

Eletricidade de Timor-Leste, E.P.

Tender Notice No. OCB/003/EDTL-EP-2023

Version 2

Date: 27 February 2023, as amended on 4 May 2023 in accordance with paragraph 24 below.
Tender Identification No: OCB/003/EDTL-EP-2023

1. Identification and contacts of the awarding entity

Designation of the awarding entity: Eletricidade de Timor-Leste, E.P. (**the Competent Entity**).
NIF/TIN: 1332633
Address: 1º Andar Edifício de Caicoli, Av.Mártires da Pátria, Dili, Timor-Leste
Phone Number: 8001000 / 3339258
Email: info@edtl-ep.tl

2. Object of the tender

The Competent Entity is seeking to award a power purchase agreement for:

- (a) the design, build, financing, operation, and maintenance of a 72-85 MWac solar plant project (**Solar PV Plant**), a 36-42.5 MW/1 hour battery energy storage system (**BESS**), a substation (**Substation**) (together the **Facility**), balance of plant, integrated communications and control systems in the area around Manatuto and transmission infrastructure to connect to Timor-Leste's network (collectively the **Project**); and
- (b) the long term purchase of energy and BESS services,

to support the development of the renewable energy industry and to improve the stability of the electrical grid in Timor-Leste (the **Contract**) through a fair, transparent and competitive bidding process in accordance with the Timor-Leste Law and international best practices (**Bidding Process**).

3. Non-Disclosure Agreement

All persons (each a **Bidder**) who request this Tender Notice in response to the announcement published at www.mof.gov.tl; www.edtl-ep.tl; www.dgmarket.com; www.devex.com and who wish to submit a bid (**Bid**) must sign the non-disclosure agreement (a form of the non-disclosure agreement is attached to this Tender Notice) and submit such signed non-disclosure agreement through the Virtual Data Room in accordance with the Instructions to Bidders (**ITB**) 14.

Only Bidders who have signed the non-disclosure agreement are invited to access the Bidding Documents and submit sealed Bids in response to the Bidding Documents with above Contract Identification No. OCB/003/EDTL-EP-2023 in relation to the Contract.

4. Type of procedure

Bidding will be conducted through a competitive bidding procedure with a single stage, three envelope procedure that is open to all Bidders.

5. Value of the Procurement

No base price is offered. Bidders are to provide their best price for evaluation, which will be undertaken on a net present value basis in accordance with Section 3 – Evaluation and Qualification Criteria, Envelope 3, provided that the undiscounted value of the Bidder's best price does not exceed the Value of Procurement for the Project. The Value of Procurement is US\$320,000,000 and is provided to the Bidders pursuant to the provisions of ITB 49.

6. Contracting in lots

The contracting for the Project will not be in lots.

7. Place or Location of execution of the activities under the Contract

Country: Timor-Leste
Municipality: Manatuto
Administrative Post: Laleia
Suco: Lifau

8. Duration of the Contract

The Competent Entity expects the term of the Contract to be 25 years, commencing after the Solar PV Plant and the BESS achieve commercial operation.

9. Required qualification documents

- (i) the Letter of Qualification Bid in accordance with ITB 18 and Appendix 3;
- (ii) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 28.2;
- (iii) the Qualification Bid Form in accordance with ITB 20;
- (iv) a sworn statement of unconditional acceptance of the Bidding Documents; and
- (v) a sworn declaration that the Bidder is not barred from participating in the Bidding Process.

10. Consultation of the Bidding Document

Bidders may obtain the Bidding Documents (except the Part III Bidding Documents) free of charge upon receipt of this Tender Notice by sending an email to the address below for access to the Virtual Data Room, which contains Bidding Documents:

Email: solaripp@edti-ep.tl and timsolar@adb.org

The Bidders shall only obtain access to the Bidding Documents once they have submitted the signed Non-Disclosure Agreement through the Virtual Data Room.

Bidders may seek further clarification or information through the email addresses above or Virtual Data Room. However, the Virtual Data Room is the preferred method of communication and clarifications or information requests that are not issued through the Virtual Data Room may not receive a response.

