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REPUBLIC OF COLOMBIA

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MINISTRY OF MINES AND ENERGY

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MINING AND ENERGY PLANNING UNIT, UPME

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SPECIFIC TERMS AND CONDITIONS OF THE

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LONG-TERM POWER PURCHASE AUCTION

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CLPE AUCTION No. 02 - 2019

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Bogotá D. C., August seven (7), 2019

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**SPECIFIC TERMS AND CONDITIONS
LONG-TERM POWER PURCHASE AUCTION
CLPE AUCTION No. 02-2019**

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SPECIFIC TERMS AND CONDITIONS OF THE LONG-TERM POWER PURCHASE AUCTION CLPE AUCTION No. 02-2019

1 INTRODUCTION

Within the framework of Decree 570 of 2018, the Ministry of Mines and Energy (MME) issued RESOLUTION MME 40590 of 2019 defining a procedure that promotes long-term purchase for power generation projects, which is complementary to the existing procedures in the WHOLESALE ENERGY MARKET.

For this purpose, the MME delegated to Unidad de Planeación Minero-Energética (UPME, Mining and Energy Planning Unit) the implementation and administration of the selection procedure of GENERATORS and DISTRIBUTORS that will enter into LONG-TERM ENERGY AGREEMENTS, and ordered the execution of an AUCTION, subsequent to the publication of the respective BIDDING DOCUMENTS in which the specific terms and conditions contained in this document are established.

The purpose of the AUCTION is the assignment of LONG-TERM ENERGY AGREEMENTS between each GENERATOR and DISTRIBUTORS that are AWARDEES.

Additionally, this AUCTION contributes to the consolidation of a complementary, resilient energy mix committed to the reduction of carbon emissions, allowing DISTRIBUTORS of the WHOLESALE ENERGY MARKET to comply with the provisions of Article 296 of Law 1955 of 2019.

2 INTERPRETATION OF THE SPECIFIC TERMS AND CONDITIONS OF AUCTION No. 02-2019

2.1 Terms and Expressions

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

3
4 For the purposes of these BIDDING DOCUMENTS and the AUCTION, it is established that
5 the following terms shall have the meanings indicated below. Expressions in singular include,
6 where appropriate, the plural and vice versa.

7
8 **"ADMINISTRADOR DEL SISTEMA DE INTERCAMBIOS COMERCIALES" (ASIC,**
9 **ADMINISTRATOR OF THE COMMERCIAL EXCHANGE SYSTEM):** The entity in
10 charge of the registration of commercial borders and LONG-TERM ENERGY
11 AGREEMENTS; of the settlement, invoicing, collection and payment of the value of
12 acts, AGREEMENTS and energy transactions in the stock exchange by
13 GENERATORS and DISTRIBUTORS; of the maintenance of information systems and
14 computer programs required; and of the fulfillment of tasks necessary to operate
15 properly the Commercial Exchange System (SIC), in accordance with current
16 regulations. The ASIC service is provided by XM Compañía de Expertos en
17 Mercados S.A. E.S.P.

18
19 **"ADDENDUM":** All documents issued by the UPME in order to modify the content of
20 the BIDDING DOCUMENTS, within the period established in the SCHEDULE. The
21 UPME will indicate which of the AUCTION documents is referred to in the respective
22 ADDENDUM. Once published, the ADDENDUM will be part of the BIDDING
23 DOCUMENTS.

24
25
26 **"ANNEXES":** Attached documents which make an integral part of these BIDDING
27 DOCUMENTS.

28
29 **"APPLICABLE PROVISIONS":** These include, but are not limited to, the Colombian
30 Civil Code, the Colombian Code of Commerce, Laws 142 and 143 of 1994, 1665 of
31 2013, 1715 and 1844 of 2014, the General Code of Process, the Tax Statute and
32 environmental standards, especially the Code of Natural Resources, Law 99 of 1993,
33 Decree 2041 of 2014 and other applicable environmental provisions, decrees 381 of
34 2012, 1258 of 2013, DUR MME, RESOLUTION MME 40590 OF 2019 and
35

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1 RESOLUTION MME 40591 OF 2019, the Operating Regulations and other CREG
2 resolutions and the norms that modify, explain or add them.
3

4
5 **"EVALUATION COMMITTEE"**: The group of PEOPLE that the UPME will designate
6 to evaluate, where appropriate, (i) compliance with PREQUALIFICATION
7 REQUIREMENTS and (ii) PROPOSALS made by PARTICIPANTS.
8

9 **"AUCTION"**: The procedure defined by the Ministry of Mines and Energy in
10 RESOLUTION MME 40590 OF 2019, which promotes long-term purchase of electric
11 energy in accordance with the provisions of Article 2.2.3.8.7.1 of Decree 1073 of
12 2015, added by Decree 0570 of 2018. It is a competitive process where BUYERS and
13 SELLERS interact to assign quantities and establish prices, which reflect the costs of
14 the OFFER and the willingness to pay of the demand.
15

16 **"AUCTION AUDITOR"** The individual or legal PERSON with recognized experience
17 in auditing processes who will be responsible for monitoring the implementation and
18 effectiveness of AUCTION plans or procedures and that is done in accordance with
19 the BIDDING DOCUMENTS, RESOLUTION MME 40590 OF 2019 and RESOLUTION
20 MME 40591 OF 2019.
21

22 **"AUTHORITY:"** Any PERSON or entity vested with public power in Colombia,
23 empowered under the APPLICABLE PROVISIONS to issue or interpret general or
24 particular rules or decisions, with mandatory effects for those who are subject to their
25 scope.
26

27 **"AWARDING"**: The process carried out in accordance with the provisions of Articles 8
28 and 24 of RESOLUTION MME 40590 OF 2019, RESOLUTION MME 40591 OF 2019,
29 these BIDDING DOCUMENTS as well as the procedures and methods defined by the
30 Ministry of Mines and Energy for the development of the AUCTION.
31

32 **"AWARDING DATE"**: The date on which OFFERORS who comply with the
33 COMPETITIVE CONDITIONS and submit a VALID OFFER become AWARDEES.
34

35 **"DATE OF CALCULATION BASIS"**: December 31, 2018 is used for the calculation
36 of the average daily commercial demand for each TRADE AGENT.
37

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1 **"BID BOND"**: The letter of indemnity, bank guarantee, or standby letter of credit
2 issued by the PARTICIPANT to guarantee the seriousness of the PROPOSAL. The
3 BID BOND must: (i) be issued by a FIRST-CLASS FINANCIAL INSTITUTION; (ii)
4 remain in force for a minimum period of six (6) months following the submission of
5 ENVELOPE No. 2, and (iii) meet the conditions referred to in section 8 of these
6 BIDDING DOCUMENTS and be issued in a format substantially equal to Forms No.
7 3A, 3B, 3C, 3D and 3E.

8
9 **"BIDDING DATE"**: The date on which OFFERORS must submit a VALID OFFER
10 before the UPME.

11
12
13 **"BUSINESS FUND"**: An autonomous patrimony constituted by the
14 SUPERINTENDENCE OF PUBLIC UTILITIES, whose origin was Article 132 of
15 Law 812 of 2003, ratified by Laws 1151 of 2007, 1450 of 2011 and 1753 of 2015, and
16 whose purpose is to guarantee the viability and continuity in the supply of public
17 services, as well as to assure that this supply is efficient, through the support required
18 by companies taken over by the Government in accordance with the provisions of
19 Article 2.2.9.4.2 of Decree 1082 of 2016.

20
21 **"BUYERS"**: WHOLESAL ENERGY MARKET DISTRIBUTORS who have met the
22 PREQUALIFICATION REQUIREMENTS to participate in the LONG-TERM ENERGY
23 PURCHASE AUCTION.

24
25 **"CLARIFICATION"**: All notifications issued in writing by the UPME, with the purpose
26 of explaining, interpreting or answering queries related to this document or any of its
27 ANNEXES. In the respective CLARIFICATION, the UPME will indicate which of the
28 AUCTION documents is referred to. The CLARIFICATIONS do not imply modification
29 of the BIDDING DOCUMENTS.

30
31 **"COMPETITIVE CONDITIONS"**: The minimum conditions to guarantee an efficient
32 interaction process between the QUALIFIED PARTICIPANTS as determined by the
33 Energy and Gas Regulatory Commission (CREG) through an administrative act, in
34 accordance with the provisions of Article 19 of RESOLUTION MME 40590 OF 2019.
35 Compliance with these conditions will be verified by the UPME and by the AUCTION
36 AUDITOR during the AWARING process.

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1 **"CONTRACTOR"**: The PARTICIPANT who becomes an AWARDEE and signs the
2 AGREEMENT object of this AUCTION.

3
4 **"CONTROL"**: a) The power or ability of a PERSON or group of PEOPLE to impose,
5 directly or indirectly, decisions at the general meeting of shareholders, partners or
6 equivalent bodies, or to appoint or remove a majority of the members of the board of
7 directors, advisors, directors or their equivalents of a legal PERSON; b) To hold the
8 ownership of rights that allow, directly or indirectly, to exercise the vote with respect to
9 more than (50%) plus a share, quotas or parts into which the corporate capital of a
10 PERSON is divided; and c) The power or ability of a PERSON or group of PEOPLE to
11 direct, directly or indirectly, the administration, strategy or main policies of a legal
12 PERSON, whether by means of participation in the shareholder equity, by
13 CONTRACT or in any other way.

14
15
16 **"CREG"**: Comisión de Regulación de Energía y Gas (Energy and Gas Regulatory
17 Commission), an entity organized under Laws 142 and 143 of 1994 and 489 of 1998,
18 assigned to the Ministry of Mines and Energy.

19
20 **"DATE OF BEGINNING OF COMMERCIAL OPERATION"**: The date from which a
21 generation project is declared in commercial operation within the WHOLESale
22 ENERGY MARKET, therefore, it complies with all current regulations on the matter.

23
24 **"BIDDING DOCUMENTS"**: This document which contains specific terms and
25 conditions, together with its ANNEXES, CLARIFICATIONS AND ADDENDA, that
26 govern the AUCTION. There are terms, conditions and procedures stated in these
27 documents which must be followed by PARTICIPANTS who apply, pre-qualify, qualify
28 and formulate their OFFERS to participate in the selection process of AWARDEES
29 that will enter into the LONG-TERM ENERGY AGREEMENTS.

30
31
32 **"DRAFT AGREEMENT"**: A standardized AGREEMENT defined by the Ministry of
33 Mines and Energy that is an integral part of the BIDDING DOCUMENTS and that will
34 contain at least the object, the obligations of the parties, price, period of supply and
35 validity, form of invoicing, guarantees of the parties, grounds for termination,
36 conditions for the cession of the AGREEMENT, conditions for its modification, which
37 in no case may be established to the detriment of users and such other aspects as the

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1 Ministry of Mines and Energy deems appropriate to ensure compliance with the
2 obligations of AWARDEES pursuant to the provisions of RESOLUTION MME 40590
3 OF 2019 and RESOLUTION MME 40591 OF 2019.

4
5
6
7
8 **"DUR MME"**: The sole regulatory decree for the mining and energy sector contained
9 in Decree 1073 of 2015 and its amendments.

10
11 **"ECONOMIC PROPOSAL"**: The PROPOSAL included in ENVELOPE No. 2 of
12 PARTICIPANTS and which contains their OFFER.

13
14 **"ENERGY PACKAGES"**: The standard unit of energy to be bid by AUCTION
15 SELLERS for an hour of the day. One ENERGY PACKAGE equals zero point five
16 megawatt hour (0.5 MWh). SELLERS must make their OFFERS expressed in positive
17 whole numbers of ENERGY PACKAGES.

18
19 **"ENVELOPE No. 1 GENERATORS"**: The envelope that contains all documents
20 specified in Section 7.1 of the BIDDING DOCUMENTS to be submitted by a
21 GENERATOR and that is part of the PROPOSAL.

22
23 **"ENVELOPE No. 1 DISTRIBUTORS"**: The envelope that contains all documents
24 specified in Section 7.2 of the BIDDING DOCUMENTS to be submitted by a
25 DISTRIBUTOR and that is part of the PROPOSAL.

26
27 **"ENVELOPE No. 2 GENERATORS"**: The envelope that contains all documents
28 specified in Section 9.1 of the BIDDING DOCUMENTS to be submitted by
29 GENERATORS and that is part of the PROPOSAL.

30
31 **"ENVELOPE No. 2 DISTRIBUTORS"**: The envelope that contains all documents
32 specified in Section 9.2 of the BIDDING DOCUMENTS to be submitted by
33 DISTRIBUTORS and that is part of the PROPOSAL.

