPE NO. 1 and in ENVELOPE NO. 2.

“GENERATION PROJECTS”: The NEW GENERATION PROJECTS and GENERATION PLANTS, provided they are accepted, throughout the enforcement of the Agreement, by central clearance in accordance with the regulations in force.

“GENERATION PLANT”: Existing power generation plants with installed capacity greater than or equal to 10 MW, which are in commercial operation in the WEM on the PREQUALIFICATION DATE.

“NEW GENERATION PROJECTS”: Power plants and/or generation units with installed capacity greater than or equal to 10 MW that are not in commercial operation in the WEM on the DATE OF CALCULATION BASIS, provided they are accepted, throughout the enforcement of the Agreement, by central clearance in accordance with the regulations in force. Expansions and technological changes of GENERATION PROJECTS that imply reduction of emissions are also included in this definition.

“GUARANTEE REGULATIONS”: The regulation issued by CREG in compliance with the provisions of MME Resolution 40791 of 2018, as amended by MME Resolution 41307 of 2018, for SELLERS with NEW GENERATION PROJECTS for the purposes of the STARTUP GUARANTEE.

“AUTHORIZED REPRESENTATIVE”: The INDIVIDUAL designated as such by a PARTICIPANT according to Section 4.4 of the TENDER DOCUMENTS. For purposes of submitting the PROPOSAL, the AUTHORIZED REPRESENTATIVE may be the same ATTORNEY IN FACT who must have the necessary powers to act before the UPME.

“LEGAL REPRESENTATIVE”: The person who exercises the representation of a PARTICIPANT in accordance with its bylaws or deed of incorporation document and its amendments, according to the respective certificate of existence and legal representation issued by the chamber of commerce where the corporate domicile is established or document acting in its stead according to the nature of the PARTICIPANT.

“PREQUALIFICATION REQUIREMENTS”: The requirements that PARTICIPATING GENERATORS and PARTICIPATING DISTRIBUTORS must meet, defined in Articles 31 and 32 of MME Resolution 40791 of 2018, as amended by MME Resolution 41307 of

2018, respectively, and in the TENDER DOCUMENTS, that the UPME will verify with the documents delivered in ENVELOPE NO. 1 and those that each PARTICIPANT will deliver at the request of the UPME, in case of finding rectifiable faults. It includes technical, legal and financial requirements.

“MME RESOLUTION 40791 OF 2018”: MME Resolution 40791 dated August 1, 2018 issued by the MME, as amended by MME Resolution 41307 dated December 28, 2018, which includes the general principles and procedures to define and implement a mechanism that promotes long-term procurement agreements for power generation projects complementary to existing mechanisms in the Wholesale Energy Market.

“MME RESOLUTION 41314 OF 2018”: MME Resolution 41314 dated December 28, 2018 issued by the MME, by which the first call for TENDER for long-term power purchase is held and the parameters of its application are defined.

“ENVELOPE NO. 1 - DISTRIBUTORS”: The envelope that contains the documents specified in Section 7.2 of the TENDER DOCUMENTS to be submitted by a Distributor and that constitutes part of the PROPOSAL.

“ENVELOPE NO. 1 - GENERATORS”: The envelope that contains the documents specified in Section 0 of the TENDER DOCUMENTS to be submitted by a GENERATOR and that constitutes part of the PROPOSAL.

“ENVELOPE NO. 2 - DISTRIBUTORS”: The envelope that contains the documents specified in Section 9.2 of the TENDER DOCUMENTS to be submitted by DISTRIBUTORS and that constitutes part of the PROPOSAL.

“ENVELOPE NO. 2 - GENERATORS”: The envelope that contains the documents specified in Section 9.1 of the TENDER DOCUMENTS to be submitted by GENERATORS and that constitutes part of the PROPOSAL.

“TENDER”: Competitive process where BUYERS and SELLERS interact to assign quantities and generate efficient prices, which reflects the costs of the bid and the availability to pay for the demand, with symmetric and sufficient information about its application and operation, which can be used to determine the risks. Based on the offers made by BUYERS and SELLERS.

“SUPERINTENDENCE OF RESIDENTIAL AND PUBLIC SERVICES (SSPD)”: The Superintendence in charge of the surveillance, inspection and control of the provision of residential public services, the protection of rights and the promotion of the duties of users and providers.

“FINANCIAL SUPERINTENDENCE OF COLOMBIA”: The Financial Superintendence of Colombia, a technical entity attached to the Ministry of Finance and Public Credit that exercises supervisory functions of financial, insurance and social security activity.

“UPME”: Colombia's National Mining and Energy Planning Unit, addressed in Law 143 of 1994, attached to the MME.

“SELLERS”: GENERATING agents of the WHOLESale ENERGY MARKET and/or individuals or legal entities, owners or commercial representatives of GENERATION PROJECTS that have fulfilled the PREQUALIFICATION AND QUALIFICATION REQUIREMENTS to participate in the long-term purchase TENDER.

Any mention made in this document to “Annex”, “Appendix”, “Chapter”, “Form”, “Format”, “Paragraph”, “Section”, “Subsection” and “Item” shall be understood as made to annexes, appendices, chapters, forms, paragraphs, sections, subsections and items from these TENDER DOCUMENTS, respectively, unless expressly indicated otherwise.

The expressions that are not expressly defined in the TENDER DOCUMENTS, correspond to the definitions in the APPLICABLE PROVISIONS. The technical or scientific words that are not expressly defined in these TENDER DOCUMENTS or in APPLICABLE PROVISIONS will have the meanings that correspond thereto pursuant to the respective technique or science and the other words will be understood in their natural and obvious sense, according to the general use thereof.

## 2.2 Interpretation of the TENDER DOCUMENTS

These TENDER DOCUMENTS will be construed in accordance with the APPLICABLE PROVISIONS. In case of conflicts or disputes between the provisions contained in these TENDER DOCUMENTS, including their ADDENDA and the provisions contained in any of its ANNEXES, the provisions of the TENDER DOCUMENTS will prevail.

In case of conflicts or disputes between the provisions of the TENDER DOCUMENTS and the APPLICABLE PROVISIONS, the latter will prevail and, among them, the rules with greater normative hierarchy.

### **3 PURPOSE AND START DATE OF LONG-TERM SUPPLY**

#### **3.1 Purpose of the Tender**

The UPME invites both GENERATORS and DISTRIBUTORS to participate in a TENDER that is governed by the APPLICABLE PROVISIONS and these TENDER DOCUMENTS, which has the purpose of executing long-term ANNUAL AVERAGE ENERGY supply AGREEMENTS between each AWARDED GENERATOR and AWARDED DISTRIBUTOR. The AGREEMENTS will be entered into strictly following the text of the MINUTES.

In accordance with MME RESOLUTION 41314 of 2018, the target demand for TENDER is 1,183,000 MWh/year. The period of supply for AGREEMENTS that will be awarded in the TENDER will be twelve (12) years beginning December 1, 2021.

#### **3.2 SELLERS with NEW GENERATION PROJECTS**

In this Tender, only GENERATION PROJECTS whose date of entry into commercial operation is later than the DATE OF CALCULATION BASIS and before December 1, 2021 may participate; the latter must be the maximum date foreseen in the connection concept of the UPME for this purpose.

The official date of commercial operation may only be changed in the manner indicated in MME Resolution 40791 of 2018, as amended by MME Resolution 41307 of 2018.

Without prejudice to the provisions set forth in the AGREEMENT, this date shall be, at most, the one foreseen in the UPME connection concept, as well as the startup of the new generation project.

SELLERS with NEW GENERATION PROJECTS will assume the obligations of construction and commercial startup foreseen in MME Resolution 40791 of 2018, as amended by MME Resolution 41307 of 2018 and MME Resolution 41314 of 2018, in the AGREEMENT. The fulfillment of these obligations will be verified by the S-CURVE AUDITOR and ensured with the STARTUP GUARANTEE.

Everything stated in this section is without prejudice to the obligations of the SELLER in the AGREEMENTS to give each BUYER a proportion of the ANNUAL AVERAGE ENERGY, of compliance with the other obligations referred to in MME Resolution 40791 of 2018, as amended by MME Resolution 41307 of 2018 and MME Resolution 41314 of 2018, and of the grounds for enforcement of STARTUP GUARANTEES and of PERFORMANCE BONDS issued by the SELLER.

#### 4 GENERAL ASPECTS OF THE TENDER

Those interested in participating in the TENDER must pay the participation rights and accredit — before the UPME — that they meet the PREQUALIFICATION REQUIREMENTS. In addition, the PARTICIPATING GENERATORS must submit the information for the evaluation of the QUALIFICATION CRITERIA.

The UPME will verify compliance with the PREQUALIFICATION REQUIREMENTS and the QUALIFICATION CRITERIA and will notify each of the PARTICIPANTS if they meet them or if they find faults, in which case they will indicate these faults to the PARTICIPANT and give them a deadline to correct said faults, in accordance with the provisions set forth in the SCHEDULE and in the TENDER DOCUMENTS. Should they fail to correct said faults in a timely manner, the UPME will notify the PARTICIPANT of failure to meet the PREQUALIFICATION REQUIREMENTS or QUALIFICATION CRITERIA, where appropriate.

DISTRIBUTORS who meet the PREQUALIFICATION REQUIREMENTS will be deemed QUALIFIED DISTRIBUTORS and may submit a purchase BID to the TENDER. Failing to submit BIDS will not constitute grounds to enforce the BID bond upon the respective DISTRIBUTOR.

GENERATION PLANTS AND PROJECTS of the PARTICIPATING GENERATORS that meet the PREQUALIFICATION REQUIREMENTS will be rated by the UPME in accordance with the QUALIFICATION CRITERIA and the weightings defined in MME Resolution 41314 of 2018.