Bidders may obtain the Part III Bidding Documents (refer to paragraph 19 below) free of charge, upon notification by the Competent Entity that any or all of these documents are available by directly downloading these documents from the Virtual Data Room.

11. Fees

Prospective bidders wishing their Bids to be evaluated are required to pay an administrative fee of USD 100 to the Competent Entity by depositing such amount into any of the following bank accounts. The

Bidder shall provide the proof of a successful deposit transaction to the Competent Entity before submitting Bids.

Bank : BNU Timor
Account Name : ELETRICIDADE DE TIMOR-LESTE E.P. (EDTL E.P.)
Account Number : 1436 1530 1000 1
IBAN : TL38 0020 1436 1530 1000 162
SWIFT CODE : CGDITLDI

Bank : Mandiri Timor-Leste
Account Name : ELETRICIDADE DE TIMOR-LESTE E.P. (EDTL E.P.)
Account Number : 601.0001 0036 67
IBAN : TL38 0050 601 0001 0036 6775

12. Place, date, and time of the site visit and pre-bid conference

A site visit shall be held on 22 March 2023 at 9:00 hours Timor-Leste Time at the address noted in item 1. Bidders (or their designated representative) are required to attend the site visit.

A pre-bid conference shall be held on 23 March 2023 at 15:00 hours Timor-Leste Time at the address noted in item 1. The Bidders may also attend the pre-bid conference virtually using the link below. Attendance at the pre-bid conference is recommended however, non-attendance will not disqualify the Bidders from the Tender.

13. Bid Security

All Bids must be accompanied by a Bid Security for the value of US\$2,300,000, in accordance with the requirements of ITB 26.

14. Performance Security and Quality Security

The winning Bidder is required to provide Performance and Quality Securities in the amount of 10% of the value of the Contract.

The Performance and Quality Securities must be submitted to the Competent Entity at least 5 days before the execution of the Contract in the form required in the Bidding Documents.

15. Form of presentation of Bids

Bids must be delivered to the address above on or before May 1, 2023. Submission of electronic Bids will be permitted. Late Bids will be rejected. No liability will be accepted by the Competent Entity for loss or late delivery of the Bid. Evaluation & Qualification Criteria and other details are documented in the Bidding Document.

Bids will be publicly opened at the above address, immediately after the Deadline for Bid Submission and in the presence of Bidders' representatives who choose to attend.

16. Language

This Tender Notice, the Bidding Documents and the Contract are issued in English. The Bidding Process will be conducted in English.

17. Minimum period of validity of the bids

Bids shall remain valid for 180 days after the Deadline for Bid Submission above. A Bid valid for a shorter period shall be rejected as nonresponsive.

18. Award criteria

The Contract is awarded to the Bidder who:

- (i) satisfied the Qualification Criteria;
- (ii) passed all technical and financial evaluations; and
- (iii) subject to confirmation by the Competent Entity, results in the best value for money to the Competent Entity and, more generally, to Timor-Leste.

19. Bidding Documents

This invitation is accompanied by the following Bidding Documents:

- (i) Part I – This Invitation to Bid;
- (ii) Part II – Bidding Procedures:
 - (a) Section 1 – Instructions to Bidders (ITB);
 - (b) Section 2 – Bid Data Sheet; (BDS)
 - (c) Section 3 – Evaluation and Qualification Criteria (EQC);
 - (d) Section 4 – Bidding Forms (BDF).

Bidders will be notified when the following Bidding Documents become available:

- (iii) Part III – Conditions of Contract and Schedules:
 - (a) Section 5 – Contract; and
 - (b) Section 6 – Contract Forms (COF)

20. Taxes

All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the Deadline for Bid Submission, shall be included in the rates and prices and the total bid price submitted by the Bidder.

21. No Liability of the Competent Entity

The Competent Entity will not be responsible for any costs or expenses incurred by Bidders in connection with the preparation or delivery of their Bids. This Tender Notice does not constitute a solicitation to invest, or otherwise participate, in the Contract or the Project. The Competent Entity reserves its right, in their sole discretion, to modify this Tender Notice, the Bidding Documents and/or the Contract or to suspend, cancel or restart the Bidding Process at any time to the fullest extent permitted by law, and shall not be liable to reimburse or compensate the Bidder for any costs or expenses incurred in such an event.

