# BIDDING

**BASELOAD CONTRACT CAPACITY OF 180 MW (NET), EFFECTIVE 26 FEBRUARY 2023**

# BID BULLETIN NO. 2

To all Interested Bidders:

A matrix containing the set of advance queries for the Pre-Bid Conference 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**.

For your guidance and information.

Issued on 12 January 2023.

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

*(sgd)*
**Atty. Ferdinand A. Domingo**
*Chairman*

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| 1. | | | | We would like to confirm if MERALCO will share all comments/queries from other bidders after the Pre-Bid | Yes, all comments/queries will be released by the TPBAC to all bidders via Bid Bulletin, as well as posted in the DOE's CSP Portal and Meralco's CSP website. |
| 2. | | Expression of Interest | | The EOI, Confidentiality Undertaking Data Privacy were printed in A4. Do we still need to redo to comply with the required paper size? | No, the A4-size printout will be accepted. |

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| 3. | | Expression of Interest | Page 2 | The Bidder may change any of its contact person(s)/authorized representative(s) at least five (5) days prior to the Pre-Bid Conference, Bid Submission Deadline, and/or Opening of Bids the submitting a new Expression of Interest stating the name(s) and email address(es) of the newly designated contact person(s)/authorized representative(s). - **5 days prior the pre-bid falls on a weekend (January 7, 2023), can this be adjusted to a later date?** | Sec. 2.1 (f) of the Instructions to Prospective Bidders dated 23 December 2022 reads:<br><br>"If the last day of the period prescribed or allowed under this IPB for TPBAC, Meralco or the Bidder to take any action falls on a Saturday, a Sunday, a non-working national holiday, or a non-working day in Pasig City, the TPBAC, Meralco or the Bidder shall have until the next working day to take action."<br><br>Therefore, the date can be adjusted to 9 January 2023. |
| 4. | | TOR Table | Tariff Structure of Contract Price | For purposes of evaluation in this bidding, the Bidder shall submit either of the following: i. Latest three (3)-month average actual landed fuel cost of its Nominated Plant/s inclusive of supporting documents (i.e., actual invoices from its fuel supplier/s); or ii. Forecasted landed fuel cost. Upon implementation where the Winning Power Supplier provided "(a)", Fuel Cost component will be treated as a full pass-through and shall be based on the actual landed fuel cost (i.e. supported by actual invoices from fuel supplier/s) and in USD/kWh and/or PhP/kWh. In the event however that Bidder chose to submit "(b)" and is declared the Winning Power Supplier, such forecasted landed fuel cost shall be used as basis of its fuel cost, which shall not be subject to escalation during the Required Contract Period (i.e. Bidder cannot pass-through its actual landed fuel cost).- **How will this be evaluated? Actual vs Forecasted?** | The landed fuel cost as submitted by the Bidder in the Financial Evaluation Workbook (FEW) will be used by the FEW to compute said Bidder's submitted Total Delivered Headline Rate, regardless of the submission of actual landed fuel cost or forecasted landed fuel cost. As stated in the TOR, there will be a difference during implementation of the fuel pass-through depending on the type of landed fuel cost that the Bidder submitted.<br><br>If the Bidder submitted its actual landed fuel cost, then during implementation of the IPSA, the actual landed fuel cost shall be pass-through. If the Bidder submitted a forecasted landed fuel cost, then during implementation of the IPSA, the pass-through landed fuel cost shall be the lower between the actual landed fuel cost and forecasted landed fuel cost. |
| 5. | | TOR Table | Tariff Structure of Contract Price | Seeking clarification if the Bidder will submit the actual landed fuel cost of its Nominated Plant/s, what exactly are the months will be used for the "latest three (3)-month average"? | The average landed fuel cost for **October, November, and December 2022** should be used. |
| 6. | | TOR Table | Supply and Replacement Power | Supply shall primarily be sourced from the Plant, provided that when the Plant is not capable of delivering 4 a portion of or the entire Contract Capacity, Power Supplier shall supply from WESM or any other source, to be paid for by Meralco at the lower between the WESM price and Variable Price (in each case inclusive of all relevant transaction costs and taxes). - **Since replacement power is c/o of Supplier, suggest that payment should be at variable price, regardless of WESM price.** | Current replacement power provision is aligned with PSAs approved by ERC previously. Proposal may not be considered 'least cost' by ERC, particularly when WESM price turns out to be lower.<br><br>Since this IPSA is physical in nature and Power Supplier should primarily source its supply from its Plant, setting the Replacement Power price as the lower between the variable cost and WESM price will ensure that the Power Supplier will have an incentive to keep its Plant operational. |