34
35 **"FIDUCIARY"**: BBVA ASSET MANAGEMENT S.A., which acts as a spokesperson

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1 and administrator of the AUTONOMOUS PATRIMONY OF TRUST - BUSINESS
2 FUND with NIT 830.052.998-9, a financial entity legitimized to issue guarantee
3 certificates in favor of third parties, in order to grant the PERFORMANCE BOND or
4 PAYMENT GUARANTEE and the BID BOND to utility service companies taken-over
5 by the SUPERINTENDENCE OF PUBLIC UTILITIES and that participate in CLPE
6 AUCTION No. 02-2019.
7

8 **"FINANCIAL SUPERINTENDENCE OF COLOMBIA"**: A technical body attached to
9 the Ministry of Finance and Public Credit that is responsible for the supervision of
10 financial, insurance and social security activities.
11

12 **"FIRST-CLASS FINANCIAL INSTITUTION"**: Is a) a financial institution domiciled in
13 Colombia, which has a long-term debt credit risk rating of "investment grade", by a risk
14 rating agency supervised by the FINANCIAL SUPERINTENDENCE OF COLOMBIA,
15 or b) a foreign financial entity included in the list of foreign financial entities in
16 Appendix No. 1 of Regulation Letter DCIN-83 of 2003 of the Colombian Bank of the
17 Republic or included in the regulations that amend, add to or substitute it and that
18 accredits a long-term debt rating of at least "investment grade" issued by an
19 internationally recognized risk rating agency in accordance with what is established in
20 the Applicable Regulations.
21

22 **"GENERATOR AGENT" o "GENERATOR"**: The company registered before the
23 ASIC that carries out energy generation activities.
24

25 **"LEGAL REPRESENTATIVE"**: The PERSON who represents a PARTICIPANT in
26 accordance with their articles of association or deed of incorporation document and
27 their amendments, as evidenced by the respective certificate of existence and legal
28 representation issued by the chamber of commerce of the place of registered office or
29 document that serves as the PARTICIPANT's representative according to the nature
30 of the PARTICIPANT.
31

32 **"LONG-TERM ENERGY AGREEMENT" OR "AGREEMENT"**: An energy supply
33 AGREEMENT entered into between DISTRIBUTORS and GENERATORS, in
34 accordance with the conditions established in the DRAFT AGREEMENT defined by
35 the Ministry of Mines and Energy in compliance with Article 13 of RESOLUTION
36
37

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1 MME 40590 OF 2019 and of these BIDDING DOCUMENTS.

2
3 **"MME"**: Ministry of Mines and Energy.

4
5 **"OFFER"**: The ECONOMIC PROPOSAL submitted to the UPME by QUALIFIED
6 PARTICIPANTS of the AUCTION.

7
8 **"OFFERORS"**: QUALIFIED PARTICIPANTS that make a VALID OFFER.

9
10 **"PARTICIPANTS"**: Agents of the WHOLESALE ENERGY MARKET and/or individual
11 or legal entities who own or commercially represent PROJECTS FOR THE
12 GENERATION OF NON-CONVENTIONAL RENEWABLE ENERGY SOURCES, who
13 submit PREQUALIFICATION documents in accordance with Articles 30 and 31 of
14 RESOLUTION MME 40590 OF 2019 and these BIDDING DOCUMENTS, and who
15 are accredited as possible BUYERS or SELLERS of the AUCTION.

16
17 **"PAYMENT GUARANTEE"**: A document issued by a FIRST-CLASS FINANCIAL
18 INSTITUTION that supports BUYER's fulfillment of payment obligations undertaken in
19 the AGREEMENT, which each AWARDED DISTRIBUTOR must deliver to each
20 AWARDED GENERATOR, in accordance with the conditions established in the
21 DRAFT AGREEMENT.

22
23 **"PERFORMANCE BOND"**: A document issued by a FIRST CLASS FINANCIAL
24 INSTITUTION that supports SELLER's fulfillment of payment obligations undertaken
25 in the AGREEMENT, which each AWARDED GENERATOR must deliver to each
26 AWARDED DISTRIBUTOR, in accordance with the conditions established in the
27 DRAFT AGREEMENT.

28
29 **"PERSON"**: Any individual or legal entity, either Colombian or foreign, who can
30 perform legal acts and assume obligations in Colombia.

31
32 **"PREQUALIFICATION"**: The requirement verification process required by the UPME
33 to PARTICIPANTS in order to determine their participation in the AUCTION. Among
34 them there are technical, legal and financial requirements defined in RESOLUTION
35
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37

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1 MME 40590 OF 2019 and these BIDDING DOCUMENTS.
2

3 **"PREQUALIFICATION REQUIREMENTS"**: Requirements to be met by
4 PARTICIPATING GENERATORS and DISTRIBUTORS, defined in Articles 30 and 31
5 of RESOLUTION MME 40590 OF 2019 and these BIDDING DOCUMENTS, which the
6 UPME will verify with the documents submitted in ENVELOPE No. 1 and documents
7 each PARTICIPANT will submit at the request of the UPME in case of remediable
8 defects. It includes technical, legal and financial requirements.
9

10 **"PROJECTS FOR THE GENERATION OF NON-CONVENTIONAL RENEWABLE
11 ENERGY SOURCES"**: Plants for the generation of electrical energy from
12 Non-Conventional Renewable Energy Sources defined in section 17 of Article 5 of
13 Law 1715 of 2014, whose DATE OF BEGINNING OF COMMERCIAL OPERATION is
14 after the AWARDDING DATE of the AUCTION and before December 2023, and which
15 have a total effective capacity greater than or equal to 5 MW, as long as they invoke,
16 for the duration of the LONG-TERM ENERGY AGREEMENT, the central dispatch in
17 accordance with the regulations in force.
18

19 **"PROPOSAL"**: Documents submitted by a PARTICIPANT which are included in
20 ENVELOPE No. 1 and ENVELOPE No. 2.
21

22 **"QUALIFIED GENERATORS"**: The GENERATOR that meets the
23 PREQUALIFICATION REQUIREMENTS, including the submission and approval of
24 the BID BOND.
25

26 **"QUALIFIED PARTICIPANTS"**: GENERATORS and DISTRIBUTORS that comply
27 with the PREQUALIFICATION REQUIREMENTS established in RESOLUTION
28 MME 40590 OF 2019 and in these BIDDING DOCUMENTS; including the delivery of
29 the sworn statement of economic connection according to the conditions established
30 by the CREG; and the approval of the BID BOND by the UPME.
31

32 **"QUALIFIED DISTRIBUTORS"**: The DISTRIBUTOR that meets the
33 PREQUALIFICATION REQUIREMENTS, including the submission and approval of
34 the BID BOND.
35
36
37

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1 **"QUERY"**: All notifications issued in writing by the Interested Parties and made to the
2 UPME in order to request clarification, interpretations or to ask questions related to
3 the conditions established in the BIDDING DOCUMENTS, including their ANNEXES
4 and which are received at SUBASTACLPE@UPME.gov.co or physically at the single
5 window of the UPME.
6

7 **"PROXY"**: The individual or legal entity who has received power from the
8 PARTICIPANT to represent them at the AUCTION. The PROXY may be domiciled in
9 Colombia or abroad. Joint PROXIES will be accepted.
10

11 **"RESOLUTION MME 40590 OF 2019"**: The Resolution issued by the MME that
12 gathers general principles and procedures to define and implement a procedure that
13 promotes long-term contracting for electrical energy generation projects
14 complementary to the existing procedures in the WHOLESale ENERGY MARKET.
15

16 **"RESOLUTION MME 40591 OF 2019"**: The Resolution issued by the MME by which
17 the second LONG-TERM ENERGY AGREEMENT AUCTION is called and the
18 parameters of its application are defined.
19

20 **"S CURVE"** Graphic representation of the accumulated progress of the generation
21 project as a function of time that allows to compare the real progress with the planned
22 progress, with the purpose of establishing the deviations of the generation project and
23 taking timely corrective actions. It shows the estimated percentage of project progress
24 during the time of execution in the y-axis and the elapsed time in the x-axis. It contains
25 the DATE OF BEGINNING OF COMMERCIAL OPERATION, which includes the
26 connection of the generation project to the national or regional transmission network
27 and which must be submitted by the GENERATORS as a requirement to participate in
28 the AUCTION.
29

30 **"S CURVE AUDITOR"** The individual or legal entity with recognized experience in
31 auditing processes who will be responsible for monitoring the construction and startup
32 of PROJECTS FOR THE GENERATION OF NON-CONVENTIONAL RENEWABLE
33 ENERGY SOURCES in accordance with RESOLUTION MME 40590 OF 2019 and
34 RESOLUTION MME 40591 OF 2019.
35
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1 **"SELLERS"**: GENERATORS OF THE WHOLESALE ENERGY MARKET and/or
2 individual or legal entities, who own or commercially represent PROJECTS FOR THE
3 GENERATION OF NON-CONVENTIONAL RENEWABLE ENERGY SOURCES, who
4 have met the PREQUALIFICATION REQUIREMENTS to participate in the AUCTION.
5

6 **"SIGNATURE DATE"**: The date on which BUYERS and SELLERS who become
7 AWARDEES enter into the AGREEMENT.
8

9 **"SUPPLY START DATE"**: January 1, 2022.
10

11 **"SSPD"**: SUPERINTENDENCIA DE SERVICIOS PÚBLICOS Y DOMICILIARIOS
12 (SUPERINTENDENCE OF PUBLIC UTILITIES), the Superintendence in charge of
13 surveillance, inspection and control of the provision of public utilities, protection of
14 rights and promotion of the duties of users and providers.
15

16 **"STARTUP DATE"**: Date of connection to the National Interconnected System
17 foreseen for a generation plant according to the date indicated in the connection
18 concept issued by the UPME.
19

20 **"STARTUP GUARANTEE"**: The letter of indemnity, bank guarantee or standby letter
21 of credit issued by a FIRST-CLASS FINANCIAL INSTITUTION that covers the
22 obligation of the SELLER to build and timely put into commercial operation the
23 generation project awarded in the AUCTION, which will be received, approved and
24 administered by XM, in accordance with the provisions of the CREG.
25

26 **"AWARDEES"**: PARTICIPANTS selected by the UPME for the execution of the
27 LONG-TERM ENERGY AGREEMENT, in accordance with the BIDDING
28 DOCUMENTS.
29

30 **"AWARDED GENERATOR"**: The GENERATOR selected by the UPME for the
31 execution of the LONG-TERM ENERGY AGREEMENT, in accordance with the
32 BIDDING DOCUMENTS and as a result of the AUCTION.
33
34
35
36

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1 **"AWARDED DISTRIBUTOR"**: The DISTRIBUTOR selected by the UPME for the
2 execution of the LONG-TERM ENERGY AGREEMENT, in accordance with the
3 BIDDING DOCUMENTS and as a result of the AUCTION.
4

5 **"INFORMATION TECHNOLOGY PLATFORM"**: Software designed through
6 integrated modules whose purpose is to allow the UPME to administer and manage
7 the AUCTION, serving as official means to carry out PREQUALIFICATION processes
8 (ENVELOPE NO. 1 and BID BOND), submission of OFFERS (ENVELOPE No. 2) and
9 awarding of the AUCTION, as well as the exchange of notifications between the
10 UPME and PARTICIPANTS, in compliance with paragraph "c" of section 1 of the
11 Appendix of RESOLUTION MME 40590 OF 2019.
12

13 **"SCHEDULE"**: Deadlines established for compliance with the milestones or
14 commitments of the AUCTION process which are compulsory for the PARTICIPANTS
15 and the entities involved.
16

17 **"TRADE AGENT" or "DISTRIBUTOR"**: The company registered before the
18 ADMINISTRATOR OF THE COMMERCIAL EXCHANGE SYSTEM (ASIC) that carries
19 out energy trading activities.
20

21 **"UPME"**: Unidad de Planeación Minero-Energética (Mining and Energy Planning
22 Unit), dealt with in Law 143 of 1994, attached to the MME.
23
24

25 **"VALID OFFER"**: The OFFER that meets the requirements established in
26 RESOLUTION MME 40590 OF 2019 and in these BIDDING DOCUMENTS and that
27 can participate in the AWARDING.
28

29 Hereunder, all references in this document to "Appendix", "Annex", "Chapter", "Form",
30 "Format", "Paragraph", "Section", "Sub-section" and "Point" should be understood as
31 references to appendices, addenda, chapters, forms, paragraphs, sections,
32 sub-sections and points of these BIDDING DOCUMENTS, respectively, unless
33 otherwise expressly stated.
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37

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1 Expressions that are not expressly defined in the BIDDING DOCUMENTS correspond
2 to the definitions that they have in the APPLICABLE PROVISIONS. Technical or
3 scientific words not expressly defined in these BIDDING DOCUMENTS or in the
4 APPLICABLE PROVISIONS shall have the meanings they are granted according to
5 the respective technique or science, and other words shall be understood in their
6 natural and obvious sense, according to the general use thereof.

