



BIDDING
FOR CONTRACT CAPACITY OF 170 MW (NET), EFFECTIVE 26 FEBRUARY 2022

BID BULLETIN NO. 3

To all Interested Bidders:

A matrix containing the set of additional queries that have been received by, and the corresponding responses of, the Meralco's Third Party Bids and Awards Committee ("TPBAC") is set out in **ANNEX A**.

Issued on 19 January 2022.

Third Party Bids and Awards Committee ("TPBAC")
Manila Electric Company

(sgd)
Atty. Ferdinand A. Domingo
Chairman

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT CAPACITY OF 170 MW (NET), EFFECTIVE 26 FEBRUARY 2022

INSTRUCTIONS TO PROSPECTIVE BIDDERS / BIDDING DOCUMENTS-RELATED QUERIES/COMMENTS																	
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1.		Authority to Participate in the Bidding and Designation of Authorized Representative	Annex QD-1A item 3	<p>"3. The Company owns, and/or operates and maintains a (specify details of the Nominated Power Plant, such as capacity and plant type) located in (specify location)"</p> <p>Question: Can we change the language to the statement below?</p> <p>"The Company assumed management and control of the contracted capacity of the [•] located in [•]."</p> <p>The original language only refers to Suppliers or Bidders who own or operate/maintain the Nominated Power Plant.</p>	The proposed details were omitted to retain anonymity, but the proposed revision will be allowed.												
2.		Technical Characteristics of the Plant	Annex TP-1 item 2	<p>Question: are we only required to fill out the table and items specified in Annex TP-1? No other Terms from the TOR is required to be included? Also, is there no need to submit further documents to justify the responses of the Bidders under Bidder's Submission?</p> <table><tr><th></th><th>Requirement</th><th>Bidder's Submission</th></tr><tr><td>Offered Contract Capacity</td><td><ul style="list-style-type: none">At least 50 MW (net)</td><td>[Must be 50 MW (net) or more]</td></tr><tr><td>Plant Type</td><td><ul style="list-style-type: none">Peaking (firm and dispatchable)Minimum Energy Off-Take Plant Capacity Factor (PCF) per month is at most 24%Single or portfolio of Plant/s</td><td>[Yes or No] [Indicate MEOT PCF] [Single or portfolio]</td></tr><tr><td>Technical Parameters</td><td><ul style="list-style-type: none">One Delivery Point (for purposes of settlement and transfer of risk and loss), which Delivery Point should be within the Luzon Grid, nearest to Meralco's load center, and subject to Meralco's approval.</td><td>[Bidder to indicate the Delivery Point]</td></tr></table>		Requirement	Bidder's Submission	Offered Contract Capacity	<ul style="list-style-type: none">At least 50 MW (net)	[Must be 50 MW (net) or more]	Plant Type	<ul style="list-style-type: none">Peaking (firm and dispatchable)Minimum Energy Off-Take Plant Capacity Factor (PCF) per month is at most 24%Single or portfolio of Plant/s	[Yes or No] [Indicate MEOT PCF] [Single or portfolio]	Technical Parameters	<ul style="list-style-type: none">One Delivery Point (for purposes of settlement and transfer of risk and loss), which Delivery Point should be within the Luzon Grid, nearest to Meralco's load center, and subject to Meralco's approval.	[Bidder to indicate the Delivery Point]	Yes, the Bidder should fill out the table. However, the said table only answers for the important Technical Proposal details of the Nominated Power Plant <i>vis-à-vis</i> the TOR's technical requirements. The other required attachments of Annex TP-1 and other Qualification Documents (Envelope 1) will be taken as a whole by the TPBAC during its evaluation if the TOR is complied with or not by the Bidder.
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3.		Bid Security	Annex BID-2	<p>Recommendation: Suggest to include instances when Meralco can draw from the SBLC. We understand that it is already in the IPB, but there is not mention of this in the Bid Security template.</p> <p>Question: Can the bank revise and comment on the template as provided in Annex BID-2?</p>	<p>The TPBAC prefers to retain the original wording of the Bid Security template (i.e. not include the instances when Meralco can draw from the SBLC).</p> <p>For exceptional instances, the TPBAC may consider a Bidder's request (because of a request of its chosen bank) to revise or comment on the Bid Security template. The Bidder should submit to the TPBAC for approval before any revision can be made.</p>												

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4.		Submission of QD, TP, and BID	IPB Sec 3.4 p.29	Question: Should the EOI, CU, and Data Privacy Form be inside either of Envelopes 1, 2, or 3? Or should it be in a separate envelope inside the box?	It should be inside Envelope 1. The Checklist for Bidders to be released in a subsequent Bid Bulletin would also indicate this.
5.		Format of Submission	IPB Sec 3.4.2 pp. 31-32	Question: Who can sign each page of the QD, TP, and BID Documents? Can any of the Authorized Reps do so? Or only the Authorized Rep as stated in Annex QD-1A?	It should be the Authorized Representative authorized by the Bidder's governing board/body to join and submit the Bidder's bid as stated in Annex QD-1A.