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| 7. | | TOR | Supply and Replacement Power | As stipulated, replacement power will be paid at WESM Price or Variable Cost (VOM+Fuel) whichever is lower. Will this not constitute an impairment and a deviation of the Rate explicitly stipulated in the Power Supply Agreement duly agreed between the parties and approved by ERC? May we humbly suggest that Replacement Power Cost shall be paid at contract price. | *See response above.* |
| 8. | | TOR Table | Required Contract Period | Will the expiration date be extended if the OED is not implemented by February 26, 2023, to complete the one-year term? | February 26, 2023 is a hard date. As recognized by the DOE in its letter to Meralco approving the TOR for posting, the TOR is consistent with the DOE-approved 2022-2031 DDP of Meralco. Note, however, that under Section 2.2.3, and subject to the need of Meralco, Term may be renewed for an additional period of up to one (1) year under the same terms and conditions, upon mutual written agreement of the Parties. |
| 9. | | ANNEXES | For Annex A of Annex QD-4 | Is this necessary if there are no lenders? If so, suggest to clarify what should be submitted in lieu thereof | Please indicate "None" in the table of "Financial Lenders." |
| 10. | | ANNEXES | Annex Bid 2 – Bid Security | To clarify whether Meralco can withdraw in full or in part, the first paragraph is structured in such a way that Meralco can withdraw the entire sum, while subsequent sections appear to enable partial withdrawal. | The intention is for MERALCO to always make "one drawing for the entire Stated Amount" of the SBLC.<br><br>Should the provisions in the IPB allow MERALCO only a certain percentage of the Bid Security, Meralco shall draw on the entire amount of the Bid Security, retain the relevant/required percentage of its value, and return the balance to Bidder. |
| 11. | | SBLC | | Meralco needs the "Envelope" name and number to be stamped on all documents. Can the original SBLC be exempted from this requirement because the bank is stringent about tampering with this document? | Amenable to this exemption **for the original copy of the SBLC**, however, the Bidder should provide the cover letter or a receiving copy (or photocopy of the SBLC) with the required stamped "Envelope name and number". |
| 12. | | TOR | Bid Type | Kindly elaborate further the Pay-as-Bid scheme. | The Pay-as-Bid type of competitive bidding allows a Bidder to join the Bidding without being required to offer all the required Contract Capacity (in this case, 180 MW), for as long as the Minimum Offered Contract Capacity is met (in this case, set at 50 MW).<br><br>For as long as the Bidder has "PASSED" the Qualification Documents (Envelope 1) and Technical Proposal (Envelope 2), and its Proposed Tariff's Total Delivered Headline Rate, as inputted by the Interested Bidder to and computed by the Financial Evaluation Workbook, is **less than or equal** to the Reserve Price, then the said Bidder's Total Delivered Headline Rate will be ranked with other Bidder's offer, from lowest to highest until the required 180 MW is filled up. |

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| | | | | | This was inspired by the WESM's stacking and determination of a Marginal Plant.<br><br>Page 5 to 6 of the Bid Requirements elucidates this further:<br><br>"...[A]ll the Offered Contract Capacities of the Qualified Bidders that meet the Reserve Price shall be stacked from lowest to highest Total Delivered Headline Rate until the required Contract Capacity (i.e. 180 MW [net]) is filled up. The TPBAC shall determine, from among the Qualified Bidders whose Offered Contract Capacities have filled up the required Contract Capacity, the most advantageous bid ("Best Bid/s"). For this purpose, the TPBAC shall notify the Bidders of the results of its evaluation and/or ranking of the Bids ("Notification of Best Bid/s").<br><br>If the resulting stack of Offered Contract Capacities goes beyond the required Contract Capacity (i.e. more than 180 MW), the Qualified Bidder that fills up the stack to complete the required Contract Capacity (hereinafter referred to as the "Marginal Bid Offer") shall have its Offered Contract Capacity reduced accordingly up to the extent of the required Contract Capacity at its Proposed Tariff. A Bidder with the Marginal Bid Offer and a candidate recipient of a Notification of Best Bid, which refuses to accept the reduction of its Offered Contract Capacity up to the extent of the required Contract Capacity at its Proposed Tariff, shall have its Bid Security forfeited equivalent to the proportionate percentage amount of the Bidder's Bid Security, based on the ratio of the required Contract Capacity that needs to be filled up (which the Bidder with the Marginal Bid Offer refused) to the Bidder's Offered Contract Capacity. For example, if the Marginal Bid Offer is for 100 MW but only 20 MW is needed to fill up the required Contract Capacity, Meralco shall draw on the entire amount of the Bid Security, retain twenty percent (20%) of its value, and return the balance to Bidder." |
| 13. | | TOR | Tariff Structure of Contract Price | As a bona fide bidder of MERALCO for the first time, please enlighten us further on the Ancillary Services (AS) Recovery Cost, its mechanism and implications. | While DOE DC2019-12-0018 does not provide any formula for AS Cost Recovery, Section 1.7 of the said Circular provides as one of its guiding principles "transparent and equitable allocation of cost for the utilization of AS taking into account each grid user's responsibility and contribution in maintaining the reliability of the |