GENERATION PROJECTS that have passed the score of fifty (50) points defined in article 6 of MME Resolution 41314 of 2018 will be considered QUALIFIED GENERATORS and may submit BIDS on the BIDDING DATE. For purposes of clarification, GENERATION PROJECTS that earn a score less than or equal to fifty (50) points will not be considered QUALIFIED GENERATORS and will not be able to submit BIDS on the BIDDING DATE. Failing to submit BIDS will not constitute grounds to enforce the BID bond upon the respective GENERATOR.

QUALIFIED DISTRIBUTORS and QUALIFIED GENERATORS may submit BIDS for purchase or sale, where appropriate, which will be opened as defined in the SCHEDULE. Once the envelopes with the BIDS have been opened, the UPME will verify that the COMPETITIVE CONDITIONS are propitious and if so, will proceed to read both the BIDS and the AWARDED GENERATORS.

The TENDER shall be a double-headed sealed envelope, with voluntary participation for both GENERATORS and DISTRIBUTORS. Each of the AWARDED GENERATORS



must enter into an AGREEMENT with each of the AWARDED DISTRIBUTORS that they will execute at their sole and exclusive expense and risk. Each of the AGREEMENTS must be registered before the ASIC complying with the requirements set forth in the APPLICABLE PROVISIONS for said purpose. The deadline to register AGREEMENTS will be the one indicated in the LONG-TERM ANNUAL AVERAGE ENERGY AGREEMENT.

Holding the TENDER, selecting the AWARDEES and executing AGREEMENTS does not imply that any type of risk will be assumed by the UPME, the MME, or any other state agency.

The TENDER will be carried out within the periods foreseen in the SCHEDULE contained in section 5 of the TENDER DOCUMENTS and will have a TENDER AUDITOR, the cost whereof will be borne by the UPME.

The costs and expenses incurred by the PARTICIPANTS during the analysis of the TENDER DOCUMENTS, the presentation of observations, the preparation and submission of BIDS, the attendance to hearings and any other cost or expense related to participation in the TENDER or execution of the AGREEMENTS, shall be solely and exclusively borne by the PARTICIPANTS.

All added value given by the UPME to the information resulting from the TENDER process will be the sole and exclusive property and control thereof.

#### **4.1 TENDER Basis**

This TENDER seeks compliance with the energy policy objectives defined in Decree 570 of 2018, "Whereby Sole Regulatory Decree 1073 of 2015 of the Administrative Mining and Energy Sector is added in relation to the public policy guidelines for the long-term purchase of power generation projects and whereby other provisions are dictated".

The TENDER is governed by the APPLICABLE PROVISIONS and these TENDER DOCUMENTS, and is based on Laws 142 and 143 of 1994, 1665 of 2013, 1715 of 2014 and 1844 of 2017, the DUR MME, the MME Resolution 40791 of 2018, as amended by means of MME Resolution 41307 of 2018 and MME Resolution 41314 of 2018, and CREG resolutions, especially the operating rules and the COMPETITIVE CONDITIONS, together with their amendments and other applicable standards in this matter. In its capacity of competition advocacy, the Superintendence of Industry and Commerce ruled on the contents of MME Resolution 40791 of 2018, as amended by MME Resolution 41307 of 2018 and MME Resolution 41314 of 2018 and its observations were accepted by the MME.

Participating in the TENDER is voluntary and, therefore, the execution of AGREEMENTS is the result of the concurrence of wills resulting from the BIDS for purchase and sale submitted by the AWARDEES, in accordance with the rules of the Civil and Commercial Codes and with the provisions of the CREG on bilateral power supply AGREEMENTS.

#### **4.2 Contractual Link between AWARDEES executing the AGREEMENTS**

Each one of the AWARDED GENERATORS shall enter into long-term ANNUAL AVERAGE ENERGY supply AGREEMENTS with each one of the AWARDED DISTRIBUTORS. As a result of the execution of each bilateral AGREEMENT between BUYERS and SELLERS, obligations between the contracting parties will arise.

Subject to the provisions of these TENDER DOCUMENTS regarding the validity of the BIDS, the COMPETITIVE CONDITIONS and the AWARD rules, the submission of purchase BIDS implies that the DISTRIBUTOR unconditionally undertakes to buy from AWARDED GENERATORS who have submitted sale BIDS, with a price that is less than or equal to the purchase price offered by the respective DISTRIBUTOR. DISTRIBUTORS that are SUCCESSFUL BIDDERS will purchase pro-rata amounts from those offered by each AWARDED GENERATOR, up to the amounts indicated in their purchase BID, without being subject to minimum amounts. DISTRIBUTORS that are not SUCCESSFUL BIDDERS will not be required to purchase.

Subject to the provisions of these TENDER DOCUMENTS regarding the validity of the BIDS, the COMPETITIVE CONDITIONS and the AWARD rules, the submission of sale BIDS implies that the GENERATOR unconditionally undertakes to sell to AWARDED DISTRIBUTORS who have submitted purchase BIDS, with a price that is greater than or equal to the sale price offered by the respective GENERATOR, up to the amounts indicated in the sale BID. AWARDED GENERATORS will sell up to the offered ANNUAL AVERAGE ENERGY, subject to the minimum annual amounts of energy that they indicate in their sale BID. GENERATORS that are not SUCCESSFUL BIDDERS will not be required to sell.

It is deemed that PARTICIPANTS and, in general, anyone who, either directly or indirectly, participates in the TENDER, is aware of the legal basis dealt with in this section and, in general, the APPLICABLE PROVISIONS.

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The mere submission of a PROPOSAL by a PARTICIPANT implies their acceptance of the provisions hereof, in a full and unconditional manner, without any limitation or restriction whatsoever.

Each AGREEMENT will only bind the parties thereof, i.e. to the respective SELLER and BUYER. The AGREEMENT will be governed by the rules of private law and, for the execution thereof, it must be registered with the ASIC in accordance with APPLICABLE PROVISIONS.

AWARDEES will not have any contractual link with the MME whatsoever, the UPME or any Colombian State entity. Under no circumstance may the MME, the UPME or any Colombian State entity assume obligations or responsibilities with TENDER PARTICIPANTS.

#### **4.3 Powers of UPME**

Notwithstanding the other powers assigned in the APPLICABLE PROVISIONS, in relation to this TENDER, the UPME is empowered to:

- a) Prepare and amend the TENDER DOCUMENTS;
- b) Hire the TENDER AUDITOR;
- c) Receive and keep ENVELOPES NO. 1 and NO. 2 from PARTICIPANTS, as well as any other information that clarifies or adds thereto;
- a) Ask PARTICIPANTS for information they deem convenient to clarify, complement or correct the documentation they have submitted;
- b) Send the SSPD information established by the CREG and any other information deemed necessary to carry out the risk assessment and monitoring of agents that will participate in the mechanism, as well as for their competency;
- c) Develop the regulations it deems necessary to carry out the mandated activities;
- d) Establish, operate and maintain the TENDER system;
- e) Offer and provide agents with the training and assistance it deems necessary in the management and operation of the TENDER system;
- f) Establish formal communication channels between PARTICIPANTS and the UPME during the TENDER;
- g) Receive, administer, request amendments, collect or return, where appropriate, BID BONDS submitted by PARTICIPANTS;

- h) Keep historic data — in electronic media — of all the operations carried out in the development of the TENDER in accordance with the APPLICABLE PROVISIONS regarding the conservation of documents;
- i) Refuse BIDS in the cases foreseen in the APPLICABLE PROVISIONS and in section 0 of these BIDS;
- j) Report any irregular actions that arise in the TENDER process to the competent authorities, without prejudice to the duties attributed to the TENDER AUDITOR;
- k) Suspend the TENDER when deemed convenient or when required by the TENDER AUDITOR, pursuant to the terms of section 1.8 of the Annex of MME Resolution 40791 of 2018, as amended by means of MME Resolution 41307 of 2018;
- l) Disclose the Price or Maximum Limit defined by the CREG, after receiving BIDS by QUALIFIED PARTICIPANTS and before starting the TENDER AWARD process;
- m) During the AWARD process, verify that the COMPETITIVE CONDITIONS are met;
- n) Declare the non-AWARD of the TENDER when any of the grounds set forth in section 0 of these Tender Documents are presented.
- o) Declare the closing of the TENDER and report the results to the AWARDEES and to the general public;
- p) Report by circulating the weighted average price of the AGREEMENTS AWARDED as a result of the TENDER, pursuant to the terms of section 1.12 of the Annex of MME Resolution 40791 of 2018, as amended by means of MME Resolution 41307 of 2018;
- q) Submit a report to the MME, within ten (10) days after the end of the TENDER, wherein it unambiguously evaluates the AWARD OF THE TENDER and the results obtained.
- r) Disclose all non-confidential information that has been recorded by PARTICIPANTS within the terms set forth in MME Resolution 40791 of 2018, modified by means of MME Resolution 41307 of 2018 and in the TENDER SCHEDULE;
- s) Verify that the SUCCESSFUL BIDDERS execute the AGREEMENTS in accordance with the Minutes;
- t) The others assigned by APPLICABLE PROVISIONS.

#### 4.4 Acquisition of Participation Rights

The TENDER DOCUMENTS will be available to those interested on the UPME website. Interested parties who intend to participate in the tender must pay participation rights, accredit them to the UPME and submit a document through which it designates one (1) AUTHORIZED REPRESENTATIVE and provides an address in the Republic of Colombia, a telephone number and an e-mail.