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PSA TEMPLATE-RELATED QUERIES/COMMENTS					
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6.		Recitals	PSA Recitals (E) p.1	Recommendation: Requesting that this provision be amended for Bidders who are IPPAs. And include any other provisions in the PSA required by PSALM under the IPPAAs.	The Recitals portion will be amended to reflect the details of the Winning Power Supplier.
7.		Change in Circumstance	PSA Sec. 1.1 Change in Circumstance (a); p.3	<p>"any Law coming into effect after the signing of this Agreement, including the adoption or enactment, or any change or repeal with respect to the imposition of taxes, duties, levies, fees, charges and similar impositions, and the right to remit or convert currencies, but in all cases excluding any Legal Requirement or the application or interpretation thereof in existence at such date but which by its explicit terms became effective only after the date of this Agreement"</p> <p>Question: Are there such Legal Requirements? Is this exception subject to the Severability provision?</p>	This is a standard definition adopted by Meralco - the definition is intended to cover the possibility that there is a Law "which by its explicit terms became effective only after the date of this Agreement", so as to afford the affected Party the applicable recourse under Article 11. In general, it covers instances when such Change in Circumstances causes serious damage to, or materially and adversely affects the financial condition of, any of the Parties, for which reason it will be materially more burdensome to continue with obligations under the PSA. The provisions on Change in Circumstances do not contemplate instances wherein the effect is to render any provision of the PSA invalid, illegal or unenforceable, which is covered by Section 18.5.
8.		Term of Agreement (Extension)	PSA Sec. 2.2.3 p.11	<p>"The Term may be renewed for an additional period of up to five (5) months under the same terms and conditions, at the option of Meralco, by giving prior written notice to Power Supplier at least one hundred eighty (180) Days prior to the end of the Term"</p> <p>Recommendation: Extension should not be solely Meralco's option. Extension should be executed subject to mutual agreement of both Parties.</p>	<p>We are amenable to the proposed revision. Sec. 2.2.3 will be revised as follows:</p> <p>2.2.3. The Term may be renewed for an additional period of up to five (5) months under the same terms and conditions, <u>at the option of Meralco upon mutual written agreement of the Parties by giving prior written notice to Power Supplier at least thirty (30) Days prior to the end of the Term.</u></p>
9.		Power Supply Agreement	Article 2.2.3, page 11	On Meralco's sole option to extend the term of the PSA for an additional 5 months, would the 5-month extension be acceptable under existing CSP rules? Has this been confirmed with the DOE and ERC?	There is no prohibition against extension of Term under the CSP Rules. The confirmation by ERC will be secured upon its action on the relevant application for approval of PSA.
10.		WESM Declaration	PSA Sec 4.5.1 p.13	<p>"...Power Supplier shall pay Meralco an administrative fee of Fifty Thousand Pesos (Php 50,000) for each Trading Interval of erroneous BCQ declaration that is due to Power Supplier's fault."</p> <p>Recommendation: Propose to remove administrative fees of Php50,000.00 per interval. Have Supplier pay imbalances only. This will be heavy on the Supplier especially since the market already shifted to the 5-min market.</p>	As relayed to the TPBAC by Meralco, this is a standard provision in ERC-approved PSAs of Meralco. The imposition of the administrative fee serves to deter erroneous BCQ declarations by Power Supplier. It is Power Supplier's lookout to make use of the multiple opportunities to correct BCQ to make sure that no erroneous declaration will result.
11.		Reduction in Contract Capacity and	PSA Sec 8.1 p.14	<p>Question: How will the reduction be determined for this PSA?</p> <p>Recommendation:</p>	As relayed to the TPBAC by Meralco, the DU shall abide by the existing rules at the time this reduction is implemented, guided