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| | | | | | grid". Clearly, the said Circular's policy direction is to establish Causer's Pay principle in the allocation of AS costs.<br><br>The existing cost recovery mechanism is currently being reviewed by the ERC and the ERC as a member of the AS-TWG solicited inputs on the appropriate cost recovery mechanism consistent with the guiding principle in the DOE AS Circular. In fact, there is already a pending NGCP petition for ERC to revise the current AS Cost Recovery, so that AS costs will be charged not only to load customers but to GenCos as well.<br><br>Inclusion of the AS Cost Recovery in the Financial Evaluation Workbook is necessary because all costs in the bid documents are binding to the bidder once declared the Winning Power Supplier.<br><br>Most importantly, removing the AS Cost Recovery Cap in the Total Delivered Headline Rate evaluation would expose the DU's consumers to additional pass-through costs in the event that the ERC issues a Resolution that the AS cost recovery can be passed through to our consumers. In order to maintain the resulting ranking from the Total Delivered Headline Rate evaluation that includes the AS Cost Recovery Cap regardless of ERC's resolution, a constant value of **PhP 0.2800 /kWh** is set as the floor value of the AS Cost Recovery Cap during each Contract Year for each Bidder that shall be used in the Total Delivered Headline Rate evaluation. This value can be modified by the Bidder in the Financial Evaluation Workbook, as long as the revised value shall be higher than the floor value. If the Bidder elects to submit a higher value than the floor value as its AS Cost Recovery Cap, said Bidder waives its right to protest the resulting ranking from the Total Delivered Headline Rate evaluation in the event that ERC issues a resolution that the AS cost recovery is not a pass-through cost.<br><br>In any case, the recovery of the AS Cost can be charged as a pass through cost only upon final approval or resolution by the ERC that the AS cost recovery can be passed through to the DU's customers.<br><br>To reiterate, including the AS Cost Recovery cap in the Total Delivered Headline Rate evaluation is for the sole benefit of the DU's |