8 **2.2 Interpretation of the BIDDING DOCUMENTS**

9
10 Except Appendix No. 4: "DRAFT OF THE AGREEMENT" whose rules of interpretation
11 are stated thereof, these BIDDING DOCUMENTS shall be construed in accordance
12 with the APPLICABLE PROVISIONS.

13
14 In case of conflicts or discrepancies between the provisions contained in these
15 BIDDING DOCUMENTS, including their ADDENDA and the provisions contained in
16 any of their ANNEXES, the provisions of the BIDDING DOCUMENTS shall prevail.

17
18 In case of conflicts or discrepancies between the provisions of the BIDDING
19 DOCUMENTS and the APPLICABLE PROVISIONS, the latter shall prevail and
20 among them, the regulations that have greater regulation hierarchy.

23 **3 OBJECT AND SUPPLY START DATE OF THE LONG-TERM ENERGY** 24 **AGREEMENT**

26 **3.1 Object of the AUCTION**

27
28 The UPME invites GENERATORS and DISTRIBUTORS to voluntarily participate in an
29 AUCTION governed by the APPLICABLE PROVISIONS and these BIDDING
30 DOCUMENTS, which aims at the execution of a LONG-TERM ENERGY
31 AGREEMENT between each AWARDED GENERATOR and each AWARDED
32 DISTRIBUTOR. The AGREEMENTS shall be entered into strictly in accordance with
33 the text found in Annex No. 4: "DRAFT OF THE AGREEMENT".

34
35 The period of supply for the AGREEMENTS to be awarded at the AUCTION shall be
36 fifteen (15) years from January first (1), 2022.

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1 **3.2 SELLERS with PROJECTS FOR THE GENERATION OF NON-CONVENTIONAL**
2 **RENEWABLE ENERGY SOURCES**
3

4 In this AUCTION, only PROJECTS FOR THE GENERATION OF NON-
5 CONVENTIONAL RENEWABLE ENERGY SOURCES can participate whose DATE
6 OF BEGINNING OF COMMERCIAL OPERATION is after the AWARDDING DATE of
7 the AUCTION.
8

9 To participate at the AUCTION, the STARTUP DATE must be no later than December
10 thirty-first (31), 2023 for the concept of connection issued by the UPME for
11 PROJECTS FOR THE GENERATION OF NON-CONVENTIONAL RENEWABLE
12 ENERGY SOURCES.
13

14 SELLERS that have PROJECTS FOR THE GENERATION OF NON-
15 CONVENTIONAL RENEWABLE ENERGY SOURCES shall assume construction
16 obligations and BEGINNING OF COMMERCIAL OPERATION set forth in Article 36 of
17 RESOLUTION MME 40590 OF 2019, RESOLUTION MME 40591 OF 2019 and in the
18 AGREEMENT. Compliance with these obligations will be verified by the S CURVE
19 AUDITOR and guaranteed with the STARTUP GUARANTEE.
20

21 The provisions of this section apply without prejudice to the performance of obligations
22 by the SELLER under each LONG-TERM ENERGY AGREEMENT that the SELLER
23 enters into with the BUYER, and other obligations under RESOLUTION MME 40590
24 OF 2019, RESOLUTION MME 40591 OF 2019 and the grounds for performance of
25 the STARTUP GUARANTEE and the PERFORMANCE BOND granted by the
26 SELLER.
27

28 **4 GENERAL ASPECTS OF THE AUCTION**
29

30 Those interested in participating in the AUCTION and being qualified to submit a
31 purchase or sale OFFER in the awarding process must prove before the UPME that
32 they comply with the PREQUALIFICATION REQUIREMENTS.
33

34 Thus, the UPME will make available to the PARTICIPANTS an INFORMATION
35 TECHNOLOGY PLATFORM on which the PROPOSAL will be submitted. This tool will
36 be authorized per the terms established in the SCHEDULE, and it will allow the
37 administration and management of the AUCTION, and it will be the only official means

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1 to carry out the processes of submission of ENVELOPE No. 1, submission of the BID
2 BOND, ENVELOPE No. 2, as well as the exchange of all notifications between the
3 UPME and the PARTICIPANTS, once the AUCTION process has begun.
4

5 The UPME will verify the compliance with PREQUALIFICATION REQUIREMENTS and
6 will notify each one of the PARTICIPANTS if they meet them, or if the UPME finds
7 faults, it will notify the respective PARTICIPANT about these faults and will grant them a
8 term to correct said faults in accordance with the provisions of the SCHEDULE. In case
9 of failure to correct the faults in a timely manner, the UPME will notify the
10 PARTICIPANT of the failure to meet the PREQUALIFICATION REQUIREMENTS, as
11 the case may be.
12

13 DISTRIBUTORS that meet the PREQUALIFICATION REQUIREMENTS, including the
14 submission and approval of the BID BOND, will be considered QUALIFIED
15 DISTRIBUTORS and may submit one or more purchase OFFERS at the AUCTION.
16 Failure to submit OFFERS shall not be cause for the execution of the BID BOND of the
17 OFFER or OFFERS to the respective DISTRIBUTOR.
18

19 GENERATORS must submit the sworn statement signed by the LEGAL
20 REPRESENTATIVE of the PARTICIPANT with exact, truthful, timely and verifiable
21 information on existing economic links with other SELLERS that could participate in the
22 AUCTION, as well as any business control relations, to have all relevant information
23 that allow the calculation of the COMPETITIVE CONDITIONS indicator.
24

25 PARTICIPATING GENERATORS that meet the PREQUALIFICATION
26 REQUIREMENTS, including the submission and approval of the BID BOND, will be
27 considered QUALIFIED GENERATORS and may submit one or more sale OFFERS at
28 the AUCTION. Failure to submit OFFERS shall not be cause for the execution of the
29 BID BOND of the OFFER or OFFERS to the respective GENERATOR.
30

31 The EVALUATION COMMITTEE will review the BID BONDS¹ submitted in a timely
32 manner, and if necessary, will ask the respective PARTICIPANT for any clarifications or
33 corrections, for which the COMMITTEE will grant a term of up to three (3) business
34 days. PARTICIPANTS that do not correct the BID BOND within the term will be
disqualified and will not be able to submit ENVELOPE No. 2.

¹ Forms 3A, 3B, 3C, 3D and 3E.

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1 QUALIFIED DISTRIBUTORS and QUALIFIED GENERATORS may submit purchase or
2 sale OFFERS as the case may be, which will be uploaded to the INFORMATION
3 TECHNOLOGY PLATFORM according to the date defined in the SCHEDULE. Once
4 the ECONOMIC OFFERS of ENVELOPE No. 2 have been entered, the UPME will
5 continue with the AWARDED process described in these BIDDING DOCUMENTS.
6

7 In general, all the information submitted in compliance with Articles 30 and 31 of
8 RESOLUTION MME 40590 OF 2019, sections 7.1 and 7.2 of these BIDDING
9 DOCUMENTS may be corrected within the periods established by UPME for such
10 purpose. In case the requested documents are not submitted in a timely manner or if
11 the fault was not corrected in the terms requested by the UPME, the PARTICIPANT will
12 be notified through the INFORMATION TECHNOLOGY PLATFORM that they do not
13 comply with the PREQUALIFICATION REQUIREMENTS and, consequently, that they
14 will not be qualified to submit ENVELOPE No. 2.
15

16 The AUCTION will be a double-headed sealed-envelope, of voluntary participation for
17 GENERATORS and DISTRIBUTORS. Each AWARDED GENERATOR shall enter into
18 an AGREEMENT with each AWARDED DISTRIBUTOR, which they shall execute at
19 their own risk. Each of the AGREEMENTS must be registered before the ASIC
20 complying with the requirements established in the APPLICABLE PROVISIONS. The
21 maximum date of registration of the AGREEMENTS shall be that established in clause
22 "VIII: AGREEMENT REGISTRATION, Section 8.01 Agreement Registration" of the
23 DRAFT AGREEMENT.
24

25 The execution of the AUCTION, the selection of AWARDEES and the execution of
26 AGREEMENTS between them do not imply any type of assumption of risk on the part
27 of the UPME, the MME, or any other state agency.
28

29 The AUCTION will be carried out in the terms foreseen in the SCHEDULE contained in
30 section 5 of the BIDDING DOCUMENTS and will have an AUCTION AUDITOR paid by
31 the UPME.
32

33 Costs and expenses incurred by PARTICIPANTS for the analysis of BIDDING
34 DOCUMENTS, submission of notes, preparation and submission of OFFERS,
35 constitution of process guarantees, attendance to meetings and any other cost or
expense related to the participation in the AUCTION or the execution of AGREEMENTS

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1 are the exclusive responsibility of the PARTICIPANTS.
2

3 **4.1 Basis of the AUCTION** 4

5 This AUCTION is governed by the APPLICABLE PROVISIONS and these BIDDING
6 DOCUMENTS, and it is based on Laws 142 and 143 of 1994, 1665 of 2013, 1715 of
7 2014 and 1844 of 2017, the DUR MME, Decree 570 of 2018, RESOLUTION
8 MME 40590 OF 2019 and RESOLUTION MME 40591 OF 2019 and the resolutions of
9 the CREG, especially operating regulations and the COMPETITIVE CONDITIONS
10 together with their amendments and other applicable rules.

11
12 Exercising the role of attorney of the competition, the Superintendence of Industry and
13 Commerce pronounced on the content of RESOLUTION MME 40590 OF 2019 and
14 RESOLUTION MME 40591 OF 2019, the analysis of its observations is incorporated
15 in the legal basis of such administrative acts.

16
17 Participation in the AUCTION is voluntary and therefore the execution of
18 AGREEMENTS is the result of concurrence of wills resulting from the purchase and
19 sale OFFERS of AWARDEES, in accordance with the rules of the Civil and
20 Commercial Codes and with the provisions of the CREG on bilateral energy supply
21 AGREEMENTS.

22 **4.2 Contractual relationship between AWARDEES who enter into AGREEMENTS** 23

24 Each AWARDED GENERATOR will enter into LONG-TERM ENERGY
25 AGREEMENTS with each AWARDED DISTRIBUTOR. As a consequence of the
26 execution of each bilateral AGREEMENT between BUYERS and SELLERS,
27 obligations will arise between the parties.
28

29
30 Subject to the provisions of these BIDDING DOCUMENTS regarding the validity of the
31 OFFERS, the COMPETITIVE CONDITIONS and the AWARDED rules, the
32 submission of purchase OFFERS implies that the DISTRIBUTOR shall indicate the
33 price at which they are willing to buy from AWARDED GENERATORS who have
34 submitted sale OFFERS.

35
36 DISTRIBUTORS who become AWARDEES shall buy prorate quantities to those
37 offered by each AWARDED GENERATOR, up to the quantities indicated in their

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1 purchase OFFER, without being subject to minimum quantities. DISTRIBUTORS who
2 are not AWARDEES shall have no obligation to buy.

3
4 Subject to the provisions of these BIDDING DOCUMENTS regarding the validity of
5 OFFERS, the COMPETITIVE CONDITIONS and the rules of AWARDING, the
6 submission of OFFERS shall comply with the conditions set forth in RESOLUTION
7 MME 40590 OF 2019, RESOLUTION MME 40591 OF 2019, the DRAFT
8 AGREEMENT, and other documents issued by the Ministry of Mines and Energy or
9 other competent authorities.

10
11 It is considered that PARTICIPANTS and in general any PERSON who directly or
12 indirectly participates in the AUCTION knows the legal basis of this section and in
13 general the APPLICABLE PROVISIONS.

14
15 The mere submission of a PROPOSAL by a PARTICIPANT implies their full and
16 unconditional acceptance of the provisions of these BIDDING DOCUMENTS, without
17 any limitation or restriction.

18
19 Each AGREEMENT will only bind its parties, that is to say, the respective SELLER
20 and BUYER. The AGREEMENT will be governed by the rules of private law and for its
21 execution it must be registered before the ASIC in accordance with the APPLICABLE
22 PROVISIONS.