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		Associated Energy		1. Since the contract is only for 5 months, we suggest to remove this provision 2. If not, then we propose that the reduction be prorated amongst Meralco's Suppliers.	by the ERC, and the DU's mandate to supply electricity in the least-cost manner.
12.		Power Supply Agreement	Article 3.2.1, Page 12 Reduction in Contract Capacity and Associated Energy	Any reduction in Contract Capacity and Associated Energy should be "prorated" amongst all of Meralco's power suppliers and shall not solely affect the Contract Capacity under the PSA with the Winning Power Supplier.	See answer immediately above (item 10).
13.		ERC Approval	PSA Sec 12.2.2 (i) p.21-22	<p>"...If the Parties are unable to agree on the required amendment within thirty (30) Days from receipt of the ERC Approval resolving the motion for reconsideration, or if the motion for reconsideration is not resolved by the ERC within one hundred twenty (120) days after its filing, or the amendment is disapproved by the ERC, or approved by the ERC but still contains any material term or condition that is not acceptable to either Party, acting reasonably, then either Party may terminate this Agreement and the Bid Security shall be returned to Power Supplier "</p> <p>Recommendation: Only the adversely affected Party should have the right to terminate the Agreement.</p>	Quoted portion of Section 12.2.2 (i) contemplates a situation wherein Parties are unable to agree on the required amendment. In such case, both Parties may be adversely affected; thus, remedy of termination is made available to either Party.
14.		ERC Approval	PSA Sec 12.2.2 (ii) p.22	<p>"If Power Supplier does not file a motion for reconsideration with the ERC and/or notifies Meralco that it intends to terminate this Agreement, Meralco shall have the right to forfeit the Bid Security to the extent of twenty-five percent (25%) thereof."</p> <p>Recommendation: Propose to revise the right of Meralco to forfeit the Bid Security in the event that Supplier fails to comply with any order or directive of the ERC. The Supplier will be forced to comply even if there are valid grounds to oppose the motion for reconsideration.</p>	<p>Bidder's mention of a motion for reconsideration <i>vis-a-vis</i> failure to comply with an ERC order or directive is covered by (i), not (ii). As relayed to the TPBAC by Meralco, the DU will retain language of this provision.</p> <p>It should be noted that forfeiture of Bid Security is not anchored on the filing of the motion for reconsideration <i>per se</i>, but on failure of Power Supplier to (a) comply with any order or directive by ERC, or (b) provide any document required by ERC; and such failure results in its obligations under the PSA not being performed.</p>
15.		Power Supply Agreement	Article 12.2.2 Item (ii), Page 22	Please clarify the rationale behind the forfeiture of 25% of the Bid Security in case Power Supplier does not file a Motion for Reconsideration. Please further clarify the basis for the minimum 25% rate. What will be MERALCO's criteria to impose a higher level of forfeiture as the PSA provides the 25% as a minimum rate?	See answer immediately above (item 13).

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				Further, please clarify and state the reason therefor, if Meralco has right to terminate the bid security in case of Power Supplier's non-acceptance of the ERC Approval that adversely affects or amends the bid of the Winning Power Supplier.	
16.		Events of Force Majeure	PSA Sec 13.1 (b) item iv p.23-24	<p>"no obligation of either Party, which arose before the occurrence of the event that caused the suspension of performance of obligations hereunder, shall be excused as a result of an Event of Force Majeure (for the avoidance of doubt, day-ahead nominations by Meralco pursuant to Section 4.1(b) shall not be considered a pre-existing obligation for this purpose)"</p> <p>Question: Please enumerate obligations that are referred to in this provision.</p>	Please note that this is a standard provision in Meralco's PSAs. This pertains to all obligations of the Parties under the PSA that arose prior to occurrence of the Event of FM.
17.		Instances of Force Majeure	PSA Sec 13.2 p.24	<p>"For clarity, Power Supplier shall not be allowed to claim Force Majeure under Article 13 in case there is supply available from the WESM or any other source."</p> <p>Recommendation: Since Power Supplier is required to nominate a Plant in this PSA, this provision should be removed. This removes the of the Supplier to claim Force Majeure even during FM events.</p> <p>Question: If Supplier is not allowed to claim FM even if the Nominated Plant is on outage due to FM, at what rate will the Supplier charge Meralco for the supply of energy during this instance?</p>	<p>Since the definition of Contract Capacity and Section 4.1 (a) provides that the Contract Capacity can be sourced by Power Supplier from the Plant, the WESM or any other source, it is only when there is no supply available from WESM or any other source that Power Supplier may claim FM. Hence, the last paragraph of Section 13.2.</p> <p>The TOR clearly provides that when the Plant is not capable of delivering a portion of, or the entire Contract Capacity, Power Supplier shall supply from its portfolio of Plants, WESM or any other source, and Meralco shall pay the lower between WESM price and Contract Price. For this purpose, note that [Section 6.1 of] Appendix D shall provide that only any positive difference between the hourly BCQ declaration and the corresponding hourly day-ahead capacity availability schedule shall be treated as Replacement Power.</p>
18.		Meralco's Events of Default	PSA Sec 14.2 p.28	<p>"For the avoidance of doubt, it is understood and agreed that, subject to Meralco exerting best efforts to procure the extension or renewal of its Franchise, the expiration and/or non-renewal of the Franchise shall not be considered a Meralco Event of Default."</p> <p>Recommendation:</p> <ol style="list-style-type: none"> Should this still be included? It shouldn't be applicable during the Contract Term If required to be included, we propose to include a provision stating that in case of non-renewal, the obligations under this PSA shall be transferred to MERALCO's successor. And in case MERALCO renews a portion of its franchise, 	<p>Please note that this is a standard provision in Meralco's PSAs.</p> <p>Considering that the terms of the subsequent franchise are beyond Meralco's control, Meralco cannot commit to its successor (if any) automatically assuming the rights and obligations under the PSA or to continue the PSA with a reduced Contract Capacity.</p>