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| | | | | | customers as it shall protect the consumers from possible pass-through charges of AS Cost. |
| 14. | | IPB | 2.2, pg.8 | What is the basis of the Reserve Price? | As relayed to the TPBAC by the DU, it is based on the DU's evaluation of prevailing market prices and recent-ERC approved prices. |
| 15. | | IPB | 2.2 (f) pg. 13 | What will happen if one or more qualified bidder/s passed the reserve price, but the total offered capacity is below the 180 MW requirement | The bids of all the said Qualified Bidders, assuming they passed all other documentary requirements for the Bid Price and Bid Security (Envelope 3), will be declared as Best Bids. |
| 16. | | IPB | 3.1 (c), pg. 22 | Limited Partnerships are not required to have GIS. In this regard, can [Bidder] indicate "N/A" in its submission | This is noted. The TPBAC would like such limited partnerships to instead submit a notarized document stating the composition of the Partnership along with the declaration of interest of each partner and the names of its officers.<br><br>In addition, the Articles of Partnership and Certificate of Registration of the said Bidder should also be submitted, as required in Sec. 3.1.2 (a) and (b) of the IPB. |
| 17. | | IPB | 3.2 (f), pg 24 | Please confirm if the bidders are allowed to submit Certificate of Registration issued by the ECOZONE Administrator in lieu of a business permit? | Section 3.2 (f) of the IPB speaks of the Certificate of Registration issued by the Board of Investments, not a business permit.<br><br>The Certificate of Registration issued by the Ecozone Administrator may be submitted as a supplement to this Technical Proposal requirement if the Bidder has no BOI-issued Certificate of Registration. |
| 18. | | IPSA | Article 7, 7.1 | We respectfully suggest to have an outage allowance in accordance to ERC Resolution No. 10, Series of 2020 "A Resolution Adopting the Interim Reliability Performance Indices and Equivalent Outage Days Per Year of Generating Units". | It is the intention that baseload supply under this IPSA is 24/7, hence, Power Supplier is not entitled to any outage allowance. Note also that the objective of the IPSA is to augment supply to Meralco's customers at onset of critical summer months in 2023, and this need is anticipated to last until the first (1st) quarter of 2024. |
| 19. | | Pre-Bid Conference questions | | May the generator be also allowed to ask for the posting of Security Deposit on the part of MERALCO in lieu of the Bid Security to be posted by the bidder? | There is a different purpose for the Bid Security and the Security Deposit. The Bid Security is submitted to ensure compliance of the Bidder for this CSP. On the other hand, MERALCO has been able to implement its PSAs without the need to put up a Security Deposit. We will study the matter further, but for now, MERALCO is not amenable to posting a Security Deposit. |
| 20. | | Pre-Bid Conference questions | | [Tariff Structure]<br>for clarification, If the supplier opt for (b) forecasted does this mean we are fixing the fuel for the term using that forecast. | If the Bidder opts to submit a forecasted landed fuel cost for the Bid Evaluation, and it is declared a Winning Power Supplier, then during implementation, that fuel pass through that that Bidder can |

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| | | | | | bill MERALCO is the lower between its actual landed fuel cost and its submitted forecasted landed fuel cost. If a Bidder submits a forecasted landed fuel cost during evaluation, it will act as a cap during the implementation.<br><br>This is also clarified in the Appendices file of the PSA template that was uploaded to the individual online folders of the Bidders. |
| 21. | | Pre-Bid Conference questions | | Definition of Metered Quantity: Metered Quantity means the actual output of the Plant as metered by the Metering Services Provider at the Delivery Point. [If the Plant is only partially contracted to Meralco, the Parties shall agree on a mechanism to allocate the metered quantity of the Plant with respect to the Contract Capacity of Meralco.] - this may not be relevant since there is no outage allowance and supplier may source it from other source | The Metered Quantity definition is still relevant since the overall concept of this IPSA is for contracting of a physical plant such that actual fuel cost incurred by it shall be the basis of the fuel cost payment of MERALCO. Thus, the Metered Quantity definition and principle is included here, even if there is no outage allowance in the IPSA, to guarantee that the power plant of the Bidder still runs and shall not depend on replacement power from other sources. This is to ensure that MERALCO pays the Power Supplier for its actual fuel cost with respect to the metered quantity that was generated to serve or provide the contract capacity to MERALCO. |
| 22. | | Pre-Bid Conference questions | | Definition of Business Day : Can we include Taguig City? | If the question refers to the IPB including in the definition of Business Day the local government holiday of the Bidder, the reason it was not included (i.e., apart from Pasig City) is because it will be difficult for the TPBAC to monitor the holidays of different cities by different participating bidders. The only visible local holiday for the TPBAC to monitor is the LGU where MERALCO's principal office is located - Pasig City. The bidders should be aware of their local holidays and plan to meet the deadlines of the CSP accordingly.<br><br>If the question refers to the PSA template's definition of Business Day, yes, the LGU where the Winning Power Supplier's principal office is located may be included in the definition of "Business Day." |
| 23. | | Pre-Bid Conference questions | | Will the TPBAC provide a checklist of eligibility requirements under Envelope 1? | Yes, the TPBAC provides a checklist of the eligibility requirement a week or a few weeks before the Bid Submission Deadline just to serve as a guide for the bidders to prepare their documents.<br><br>The Checklist of Document Submissions is being provided for the sole purpose of reference and convenience of the Bidders only. No reliance can be made on the said checklist and its issuance (including its contents) does not relieve Bidders of their responsibility to examine all the Bidding Documents and comply with the provisions of the IPB. In the event of a conflict or |

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| | | | | | discrepancy between the checklist of Document Submissions and the IPB, the latter shall prevail. |