23
24 AWARDEES shall not have any contractual relationship with the MME, the UPME or
25 any entity of the Colombian State. Under no circumstances will the MME, the UPME
26 or any entity of the Colombian State assume obligations or responsibilities with the
27 PARTICIPANTS in the AUCTION.

28 **4.3 Powers and Responsibilities of the UPME**

29
30 Without prejudice to other powers assigned in the APPLICABLE PROVISIONS, in
31 relation to this AUCTION, the UPME is empowered to do the following:

- 32
33 a) Prepare and modify the BIDDING DOCUMENTS;
34 b) Hire the AUCTION AUDITOR;
35 c) Receive and keep PARTICIPANTS' envelopes No. 1 and No. 2, as well as any
36
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other information that clarifies or adds to them;

- d) Request PARTICIPANTS information the UPME deems convenient to explain, complement or correct the documentation they have submitted;
- e) Send the SSPD the necessary information so that it can carry out risk assessment and monitoring of the agents that participated in the AUCTION, as well as for other purposes of its responsibility;
- f) Prepare the regulations and/or manuals the UPME considers necessary to carry out the entrusted activities;
- g) Establish, operate and maintain the INFORMATION TECHNOLOGY PLATFORM of the AUCTION;
- h) Offer and give agents training and assistance deemed necessary in the management and operation of the INFORMATION TECHNOLOGY PLATFORM of the AUCTION;
- i) Establish formal channels of communication between the PARTICIPANTS and the UPME during the AUCTION;
- j) Receive, administer, request modifications, approve, collect or return, as the case may be, BID BONDS for OFFERS submitted by PARTICIPANTS;
- k) Keep historical records in electronic media of all the operations carried out in development of the AUCTION in accordance with the APPLICABLE PROVISIONS regarding the conservation of documents;
- l) Reject OFFERS in the cases indicated in the APPLICABLE PROVISIONS and in these BIDDING DOCUMENTS;
- m) Report irregular actions that may happen in the AUCTION process to the competent authorities, without prejudice to the functions attributed to the AUCTION AUDITOR;
- n) Suspend the AUCTION when the UPME deems it convenient or when it is required by the AUCTION AUDITOR, in the terms of paragraph h, section 1 of the Annex of RESOLUTION MME 40590 OF 2019.
- o) Disclose the ceiling price or maximum Limit defined by the CREG after receiving the OFFERS from the QUALIFIED PARTICIPANTS and before beginning the AWARDING process of the AUCTION;

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- 1 p) Verify that the COMPETITIVE CONDITIONS are met during the AWARDDING
2 process;
3
4 q) Declare the NON-AWARDING of the AUCTION when any of the causes
5 indicated in these BIDDING DOCUMENTS occurs;
6
7 r) Declare the closing of the AUCTION and inform AWARDEES and the general
8 public of the results;
9
10 s) Publish on its website the PARTICIPANTS, quantities and prices that have
11 been awarded as a result of the AUCTION, in the terms of paragraph k,
12 section 1 of the Annex of RESOLUTION MME 40590 OF 2019.
13
14 t) Submit a report to the MME, within ten (10) days following the end of the
15 AUCTION, which evaluates, without ambiguity, the AWARDDING of the
16 AUCTION and the results obtained.
17
18 u) Disclose all non-confidential information that has been recorded by
19 PARTICIPANTS within the time limits established in RESOLUTION
20 MME 40590 OF 2019 and in the AUCTION SCHEDULE;
21
22 v) Verify that the AWARDEES of the AUCTION enter into the AGREEMENTS in
23 accordance with the DRAFT AGREEMENT;
24
25 w) Other responsibilities assigned by the APPLICABLE PROVISIONS.

26 In accordance with Article 13 of RESOLUTION MME 40590 OF 2019, it is the power
27 of the Ministry of Mines and Energy to define the DRAFT AGREEMENT in which the
28 obligations resulting from the AWARDDING process will be become effective.

29 **4.4 Participation Rights**

30 The BIDDING DOCUMENTS will be available to the interested parties on the UPME
31 website at no cost; therefore, PARTICIPANTS do not have to pay participation rights
32 to submit an OFFER at the AUCTION.

33 **4.5 Designation of the Legal Representative or Proxy by the PARTICIPANT**

34 The interested parties intending to participate in the AUCTION must designate one (1)
35 LEGAL REPRESENTATIVE or PROXY, and provide an address in the Republic of
36

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1 Colombia, a telephone number and an e-mail address.

2
3 The LEGAL REPRESENTATIVE or PROXY shall be fully authorized by the
4 PARTICIPANT, without any restriction, to receive notifications and notices in their
5 name and representation, and to make queries, comments or requests for
6 modification of the BIDDING DOCUMENTS in the name of the PARTICIPANT.

7
8 PARTICIPANTS may substitute through the INFORMATION TECHNOLOGY
9 PLATFORM their LEGAL REPRESENTATIVE or PROXY, and change their address,
10 telephone numbers or e-mail address, up to three (3) business days prior to the date
11 established in the AUCTION SCHEDULE for the delivery of ENVELOPE No. 2, upon
12 request by physical means to the UPME. Once the request is received, the UPME will
13 enable the INFORMATION TECHNOLOGY PLATFORM for the PARTICIPANT to
14 proceed with the respective update within 24 hours.

15
16 **4.6 Request for CLARIFICATION of the BIDDING DOCUMENTS and their ANNEXES**

17
18 All pages and lines of the BIDDING DOCUMENTS and their ANNEXES are duly
19 numbered so that queries, comments and requests for modification make clear and
20 unequivocal references on the subjects to which they refer. Consultations, comments
21 or requests for modification that do not expressly mention the pages and lines, or in
22 which it cannot be deduced to which part of the BIDDING DOCUMENTS they refer will
23 be returned for their corresponding review and clarification.

24
25 All queries, comments and requests for modification of the BIDDING DOCUMENTS
26 will be studied and answered by the UPME, which will provide the answers it deems
27 appropriate. Each answer will include the respective consultation or comment of the
28 PARTICIPANT that made them. Said answers will be sent to the e-mail address of the
29 person who made them and will additionally be available on the UPME website.

30
31 **4.7 Deadline for submitting queries about the BIDDING DOCUMENTS and ANNEXES**

32
33 Queries, comments or requests for modification may be made on the BIDDING
34 DOCUMENTS within the dates indicated in the SCHEDULE.
35
36

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4.8 Procedure for making queries about the BIDDING DOCUMENTS and ANNEXES

Queries and other correspondence about the content of the BIDDING DOCUMENTS and their ANNEXES shall be submitted in writing and in Spanish, stating that it is about SUBASTA CLPE UPME No. 02 - 2019 and addressed like this:

Director General de la UPME
subastaCLPE@upme.gov.co
Av. Calle 26 # 69 D-91, Centro Empresarial Arrecife Torre 1, Piso 9,
Bogotá, D.C., Colombia
Código Postal 110931

Queries may be made using this email: subastaCLPE@upme.gov.co, or physically filed at the single window of the UPME, directly at the headquarters of the UPME, during its office hours. Physical queries should also be sent by e-mail, in digital and editable form.

It will be understood that the UPME has received them when a copy of the communication to which the UPME has assigned a filing number: (i) is received through the UPME filing window, or (ii) is received via e-mail. Notifications received after the official UPME closing time will be deemed to be received on the following business day.

Answers to queries will be communicated through the UPME website or by letter or e-mail.

After the submission of ENVELOPE No. 1 by PARTICIPANTS, the exchange of communication will take place on the INFORMATION TECHNOLOGY PLATFORM.

4.9 ADDENDA:

If the UPME considers it necessary to modify the BIDDING DOCUMENTS, it will issue an ADDENDUM, which will be communicated on the website, considering the maximum term established for this purpose in the SCHEDULE.

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

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1 It is the sole responsibility of PARTICIPANTS to check the website that the UPME has
2 set up for the publication of the information referred to herein.
3

4 All notifications addressed to PARTICIPANTS through the UPME website will be
5 understood as having been notified to the LEGAL REPRESENTATIVE or PROXY on
6 the date of their publication on the official page of the Unit.

7 **4.10 Language**

8 All queries, questions, answers, actions and procedures related to the AUCTION, as
9 well as all documents submitted with the PROPOSAL, must be submitted in Spanish
10 or accompanied by official translations into Spanish made by an authorized certified
11 translator in accordance with the APPLICABLE PROVISIONS. In the event that any
12 discrepancy is detected between the texts in different languages of any document, the
13 Spanish text shall prevail.
14

15 **4.11 Confidentiality and Publication of Information of PARTICIPANTS**

16 The information submitted by PARTICIPANTS during the AUCTION will be
17 confidential until the AWARDING and can only be known by the UPME.
18

19 Once the AWARDING is completed, the Ministry of Mines and Energy will have open
20 access to this information, respecting the legal provisions in force that refer to the
21 treatment of personal information and confidentiality restrictions established by the
22 UPME regarding the information described in this section.
23

24 In addition to the information that is confidential by law, the UPME establishes that the
25 following information is confidential and will not be published:
26

- 27
- 28 a) Shareholder structure.
 - 29 b) Copies of documents that prove the identification of natural PERSONS involved in
30 the process.
31

32 Once the AWARDING process has finished, on the date planned in the SCHEDULE, the
33 UPME will disclose all non-confidential information that has been registered by
34 PARTICIPANTS, which may be checked by any PERSON, during business days and
35
36

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business hours at the UPME headquarters or by means of procedures defined by the UPME for this purpose.

5 AUCTION SCHEDULE

The SCHEDULE on the basis of which the AUCTION will be developed is found below. In the event that the UPME decides to change any of these dates, it will issue the corresponding ANNEX.

SCHEDULE FOR CLPE AUCTION No. 02 - 2019		
EVENT		DATE
1.	Publication of the BIDDING DOCUMENTS.	Aug-07-2019
2.	Training for the INFORMATION TECHNOLOGY PLATFORM and AWARDING process.	Aug-20-2019 to Aug-30-2019
	Request by PARTICIPANTS of their username and password for the INFORMATION TECHNOLOGY	Aug-28-2019 to Sep-03-2019
4.	Entry of information of ENVELOPE No. 1 by PARTICIPANTS on the INFORMATION TECHNOLOGY	Sep-04-2019 to Sep-06-2019
5.	Deadline for PARTICIPANTS to send the physical documents of ENVELOPE No. 1.	Sep-06-2019
6.	Publication of PARTICIPANTS.	Sep-07-2019
7.	Deadline for notification to PARTICIPANTS of the review and evaluation results of ENVELOPE No. 1.	Sep-16-2019
8.	Deadline to add ADDENDA to the BIDDING DOCUMENTS.	Sep-16-2019
9.	Physical delivery and entry of the BID BOND by DISTRIBUTORS in the INFORMATION TECHNOLOGY PLATFORM.	Sep-20-2019
10.	Publication by the UPME of the names of QUALIFIED DISTRIBUTORS and their financial statements.	Sep-24-2019
11.	Physical delivery and entry of the BID BOND by GENERATORS in the INFORMATION TECHNOLOGY PLATFORM.	Oct-07-2019

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12.	Submission of the envelope containing the ceiling price or Maximum Limit and entry on the INFORMATION TECHNOLOGY PLATFORM.	Oct-22-2019
13.	Submission of the Target Demand on the INFORMATION TECHNOLOGY PLATFORM.	Oct-22-2019
14.	Entry of ENVELOPE No.2 by PARTICIPANTS in the INFORMATION TECHNOLOGY PLATFORM.	Oct-22-2019
15.	Assessment of the COMPETITIVE CONDITIONS.	Oct-22-2019
16.	AWARDING.	Oct-22-2019
17.	Publication of the AWARDING and information.	Oct-22-2019
18.	Deadline for submitting appeals.	Nov-06-2019
19.	End of the AUCTION.	With the determination of the administrative act of AWARDING.
20.	Sending of the report by the AUDITOR to the MME.	Five (5) business days after the end of the AUCTION.
21.	Sending of the result of the AUCTION by the UPME to the SSPD.	Ten (10) business days after the end of the AUCTION.
22.	Reference of Report of the UPME by the MME.	Ten (10) business days after the end of the AUCTION.
23.	Delivery to the ASIC of the STARTUP GUARANTEE for approval.	Within ten (10) business days after the end of the AUCTION.
24.	Signature of the AGREEMENTS.	Within twenty (20) business days after the end of the AUCTION.
25.	Delivery of bilateral guarantees for counterparty review and receipt of approval of the STARTUP GUARANTEE.	Within twenty (20) business days after the end of the AUCTION.
26.	Deadline for the approval of guarantees by the counterparty.	Within ten (10) business days after signing the Agreement.