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				MERALCO and Power Supplier shall continue the PSA but amend the CC and Associated Energy to reflect the prorated reduction.	
19.		Agreed Damages	PSA Sec 14.3 p.28	<p>"...The remedies in this Section 14.3 are exclusive remedies in cases of termination of this Agreement."</p> <p>Question: If a Party exercises this provision upon termination, no other remedy is available to that Party?</p>	Agreed Damages in Section 14.3 are exclusive remedies in case of termination by reason of Event of Default.
20.		Other Rights and Remedies	PSA Sec 14.6.1 p.30	<p>"Upon the breach by either Party of any representations, warranties, covenants or obligations hereunder, the Party damaged by any such breach may, in its sole discretion, in addition to exercising any other remedies provided for hereunder, proceed in accordance with Article 16 to protect and enforce its rights, to recover any damages to which it may be entitled (including all costs and expenses reasonably incurred in the exercise of its remedy, but subject to the limitations in Section 14.3.) or to seek specific performance by the other Party of such other Party's obligations under this Agreement."</p> <p>Question: Please confirm if this provision contemplates a scenario where a Party breaches the PSA but the other Party does not terminate the Agreement?</p>	The contemplation of this provision includes the instance when a Party may not wish to terminate the PSA at the outset.
21.		Assignment Clause	PSA Sec 17.1.1(a) p.33	<p>"a. Power Supplier may, with prior written consent of Meralco (which consent shall not be unreasonably withheld or delayed), transfer or assign this Agreement and its rights and interest hereunder to (a) an Affiliate with creditworthiness equal to or higher than that of Power Supplier and (b) any Person succeeding to all or substantially all of Power Supplier's assets with creditworthiness equal to or higher than that of Power Supplier..."</p> <p>Question: At what point in the contract can Supplier transfer the contract to its Affiliate?</p> <p>What is the criteria for creditworthiness?</p>	<p>Section 3.2.1 provides for occurrence of Operations Effective Date (OED), which includes ERC Approval and Acceptance Date by Longstop Date. Given this, PSA may be assigned by PS upon OED.</p> <p>As mentioned in Section 17.1.1(a), creditworthiness of the Affiliate must be equal to or higher than that of Power Supplier. In this regard, Power Supplier should submit proof of the credit rating of the Affiliate issued by any local or foreign credit rating agency.</p>

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22.		Power Supply Agreement	Article 11.3 Charges Due To Changes In Circumstances Last portion of the paragraph, Page 19 Article 11.4	<p>" ..., the Associated Energy with respect to the Contract Capacity computing using 45% plant capacity factor for the remaining term, whichever is shorter". Please clarify the figures being compared in this sentence with the foregoing highlighted clause.</p> <p>Further, the basis of the liquidated damages should be the MEOT of 24% PCF only (not the 45% maximum level) as this level is Meralco's committed utilization of the Contract Capacity.</p> <p>Please delete item (c) in Article 11.4 considering that the Term of the Agreement is five (5) months assuming the PSA will be implemented by February 26, 2022.</p>	<p>Basis of liquidated damages is at 45% PCF since this is the maximum exposure that Meralco will incur in case Power Supplier will be in Event of Default. Also, the winning power supplier will be determined by comparing the offered prices at 45% PCF.</p> <p>Also, for clarity, the proposed revision in Section 11.3 will instead be reflected as follows:</p> <p>"xxx If the Parties fail to reach a mutually satisfactory resolution within thirty (30) Days from the commencement of negotiations, or Power Supplier does not accept the ERC approval, Power Supplier shall be entitled to terminate this Agreement subject to Power Supplier's payment of liquidated damages, which shall be in lieu of all other damages to which Meralco may be entitled, in the amount equivalent to the sum of the product of the Contract Price (at the time of failure to reach a mutually satisfactory resolution or Power Supplier's notification of non-acceptance of the ERC approval, whichever is applicable) and the Associated Energy with respect to the Contract Capacity computed using a 45% plant capacity factor for the remaining Term, whichever is shorter."</p> <p>The contemplation of Section 11.4 includes the instance when the event that led to the Change in Circumstances happened within the Term of the PSA, as when the Term is extended as provided therein. As such, this provision will be retained.</p>