22. Definitions

In addition to the definitions in this Tender Notice, capitalised expressions in this Tender Notice have the meaning given to them in the ITB.

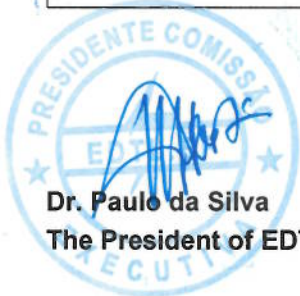
23. Next Steps

Please respond to this announcement by submitting a request to access the Virtual Data Room in accordance with item 10 above.

24. VERSION CONTROL NOTES

This TN has been updated as follows:

Title	Version	Issue Date	Notes
Tender Notice	1	27 February 2023	Initial release
Tender Notice	2	4 May 2023	As amended by Addendum #3



Dr. Paulo da Silva
The President of EDTL, E.P.

Form of Non-Disclosure Agreement

This Non-Disclosure Agreement (this "**Agreement**") is made on _____ 2023 by and between:

- (a) [insert Bidder name], with its principal office at [insert] (the "**Potential Bidder**"), and
- (b) Eletricidade de Timor-Leste, E.P. ("**the Competent Entity**").

BACKGROUND

- A. The Competent Entity is seeking to award a power purchase agreement for:
 - a. the design, build, financing, operation, and maintenance of a 72-85 MWac solar plant project (Solar PV Plant), a 36-42.5 MW/1 hour battery energy storage system (BESS), a substation (Substation) (together the Facility), balance of plant, integrated communications and control systems in the area around Manatuto and transmission infrastructure to connect to Timor-Leste's network; and
 - b. the long term purchase of energy and BESS services,

to support the development of the renewable energy industry and to improve the stability of the electrical grid in Timor-Leste ("**Project**") through a fair, transparent and competitive bidding process in accordance with the Timor-Leste Law and international best practices ("**Bidding Process**").
- B. As part of the Bidding Process, the Parties will upload to a designated website-based virtual data room (the "**VDR**") and share sensitive financial or proprietary information of confidential or non-confidential nature to review, evaluate or consider while undertaking the Bidding Process for the Project.
- C. The Parties wish to provide for the conditions of disclosure of such information and the rules governing use and the protection thereof by the Parties.
- D. In consideration of the Competent Entity agreeing to grant access to the VDR and of the Potential Bidder agreeing to grant access to documents uploaded to the VDR, the Parties hereby agree to comply with this Agreement.

It is agreed as follows.

1 General

- 1.1 Unless otherwise defined in this Agreement, the definitions in the document titled "Section 1 – Instructions to Bidders – TIMOR-LESTE SOLAR PV PLANT AND BESS PROJECT" ("**ITB**") apply to this Agreement.
- 1.2 This Agreement shall take effect on the date of execution and delivery of this Agreement by all Parties (the "**Effective Date**"). Any use of the uploaded information by the Potential Bidder shall be construed as a consent, acceptance, execution and delivery of this Agreement regardless of its signature.
- 1.3 Any information, documents or data in any form that contains proprietary, operational, financial, legal, corporate, technical, commercial, or other publicly unavailable information pertaining to the subject matter of the Project or the Bidding Process as disclosed in the VDR or otherwise, including



any information added at any time, information provided directly in response to questions and any other information, materials or data:

1.3.1 disclosed to the Potential Bidder by or on behalf of the Competent Entity in any form or by any means or through any medium; or

1.3.2 disclosed to the Competent Entity by or on behalf of the Potential Bidder in connection with the Project,

in each case whether it is disclosed before, on, or after the Effective Date (**Confidential Information**) is being made available subject to, and on the terms and conditions of, this Agreement.