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27.	Deadline for the correction of guarantees by the counterparty.	Within ten (10) business days following notification to the counterparty of the need to make adjustments to the guarantee.
28.	Deadline for informing the UPME of the counterparty's compliance in the granting of bilateral guarantees.	Within fifteen (15) business days following the expiration of the term for the submission of the guarantee.
29.	Beginning of the process for the return or execution of BID BONDS of the OFFER.	Up to two (2) months counted from the receipt of the last compliance report of AWARDEES.
30.	The registration of AGREEMENTS will be carried out by the parties in the terms established in Clause VIII of the LONG-TERM ENERGY AGREEMENT.	

6 SUBMISSION OF PROPOSALS

6.1 Registration of PARTICIPANTS before the UPME.

PARTICIPANTS must physically send the documents that prove who will be their LEGAL REPRESENTATIVE or PROXY who, among other powers, will be in charge of administering the user that will interact on the INFORMATION TECHNOLOGY PLATFORM so that the UPME sends them a user and a respective password to the e-mail that the PARTICIPANT registers in the application letter, which must be sent to the UPME, in physical format, and at least five (5) business days before the date established in the SCHEDULE for the submission of ENVELOPE No. 1.

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1
2 PARTICIPANTS that wish to submit OFFERS as DISTRIBUTORS and as
3 GENERATORS shall indicate such condition in their registration application in
4 order to generate different users and passwords.

5
6 **6.2 Powers of the LEGAL REPRESENTATIVE or PROXY**

7
8 The powers of the LEGAL REPRESENTATIVE or those granted to the PROXY
9 shall be sufficiently broad so that they may bind the PARTICIPANT and sign in
10 their name and representation all documents that may be required, as described in
11 these BIDDING DOCUMENTS. These powers must also include those necessary
12 to represent the PARTICIPANT widely and in general in the actions of the
13 AUCTION. The LEGAL REPRESENTATIVE and the PROXIES, if any, shall be
14 fully empowered by the PARTICIPANT to do the following:

- 15 a) To bind the PARTICIPANT unconditionally, irrevocably and unrestrictedly;
16 b) To submit the PROPOSAL;
17 c) To represent the PARTICIPANT without any limitation;
18 d) To discuss with the UPME all matters that may arise in relation to the
19 documents submitted in ENVELOPE No. 1, ENVELOPE No. 2 and, in general,
20 in all documents and procedures related to AUCTION and BIDDING
21 DOCUMENTS;
22 e) To answer on behalf of the PARTICIPANT and with binding effect all
23 questions or clarifications that the UPME makes;
24 f) To receive notifications in the name and representation of the
25 PARTICIPANT;
26 g) If the PARTICIPANT becomes an AWARDEE, to sign the AGREEMENT
27 and assume on behalf of the PARTICIPANT the obligations derived from it,
28 without any limitation;
29 h) To sign on behalf of the PARTICIPANT any document related to this
30 AUCTION or the AGREEMENT, including, among others, guarantees,
31 statements, forms, OFFERS, clarifications and, in general, any document
32 related to making OFFERS, the execution of the AGREEMENT and compliance
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- 1 with the requirements and obligations related to the AUCTION;
2 i) To receive, desist, compromise, commit, renounce, have rights, assume
3 obligations, pay and collect;
4 j) To be notified of any action during the AUCTION, and
5 k) PROXIES shall have the power to substitute and regain power.
6

7 These powers shall be accredited by means of the submission of the respective
8 certificate of existence and legal representation issued by the chamber of
9 commerce of the place of domicile of the company or, according to the nature of
10 the PARTICIPANT of the document that acts in accordance with the APPLICABLE
11 PROVISIONS.
12

13 If the LEGAL REPRESENTATIVE of a PARTICIPANT does not have the
14 aforementioned powers or that such powers are not clearly understood from the
15 document of existence and legal representation of the company, they must submit
16 the corresponding authorization granted by the competent corporate body which
17 must contain the powers listed in this section and indicate the name and identity
18 card number of the LEGAL REPRESENTATIVE to whom such powers are
19 granted. For this purpose, a copy or an extract of the minutes of the meeting of
20 said corporate body must be provided, which shall be certified by the company
21 secretary or by the LEGAL REPRESENTATIVE.
22

23 The information to be provided in relation to the LEGAL REPRESENTATIVE or
24 the PROXY shall be the following: name, identity card number, address, telephone
25 numbers and e-mail address.
26

27 If the PARTICIPANT acts through a PROXY, the LEGAL REPRESENTATIVE
28 granting the power must be duly empowered to grant the aforementioned powers.
29 The power by which the PROXY is designated shall have the powers to represent
30 the PARTICIPANT in the terms of this section and shall state name, identity card
31 number, address, telephone numbers and e-mail address, and shall be included in
32 ENVELOPE No. 1.
33

34 **6.3 Place of granting Power**

35 The power granted outside of Colombia for the purpose of designating or
36

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1 appointing the PROXY shall be:

2

3

4

a) Duly authenticated by the consul or diplomatic agent of the Republic of Colombia in said country or, otherwise, by that of a friendly Nation.

5

6

7

8

b) Paid to the Ministry of Foreign Affairs of Colombia.

9

10

11

12

c) In Spanish, if this is the language of the country of the issuer, or translated into Spanish by a certified translator authorized for such purpose in Colombia.

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

13

14

15

For the powers granted in Colombia, it will be sufficient and necessary to submit them face-to-face before a notary public.

16

17

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20

Without prejudice to the foregoing, all powers shall comply with the APPLICABLE PROVISIONS and especially the provisions of Articles 74 and 251 of the General Code of Process.

21

6.4 AUCTION PARTICIPANTS

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Only DISTRIBUTORS of the WHOLESALE ENERGY MARKET who have already registered as PARTICIPANTS before the UPME may participate in the AUCTION and make purchase OFFERS, in accordance with sections 6.1. and 6.2 of the BIDDING DOCUMENTS.

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Only the following PEOPLE who have registered as PARTICIPANTS before the UPME may participate in the AUCTION and make sale OFFERS in compliance with the PREQUALIFICATION REQUIREMENTS under the following legal entities: (i) GENERATORS of the WHOLESALE ENERGY MARKET who are trade representatives of generation plants; (ii) GENERATORS of the WHOLESALE ENERGY MARKET who are owners, or authorized by the owner as representatives, of PROJECTS FOR THE GENERATION OF NON-CONVENTIONAL RENEWABLE ENERGY SOURCES, or (iii) individual or legal entities who are owners, or authorized by the owner as representatives, of

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PROJECTS FOR THE GENERATION OF NON-CONVENTIONAL RENEWABLE ENERGY SOURCES.

For the purposes of these BIDDING DOCUMENTS, it shall be understood that the owner of the PROJECT FOR THE GENERATION OF NON-CONVENTIONAL RENEWABLE ENERGY SOURCES is the individual or legal entity who has received a favorable concept from the UPME regarding the request for connection to the National Interconnected System.

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

6.5 Communication to PARTICIPANTS

All notifications addressed to PARTICIPANTS shall be made through the representative who may be the LEGAL REPRESENTATIVE or the PROXY, as the case may be, on the INFORMATION TECHNOLOGY PLATFORM, in which case it shall be understood as received on the date on which the transmission is completed, and said notification shall be understood as sent to the LEGAL REPRESENTATIVE or the PROXY registered before the UPME.

After the submission of ENVELOPE No. 1 by PARTICIPANTS, the exchange of notifications will only take place on the INFORMATION TECHNOLOGY PLATFORM unless some type of contingency arises and the UPME, by the publication of a notice in its web page, authorizes the use of an alternative means of communication.

6.6 Independence of PARTICIPANTS.

All AUCTION PARTICIPANTS will base the submission of their PROPOSALS for this AUCTION on their own studies, research, examinations, inspections, visits, interviews and others.

6.7 Liability

The submission of a PROPOSAL constitutes acknowledgement and acceptance by the PARTICIPANT that are not limited by any document or information made

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1 available by Colombia, the MME, the CREG, the UPME or any state agency or
2 entity, its public servants, advisors and agents, or in the materials provided (or
3 statements made) during the course of any visit to the UPME, any informational
4 memorandum or descriptive documents. Especially, nothing contained in the
5 BIDDING DOCUMENTS constitutes a guarantee or statement with respect to the
6 achievement or reasonableness of results, perspectives or operational or financial
7 performance, if any.

8
9 Neither the receipt of the BIDDING DOCUMENTS by PARTICIPANTS nor any
10 information provided during the AUCTION or subsequently communicated to any
11 PARTICIPANT, whether orally or in writing with respect to the AUCTION, shall or
12 may be considered as investment, legal, regulatory, tax or other type of advice in
13 favor of any PARTICIPANT by the UPME.

14
15 The limitation of liability set forth in this section also affects information provided
16 through DISCLAIMERS, ADDENDA or any other form of communication.

17 **6.8 Acceptance by PARTICIPANTS**

18
19 The mere submission of documents to accredit the PREQUALIFICATION
20 REQUIREMENTS by PARTICIPANTS shall constitute, without the need for any
21 subsequent act, their acceptance of all the provisions of Sections 6.6 and 6.7 of
22 these BIDDING DOCUMENTS.
23

24 **7 PREQUALIFICATION REQUIREMENTS**

25
26 The EVALUATION COMMITTEE of the UPME must verify that PARTICIPANTS
27 comply with the PREQUALIFICATION REQUIREMENTS established in
28 RESOLUTION MME 40590 OF 2019. The evaluation of the PREQUALIFICATION
29 REQUIREMENTS shall be carried out in compliance with the provisions of the
30 SCHEDULE.
31

32 **7.1 Content of ENVELOPE No. 1 - GENERATORS**

33
34 GENERATORS shall include the following documents in ENVELOPE No. 1:
35
36

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1 **Technical requirements:**

2
3 a) The UPME number of the notification of registration in the record of
4 electrical energy generation projects, at least phase 2, whose certificate must
5 be in force.

6
7 b) The UPME number of the notification in which the concept of connection to
8 the National Interconnected System is approved. OFFERS OF PROJECTS FOR
9 THE GENERATION OF NON-CONVENTIONAL RENEWABLE ENERGY
10 SOURCES whose start date planned in the concept of connection of the UPME
11 is later than December thirty-first (31), 2023 will not be qualified.

12
13 c) A statement in Form No. 1 that PROJECTS FOR THE GENERATION OF
14 NON-CONVENTIONAL RENEWABLE ENERGY SOURCES have a total
15 effective capacity greater than or equal to 5 MW. For generation projects with a
16 capacity equal to or greater than 5 MW and less than 20 MW, a statement
17 signed by the LEGAL REPRESENTATIVE of the respective GENERATOR
18 must be submitted, based on the duration of the AGREEMENT to the central
19 dispatch in accordance with the regulations in force.

20
21 d) The detailed SCHEDULE of the project with instructions of the critical
22 route, the DATE OF BEGINNING OF COMMERCIAL OPERATION of the
23 PROJECT FOR THE GENERATION OF NON-CONVENTIONAL RENEWABLE
24 ENERGY and the S CURVE with at least the following construction and
25 execution milestones: (i) Prior queries; (ii) granting of the environmental license
26 for the PROJECT FOR THE GENERATION OF NON-CONVENTIONAL
27 RENEWABLE ENERGY; (iii) beginning of construction of the PROJECT FOR
28 THE GENERATION OF NON-CONVENTIONAL RENEWABLE ENERGY; (iv)
29 purchase of main equipment; (v) testing period; (vi) environmental licenses or
30 permits associated with the connection; (vii) implementation of the connection;
31 (viii) completion of the construction of the connection; and (ix) DATE OF
32 BEGINNING OF COMMERCIAL OPERATION of the PROJECT FOR THE
33 GENERATION OF NON-CONVENTIONAL RENEWABLE ENERGY.

34 In general, GENERATORS must meet the requirements set forth in MME

35
36

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1 RESOLUTION 40590 OF 2019.