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| 24. | | Article 6. Operation and Maintenance of the Plant | Article 6.1.2 | The Parties shall maintain close coordination at all times in respect of all matters relating to the supply of electricity under this Agreement. Power Supplier shall keep Meralco sufficiently informed of all significant developments affecting the Plant. For this purpose, the Parties shall establish a Coordinating Committee comprised of six (6) members, three (3) appointed by each of Power Supplier and Meralco. The obligations and responsibilities of the Coordinating Committee and the rules governing meetings of the Coordinating Committee shall be as set out in **Appendix E- Replacing Appendix D to E as the file pertains to Appendix D pertains to acceptable banks. It should be Appendix E** | This is a typographical error and will be corrected from Appendix "D" to "E".<br><br>The correction is noted by the TPBAC and MERALCO PSA team and will be reflected on the PSA template to be executed by the Winning Power Supplier. |
| 25. | | Article 8. Adjustments in Contract Capacity and Associated Energy | Article 8.2 Adjustments in Contract Capacity and Associated Energy | Suggest to include the **bold** portion in the provision:<br><br>8.2. Meralco shall give a written notice to Power Supplier of the Reduction in Contract Capacity and Associated Energy at least five (5) Days prior to the first Day of the next Billing Period. Upon receipt by Power Supplier of such written notice, Meralco shall cease to have any rights and obligations under this Agreement in respect of such Reduction in Contract Capacity and Associated Energy; **provided that this right may only be exercised in the event that Meralco, after exercising best efforts and in good faith, is unable, to assign or transfer the Contract Capacity in accordance with Article 19 of this Agreement** | The adjustment in Contract Capacity and Associated Energy under Article 8 is a right distinct from Article 19 which pertains to assignment. Hence, Article 8 can be exercised independently from Article 19. |
| 26. | | Article 9. Billing and Payment | Article 9.1 Billing | Power Supplier shall render to Meralco an itemized Invoice for each Billing Period in accordance with the provisions of this Agreement and **Appendix F.** Meralco shall pay Invoices when due and payable in accordance with this Agreement and **Appendix F. – replacing Appendix E to F as Appendix E pertains to Operating Procedure** | This is a typographical error and will be corrected from Appendix "E" to "F".<br><br>The correction is noted by the TPBAC and MERALCO PSA team and will be reflected on the PSA template to be executed by the Winning Power Supplier. |
| 27. | | Article 9.2 Payments | Article 9.2.1 -Payments | Meralco shall pay the entire amount indicated in the Final Invoice **(subject to Appendix F)** when due and payable, *provided* that, Meralco shall not be required to make payment on any Invoice that is manifestly in error, apparently invalid, or not in the form or substance contemplated by this Agreement, until the same has | This is a typographical error and will be corrected from Appendix "E" to "F".<br><br>The correction is noted by the TPBAC and MERALCO PSA team and will be reflected on the PSA template to be executed by the Winning Power Supplier. |

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| | | | | been corrected following prompt notice by Meralco to Power Supplier of such error, invalidity or absence of proper form or substance. - **replacing Appendix E to F as Appendix E pertains to Operating Procedure** | |
| 28. | | Article 9.2 Payments | Article 9.2.2 - Payments | 9.2.2. If Meralco disputes all or any portion of an Invoice for a reason other than a manifest error in, or the apparent invalidity, or incorrect form or substance of, such Final Invoice, Meralco shall nonetheless pay the full amount of such Invoice **(subject to Appendix F). Any payment by Meralco under this Section 9.2.2 is without prejudice to Meralco's right at a later date within one (1) year following such payment to dispute, protest or question any amount so paid. -**<br>• **replacing Appendix E to F as Appendix E pertains to Operating Procedure**<br>**1 year to dispute is quite long? Given that this PSA is only for a year, may this be reduced to 60 days from Meralco's payment?** | This is a typographical error and will be corrected from Appendix "E" to "F".<br><br>The correction is noted by the TPBAC and MERALCO PSA team and will be reflected on the PSA template to be executed by the Winning Power Supplier.<br><br>The 1-year period to dispute is a standard period in MERALCO's PSAs regardless of Term. Further, since this provision contemplates that the payment has already been received by power supplier for such billed [then questioned] amounts, in the interest of customers, MERALCO should be given ample opportunity to recoup disputed amounts that may have been wrongfully charged and paid. |
| 29. | | Article 9.2 Payments | Article 9.2.4 - Payments | If any withheld amount under Section 9.2.1 is subject to objection or Dispute, or sum set forth in a Final Invoice, or any other sum payable under this Agreement has been paid under protest or is subject to objection, or is the subject of a Dispute, then after agreement between the Parties or after settlement of the Dispute, any sum so agreed by the Parties or determined pursuant to Article 18 to be owing (including the refund of any amount so paid under protest or subject of a Dispute) shall be paid within the later of (a) the original due date of such payment and (b) seven (7) Days from such agreement or settlement, with interest accruing thereon from the original due date (or, if payment has been made under protest or Dispute, from the date the disputed amount was paid) until the award or settlement amount is paid. Interest shall be calculated on the actual number of days elapsed over a three hundred sixty-five (365) Day basis equivalent to the PHP BVAL Reference Rate plus two hundred (200) basis points, pursuant to Section 4 of **Appendix F**, in each | This is a typographical error and will be corrected from Appendix "E" to "F".<br><br>The correction is noted by the TPBAC and MERALCO PSA team and will be reflected on the PSA template to be executed by the Winning Power Supplier. |