The AUTHORIZED REPRESENTATIVE shall be empowered by the PARTICIPANT, in full and without any restrictions whatsoever, to receive notifications and communications on its behalf and to make inquiries, comments or amendment requests on the TENDER DOCUMENTS, in the name of the PARTICIPANT.

To submit the PROPOSAL, PARTICIPATING DISTRIBUTORS must have the capacity of agents who can distribute power in the WHOLESALE ENERGY MARKET.

In order to submit a PROPOSAL, PARTICIPATING GENERATORS must have the capacity of (i) WHOLESALE ENERGY MARKET generating agents; or (ii) individuals or legal entities that own GENERATION PROJECTS, or (iii) individuals or legal entities representing GENERATION PROJECTS, in which case they must present the authorization from the GENERATION PROJECT owner. Only for the purposes of these TENDER DOCUMENTS will it be understood that the owner of the NEW GENERATION PROJECT is the PERSON who has received a favorable concept from the UPME regarding the connection request to the NATIONAL INTERCONNECTED SYSTEM.

PARTICIPANTS may replace their AUTHORIZED REPRESENTATIVE at any time whatsoever, or change their address, telephone numbers or e-mail, after having sent a written communication addressed to UPME. The replacement of the AUTHORIZED REPRESENTATIVE or the change of their address, telephone number or e-mail, where appropriate, will be effective as of the second (2) business day follow the UPME having received the respective communication.

Participation rights will cost twenty million Colombian pesos (\$20,000,000), currency of legal tender, which must be consigned in savings account number 059-028266 from Banco AVVILLAS, Tax ID: 830,054,076-2, FIDUOCCIDENTE - FID 316272 PA UPME. In the corresponding consignment receipt, or in the e-transfer, the identification of this TENDER, the name of the Interested Party and their identification number (Tax ID or citizenship card).

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The original consignment receipt or proof of e-transfer, where appropriate, will serve as proof of payment of participation rights and will constitute part of ENVELOPE No. 1.

#### **4.5 Request for Clarifications**

All pages and lines of the TENDER DOCUMENTS and its ANNEXES are duly numbered so that inquiries, comments and amendment requests make clear and unambiguous references about the matters to which they refer. Inquiries, comments or amendment requests that do not expressly cite pages and lines, or wherein to what part of the TENDER DOCUMENTS they refer cannot be deduced, will be returned for their corresponding review and clarification.

All inquiries, comments and amendment requests about the TENDER DOCUMENTS will be assessed and answered by the UPME, who will issue the responses it deems pertinent. Each response will include the respective inquiry or comment without identifying the name of the PARTICIPANT who formulated them. These answers will be sent to the electronic mail address (e-mail) of the person who formulated them and will also be available on the UPME website.

#### **4.6 Deadline to Submit Inquiries**

Inquiries, comments or amendment requests about the TENDER DOCUMENTS may be made within the dates indicated in the SCHEDULE.

#### **4.7 Notifications to the UPME**

Inquiries and other correspondence will be submitted in writing and in Spanish, specifying that they are in relation to UPME Long-Term Power Purchase Tender No. 01 – 2019 and addressed as follows:

UPME Managing Director  
subastaclpe@upme.gov.co  
Av. Calle 26 # 69 D-91, Centro Empresarial Arrecife Torre 1, Piso 9,  
Bogotá, D.C., Colombia  
ZIP 110931

PARTICIPANTS must file their inquiries at the UPME directly in the UPME filing office within its business hours. They must also be sent by e-mail, in digital and editable media, from the e-mail address registered when designating the AUTHORIZED REPRESENTATIVE, to

subastaCLPE@upme.gov.co with the PARTICIPANT'S proper identification in the matter. In this case, express and documented confirmation of having received the respective inquiry must be obtained from the UPME.

It will be understood that the UPME received it when: (i) the PARTICIPANT receives — through the UPME filing window — a copy of the communication to which the UPME has assigned a filing number, or (ii) when the PARTICIPANT receives — via e-mail — a message sent from the UPME e-mail to the e-mail registered when acquiring the TENDER DOCUMENTS, confirming receipt of the communication thereof. Communications received after the UPME business hours will be understood as received the next business day.

Answers to the inquiries formulated will be communicated to all PARTICIPANTS on the UPME website or by mail or via e-mail addressed to their AUTHORIZED REPRESENTATIVES.

#### **4.8 Clarifications about the Tender Documents**

Should the UPME deem it is necessary to clarify the TENDER DOCUMENTS, it will issue a CLARIFICATION for this purpose, which will be communicated to all PARTICIPANTS through its website or by mail or via e-mail addressed to its AUTHORIZED REPRESENTATIVES.

Should the response to the inquiry entail an addition or amendment to the TENDER DOCUMENTS, the UPME will issue an ADDENDUM, pursuant to the terms of Section 4.9.

#### **4.9 Addenda**

Should the UPME deem it is necessary to amend the TENDER DOCUMENTS, it will issue an ADDENDUM for this purpose, which will be communicated through its website or by mail or via e-mail addressed to its AUTHORIZED REPRESENTATIVES.

ADDENDA will constitute an integral part of these TENDER DOCUMENTS and will be binding for all PARTICIPANTS.

#### **4.10 Communications to PARTICIPANTS**

All communications addressed to PARTICIPANTS through the UPME website will be understood as notified to the AUTHORIZED REPRESENTATIVE on the date on which it is published in the Unit's official website.

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All communications addressed to the PARTICIPANT, through the AUTHORIZED REPRESENTATIVE, via e-mail, with confirmation of the complete transmission of the respective communication, will be deemed received on the date the transmission is completed. Should communications be made by letter delivered by courier or mail, notifications will be understood as received on the date they are delivered.

Any communication made by any of the means described in this section will be understood as properly executed, effective and notified to the AUTHORIZED REPRESENTATIVE.

#### **4.11 Language**

Unless expressly stated otherwise in these TENDER DOCUMENTS, all inquiries, questions, answers, actions and procedures related to the TENDER, as well as all documents submitted with the PROPOSAL, must be submitted in Spanish or accompanied by official Spanish translations by a certified translator authorized to do so in accordance with the APPLICABLE PROVISIONS. Should there be any inconsistencies between the texts in different languages of any document, the text in Spanish will prevail.

Should leaflets or brochures be attached in another language, not required in the TENDER DOCUMENTS, but included for further illustration of the PROPOSAL, the UPME may request it be translated into Spanish.

#### **4.12 Confidentiality and Publication of Information about PARTICIPANTS**

The information presented by the PARTICIPANTS will be confidential until the AWARD and may only be known by the UPME, its officers and advisors.

Once the TENDER has ended, on the date foreseen in the SCHEDULE, the UPME will disclose all information that has been recorded by the PARTICIPANTS which may be checked by anyone, during business hours and days at the UPME headquarters or through the mechanisms defined by UPME for this purpose.

The following information is understood to be confidential and will not be published:

- a) Measurements and Series of the projects submitted by PARTICIPANTS.
- b) GENERATION PROJECT location area.
- c) Shareholding structure.



## 5 TENDER SCHEDULE

The SCHEDULE which will be the basis for TENDER development is as follows hereunder. Should the UPME decide to amend any of these dates, it will issue the corresponding ADDENDUM.

SCHEDULE FOR LONG-TERM POWER PURCHASE TENDER No. 01 – 2019		
	EVENT	DATE
1.	Publication of TENDER DOCUMENTS	4-Jan.-19
2.	Deadline for inquiries and observations about the TENDER DOCUMENTS	18-Jan.-19
3.	Actual receipt of Envelope No. 1 from PARTICIPANTS	28-Jan.-2019
4.	Deadline to add ADDENDA to the TENDER DOCUMENTS	15-Feb.-2019
5.	Deadline to notify PARTICIPANTS of revision and evaluation results of PREQUALIFICATION REQUIREMENTS and QUALIFICATION CRITERIA	18-Feb.-2019
6.	Deadline for UPME to publish the names of PREQUALIFIED DISTRIBUTORS and their financial statements	18-Feb.-2019
7.	Date on which the CREG envelope is received with ceiling price	26-Feb.-2019
8.	Evaluation of COMPETITIVE CONDITIONS	26-Feb.-2019
9.	Actual receipt of Envelope No. 1 from PARTICIPANTS	26-Feb.-2019
10.	AWARD HEARING	26-Feb.-2019
11.	Disclosure of the AWARD and information	26-Feb.-2019
12.	Delivery of AUDITOR'S report to the MME	5-Mar.-19

SCHEDULE FOR LONG-TERM POWER PURCHASE TENDER No. 01 – 2019		
EVENT		DATE
13.	Delivery of the TENDER results from the UPME to the SSPD	8-Mar.-19
14.	Sending of Report from the UPME to the MME	12-Mar.-19
15.	Signing of AGREEMENTS	26 through 29-Mar.-19
16.	Start of the process to execute bid bonds	2-Apr.-19
17.	Registration of AGREEMENTS: carried out by the parties within the terms set forth in the LONG-TERM ANNUAL AVERAGE ENERGY AGREEMENT.	

## 6 SUBMISSION OF PROPOSALS

### 6.1 TENDER Participants

Only the DISTRIBUTING agents of the WHOLESale ENERGY MARKET who have accredited the fulfillment of PREQUALIFICATION REQUIREMENTS by the UPME may participate in the TENDER and make PURCHASE BIDS.