2
3 **Legal requirements:**

- 4
5 a) Letter of submission of the PREQUALIFICATION documents of ENVELOPE
6 No. 1 (including statements). Form No. 1.
7
8 a) Documents accrediting the existence and legal representation of the
9 PARTICIPANT and their address. The documents may not have a term longer
10 than thirty (30) calendar days.
11
12 b) In the event that the PARTICIPANT does not have the nature of a company,
13 the PARTICIPANT must submit the documents that accredit their existence
14 (laws, decrees, agreements) and legal representation and its statutes.
15
16 c) Copy of the authorizations of the competent bodies so that the PARTICIPANT
17 attends the AUCTION and makes a binding and unconditional OFFER,
18 including the pertinent authorizations to the LEGAL REPRESENTATIVE of the
19 PARTICIPANT.
20
21 d) The power granted to the PARTICIPANT'S PROXY in accordance with the
22 provisions of these BIDDING DOCUMENTS.
23
24 e) Letter of authorization by the Owner of the Project to the PARTICIPANT to
25 participate in the AUCTION. This is only if the PARTICIPANT is not the one
26 who processed the registration in phase 2 of the UPME nor who carried out the
27 procedures for approval of the connection.
28
29 f) Document from the competent corporate body (Shareholders meeting,
30 meeting of partners or the competent corporate body) in which it is stated the
31 obligation to change the PARTICIPANT into a public utility company. In the
32 case of entities with another legal nature, they should submit authorizations of
33 such case. The foregoing is without prejudice to the existence of any other
34 entity authorized by Law 142 of 1994 to provide public utilities.
35
36 g) To submit the declaration of economic ties with other GENERATORS.

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1 Once the revision process of ENVELOPE No. 1 has finished, the
2 GENERATORS that have complied with the requirements and/or have
3 corrected them, must submit the original BID BOND in accordance with the
4 SCHEDULE; they have to submit it physically before the UPME and upload it
5 on the INFORMATION TECHNOLOGY PLATFORM.

6
7 The only ones who will be able to participate as GENERATORS are the following:

8
9 (i) A legal PERSON domiciled in Colombia who can carry out the generation and
10 who is a public utility company or who is authorized for that purpose by Law 142 of
11 1994; or

12 (ii) A legal PERSON domiciled in Colombia that is not a public utility company, in
13 which case they must submit the document stating the obligation to change into a
14 public utility company, which is dealt with in paragraph k of this section; or

15
16 (ii) A natural PERSON, either Colombian or an alien, who must submit a
17 written promise of future partnership with the requirements stated in the following
18 section, or

19
20 (iii) One or more individual or legal entities, either Colombian or foreign, by
21 means of promise of future partnership, in which case they must submit the
22 foregoing documents (except for the commitment to change into a public utility
23 company referred to in paragraph k) for each of them, together with a written
24 promise of future partnership.

25
26 The promise of future partnership must contain: (1) the shareholders and their
27 participation in the capital of the company; (2) the initial contributions to be made
28 by each of them; (3) the bylaws expressly stating that its shareholders will be
29 jointly and severally liable for all obligations acquired in the event of being an
30 AWARDEE; (4) that the company to be incorporated will be a Public Utility
31 Company domiciled in Colombia, which will assume the obligations and rights as a
32 GENERATOR in the event of being an AWARDEE; (5) the legal formalities
33 required to make the incorporation of the future company valid; (6) a term or
34 condition that establishes the time in which the future company is to be
35 incorporated, which must occur prior to the SIGNATURE DATE; (7) an express
36

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1 provision stating that in the event of being an AWARDEE, the future company
2 shall sign the AGREEMENTS with the AWARDED DISTRIBUTORS; (8) the term
3 of the social AGREEMENT shall be at least the term of the LONG-TERM
4 ENERGY AGREEMENT; and (9) any other legally required requirement for the
5 validity of the promise of the AGREEMENT of future companies.
6

7 In general, GENERATORS must meet the requirements set forth in MME
8 RESOLUTION 40590 OF 2019.
9

10 The above documentation, regarding the compliance with legal requirements,
11 must be uploaded to the INFORMATION TECHNOLOGY PLATFORM and
12 physically submitted to the UPME in accordance with the deadline stated in the
13 SCHEDULE. In the development of the assessment process of compliance with
14 these requirements, the content of the physical information will prevail over the
15 information entered on the platform.
16

17 **Financial requirements:**

18 a) To have a BID BOND.
19

20
21 b) In order to calculate the value of the constitution of the guarantee,
22 GENERATORS shall report the maximum amount of energy available for sale
23 in one day in kilowatt hour [kWh-day], expressed in positive whole numbers.
24 This value shall consider all OFFERS submitted for each project, and the
25 restrictions submitted pursuant to the provisions of section vii, paragraph b of
26 Article 20 of Resolution MME 40590.
27

28 c) Certification of the subscribed capital and the shareholder structure of the
29 PARTICIPANT, signed by the fiscal auditor or, if any, it must be signed by the
30 LEGAL REPRESENTATIVE. The date of issuance may not exceed thirty (30)
31 calendar days prior to the submission of ENVELOPE No. 1.
32

33 In general, GENERATORS must meet the requirements set forth in MME
34 RESOLUTION 40590 OF 2019.
35

36 **7.1.1 Delivery and Processing of Information**

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1 GENERATORS must complete the information requested in the INFORMATION
2 TECHNOLOGY PLATFORM, which will contain the basic information of the person
3 submitting ENVELOPE No. 1 and the information related to the legal, financial and
4 technical requirements delivered to the UPME, as well as the uploading of the
5 required documents in PDF format.

6
7 The documentation, regarding the compliance with legal requirements, must be
8 uploaded to the INFORMATION TECHNOLOGY PLATFORM and physically
9 submitted to the UPME in accordance with the deadline stated in the SCHEDULE.
10 In the development of the assessment process of compliance with these
11 requirements, the content of the physical information will prevail over the
12 information entered on the platform.

13 **7.2 Content of ENVELOPE No. 1 DISTRIBUTORS**

14 DISTRIBUTORS who wish to participate in the AUCTION process must submit
15 ENVELOPE No. 1:

16 **Legal requirements:**

17
18
19
20 b) Letter of submission of the PREQUALIFICATION documents of
21 ENVELOPE No. 1 (including statements). Form No. 2.

22
23 c) Documents accrediting the existence and legal representation of the
24 PARTICIPANT and their address. The documents may not have a term longer
25 than thirty (30) calendar days.

26
27 d) Documents accrediting the existence and legal representation of the
28 PARTICIPANT and in which it is stated that the PARTICIPANT is incorporated
29 and domiciled in Colombia, that they are a public utility company and that they
30 trade electrical energy as part of their company purpose in the WHOLESale
31 ENERGY MARKET, and that their validity is at least until December 31, 2038.

32
33 e) Copy of the authorizations of the competent bodies so that the
34 PARTICIPANT attends the AUCTION and makes a binding and unconditional
35 OFFER, including the pertinent authorizations to the LEGAL
36 REPRESENTATIVE of the PARTICIPANT, according to section 6.2 of these

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1 BIDDING DOCUMENTS. In case of limitations to the powers of the LEGAL
2 REPRESENTATIVE, the minutes in which it is stated the respective
3 authorization of the competent corporate body (board of directors or
4 shareholders meeting) are required. In the case of entities with another legal
5 nature, they should submit authorizations of such case.

6
7 f) The power granted to the PARTICIPANT'S PROXY in accordance with the
8 provisions of these BIDDING DOCUMENTS.

9
10 Once the revision process of ENVELOPE No. 0.1 has finished, the
11 DISTRIBUTORS that have complied with the requirements and/or have corrected
12 them, must submit the original BID BOND in accordance with the SCHEDULE;
13 they have to submit it physically before the UPME and upload it to the
14 INFORMATION TECHNOLOGY PLATFORM.

15
16 The above documentation, regarding the compliance with legal requirements,
17 must be uploaded to the INFORMATION TECHNOLOGY PLATFORM and
18 physically submitted to the UPME in accordance with the deadline stated in the
19 SCHEDULE. In the development of the assessment process of compliance with
20 these requirements, the content of the physical information will prevail over the
21 information entered on the platform.

22 **Financial requirements:**

23
24 a) To have a BID BOND.

25
26 b) In order to calculate the value of the constitution of the guarantee,
27 DISTRIBUTORS shall report the maximum amount of energy they are willing to
28 buy in one day in kilowatt hour [kWh-day], expressed in positive whole
29 numbers. This value must consider all OFFERS submitted.

30
31 Under no circumstances shall the sum of the amounts of purchase OFFERS
32 exceed the average daily commercial demand of the BUYER for 2018.

33
34 The average daily commercial demand will be calculated for each TRADE
35 AGENT and published by the UPME as in APPENDIX No. 1 of the BIDDING
36

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1 DOCUMENTS.

2
3 g) Certification of the subscribed capital and the shareholder structure of the
4 PARTICIPANT, signed by the fiscal auditor or, if any, it must be signed by the
5 LEGAL REPRESENTATIVE. The date of issuance may not exceed thirty (30)
6 calendar days prior to the submission of ENVELOPE No. 1.

7
8 h) Financial statements and their notes, as of December 31, 2018, audited by
9 the fiscal auditor. The UPME will publish the financial statements of the
10 QUALIFIED DISTRIBUTORS. The delivery of ENVELOPE No. 1 implies not
11 saving such documents anymore.

12 **7.2.1 Delivery and Processing of Information**

13
14 DISTRIBUTORS must complete the information requested in the INFORMATION
15 TECHNOLOGY PLATFORM, which will contain the basic information of the person
16 submitting ENVELOPE No. 1 and the information related to the legal, financial and
17 technical requirements delivered to the UPME, as well as the uploading of the
18 required documents in PDF format.

19
20 The documentation, regarding the compliance with legal requirements, must be
21 uploaded to the INFORMATION TECHNOLOGY PLATFORM and physically
22 submitted to the UPME in accordance with the deadline stated in the SCHEDULE.
23 In the development of the assessment process of compliance with these
24 requirements, the content of the physical information will prevail over the
25 information entered on the platform.

26
27 **8 BID BOND OF THE OFFER**

28
29 PARTICIPATING DISTRIBUTORS AND GENERATORS must constitute a BID
30 BOND of the OFFER to guarantee the validity, effectiveness and fulfillment of their
31 PROPOSAL. To that effect, they must submit the original copy of the BID BOND in
32 accordance with the model contained in Forms No. 3A, 3B, 3C, 3D and 3E, as
33 applicable, and in the terms established in the SCHEDULE of this AUCTION.
34 Such document must be uploaded in PDF format to the INFORMATION
35 TECHNOLOGY PLATFORM in the same terms and deadlines.

36

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1 The BID BOND must be issued by a FIRST-CLASS FINANCIAL INSTITUTION or
2 by the FIDUCIARY.

3
4 This guarantee must be constituted in favor of the UPME and payable to the
5 PARTICIPANTS acting as counterparty of the defaulting OFFEROR, according to
6 the instructions of the UPME.

7
8 The BID BOND shall consist of a letter of indemnity or a bank guarantee issued by
9 a FIRST-CLASS FINANCIAL INSTITUTION domiciled in Colombia or a standby
10 letter of credit issued by a FIRST-CLASS FINANCIAL INSTITUTION domiciled in
11 Colombia or abroad or a guarantee certificate issued by the FIDUCIARY.

12
13 The value to be guaranteed must cover as a minimum:

14
15 In the case of PARTICIPATING GENERATORS, the sum of one hundred and
16 thirty-five Colombian pesos in the legal currency (\$135.00) /kWh or four twenty-
17 five cents of a United States dollar (USD 0.0425)²/kWh, multiplied by ten percent
18 (10%) of the maximum quantity of energy available for sale in a year in kilowatt
19 hour [kWh-year] declared on the INFORMATION TECHNOLOGY PLATFORM.

20
21 In the case of DISTRIBUTORS, the sum of one hundred and thirty-five Colombian
22 pesos in the legal currency (\$135.00)/kWh or four twenty-five cents of a United
23 States dollar (USD 0.0425)³/kWh, multiplied by five percent (5%) of the maximum
24 quantity of energy available to buy in a year in kilowatt hour [kWh-year] declared
25 on the INFORMATION TECHNOLOGY PLATFORM.

26
27 The BID BOND must have a minimum validity of six (6) months from the date of
28 submission of ENVELOPE No. 2. If required, the UPME may request one or more

2 Taking as reference the quotation in the derivatives market for foreign currency in Colombia of the future market representative rate March 2019, with closing date January 24, 2019: 3174.9 (COP/USD). The primary source of information for future market representative rates is the Colombia Stock Exchange (Bolsa de Valores de Colombia, BVC), available at the following link: <https://www.bvc.com.co/pps/tibco/portalbvc/Home/Mercados/enlinea/derivados>

3 Taking as reference the quotation in the derivatives market for foreign currency in Colombia of the future market representative rate March 2019, with closing date January 24, 2019: 3174.9 (COP/USD). The primary source of information for future market representative rates is the Colombia Stock Exchange (Bolsa de Valores de Colombia, BVC), available at the following link: <https://www.bvc.com.co/pps/tibco/portalbvc/Home/Mercados/enlinea/derivados>

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1 extensions of the validity of the BID BOND, but the sum of the extensions may not
2 exceed four (4) months.