1.4 This Agreement sets out the obligations, rules and procedures governing the confidentiality undertaking and use of the VDR to be made available to:

1.4.1 any ministry, department or political subdivision thereof, any municipality, any other governmental entity, instrumentality, agency, authority, committee or commission, under the direct or indirect control of Timor-Leste, or any department or political subdivision thereof, or any independent regulatory authority relating thereto, having jurisdiction under the laws of Timor-Leste over the Project (together referred to as the "**Regulatory Authorities**") and their respective associates, officers, statutory agencies, and its appointed consultants and advisors (its "**Associates**");

1.4.2 professional advisers appointed by the Competent Entity, as notified from time to time, including the ADB Office of PPP and ADB's advisors, including law firms, DLA Piper and Da Silva Teixeira & Associados, and technical advisors, Entura (together, the "**Advisors**");

1.4.3 the Potential Bidders and their respective affiliates, employees, consultants and professional advisers (including, but not limited to: technical, financial, tax, accounting, legal) (the "**Authorized Users**") who need to know such information for the purpose of considering the Project; and

1.4.4 the Potential Bidders' prospective contractors, co-sponsors or lenders, and their respective employees, consultants, and professional advisers (each "**Permitted Users**" – who, together with Authorized Users, shall be referred to as "**Authorized Persons**").

1.5 The Competent Entity shall make appropriate arrangements to ensure that any Regulatory Authority shall agree to be bound by the confidentiality obligations of the Competent Entity with respect to Confidential Information.

1.6 The Potential Bidder's Representative (as defined below) is deemed to have signed this Agreement on behalf of all Authorized Users and Permitted Users with access to the VDR.

1.7 Each Party shall:

- 1.7.1 make appropriate arrangements to ensure that any Associates, Advisors or Authorized Persons (as the case may be) agree to be bound by the confidentiality obligations of the relevant Party with respect to the Confidential Information;
 - 1.7.2 comply and cause their respective Associates, Advisors and Authorized Persons (as the case may be) to comply with any obligation imposed by this Agreement as if such persons were itself a signatory to this Agreement; and
 - 1.7.3 be liable for any breach committed of clauses 1.7.1 to 1.7.2 (inclusive) by an Associate, Advisor, or Authorized Person (as the case may be).
- 1.8 Any breach of confidentiality by the Authorized Persons will entitle the Competent Entity to reject the Bid by that Potential Bidder without any further consideration and terminate the Potential Bidder's right to continue in the Bidding Process.
- 1.9 This Agreement shall expire upon successful award of the Project to a winning bidder, unless terminated earlier in accordance with the terms and conditions of this Agreement. Subject to the terms and conditions set forth in clause 2, the Parties shall keep the Confidential Information confidential for a further two (2) years following the earlier to occur of termination or expiry of the Agreement.

2 Confidentiality

- 2.1 Subject to clause 2.2, the Parties shall treat the Confidential Information as strictly confidential and shall use the Confidential Information solely for the purpose of conducting the Bidding Process, considering, evaluating, advising on, designing, building, financing, operating or furthering the Project and shall not disclose the Confidential Information other than to their respective Associates, Advisors and Authorized Persons who have agreed to comply with the terms of this Agreement.
- 2.2 The term "**Confidential Information**" under this Agreement shall be deemed **not** to include information which the receiving Party can prove:
- 2.2.1 is or has come into the public domain prior to disclosure by the receiving Party, or after the disclosure by the receiving Party, provided such disclosure to the public domain is not through any wrongful act of the receiving Party; or
 - 2.2.2 is already known to, or in the possession of the receiving Party, as evidenced by written documentation in the files of the receiving Party; or
 - 2.2.3 has been lawfully received from a third party without restrictions or breach of this Agreement; or
 - 2.2.4 has been or is published without violation of this Agreement; or
 - 2.2.5 is approved for the release or use in question by written authorization of the disclosing Party; or