Only the following people who have accredited the fulfillment of the PREQUALIFICATION REQUIREMENTS by the UPME will be able to participate in the TENDER and make SALE BIDS: (i) GENERATING agents of the WHOLESale ENERGY MARKET, commercial representatives of GENERATION PLANTS; (ii) GENERATING agents of the WHOLESale ENERGY MARKET, owners of or people authorized by the owner to act as representatives of GENERATION PROJECTS, or (iii) individuals or legal entities that are owners or people authorized by the owner to act as representatives of GENERATION PROJECTS Furthermore, GENERATION PLANTS OR PROJECTS must have accredited the fulfillment of the QUALIFICATION requirements by the UPME.

PARTICIPANTS will declare under oath that they comply with the APPLICABLE PROVISIONS.

## 6.2 Identification and Powers of the Legal Representative of the PARTICIPANTS

Once ENVELOPE NO. 1 has been submitted, the communication between the UPME and the PARTICIPANTS will be made through their LEGAL REPRESENTATIVE or a general or special attorney in fact. The AUTHORIZED REPRESENTATIVE may act as a LEGAL REPRESENTATIVE of the PARTICIPANTS, provided he/she is duly authorized for this purpose.

PARTICIPANTS will indicate and accredit — before the UPME — their LEGAL REPRESENTATIVE or their attorney in fact if they have designated one.

The powers of the LEGAL REPRESENTATIVE or those granted to the attorney in fact shall be broad enough so that he/she may bind the PARTICIPANT and sign, on his/her behalf, all the documents that may be required, as set forth in these TENDER DOCUMENTS. Said powers shall also include those necessary to broadly represent the PARTICIPANT in hearings and, in general, in the TENDER proceedings. The LEGAL REPRESENTATIVE and attorneys in fact, if any, must be fully empowered by the PARTICIPANT to:

- a) Unconditionally, irrevocably and unlimitedly bind the PARTICIPANT;
- b) Submit the PROPOSAL;
- c) Represent the PARTICIPANT without any limitation whatsoever;
- d) Deal with the UPME on all matters that may arise in relation to the documents presented in ENVELOPE NO. 1, in ENVELOPE NO. 2 and, in general, in all documents and procedures related to the TENDER and the TENDER DOCUMENTS;
- e) Answer all questions or clarifications that the UPME formulates, on behalf of the PARTICIPANT and with a binding effect;
- f) Receive communications on behalf of the PARTICIPANT;
- g) If AWARDED, sign the AGREEMENT and assume the obligations derived therefrom, on behalf of the PARTICIPANT, without any limitation whatsoever;
- h) Sign — on behalf of the PARTICIPANT — any document related to this TENDER or to the AGREEMENT, including, but not limited to, insurance policies, guarantees, statements, forms, offers, clarifications and, in general, any related to the formulation of BIDS, the execution of the AGREEMENT and the fulfillment of the requirements and obligations related to the TENDER;
- i) Receive, withdraw, settle, compromise, confess, renounce, dispose of rights, assume obligations, pay and collect;

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- j) Be notified of any action in development of the TENDER; and
- k) Attorneys in fact will be entitled to substitute and resume power.

These powers will be accredited by submitting the respective certificate of existence and legal representation issued by the Chamber of Commerce of the place of corporate domicile or, depending on the nature of the PARTICIPANT, of the document acting in its stead in accordance with the APPLICABLE PROVISIONS.

Should the LEGAL REPRESENTATIVE of a PARTICIPANT not have the aforementioned powers, or should such powers not be clear in the document of existence and legal representation of the company, he/she must submit the corresponding authorization granted by the competent corporate body, which shall contain the powers listed in this section and indicate the name and identity document of the LEGAL REPRESENTATIVE to whom said powers are granted. For this purpose, a copy or an excerpt of the minutes of the meeting of said corporate body must be provided, certified by the secretary of the company or by the legal representative.

The information that must be provided in relation to the LEGAL REPRESENTATIVE or the attorney in fact will be the following: name, identity document, address, telephone numbers and email address.

Should the PARTICIPANT act through an attorney in fact, the LEGAL REPRESENTATIVE that grants the power of attorney must be duly authorized to grant the aforementioned powers. The power-of-attorney by which the attorney in fact is appointed shall contain the powers to represent him/her pursuant to the terms of this section and shall indicate the name, identity document, address, telephone numbers and email address, and shall be included in ENVELOPE NO. 1.

The appointment of a new LEGAL REPRESENTATIVE or attorney in fact will only be valid to the UPME from the business day following the date on which it receives the documents duly accrediting said appointment.

### **6.3 Place Where the Power-of-Attorney is Granted**

The power-of-attorney granted outside of Colombia for the purpose of designating the attorney in fact shall be:

- a) Duly authenticated by the consul or diplomatic agent of the Republic of Colombia in that country and, in lieu thereof, by a friendly Nation.
- b) Paid to the Ministry of Foreign Affairs of Colombia.

c) In Spanish, if this is the official language of the grantor's country, or translated into Spanish by an official translator who is authorized for said purpose in Colombia.

In the case of authentication of documents issued by the authorities of member countries of the Hague Convention of 1961, only the apostille will be required as a legalization mechanism, in accordance with the provisions of Law 455 of 1998.

For powers-of-attorney granted in Colombia, the notarial certification of the authorized signatures will suffice.

Notwithstanding the foregoing, all powers-of-attorney must comply with the APPLICABLE PROVISIONS and especially as indicated in articles 74 and 251 of the General Procedural Code.

#### **6.4 Communications to PARTICIPANTS**

All communications addressed to the PARTICIPANTS will be made through the LEGAL REPRESENTATIVE who may be the AUTHORIZED LEGAL REPRESENTATIVE or the attorney in fact, where appropriate, by e-mail, with confirmation of the complete transmission of the respective communication, in which case it will be understood as received on the date on which the transmission is completed; or by letter delivered by courier, in which case the notification will be understood to have been received on the date of delivery, and any notification sent to the address of the LEGAL REPRESENTATIVE or the attorney in fact registered with the UPME is understood to be properly made and effective.

#### **6.5 Independence of the PARTICIPANTS**

All PARTICIPANTS of the TENDER will base the submission of their PROPOSALS for this TENDER on their own assessments, research, examinations, inspections, visits, interviews, etc.

#### **6.6 Liability**

The submission of a PROPOSAL constitutes an acknowledgment and acceptance by the PARTICIPANT in that the submission thereof is not limited by any document or information that has been made available by the Colombian Nation, MME, CREG, the UPME or any state agency or entity, its officers, advisors and agents, or in the material provided (or the statements made) during the course of any visit made to the UPME, concerning any informative memorandum or descriptive documents. In particular, the contents

in the TENDER DOCUMENTS do not constitute a guarantee or statement regarding the achievement or reasonableness of the projections, perspectives, operational, or financial performance, if any.

Neither the receipt of the TENDER DOCUMENTS by the PARTICIPANTS, nor any information provided in the development of the TENDER, or communicated subsequently to any PARTICIPANT, either verbally or in writing, with respect to the TENDER must or can be considered as advisory in investment, legal, regulatory, or fiscal matters or otherwise, in favor of any PARTICIPANT by the UPME or its officers, employees, advisors, agents and/or representatives.

The limitation of liability set forth in this Section also reaches the information provided through CLARIFICATIONS, ADDENDA, or any other form of communication.

## **6.7 Acceptance by PARTICIPANTS**

The mere submission of documents to accredit the PREQUALIFICATION AND QUALIFICATION REQUIREMENTS by PARTICIPANTS shall constitute, without the need for any subsequent act, their acceptance of all the provisions of Sections 6.5 and 6.6.

## **7 PREQUALIFICATION AND QUALIFICATION REQUIREMENTS**

The UPME EVALUATING COMMITTEE must verify that ENVELOPE NO. 1 delivered by the PARTICIPANTS contains the PREQUALIFICATION and QUALIFICATION requirements set forth in MME Resolution 40791 of 2018, as amended by means of MME Resolution 41307 of 2018. The PREQUALIFICATION and QUALIFICATION requirements shall be evaluated in accordance with the provisions of the SCHEDULE.

### **7.1 Contents of ENVELOPE NO. 1 - GENERATORS**

The GENERATORS must include the following documents in ENVELOPE NO. 1:

#### **7.1.1 PREQUALIFICATION Requirements:**

##### **Technical requirements:**

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- a. Indication of the UPME filing number of the communication of registration in the registry of power generation projects, at least in stage 2.
- b. Indication of the UPME filing number of the communication whereby the concept of connection to the National Interconnected System is approved. NEW GENERATION PROJECT BIDS will not be rated when the startup date foreseen in the UPME connection concept is later than December 1, 2021.
- c. The detailed project schedule with indication of the critical route, the startup date of the NEW GENERATION PROJECT and the S-CURVE with at least the following construction and execution milestones: (i) Preliminary inquiries; (ii) granting of the environmental license of the GENERATION PROJECT; (iii) start of construction of the NEW GENERATION PROJECT; (iv) acquisition of major equipment; (v) trial period; (vi) environmental licenses or permits associated with the connection; (vii) commissioning of the connection; (viii) completion of connection construction; and (ix) startup of the NEW GENERATION PROJECT.
- d. In the case of GENERATION PROJECTS that are already in commercial operation, only a certification by the ASIC will be required, issued within a period not exceeding ninety (90) days, of registration of the commercial border of the GENERATION PLANT, indicating its effective net capacity on the date of certification and that it entered into commercial operation following the DATE OF CALCULATION BASIS.

In general, it must comply with the requirements established in MME Resolution 40791 of 2018, as amended by MME Resolution 41307 of 2018.

**Legal requirements:**

- e. Proof of payment of participation rights, original or legible copy.
- f. Documents that certify the existence and legal representation of the PARTICIPANT and his/her address. The documents cannot have a term greater than thirty (30) days.
- g. Should the PARTICIPANT not be a company, he/she must submit the documents that prove his/her existence (laws, decrees, agreements), those that prove the legal representation and the statutes thereof.