3
4 For the entity issuing the guarantee to be considered a FIRST-CLASS FINANCIAL
5 INSTITUTION, a valid document issued by a risk rating firm must be attached,
6 stating the last rating obtained by the financial entity issuing the guarantee and the
7 validity of said rating, to verify compliance with the requirements and, for entities
8 domiciled in Colombia, a certificate of existence and legal representation of the
9 FIRST-CLASS FINANCIAL INSTITUTION, issued by the Financial
10 Superintendence of Colombia with a date of issue that does not exceed thirty (30)
11 calendar days from the date of submission of the PROPOSAL.

12
13 In the event that documents issued by financial entities domiciled abroad are
14 submitted, it will be required to accredit their existence and legal representation
15 according to the country of origin and the rating of the long-term debt, and the
16 UPME will verify that it is included in the list of foreign financial entities contained
17 in Annex No. 1 of Regulation Letter DCIN-83 of 2003 of the Colombian Bank of the
18 Republic.

19
20 For guarantees issued in dollars, in the event of default and if they have to be
21 executed, their payment must be made in Colombian pesos, at the exchange rate
22 indicated by the issuing bank on the day of payment, according to the terms
23 indicated in the BIDDING DOCUMENTS.

24
25 For the FIDUCIARY, guarantee certificates submitted by PARTICIPANTS must be
26 accompanied by the certificate of existence and legal representation or equivalent
27 document accrediting the legal capacity of its executor.

28
29 The purpose of the BID BOND must be:

- 30
31 a) To irrevocably guarantee the seriousness of the OFFER made by the
32 QUALIFIED PARTICIPANT, in accordance with these BIDDING
33 DOCUMENTS.
34 b) To guarantee the fulfillment of the requirements foreseen in the SIGNATURE
35 DATE of the AGREEMENT.
36 c) To guarantee the constitution of PERFORMANCE, PAYMENT and STARTUP

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1 GUARANTEES, as the case may be.

2 In this way, the BID BOND submitted by the PARTICIPANT may be executed if
3 said PARTICIPANT does not comply with: (i) signing the AGREEMENT; (ii) the
4 approval of the STARTUP GUARANTEE by their beneficiary, or (iii) the
5 constitution of the PERFORMANCE OR PAYMENT GUARANTEE, as the case
6 may be.

7
8 The BID BOND submitted by PARTICIPANTS shall be returned to them, at their
9 request, once: (i) they have signed the AGREEMENT; (ii) the ASIC has accredited
10 the approval of the STARTUP GUARANTEE; and (iii) they have constituted
11 PERFORMANCE OR PAYMENT GUARANTEES, as the case may be, duly
12 approved by the counterparties in accordance with the DRAFT AGREEMENT.

13 In the event of controversies between the counterparties regarding the approval of
14 the guarantee, in no case will the UPME act as an intermediary or intervene with
15 respect to it. Upon submission of one of the causes established for the execution
16 of the guarantee, the UPME will proceed to arrange the payment instruction before
17 the FIRST-CLASS FINANCIAL INSTITUTION or the FIDUCIARY, as the case
18 may be.

19
20 The BID BOND submitted by PARTICIPANTS will also be returned, at their
21 request, to those who do not submit an OFFER or who do not become
22 AWARDEES.

23
24 Likewise, the BID BOND will be returned to all PARTICIPANTS if there is no
25 awarding, when the AUCTION is declared void or in the other cases as provided
26 for in the APPLICABLE PROVISIONS or in the DOCUMENTS.

27 28 **9 OFFER**

29
30 The UPME will evaluate the OFFERS OF PARTICIPANTS to determine whether
31 or not they are VALID OFFERS. Those who accredit the quality of QUALIFIED
32 PARTICIPANTS will be able to participate in the AWARDING that will be held as
33 established in the SCHEDULE of these BIDDING DOCUMENTS.

34
35 OFFERS, that is Envelope No. 2, must be submitted on the INFORMATION
36
37

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1 TECHNOLOGY PLATFORM provided by the UPME for this purpose.

2
3 **9.1 Content of ENVELOPE No. 2 - ECONOMIC OFFER for GENERATORS.**

4 QUALIFIED PARTICIPANTS must submit their OFFERS in the terms established
5 in Article 20 of RESOLUTION MME 40590 OF 2019 and in these BIDDING
6 DOCUMENTS.

7
8 Each sale OFFER of the GENERATORS must be submitted through the
9 INFORMATION TECHNOLOGY PLATFORM, indicating the price of the OFFER,
10 in Colombian pesos per kilowatt hour [COP/kWh] with two (2) decimals of
11 precision and not including the CERE.

12
13 The CERE Component will be settled in accordance with the regulations in force
14 or with the provisions of the CREG for such purpose according to Resolution 071
15 of 2006 or anyone that modifies or replaces it.

16
17
18 **9.2 Content of ENVELOPE No. 2 - ECONOMIC OFFER for DISTRIBUTORS**

19 QUALIFIED PARTICIPANTS must submit their OFFERS in the terms established
20 in RESOLUTION MME 40590 OF 2019 and in these BIDDING DOCUMENTS.

21
22 Each purchase OFFER of the GENERATORS must be submitted on the
23 INFORMATION TECHNOLOGY PLATFORM, indicating the price of the OFFER,
24 in Colombian pesos per kilowatt hour [COP/kWh] with two (2) decimals of
25 precision and not including the CERE.

26
27 The CERE Component shall be settled in accordance with current regulations or
28 with the provisions of the CREG for such purpose according to Resolution 071 of
29 2006 or anyone that modifies or replaces it.

30
31 **10 PAPER DOCUMENTS TO SUBMIT TO THE UPME**

32 The documentation that is requested in paper is the legal requirements of
33 ENVELOPE No. 1 AND the BID BOND, whose original copies must be sent to the
34 UPME. All pages that have content must be duly numbered in a clear and
35 consecutive way and signed in those pages in which it is required, according to

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1 the rules established in these BIDDING DOCUMENTS for each type of document.

2
3 Authentication will only be required for the special powers and apostille as
4 indicated in sections 4.5, 6.2 and 6.3 of these BIDDING DOCUMENTS.

5
6 The documentation in paper must always correspond to that uploaded to the
7 INFORMATION TECHNOLOGY PLATFORM.

8
9 **11 EFFECTS OF THE SUBMISSION OF OFFERS AND BINDING NATURE OF**
10 **BIDDING DOCUMENTS**

11
12 The submission of OFFERS to the UPME can only be made if there is full
13 knowledge of: (i) the APPLICABLE PROVISIONS and other applicable
14 regulations, both to the generation and trade of energy, as well as to those who
15 carry out these activities in the Republic of Colombia, and (ii) all procedures,
16 obligations, conditions and rules applicable to that activity and to those PEOPLE in
17 the Republic of Colombia, without exception, on the understanding that all the
18 beforementioned laws, regulations, rules and procedures are binding.

19
20 It shall be understood that those who submit the beforementioned OFFERS to the
21 UPME declare, by the mere fact of their submission and under oath, that they are
22 aware of the APPLICABLE PROVISIONS, the laws, rules and procedures referred
23 to in this section, and that they undertake to accept them and to obey them
24 unconditionally and at all times.

25
26 **12 EVALUATION OF PROPOSALS AND SELECTION OF AWARDEES**

27
28 **12.1 EVALUATION of PREQUALIFICATION REQUIREMENTS**

29 The evaluation will be divided in two stages: first, the evaluation of the
30 PREQUALIFICATION REQUIREMENTS contained in ENVELOPE No. 1 and
31 second, the evaluation of the BID BOND.

32
33 **12.1.1 Verification of ENVELOPE No. 1 of PARTICIPANTS.**

34
35 ENVELOPE No. 1 will be submitted in accordance with the AUCTION SCHEDULE
36

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1 and these BIDDING DOCUMENTS. Upon receipt of ENVELOPE No. 1, the UPME
2 EVALUATION COMMITTEE shall be responsible for verifying compliance with the
3 PREQUALIFICATION REQUIREMENTS set forth in these BIDDING
4 DOCUMENTS and in RESOLUTION MME 40590 OF 2019.

5
6 After verifying compliance with the requirements of ENVELOPE No. 1 of
7 DISTRIBUTORS, the UPME will individually notify each of the PARTICIPANTS of
8 their result through the INFORMATION TECHNOLOGY PLATFORM, so that they
9 may submit the BID BOND as indicated in the term established in the
10 SCHEDULE.

11
12 If noncompliance with the requirements is found in these BIDDING DOCUMENTS
13 or in the BID BOND, the UPME will grant the PARTICIPANT up to three (3)
14 business days, at the discretion of the committee and according to the complexity,
15 to make the respective correction, under penalty of being disqualified and,
16 consequently, not qualified to submit an OFFER in the AWARING process of this
17 AUCTION.

18
19 Once the PREQUALIFICATION REQUIREMENTS have been accredited and the
20 respective BID BONDS have been approved, the UPME will publish a notice with
21 the name of QUALIFIED DISTRIBUTORS, who may submit Envelope No. 2 with
22 the ECONOMIC PROPOSAL in accordance with the established SCHEDULE.

23
24 Simultaneously, the EVALUATION COMMITTEE will proceed to assess the
25 requirements considered in sections 7.1 of these BIDDING DOCUMENTS, and in
26 RESOLUTION MME 40590 OF 2019, delivered by GENERATORS in ENVELOPE
27 No 1. After verifying the fulfillment of said requirements, the UPME will proceed to
28 inform through the INFORMATION TECHNOLOGY PLATFORM individually and
29 confidentially each one of the GENERATORS who have fulfilled these
30 requirements, so that they submit the BID BOND, as indicated in section 5, in the
31 term established in the SCHEDULE.

32
33 If noncompliance is found with the PREQUALIFICATION REQUIREMENTS, the
34 UPME will grant the PARTICIPANT up to three (3) business days, according to the
35 complexity, to make the respective correction, under penalty of being disqualified
36 and, consequently, not qualified to submit an OFFER in the AWARING process

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1 of this AUCTION.

2
3 Once the PREQUALIFICATION REQUIREMENTS have been accredited,
4 GENERATORS will be QUALIFIED and may submit ENVELOPE No. 2 with the
5 ECONOMIC PROPOSAL through the INFORMATION TECHNOLOGY
6 PLATFORM in accordance with the established SCHEDULE.

7
8 **12.1.2 Request for Correcting PREQUALIFICATION REQUIREMENTS**

9
10 In order to carry out a correct assessment of the PREQUALIFICATION
11 REQUIREMENTS, the UPME may, at its discretion, request clarifications or
12 additional information to the documents submitted by a participant, as well as
13 additional documents the UPME deems necessary for the purpose of assessing
14 whether or not the participant complies with said requirements.

15
16 In case of finding any defects in the documents that make up ENVELOPE No. 1,
17 the UPME will request correction within a term of up to three (3) business days, at
18 the discretion of the committee, clearly indicating which defects were found and
19 how they must be remedied. The lack of other documents referred to in section 7
20 other than those indicated in this section and minor defects, such as typos, are
21 considered correctable defects.

22
23 The EVALUATION COMMITTEE shall review the corrective documents submitted
24 by the PARTICIPANT in order to determine whether or not the defect was
25 corrected. In case the requested documents are not submitted in a timely manner
26 or if the fault was not corrected, the UPME will notify the PARTICIPANT who does
27 not comply with the PREQUALIFICATION REQUIREMENTS.

28
29 The EVALUATION COMMITTEE will review the documents submitted and will
30 declare as "non-conforming" those documents that incur in any of the following
31 causes that cannot be remedied:

- 32 a) The project does not have a total effective capacity greater than or equal to
33 5 MW.
34 b) The STARTUP DATE for the PROJECT FOR THE GENERATION OF
35 NON-CONVENTIONAL RENEWABLE ENERGY according to the concept of
36 connection of the UPME is after December thirty-first (31), 2023.