- 2.2.6 is required to be publicly disclosed by law, order, or demand of a court of competent jurisdiction or the requirement of any relevant stock exchange or other regulatory government or official body.
- 2.3 Each receiving Party undertakes:
- 2.3.1 to keep the Confidential Information and any copies of it secure and in such a way as to prevent unauthorized access by any third party and not to disclose, copy, reproduce or distribute any Confidential Information or otherwise make it available to any person other than its respective Associates, Advisors and Authorized Persons;
- 2.3.2 to use the Confidential Information solely for purposes of undertaking the Project;
- 2.3.3 to inform other Parties immediately if it becomes aware that any Confidential Information has been disclosed to or come to the knowledge of an unauthorized third party; and
- 2.3.4 with respect to Potential Bidders only and at their own expense, within seven (7) days of withdrawing from the Bidding Process, or of being notified that it has been disqualified, its proposal has been rejected, or it not been declared as having won the Project, or in any event on receipt of a written demand from the Competent Entity:
- (a) to return or destroy all hard copies of Confidential Information that has been made available to it by or on behalf of the Competent Entity which is in its possession or under its custody and control without keeping any copies;
 - (b) to destroy all hard copies of Confidential Information prepared by it to the extent that the same contains, reflects or derives from information that has been made available to it by or on behalf of the Competent Entity, except for the copies of Confidential Information contained in management presentations and/or board minutes related to the Potential Bidder's internal evaluation of the Project, the Bidding Process and any related transaction, provided that such Confidential Information is kept only when needed to comply with applicable laws;
 - (c) to the extent practicable, to expunge all Confidential Information from any computer, word processor, online database, file management system or other place where Confidential Information may be stored (whether physically or electronically) that is within its possession or under its custody or control; and
 - (d) to confirm to the Competent Entity in writing that the above actions have been taken.

3 VDR

- 3.1 Except where the ITB provides otherwise, no representation or warranty (whether express or implied) is given, and no responsibility or liability is accepted by the Competent Entity (or their

Associates and Advisors) as to the accuracy or completeness of the information disclosed in the VDR or otherwise.

3.2 The Potential Bidder:

3.2.1 acknowledges that in relation to the Project and Bidding Process, the Competent Entity are represented by Advisors; and

3.2.2 consents to such representation, notwithstanding that such Advisors may be engaged in other matters involving such Potential Bidder.

3.3 The Potential Bidder hereby waives any liability to which ADB and its Advisors might be subject in connection with the Project or the Bidding Process and consents to the use and disclosure of any Confidential Information provided to or created by ADB or its Advisors in connection with the Project or the Bidding Process within only such departments of ADB (and the officers and employees working therein) as is necessary for the conduct of the Bidding Process or the development and/or financing of the Project.

3.4 Information disclosed in the VDR or otherwise, or any part thereof, does not constitute an offer or proposal by or on behalf of the Competent Entity.

3.5 Additional documents may be added to, and documents may be removed from, the VDR from time to time by or on behalf of, and at the discretion of the Competent Entity and in accordance with the ITB. The Potential Bidder should check the VDR regularly as the inclusion of new documents will be apparent from doing so. However, no obligation is undertaken or accepted by the Competent Entity (or their Associates or Advisors) to provide any additional or updated information or to correct any inaccuracies or discrepancies in the information.

4 Access to the VDR

4.1 The VDR service is outsourced to a third-party provider, and accordingly the Parties shall:

4.1.1 allocate adequate time for processing of information; and

4.1.2 follow the instructions of the VDR provider necessary for registration, access, use and compliance with security measures.

4.2 The Potential Bidder shall ensure at all times that:

4.2.1 only Authorized Persons shall seek access to the VDR; and

4.2.2 the number of Authorized Persons who shall seek such access is limited only to those for whom it is strictly necessary for the purposes of, or in connection with, undertaking the Bidding Process for the Project.