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- h. Copy of the authorizations of the competent bodies for the PARTICIPANT to submit to the TENDER and make a binding and unconditional offer, including the pertinent authorizations of the PARTICIPANT's Legal Representative.
- i. The power-of-attorney granted to the PARTICIPANT'S attorney in fact, pursuant to section 6.3 of these TENDER DOCUMENTS.
- j. Letter of authorization from the PROJECT OWNER to the PARTICIPANT to participate in the TENDER. Only in case the PARTICIPANT is not the one who processed the UPME registration in stage 2 or who carried out the procedures for approval of the connection.
- k. Document of the competent corporate body (Meeting of shareholders, board of directors or competent corporate body) which includes the obligation to transform the PARTICIPANT into a Residential Public Service Company (ESP). In the case of entities with another legal nature, the appropriate authorizations. The foregoing is without prejudice to the existence of any other entity authorized by law 142 of 1994 to provide residential public services.
- l. In case of having economic ties with other PARTICIPANTS, they must be declared. However, once the information of QUALIFIED DISTRIBUTORS is revealed, they must verify if they have economic ties with each other and of which the UPME must be informed. Should this be so, they must provide a document declaring their economic ties.
- m. Several people, either individuals or legal entities, be it national or foreign, may participate as a GENERATOR by means of the promise of a future company, in which case the previous documents must be submitted for each of them, together with a written memorandum of understanding for a future company, containing: (i) the shareholders and their participation in the equity of the company; (ii) the initial contributions that each of them will make; (iii) the bylaws in which it is expressly stated that its shareholders will be jointly and severally liable for all the obligations assumed in the event of being AWARDED; (iv) that the company to be incorporated will be a Residential Public Service Company domiciled in Colombia, which will assume the obligations and rights as GENERATOR in case of being AWARDED; (v) the legal formalities required to perfect the incorporation of the future company; (vi) a term or condition that establishes the time at which the future company is to be incorporated, which must happen prior to the DATE OF EXECUTION; (vii) an express provision stating that, in case of being AWARDED, the future company will sign AGREEMENTS with the AWARDED DISTRIBUTORS; and (viii)



any other requirement legally required to validate the memorandum of understanding for future companies.

In general, they must comply with the requirements set forth in MME Resolution 40791 of 2018, as amended by MME Resolution 41307 of 2018.

**Financial requirements:**

n. The BID BOND, with the documentation and pursuant to the terms set forth in section 8, the corresponding certificate or receipt of payment of the commission or premium issued by the guarantor and the copy of the document proving the rating of the financial institution issuing the guarantee and the validity of said rating.

o. Certification of subscribed capital and the shareholding structure of the PARTICIPANT, signed by the TAX AUDITOR or, in lieu thereof, it must be signed by the LEGAL REPRESENTATIVE.

p. The irrevocable commitment issued by a FIRST-CLASS FINANCIAL ENTITY to issue a PERFORMANCE BOND, according to the template contained in Form No. 7, should the PARTICIPANT become an AWARDEE. This commitment is duly signed by the PARTICIPANT.

q. The irrevocable commitment issued by a FIRST-CLASS FINANCIAL ENTITY to issue a STARTUP GUARANTEE, according to the template contained in Form No. 8, should the PARTICIPANT become an AWARDEE. This commitment is also duly signed by the PARTICIPANT's legal representative. This requirement applies only to PARTICIPATING GENERATORS with GENERATION PROJECTS.

In general, it must comply with the requirements established in MME Resolution 40791 of 2018, as amended by MME Resolution 41307 of 2018.

**7.1.2 Qualification Requirements:**

Projects from GENERATORS that have passed the PREQUALIFICATION STAGE will be rated by the UPME EVALUATING COMMITTEE in accordance with the provisions of MME Resolution 40791 of 2018, as amended by MME Resolution 41307 of 2018,

verifying their contribution to the fulfillment of the objectives set forth in article 2.2.3.8.7.3 of the MME DUR.

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The QUALIFICATION CRITERIA only apply to GENERATION PLANTS OR PROJECTS.

The rating will be made by taking into account the criteria of resilience, complementarity of resources, regional energy security and reduction of emissions, as contained and developed in MME Resolution 40791 of 2018, as amended by MME Resolution 41307 of 2018 and MME Resolution 41314 of 2018.

To calculate the electric power generation matrix indices, the weighting factors that will be assigned to the QUALIFICATION CRITERIA for the TENDER will be:

<b>QUALIFICATION CRITERIA</b>	<b>WEIGHTING FACTOR (Wf)</b>
Resilience criterion:	0.25
Complementarity of resources criterion:	0.25
Regional energy security criterion:	0.25
Emissions reduction criterion:	0.25

The minimum score that GENERATION projects must meet to be deemed QUALIFIED and able to submit a VALID BID in the AWARD process must be greater than fifty (50) points.

Said result will be personally notified to each PARTICIPANT; however, the result of the interactions of all GENERATION PLANTS OR PROJECTS that are carried out in the development of the qualification process by the UPME will be published after the award process together with the rest of the tender information, which are not subject to confidentiality.

#### 7.1.2.1 Resilience Criterion:

Each PARTICIPANT must provide the following information:

a.	Generation project:	<i>(Name of the project that participates in the tender)</i>
b.	Annual average energy, associated with the ideal generation of the generation project, offered by the seller	<i>(MWh/year)</i>
c.	Main energy source used by the generation project.	<i>(Whole number between 1 and 19 according to the classification of Table 1.)</i>
d.	Shannon Wiener index considering the generation project (2)	<i>(Value of the index calculated using the formula in Annex A)</i>

(1) The index to be reported shall be the number resulting from the calculation truncated to the 6 decimal.

The methodology for evaluating the resilience criterion is found in Annex No. 1 of these TENDER DOCUMENTS.

#### 7.1.2.2 Complementarity Criterion:

Each PARTICIPANT must provide the following information:

a.	Generation project (1):	<i>(Name of the project that participates in the tender)</i>
b.	Pearson coefficient (2)	<i>(Result of applying the formula in Annex D)</i>

(1) The coefficient must be reported only for generation projects from renewable energy sources.

(2) The indicator to be reported shall be the number resulting from the calculation truncated to the 2 decimal.

The methodology for evaluating the complementarity criterion is found in Annex No. 1 of these TENDER DOCUMENTS.

### 7.1.2.3 Regional energy security criterion:

- Electric area where the generation project will be located, according to the list shown in attachment E of Annex No. 1.
- Indicator of contribution to the power supply and demand balance of each of the National Interconnected System's electric areas. The indicator per electric area is shown in attachment E of Annex No. 1.
- Indicator of contribution to the reduction of the cost of operating restrictions in each of the National Interconnected System's electric areas. The formula for calculating the indicator per electric area and energy source of the project is shown in attachment F of Annex No. 1.
- The value of the regional energy security strengthening indicator, declared by each seller, for each of its generation projects that have passed the prequalification stage of the tender.

For purposes of the foregoing, each seller participating in the tender must provide the following information (1):

a.	Generation project:	<i>(Name of the project that participates in the tender)</i>
b.	Indicator for strengthening regional energy security (SE)	<i>(Result of applying the formula in Annex G)</i>

(1) Generation plants in commercial operation as of December 31, 2017 and that do not carry out projects that expand their capacity, should not report this indicator.

Participants must use the information contained in Annex No. 1 to calculate the energy security criterion, where they will also find the evaluation methodology.

#### 7.1.2.4 Emissions Reduction Criterion:

Each PARTICIPANT must provide the following information:

a.	Generation project:	<i>(Name of the project that participates in the tender)</i>
b.	Emission factor of the generation project:	<i>(kg CO<sub>2</sub>eq / kWh)</i>
c.	Magnitude of the emission factor reduction due to technological change:	<i>(kg CO<sub>2</sub>eq / kWh)</i>
d.	Emissions factor before technological change:	<i>(kg CO<sub>2</sub>eq / kWh)</i>

**The methodology for evaluating the emission reduction criterion is shown in Annex No. 1 of these TENDER DOCUMENTS.**

#### 7.1.2.5 Additional information:

In addition to the information on the QUALIFICATION criteria previously submitted, PARTICIPANTS must indicate:

- a) The effective net capacity of the PROJECT or Plant. It should be indicated in MW with two decimals. For Existing Plants in commercial operation, the total Net Effective Capacity of the plant in the commercial border applies. For New Generation Projects, the capacity declared by the Bidder applies, which cannot exceed the capacity indicated in the connection concept approved by the UPME.
- b) The location of the Project indicating Municipality and Department.
- c) The area of the Project with the Magna Sirgas coordinates, origin Bogotá.
- d) The electric area for the calculation of power balance.
- e) In accordance with the approval of the connection study, the point of connection of the Project to the National Interconnected System.

- f) The energy source to be considered by UPME in accordance with article 34 of MME Resolution 40791 of 2018, as amended by MME Resolution 41307 of 2018.
- g) The ANNUAL AVERAGE ENERGY with which the PROJECT will participate in the TENDER in MWh/year, with two decimal points, that will be the same as the one taken into account for the AWARD.
- h) The percentage of the PROJECT generation destined to the fulfillment of the AGREEMENTS that, in any case, must be greater than or equal to 50%.
- i) Series of the resource with which it will be generated. Corresponds to the series between January 1, 1998 and December 31, 2017 for the resource with which the Project will be generated in accordance with Annex No. 1 of the TENDER DOCUMENTS.