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- 1 c) The BID BOND is not delivered within the term granted by UPME
2 substantially according to the model contained in Forms No. 3A, 3B, 3C, 3D
3 and 3E, as applicable.
4 d) The PARTICIPANT is a company that cannot submit OFFERS to this
5 request accordance with these BIDDING DOCUMENTS, the Regulations and
6 the APPLICABLE PROVISIONS.
7 e) Any failures of the documents that make up the PREQUALIFICATION
8 REQUIREMENTS have not been corrected within the term since notified.
9 f) The information, declarations, certifications and, in general, any document
10 submitted are false.
11

12 In general, the PARTICIPANT must meet the requirements set forth in MME
13 RESOLUTION 40590 OF 2019.

14 **12.1.3 Rejection of PROPOSALS**

15 Without prejudice to the PROPOSALS established in the APPLICABLE
16 PROVISIONS, the following shall be grounds for rejection: (i) the documents
17 submitted by the PARTICIPANTS are declared "non-conforming" as established in
18 section 12.1.2 of these BIDDING DOCUMENTS; (ii) any requirement demanded in
19 the APPLICABLE PROVISIONS is not complied with, especially those established
20 in Article 26 of RESOLUTION MME 40590 OF 2019.
21
22

23 **12.2 Ceiling Price or Maximum Limit and Target Demand**

24 Between 08:00 and 09:00 a.m. of the day set for the awarding per the AUCTION
25 SCHEDULE, the CREG shall deliver to the UPME a sealed envelope with the
26 ceiling price or Maximum Limit in Colombian pesos per kilowatt hour [\$/kWh], with
27 two decimals of precision, excluding the CERE, for the purposes of Article 23 of
28 RESOLUTION MME 40590 OF 2019. The UPME, together with the AUCTION
29 AUDITOR, will open the envelope and proceed to register the information in the
30 INFORMATION TECHNOLOGY PLATFORM available for the AUCTION.
31
32

33 Next, the MME must deliver to the UPME in a closed envelope the Target
34 Demand, in units of energy, for the purposes of Article 3 of RESOLUTION
35 MME 40591 OF 2019. The UPME, together with the AUCTION AUDITOR, will
36

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1 open the envelope and proceed to register the information in the INFORMATION
2 TECHNOLOGY PLATFORM available for the AUCTION.

3

4 In any case, the information referred to above will be confidential and will only be
5 disclosed once the awarding process has finished.

6

7 **12.3 Entry of ENVELOPE No. 2 of OFFERORS.**

8

9 The OFFER contained in ENVELOPE No. 2 shall be submitted by QUALIFIED
10 GENERATORS and QUALIFIED DISTRIBUTORS through the INFORMATION
11 TECHNOLOGY PLATFORM provided by the UPME for such purposes, from
12 09:00 a.m. on the day set for the awarding and until 12:00 p.m. on the same day,
13 as indicated in the AUCTION SCHEDULE.

14 After receiving all ENVELOPES No. 2 submitted by QUALIFIED PARTICIPANTS,
15 in the presence of the AUCTION AUDITOR, the UPME will have the necessary
16 procedures to guarantee its integrity.

17

18

19 **12.4 AUCTION AWARD:**

20

21 Once the information of the ceiling price or Maximum Limit, Target Demand and
22 OFFERS submitted by each of the SELLERS and BUYERS is known, the UPME
23 will verify if the COMPETITIVE CONDITIONS are fulfilled. If the COMPETITIVE
24 CONDITIONS are not met, the UPME will terminate the process without award.

25 Once the process described above has finished, the AUCTION AUDITOR will fulfill
26 the roles established in RESOLUTION MME 40590 OF 2019, to continue with the
27 AWARDING process.

28

29 Subsequently and on the same day, the UPME will carry out the AWARDING
30 process using the procedure that will solve a problem of optimization, that will
31 seek the combination of offers which maximizes the benefit of the final consumer,
32 in accordance with the provisions of Article 24, Chapter IV of RESOLUTION
33 MME 40590 OF 2019, and will report the results of the AUCTION. Likewise, the
UPME will reveal the Target Demand and the Maximum Limit.

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1 The AWARDING process will be registered in a record, and in the event of
2 cession, the energy to be contracted by each of the parties must be indicated.
3

4 AWARDEES must register before the CREG, the SSPD and the ASIC, in
5 accordance with the APPLICABLE PROVISIONS.
6

7 The AGREEMENTS resulting from the AWARDING shall be formalized using the
8 DRAFT of the AGREEMENT issued by the MME for this purpose (**Annex No. 4:**
9 "DRAFT OF THE AGREEMENT".) Said AGREEMENTS must be signed within the
10 term established in the SCHEDULE and must be registered before the Operator
11 and Market Administrator, complying with the requirements established for this
12 purpose in the APPLICABLE PROVISIONS and at the time indicated in the
13 AGREEMENT.
14

15 **12.5 Non-Award of Auction**

16
17 The UPME may declare the NON-AWARD of the AUCTION in any of the following
18 cases:
19

- 20 a) If the COMPETITIVE CONDITIONS defined by the CREG in accordance with
21 Article 19 of Resolution MME 40791 of 2019 are not met.
22
23 b) When the optimization process established for the AWARDING does not find a
24 feasible solution for the allocation of bids.
25
26 c) When at the request of the AUCTION AUDITOR it is considered that the
27 AUCTION should be suspended.
28

29 **12.6 Declaring the Process Void**

30
31 The UPME may declare the AUCTION void if none of the PARTICIPANTS meets the
32 PREQUALIFICATION REQUIREMENTS.
33
34
35

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1 **12.7 Award Minutes**

2
3 Once the AWARDING process has finished, the minutes will be prepared, in which
4 the development of the AUCTION, the verification of the COMPETITIVE
5 CONDITIONS, and other regulatory requirements, as well as the selection of
6 AWARDEES and the corresponding amounts of energy will be recorded.
7 SELLERS and BUYERS that became AWARDEES will be mentioned there, and
8 must therefore sign the DRAFT AGREEMENT. The aforementioned minutes shall
9 be disclosed, informing the selection to the AWARDEES. These minutes shall be
10 notified on notice boards and shall contain an exact record of the decisions taken
11 and of the situation in which such decisions were notified. An appeal could be filed
12 against the awarding act pursuant to the terms established in Article 76 of the
13 Código de Procedimiento Administrativo y de lo Contencioso Administrativo
14 (CPACA, Code of Administrative Procedure and Contentious Administrative
15 Matters).

16 The awarding minutes will be signed by the Director of the UPME or whoever is in
17 charge and the AUCTION AUDITOR.

18
19 **13 EFFECT OF SELECTION**

20
21 It will be understood that the AWARDEES unconditionally accepted the OFFERS
22 of the counterparties. As a consequence of the foregoing and of the development
23 of this AUCTION, BUYERS and SELLERS must sign and register the
24 AGREEMENT from which they became AWARDEES at the time established in the
25 SCHEDULE of these BIDDING DOCUMENTS. After signing the AGREEMENT,
26 they must deliver the PERFORMANCE BOND AND PAYMENT GUARANTEES,
27 as appropriate, according to the provisions of the AGREEMENT. Once the
28 respective guarantees are delivered, the BID BOND will be returned pursuant to
29 the terms established in section 8 of the BIDDING DOCUMENTS.

30
31 Should the AWERDEE fail to comply with all the obligations that must be fulfilled
32 before the SIGNATURE DATE of the AGREEMENT, the UPME may execute the
33 BID BOND in accordance with the provisions of the BIDDING DOCUMENTS.
34
35
36

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1 **14 GUARANTEES**
2

3 Guarantees that the PARTICIPANTS are obliged to constitute and deliver shall be
4 granted subject to the conditions stated in these BIDDING DOCUMENTS,
5 CLAUSE XIII of the DRAFT AGREEMENT and the administrative act issued by
6 the CREG in the case of a STARTUP GUARANTEE within the periods indicated in
7 the SCHEDULE.
8

9 **14.1 STARTUP Guarantee**
10

11 Each SELLER that has a PROJECT FOR THE GENERATION OF
12 NON-CONVENTIONAL RENEWABLE ENERGY and who has been selected in
13 this AUCTION must grant a STARTUP GUARANTEE on the date established in
14 the SCHEDULE, in accordance with the provisions of the CREG.
15

16 **14.2 Bilateral Guarantees considered in the Agreement.**
17

18 AWARDEES must constitute bilateral performance and payment guarantees
19 provided for in the AGREEMENT. The guarantee submitted by each of the parties
20 to the AGREEMENT must be approved by their counterparty and inform in writing
21 to the UPME of the fulfillment or breach of this obligation in order to return or
22 execute the BID BOND.
23

24 **14.3 Bid Bond of the Offer.**
25

26 According to the deadlines stated in the SCHEDULE, once all compliance reports of
27 AWARDEES have been received, the UPME will proceed with the execution of the
28 BID BOND so that guarantors proceed to make the corresponding disbursements.
29

30 **15 AUDIT**
31

32 There will be an AUCTION AUDITOR who will be an individual or legal entity with
33 recognized experience in auditing processes. The auditor will be responsible for
34 the following:
35

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- 1 a) Verifying the correct application of the regulations in force for the
2 development of the AUCTION.
- 3
- 4 b) Verifying that communications between PARTICIPANTS and the UPME
5 are carried out solely and exclusively through formal communication channels
6 established by the latter.
- 7
- 8 c) Verifying the prequalification process of OFFERS.
- 9
- 10 d) Verifying that during the AUCTION, the steps and rules established in
11 RESOLUTION MME 40590 OF 2019 and the criteria mentioned in these
12 BIDDING DOCUMENTS are expressly followed.
- 13 e) Requesting the UPME to suspend the AUCTION when they consider that
14 the provisions contained in the regulations in force are not being complied
15 with.
- 16
- 17 f) Submitting to the MME, within five (5) days following the end of the
18 AUCTION, a report in which it is stated, free of ambiguities, the compliance or
19 non-compliance of the regulations in force in said process.
- 20
- 21 g) Verifying the COMPETITIVE CONDITIONS established in Article 19 of
22 RESOLUTION MME 40590 OF 2019 and submitting the corresponding report
23 to the CREG within the terms established by said entity.
- 24
- 25 h) For the cases in which the AUDITOR establishes that the beforementioned
26 requirements, as well as those indicated in RESOLUTION MME 40590 OF
27 2019, were not met in the respective ACUTION, the advanced process will not
28 take effect, without prejudice to criminal and/or civil actions and administrative
29 actions that may take place against PERSONS who have not complied with
30 the regulations in force.

31 The costs incurred because of the AUCTION AUDIT will be paid by the UPME.

32 **16 INFORMATION TECHNOLOGY PLATFORM**

33 The UPME will implement an INFORMATION TECHNOLOGY PLATFORM that
34 allows the implementation of the AUCTION. For this, the UPME will hire an agent
35 specialized in software that allows the correct execution of the AUCTION. In the
36 event that, due to Force Majeure and Fortuitous Event, the information system
37 does not work on the day of the AUCTION, contingency procedures will be used,
38

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such as, for example:

- a. For uploading information: the physical submission of documents that must be registered.
- b. For the AWARDING process: the use of a macro in Excel.

In any case, the UPME may temporarily and discretionally suspend the AUCTION until the contingency that occurred with the INFORMATION TECHNOLOGY PLATFORM is solved, without such suspension exceeding the maximum term established in Article 2 of RESOLUTION MME 40591 OF 2019.

17 FORMS FOR CLPE AUCTION No. 02 - 2019 (Appendix No. 3)

- FORM No. 1 Letter of submission of the prequalification documents of ENVELOPE No. 1 of GENERATORS (it includes statements).
- FORM No. 2 Letter of submission of the PREQUALIFICATION documents of ENVELOPE No. 1 of DISTRIBUTORS (it includes statements).
- FORM No. 3.A BID BOND of the PROPOSAL for PARTICIPATING GENERATORS.
- FORM No. 3.B BID BOND of the PROPOSAL for PARTICIPATING DISTRIBUTORS.
- FORM No. 3.C BID BOND (Standby Letter of Credit) for PARTICIPATING GENERATORS.
- FORM No. 3.D BID BOND (Standby Letter of Credit) for PARTICIPATING DISTRIBUTORS.
- FORM No. 3.E BID BOND: Guarantee Certificate granted by BBVA Asset Management S.A. Sociedad Fiduciara S.A. in favor of the Mining and Energy Planning Unit.
- FORM No. 4 Affidavit of Financial Link for PARTICIPATING GENERATORS

18 LIST OF ANNEXES

Annex No. 1: "AVERAGE DAILY COMMERCIAL DEMAND CALCULATED FOR EACH TRADE AGENT."

Annex No. 2: "PLANT FACTORS PER TECHNOLOGY FOR AVERAGE ENERGY CALCULATION."

Annex No. 3: "FORMS FOR CLPE AUCTION No. 02 - 2019"

Annex No. 4: "DRAFT OF THE AGREEMENT"