4.3 Access to the VDR by any Authorized Persons is subject to:

4.3.1 acceptance of VDR rules of a third-party provider; and

- 4.3.2 an authorized representative of the Potential Bidder, being the individual duly authorized under a corporate resolution, power of attorney or otherwise by the Potential Bidder and the signatory of this Agreement, (**Representative**) having:
- (a) signed and returned a copy of this Agreement; and
 - (b) if available, countersigned and returned copies of any non-reliance letters issued by Advisors whose reports are included in the VDR, in each case as identified to the Representative by the Competent Entity or ADB.
- 4.4 The Competent Entity reserves the right to refuse, terminate or withdraw access to the VDR (either in general or by any Authorized Persons) at any time at their own discretion without giving any reason.
- 4.5 If the Potential Bidder withdraws from the tender process (whether formally or informally), or it is disqualified, or its Bid is rejected, access to the VDR will be withdrawn.
- 4.6 Subject to VDR rules related to scheduled downtime and communications as notified by the VDR provider, the VDR is expected to be open twenty-four (24) hours per day, seven (7) days per week from the date of its opening until the Deadline for Bid Submission, or such other dates as notified by the Competent Entity to the Potential Bidders. The information may subsequently be reopened to the successful Prequalified Bidders to respond to the ITB and the Bidding Documents.
- 4.7 Potential Bidders acknowledge and accept that neither the Competent Entity, nor their respective Associates and Advisors, or other representatives, nor any of their respective officers, employees or agents accept responsibility for or make any representation, express or implied, nor give any warranty with respect to the accuracy or completeness of the information provided in the VDR or accept any responsibility or liability for technical issues affecting the VDR service outsourced to a third-party provider.

5 Use of the Information

- 5.1 The Confidential Information may not be forwarded or shared other than in accordance with this Agreement.
- 5.2 If any information is copied, printed or downloaded, it shall be deemed to have been copied, printed and/or downloaded on, and shall remain subject to, the terms of this Agreement (including, for the avoidance of doubt, the obligation to return or destroy the information).
- 5.3 No attempt may be made to circumvent any of the security features of the VDR.

6 Intellectual Property

Nothing in this Agreement or the disclosure of information or data hereunder is intended to grant or shall be construed as granting to the receiving Party any title, rights, or licenses in or under any patent, copyright or any other intellectual property right whatsoever of the other Party, other than the right to use such information or data for the purpose strictly authorized in this Agreement.



7 Security

- 7.1 Potential Bidders and their Authorized Persons shall strictly adhere to the security rules of the VDR service provider. Authorized Persons must not reveal their username or password to anyone for any reason whatsoever.
- 7.2 When accessing the VDR, Authorized Persons must:
- 7.2.1 take all necessary steps to ensure that none of the Confidential Information contained therein is visible to, or capable of being overlooked by, other persons;
 - 7.2.2 not leave their computer (or other communications device through which they have logged on to the VDR) unattended whilst they are logged on to the VDR; and
 - 7.2.3 ensure that they log-out of the VDR when they have finished using it, by closing down their Internet browser program or as otherwise notified by the rules of the VDR.
- 7.3 It should be noted that the VDR system keeps a record of which user names have been used, and at what time, to access particular documents.

8 Questions & Answers Procedure

The Competent Entity will advise Bidders as to the procedure for submitting questions and requests for clarification through the VDR.

9 Technical Support

Authorized Persons who experience technical difficulties in accessing or using the VDR should contact ADB at timsolar@adb.org.

10 Disclaimer and damages

- 10.1 No liability is accepted by the Competent Entity or their Associates and Advisors for any damage of any sort which may be caused to any computer, computer system or other communications device through which the VDR has been accessed, or any information stored on any such computer, computer system or other communications device, in any way resulting from the use of or the downloading of any information from the VDR. Use of the VDR is entirely at the user's own risk.
- 10.2 The liability of the Parties to each other for breach of this Agreement shall be limited to direct actual damages only. Such direct actual damages shall be the sole and exclusive remedy, and all other remedies or damages at law or in equity are waived by each Party.
- 10.3 Subject to clause 10.2, neither Party shall be liable, whether in contract, tort or otherwise, to each other for any indirect, consequential or special losses, damages or expenses of any kind (including loss or deferment or profit) directly or indirectly arising out of, or in connection with, the performance of this Agreement.



11 Miscellaneous

11.1 No variation, amendment or modification of this Agreement shall be effective unless it is in writing and signed by the Parties.

11.2 Save as expressly mandated by this Agreement with respect to Associates, Advisors, Authorized Users and Permitted Users, neither Party may transfer its rights or obligations under this Agreement in full or in part without the prior written consent of the other Party.

12 Governing Law and Disputes

12.1 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed in accordance with the laws of Timor-Leste.

12.2 The courts of the Democratic Republic of Timor-Leste shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with this Agreement.

Potential Bidder

Name of Potential Bidder (*entity*):

By (*signature*): _____ (Representative)

Name (print):

Title: _____

Date: _____