## 7.2 Contents of ENVELOPE NO. 1 – DISTRIBUTORS

DISTRIBUTORS who want to participate in the TENDER process must submit ENVELOPE NO. 1 with the following PREQUALIFICATION REQUIREMENTS:

### 7.2.1 PREQUALIFICATION requirements:

#### Legal requirements:

- a) Proof of payment of participation rights, original or legible copy.
- b) Documents proving the existence and legal representation of the PARTICIPANT and in which it is evident that the PARTICIPANT is incorporated and domiciled in Colombia, is an ESP and that its corporate purpose includes the sale of power in the WEM and it is valid at least until December 1, 2032.
- c) Copy of the authorizations of the competent bodies for the PARTICIPANT to submit to the TENDER and make a binding and unconditional offer, including the pertinent authorizations to the PARTICIPANT's Legal Representative, in accordance with section 4.10 of the TENDER DOCUMENTS. In the case of limitations to the powers of the legal representative, the minutes stating the respective authorization of the competent corporate body (board of directors or meeting of shareholders) are required. In the case of entities with another legal nature, the appropriate authorizations.

d) The power-of-attorney granted to the PARTICIPANT'S attorney in fact, pursuant to section 6.3 of these TENDER DOCUMENTS.

**Financial requirements:**

e) The BID BOND, with the corresponding documentation and pursuant to the terms set forth in section 8, the corresponding certificate or receipt of payment of the commission or premium issued by the guarantor and the copy of the document proving the rating of the financial institution issuing the guarantee and the validity of said rating.

f) The maximum amount of ANNUAL AVERAGE ENERGY to be purchased during the twelve (12) years of enforcement of the AGREEMENTS. This information will be used to verify, among other things, the constitution value of the BID BOND.

g) Certification of subscribed capital and the shareholding structure of the PARTICIPANT, signed by the TAX AUDITOR or, in lieu thereof, it must be signed by the LEGAL REPRESENTATIVE.

h) Financial statements with notes, closing on December 31, 2017, audited by the TAX AUDITOR. The UPME will publish the financial statements of qualified distributors. The delivery of envelope No. 1 implies the lifting of restrictions on said documents.

i) The irrevocable commitment issued by a FIRST-CLASS FINANCIAL ENTITY to issue a PAYMENT GUARANTEE, according to the template contained in Form No. 6, should the PARTICIPANT become an AWARDEE. This commitment must also be duly signed by the PARTICIPANT's legal representative.

**8 Participants' Bid Bond**

PARTICIPATING DISTRIBUTORS AND GENERATORS must constitute a BID BOND to guarantee the validity, enforcement and fulfillment of their PROPOSAL. For this purpose, they must attach the original BID BOND pursuant to the template contained in Form No. 5A or 5B, where appropriate, and in accordance with the terms established in the SCHEDULE of this TENDER. This guarantee shall be payable to the order of the PARTICIPANTS acting as counterparty to the BIDDER in breach, according to UPME instructions.

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The BID BOND shall cover at least the sum of one hundred and thirty five pesos per Kilowatt hour per year of the ANNUAL AVERAGE ENERGY declared by PARTICIPATING GENERATORS or the maximum amount of ANNUAL AVERAGE ENERGY to be purchased by the PARTICIPATING DISTRIBUTORS \$ 135 for each KWh/year of the ANNUAL AVERAGE ENERGY.

The BID BOND must have a minimum validity of six (6) months after the communication of the UPME on DISTRIBUTORS OR GENERATORS that met the PREQUALIFICATION AND QUALIFICATION REQUIREMENTS. If required, the UPME may request the extension of the validity of the BID BOND for terms of six (6) months. The BID BOND must be issued by a FIRST-CLASS FINANCIAL ENTITY.

In order for the issuer of the guarantee to be deemed a FIRST-CLASS FINANCIAL ENTITY, a valid document issued by a risk rating firm must be attached, stating the latest rating obtained by the financial institution that issued the guarantee and the validity of said qualification, to verify compliance with the requirements and a certificate from the FINANCIAL SUPERINTENDENCE OF COLOMBIA with a date of issue not exceeding thirty (30) calendar days from the date on which the PROPOSAL is submitted.

The purpose of the BID BOND must be:

- a) Irrevocably guarantee the seriousness of the BID formulated by the QUALIFIED PARTICIPANT, in accordance with these TENDER DOCUMENTS.
- b) Guarantee compliance with the requirements stipulated on the DATE OF EXECUTION of the AGREEMENT.

This way, the BID BOND presented by the PARTICIPANT may be executed if said PARTICIPANT does not comply therewith: (i) the Execution of the AGREEMENT; (ii) the approval of the STARTUP GUARANTEE by its beneficiary; or (iii) the constitution of the PERFORMANCE BOND OR PAYMENT GUARANTEE, where appropriate.

The BID BOND presented by the PARTICIPANTS will be returned, at the request thereof, once they certify (i) the execution of the AGREEMENT; (ii) in the case of NEW GENERATION PROJECTS, that have not entered into commercial operation on the AWARD DATE, with the approval of the STARTUP GUARANTEE by the ASIC and (iii) the constitution of the PERFORMANCE BOND OR PAYMENT GUARANTEE, where appropriate, duly approved by the TENDER AUDITOR.

The BID BOND presented by the PARTICIPANTS will also be returned, at the request thereof, to those who do not submit a bid or do not become AWARDEES. The bid bond will also be returned to all the PARTICIPANTS, should there not be any



AWARD, such as when the supply and demand curves do not cross, when the TENDER is declared abandoned or in the other cases foreseen in the APPLICABLE PROVISIONS or in the TENDER DOCUMENTS.

## **9 BID**

The UPME will evaluate the BIDS of QUALIFIED PARTICIPANTS to determine whether or not it is a VALID BID. Those who accredit the quality of the bidders may participate in the AWARD HEARING to be held at the time established in the SCHEDULE of these TENDER DOCUMENTS. For this, it will implement a technological platform that allows the AWARD of BIDS to each AWARDED DISTRIBUTOR and to each AWARDED SELLER, where appropriate.

The BIDS must be presented in a sealed envelope, which for the purposes of these TENDER DOCUMENTS will be called ENVELOPE NO. 2 and must be attached, together with Form No. 3 or No. 4, where appropriate, which contains the submission of the ECONOMIC PROPOSAL.

### **9.1 Contents of ENVELOPE NO. 2 – ECONOMIC PROPOSAL for GENERATORS**

QUALIFIED PARTICIPANTS must deliver their BIDS pursuant to the terms set forth in MME Resolution 40791 of 2018, as amended by means of MME Resolution 41307 of 2018 and in these TENDER DOCUMENTS.

The SALE BID from GENERATORS must be submitted in the format set forth in Form No. 4. It will be unconditional and irrevocable and must contain the following:

- a) The quantity of ANNUAL AVERAGE ENERGY to be sold, in Megawatt hours per year (MWh/year) with two (2) decimal points;
- b) The bid price, in Colombian pesos per Kilowatt hours (COP \$/kWh) with two (2) decimal points, excluding the Actual Equivalent Cost of Energy (CERE). The CERE Component will be settled in accordance with current regulations or with the provisions of the CREG for that purpose, pursuant to Resolution 071 of 2006 or the one that amends or replaces it;
- c) The minimum amount of ANNUAL AVERAGE ENERGY to be committed in the AGREEMENT, in case of being partially assigned, in Megawatt hours per year (MWh/year) with two (2) decimal points.

The period of validity for long-term ANNUAL AVERAGE ENERGY AGREEMENTS that will be awarded in the TENDER will be twelve (12) years.

## 9.2 Contents of ENVELOPE NO. 2 – ECONOMIC PROPOSAL for DISTRIBUTORS

QUALIFIED PARTICIPANTS must deliver their BIDS pursuant to the terms set forth in MME Resolution 40791 of 2018, as amended by means of MME Resolution 41307 of 2018 and in these TENDER DOCUMENTS.

The PURCHASE BID from DISTRIBUTORS must be submitted in the format set forth in Form No. 3. It will be unconditional and irrevocable and must contain the following:

- a) The maximum amount of energy to be purchased, in Megawatt hours per year (MWh/year) with two (2) decimal points, and its maximum purchase price, in Colombian pesos per Kilowatt hour [COP \$/kWh] with two (2) decimal points, excluding the CERE. The CERE Component will be settled in accordance with current regulations or with the provisions of the CREG for that purpose, pursuant to Resolution 071 of 2006 or the one that amends or replaces it;
- b) A statement by the BUYER in which they are bound to accept the amount of ANNUAL AVERAGE ENERGY in case of partial award, as established in Form No. 3.

## 10 Method of Delivery of Envelopes and the PROPOSAL

The documents contained in ENVELOPE NO.1 and in ENVELOPE NO. 2 can only be submitted in person at the place indicated by the UPME. The UPME will not accept or receive documents that are sent to them by post, email or any other means of communication.

The UPME reserves the right to ask PARTICIPANTS to digitally load the above information on the system available for said purpose. In such case, it will report this situation to PARTICIPANTS in a timely manner through an External Letter published on the entity's website.

### 10.1 Original documents and copies

The documentation must be submitted as an original and a copy. The original document duly marked as original on the first page, having clearly and consecutively numbered all of its pages with content and having signed on those pages required, according to the rules set forth in these TENDER DOCUMENTS for each type of document.

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Furthermore, the PARTICIPANT must deliver a CD duly marked with the documents corresponding to the PROPOSAL. These must be scanned and saved in PDF format and technical information in the formats indicated in these TENDER DOCUMENTS.

Should there be any inconsistencies in the content of the documents provided as originals and those provided in the CD, the original ones will prevail.

## **10.2 Method of Submission of ENVELOPES NO. 1 and NO. 2 of the PROPOSAL**

ENVELOPES NO. 1 AND NO. 2 must be submitted by the participants to the UPME, where appropriate, and must be closed and clearly marked on the front with the instructions:

MINISTRY OF MINES AND ENERGY - MINING AND ENERGY PLANNING UNIT (UPME)

Long-Term Power Purchase Tender No. 01 – 2019 For the long-term power purchase agreement of the POWER GENERATION PLANT OR PROJECT complementary to the existing mechanisms in the Wholesale Energy Market.

[PARTICIPANT'S NAME]

[PARTICIPATING CAPACITY – GENERATOR OR DISTRIBUTOR]

A detailed list of all the documents included in said Envelopes must be included. Should there be any inconsistencies between a figure expressed in numbers and in letters, the amount expressed in letters will prevail.

## **11 Effects of the PROPOSAL Document Submission and Binding Nature of the TENDER DOCUMENTS**

The submission of the documents included in ENVELOPE NO. 1 and in ENVELOPE NO. 2, to the UPME, can only be done if there is full knowledge of (i) APPLICABLE PROVISIONS and other regulations that apply, both to generation activity and to energy distribution, as well as to those who develop it in the Republic of Colombia, and (ii) each and every one of the procedures, obligations, conditions and rules that apply to said activity and those Persons in the Republic of Colombia, without exception, on the understanding that all the aforementioned laws, regulations, rules and procedures are binding.

It will be understood that those who submit the aforementioned envelopes to the UPME declare, by the mere fact of their submission and under oath, that they know the APPLICABLE PROVISIONS, laws, norms and procedures to which this section refers, and that they undertake to accept them and to unconditionally and at all times adhere thereto.

### **11.1 Cost of PROPOSAL Preparation and Submission**

PARTICIPANTS will bear — at their sole expense and risk — all costs or expenses, either direct or indirect, that they incur related to the preparation and submission of documents or information included in their PROPOSAL. Neither the Government of Colombia or any office thereof, nor the UPME or its employees, officers, advisers, will be liable under any circumstance for these costs, whatever the form in which the TENDER is carried out or the result thereof.

There will be no refund of money consigned to UPME for the acquisition or payment of participation rights.

## **12 OPENING AND EVALUATION OF PROPOSALS AND SELECTION OF AWARDEES**

### **12.1 Opening and Evaluation of PROPOSALS**

The evaluation of the PROPOSALS will be divided into two moments: first, the evaluation of the prequalification and qualification requirements contained in ENVELOPE NO. 1 and, second, the evaluation of the bids contained in ENVELOPE NO. 2.

#### **12.1.1 Opening of Envelope No. 1 - Participants.**

ENVELOPE NO. 1 will be filed at the UPME in accordance with the provisions of the TENDER SCHEDULE and in these TENDER DOCUMENTS. Once ENVELOPE NO. 1 has been received, the UPME EVALUATING COMMITTEE will be in charge of verifying compliance with the PREQUALIFICATION requirements established in these TENDER DOCUMENTS and 2018 in MME Resolution 40791 of 2018, as amended by MME Resolution 41307 of 2018.

After verifying fulfillment of the PREQUALIFICATION requirements of both GENERATORS and DISTRIBUTORS, the EVALUATING COMMITTEE will proceed to individually notify each of the PARTICIPANTS of the result thereof. Should there be any breach of the PREQUALIFICATION requirements, the EVALUATING COMMITTEE will grant the PARTICIPANT a term of one (1) to two (2) business days, at the discretion of the committee and according to the complexity, to make the corresponding correction, or otherwise be disqualified from the AWARD process hereof.

Once the PREQUALIFICATION requirements have been accredited, the EVALUATING COMMITTEE will publish a letter with the name of the DISTRIBUTORS that accredited the PREQUALIFICATION requirements and that continue in the AWARD process. Thereafter, it will receive — during the terms set forth in the SCHEDULE — ENVELOPE NO. 2 from DISTRIBUTORS who prove to be QUALIFIED PARTICIPANTS.

Simultaneously, the EVALUATION COMMITTEE will proceed to perform the evaluation of the QUALIFICATION REQUIREMENTS, contemplated in Section 0 of these TENDER DOCUMENTS and in MME Resolution 40791 of 2018, as amended by MME Resolution 41307 of 2018, sent by the GENERATORS in ENVELOPE NO. 1. After verifying compliance therewith, the UPME will proceed to individually and confidentially inform each GENERATOR who has complied with these requirements, so that they can send ENVELOPE NO. 2 together with the ECONOMIC PROPOSAL in accordance with the established schedule. Should there be flaws in the documentation sent by the GENERATORS in ENVELOPE NO. 1, it will grant the PARTICIPANT a term of one (1) to two (2) business days, at the discretion of the committee and according to the complexity, to make the corresponding correction, or otherwise be disqualified from the AWARD process.

Once the QUALIFICATION requirements have been accredited, the EVALUATING COMMITTEE will publish a letter with the name of the GENERATORS that accredited the QUALIFICATION requirements and that continue in the AWARD process. Thereafter, it will receive — during the terms set forth in the SCHEDULE — ENVELOPES NO. 2 from GENERATORS who prove to be QUALIFIED PARTICIPANTS

### **12.1.2 Evaluation of Envelope No. 1 - Prequalification of Participants.**

The EVALUATING COMMITTEE will review the documents in Envelope No. 1, and declare as non-conforming with the PREQUALIFICATION requirements those Envelopes No. 1 that incur in any of the following grounds:

- a) That the PREQUALIFICATION requirements are breached, where applicable.
- b) Failure to deliver S-Curve, in the case of generators.

- c) When the project does not correspond with the connection approval by the UPME.
- d) That the project has an installed capacity greater than or equal to 10 MW.
- e) When the PROJECT startup date foreseen in the UPME connection concept is later than December 1, 2021.
- f) Not signing the documents that must be signed.
- g) Not having included the following in the documents presented: (a) BID BOND in accordance with the template contained in Form No. 5A or 5B, where appropriate, (b) the irrevocable commitment issued by a FIRST-CLASS FINANCIAL INSTITUTION to constitute the PERFORMANCE BOND or PAYMENT GUARANTEE, where appropriate, according to the template contained in the Forms provided in the TENDER DOCUMENTS.
- h) When ENVELOPE NO.1 does not correspond to the PURPOSE of the TENDER as established in these TENDER DOCUMENTS.
- i) Failure to present the schedule and the other PREQUALIFICATION REQUIREMENTS required in these TENDER DOCUMENTS.
- j) The PARTICIPANT was or is formed by a company that cannot submit Proposals to this call for tender in accordance with these TENDER DOCUMENTS, the Regulations and the APPLICABLE PROVISIONS;
- k) Not having corrected any other failure of the documents that make up ENVELOPE NO. 1 from the time on which it was notified.

In general, they must comply with the requirements set forth in MME Resolution 40791 of 2018, as amended by MME Resolution 41307 of 2018.

In order to carry out a correct evaluation of the PRE-QUALIFICATION and QUALIFICATION criteria, the UPME may discretionally request a PARTICIPANT for clarifications or complements of the submitted documents, as well as additional documents it deems necessary for the purpose of assessing whether or not it meets the PREQUALIFICATION OR QUALIFICATION criteria.

Should there be any faults in the documents that make up ENVELOPE NO. 1, the EVALUATING COMMITTEE will request a correction within a term of two (2) business days, indicating clearly what faults were found and how they should be corrected. The lack of the other documents referred to in Section 7 other than those indicated in the previous paragraph, and minor faults such as, for example, typos, are considered rectifiable failures. The EVALUATING COMMITTEE will review the correction documents submitted by the PARTICIPANT, in order to determine if the failure was or was not corrected. Should the documents requested not be submitted in a timely manner or should the failure not be

corrected, the EVALUATING COMMITTEE will sign a record in which it will record that the PARTICIPANT does not comply with the PREQUALIFICATION requirements and will inform the respective PARTICIPANT accordingly.

### **12.1.3 Evaluation of Envelope No. 1 - Qualification of Participants**

The EVALUATING COMMITTEE will review the documents in Envelope No. 1, and will declare those Envelopes No. 1 that have a standard score less than or equal to 50 points as non-conforming to the qualification. For this purpose, the calculations of the assessment of the criteria and the standardized score made by the UPME will be taken into account.

Should there be any failure in the QUALIFICATION requirements, the EVALUATING COMMITTEE will request a correction within the term of one (1) to two (2) business days, at the discretion of the committee and according to the complexity, indicating clearly which faults were found and how they should be corrected. Should the requested documents not be submitted in a timely manner or should the failure not be corrected, the EVALUATING COMMITTEE will sign a record in which it will record that the PARTICIPANT does not meet the QUALIFICATION requirements and will inform the respective PARTICIPANT accordingly.

### **12.1.4 Opening of Envelope No. 2 - Bidders**

The BIDS contained in ENVELOPE NO. 2 may be filed:

GENERATORS from 7:30 a.m. on the day indicated in the Tender SCHEDULE, until 8.30 a.m.

DISTRIBUTORS from 8:30 a.m. on the day indicated in the Tender SCHEDULE, until 9.30 a.m.

Bidders must deliver the purchase or sale bid, where appropriate, at UPME headquarters, located at Av. Calle 26 # 69 D-91, Centro Empresarial Arrecife Torre 1, Piso 9°, in the city of Bogotá D.C. or in the city and place that is duly informed to PARTICIPANTS on the website. The official date and time of submission of PROPOSALS will be the one indicated by the time/clock recorder, in accordance with the provisions of article 27 of MME Resolution 40791 of 2018.

ENVELOPES NO. 2 for GENERATORS and DISTRIBUTORS will be received at two different times, in accordance with the terms established in the SCHEDULE. After receiving all BIDS, the UPME will have the necessary mechanisms to ensure the integrity of the ENVELOPES submitted by BIDDERS.

On the same day, time and place indicated for the receipt of the GENERATOR'S BIDS, the CREG shall deliver the sealed envelope with the MAXIMUM LIMIT in Colombian pesos per Kilowatt hour [\$/kWh] with two decimal points, excluding the CERE, for the purposes referred to in Article 25 of MME Resolution 40791 of 2018, as amended by MME Resolution 41307 of 2018.

First, the UPME will open ENVELOPE NO. 2 from GENERATORS, and will verify that it is a VALID BID, proceed to record the information of the bid in the technological platform prepared for the TENDER and will verify if the COMPETITIVE CONDITIONS are met and inform the result in the hearing.

Should this not be fulfilled, it will not proceed to award in the TENDER.

If the COMPETITIVE CONDITIONS are met, ENVELOPE NO. 2 from DISTRIBUTORS will be opened, and it will verify that it is a VALID BID, proceed to record the information of the bid in the technological platform prepared for the TENDER and read the contents of ENVELOPE NO. 2 out loud.

The AWARD of the TENDER will be according to what is established in section 12.2.

## **12.2 TENDER AWARD:**

The AWARD of the TENDER will be made considering the following rules:

### **12.2.1 Refusal of Bids**

Without prejudice to the provisions established in the APPLICABLE PROVISIONS, grounds for refusal will be the following: (i) when the BID does not correspond to the GENERATION PROJECT; (ii) when the requirements of the TENDER DOCUMENTS are not met; (iii) when it is not signed by the Legal Representative; (iv) when the ideal generation percentage of the PROJECT destined to comply with the AGREEMENTS is less than 50% in the BID; (v) when there is no bid bond; (vi) when there is no commitment to constitute a performance bond; (vii) when there is no commitment to provide a payment guarantee; (viii) when there is no commitment to



constitute a startup guarantee; (ix) when there is no S-Curve presented; (x) when the commitments that must be signed are not signed; (xi) when the selection criteria are not met; (xii) when the information required for prequalification or qualification is not delivered; or (xiii) when any requirement required in the APPLICABLE PROVISIONS is not met.

### **12.2.2 Bids Submitted by Distributors article 18**

Energy PURCHASE BIDS delivered by OFFERING DISTRIBUTORS shall be ordered in accordance with the provisions of article 26 of Chapter IV of MME Resolution 40791 of 2018, as amended by article 18 of the MME Resolution 41307 of 2018.

### **12.2.3 BIDS Submitted by GENERATORS**

Energy SALE BIDS delivered by OFFERING GENERATORS shall be ordered in accordance with the provisions of article 26 of Chapter IV of MME Resolution 40791 of 2018, as amended by article 18 of the MME Resolution 41307 of 2018.

### **12.2.4 Competitive Conditions**

To guarantee an efficient interaction process between BUYERS and SELLERS, the TENDER AUDITOR and the UPME, during the award process, must verify compliance with the COMPETITIVE CONDITIONS that the CREG determined in the corresponding administrative minutes.

Should the COMPETITIVE CONDITIONS not be fulfilled, the UPME will end the process without award.

### **12.2.5 Non-award of Tender**

The UPME may declare the non-AWARD of the TENDER in any of the following cases:

- a) The grounds established in Article 26 of Chapter IV of MME Resolution 40791 of 2018, as amended by Article 18 of MME Resolution 41307 of 2018.
- b) If the BIDS do not meet the VALID BID criteria in accordance with the requirements specified in these TENDER DOCUMENTS and in MME Resolution 40791 of 2018, as amended by MME Resolution 41307 of 2018 and MME Resolution 41314 of 2018, as well as in the APPLICABLE PROVISIONS.

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c) Should the competitive conditions defined by the CREG not be met in accordance with article 22 of MME Resolution 40791, as amended by MME Resolution 41307 of 2018.

### **12.2.6 Award of BIDS**

Should the COMPETITIVE CONDITIONS established by the CREG be met, the award process will proceed in accordance with the provisions of article 26 of Chapter IV of MME Resolution 40791 of 2018, as amended by article 18 of MME Resolution 41307 of 2018

The AWARDEES must register with the CREG, the SSPD and the ASIC, in accordance with the APPLICABLE PROVISIONS.

AGREEMENTS resulting from the AWARD will be executed using the AGREEMENT minutes that the MME issues for this purpose. These AGREEMENTS must be signed within the term established in the SCHEDULE and must be registered before the Market Operator and Administrator while complying with the requirements established for said purpose in the APPLICABLE PROVISIONS and within the terms set forth in the AGREEMENT.

### **12.2.7 Award Minutes**

Once the session to open ENVELOPES NO. 2 is concluded, a record will be drawn up that will record the development of the hearing and the selection of the AWARDEES. It will include the SELLERS and BUYERS that were AWARDED, and that must consequently sign the AGREEMENT. The aforementioned minutes will be read aloud, communicating, in this way, the selection to the AWARDEES. This act is notified on notice boards and will leave an exact record of the decisions adopted and of the circumstance that said decisions were notified, with no appeal whatsoever proceeding thereto.

The AWARD CERTIFICATE will be signed by a UPME representative and the TENDER AUDITOR.

### **13 EFFECT OF THE SELECTION**

It will be understood that the AWARDEES unconditionally accepted the BIDS from the counterparties. As a consequence of the foregoing and the development of this TENDER, BUYERS and SELLERS must sign and register the agreement from which they were AWARDED within the terms established in the SCHEDULE of these TENDER DOCUMENTS. After signing the AGREEMENT, they must deliver the PERFORMANCE BOND AND PAYMENT GUARANTEE, where appropriate, according to the provisions of the AGREEMENT. Once the delivery of the respective guarantees has been executed, the BID BOND will be returned pursuant to the terms established in Section 8 of the TENDER DOCUMENTS.

Should the AWARDEE fail to comply with each and every one of the obligations that must be fulfilled before the DATE OF EXECUTION of the AGREEMENT, the UPME may execute the BID BOND in accordance with and as established in the TENDER DOCUMENTS.

### **14 GUARANTEES**

#### **14.1 Startup Guarantee**

Each SELLER with a NEW GENERATION PROJECT selected in this TENDER, shall grant — on the date established in the SCHEDULE — a STARTUP GUARANTEE in accordance with the REGULATIONS OF GUARANTEES established by the CREG.

#### **14.2 Bilateral Guarantees contained in the Agreement**

AWARDEES must constitute the bilateral payment guarantees and performance bond foreseen in the AGREEMENTS. The first guarantee presented by each contracting party must be approved by the TENDER AUDITOR, addressed in writing to the respective counterparty, sending a copy to the UPME.

### **15 Audit**

There will be a TENDER AUDITOR who will be an individual or legal entity with recognized experience in audit processes. The auditor will be responsible for:

- a) Approving the bilateral guarantees contemplated in the AGREEMENT.
- b) Verifying the correct application of the regulations in force for the development of the TENDER.

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- c) Verifying that the communications between PARTICIPANTS and the UPME are made solely and exclusively through the formal channels of communication established by the latter.
- d) Verifying the prequalification and qualification process of the bids.
- e) Verifying that — during the TENDER — the steps and rules established in MME Resolution 40791 of 2018, as amended by means of MME Resolution 41307 of 2018 and the criteria mentioned herein, are expressly followed.
- f) Requesting the UPME to suspend the TENDER when it considers that the provisions contained in the current regulations are not being fulfilled.
- g) Submitting a report to the MME within five (5) days following the end of the TENDER that establishes, without ambiguities, compliance with or breach of the regulations in force in said process.
- h) Verifying the competitive conditions established in Article 22 of MME Resolution 40791 of 2018 and issuing the corresponding report to the CREG within the deadlines established by said entity.
- i) For those cases in which the AUDITOR establishes that the aforementioned requirements, as well as those provided for in RESOLUTION MME 40791 of 2018, were not met in the respective TENDER, the advanced process will not take effect, without prejudice to the criminal and/or civil actions and the administrative actions that may take place against persons who have breached current regulations.

The costs incurred for the purpose of the TENDER AUDIT will be financed by the UPME.

There will also be an S-CURVE AUDITOR, who will be contracted by each SELLER with GENERATION PROJECTS and who will audit the project. The cost of the S-CURVE AUDITOR will be borne by the respective AWARDED GENERATOR.

## 16 Tender System

The UPME will use a technological platform that allows for the execution of the TENDER. For this, it will contract with a specialized agent in software that allows for the correct execution of the TENDER. Should the technological system not work on the day of the TENDER due to force majeure or unforeseeable circumstances, contingency mechanisms will be used, such as (i) the application of an Excel table, (ii) the use of back-up that the

software specialist hired for the TENDER has, or (iii) the discretionary suspension of the TENDER.

## 17 FORMS OF THE CALL FOR TENDER (Annex No. 2)

- **FORM No. 1** Letter of submission of prequalification documents in Envelope No. 1 from generators (includes statements).
- **FORM No. 2** Letter of submission of prequalification documents in Envelope No. 1 from distributors (includes statements).
- **FORM No. 3** Letter of submission of bid by distributors.
- **FORM No. 4** Letter of submission of bid by generators.
- **FORM No. 5A** Bid bond for participating generators.
- **FORM No. 5B** Bid bond for participating distributors.
- **FORM No. 6** Commitment to constitute a payment guarantee.
- **FORM No. 7** Commitment to constitute a performance bond.
- **FORM No. 8** Commitment to constitute a startup guarantee.