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| | | | | month in which the sum was due and payable; provided however, that if the protest or Dispute is resolved by the Parties and payment is made, in each case within thirty (30) Days from the date of filing thereof, the Parties agree to waive payment of any interest due on the amount owing (or, if payment has been made under protest or Dispute, due on the amount to be refunded). - **replacing Appendix E to F as Appendix E pertains to Operating Procedure** | |
| 30. | | Article 11. Charges Due to Material Adverse Government Action | Article 11.2, item b, paragraph 2 | It is agreed that New Charges or Increased Charges **for which Power Supplier sends a Notice of Material Adverse Government Action in accordance with this Section 11.2** shall not include charges, fees, taxes, duties, assessments or other similar amounts relating to (i) taxes on the income of Power Supplier, (ii) taxes on the real property owned, held by or in possession of Power Supplier, and (iii) business taxes on the operations of Power Supplier. - **Notice of Material Adverse Government Action is only defined in 11.3. Should this paragraph be in 11.3? or does this also apply to 11.2?** | For proper flow, [current] Section 11.2 will be re-numbered to Section 11.3 and [current] Section 11.3 will be moved up to Section 11.2.<br><br>The correction is noted by the TPBAC and MERALCO PSA team and will be reflected on the PSA template to be executed by the Winning Power Supplier. |
| 31. | | Article 11. Charges Due to Material Adverse Government Action | Article 11.3, item a, paragraph 2 | If the Application for Price Adjustment has been denied, in whole or in part, Power Supplier shall be entitled to terminate this Agreement in accordance with the provisions of Section 16.6.3(a); provided that, serious damage or material and adverse effect on Power Supplier has resulted in its having actually incurred costs amounting to more than thirty percent (30%) of the annual capacity payment. In case of termination by reason of a denial by the ERC or applicable Government Instrumentality of the existence of a Material Adverse Government Action, Power Supplier shall pay the liquidated damages calculated in accordance with Section **16.3.3(a);** provided that, if the denial is for a reason other than non-existence of a Material Adverse Government Action, Power Supplier shall only pay fifty percent (50%) of the liquidated damages calculated in accordance with Section 16.4.1.- **There's no 16.3.3(a) in this PSA. Should this be 16.6.3(a)?** | This is a typographical error and will be corrected from Section 16.3.3.(a) to Section 16.**6**.3.(a).<br><br>The correction is noted by the TPBAC and MERALCO PSA team and will be reflected on the PSA template to be executed by the Winning Power Supplier. |
| 32. | | Article 11. Charges Due to Material Adverse Government Action | Article 11.3, item b, | Meralco may dispute the existence of a Material Adverse Government Action following the procedure set in **Article 16.** During the pendency of the Dispute, Power Supplier shall continue to make Available the Contract Capacity and supply the Associated Energy to Meralco; provided that, when the Material Government Action results in Power Supplier having actually | This is a typographical error and will be corrected from Article 16 to Article 18.<br><br>The correction is noted by the TPBAC and MERALCO PSA team and will be reflected on the PSA template to be executed by the Winning Power Supplier. |

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| | | | | incurred costs amounting to more than thirty percent (30%) of the annual capacity payment, Power Supplier shall be entitled to terminate this Agreement in accordance with the provisions of Section 16.6.3(a), subject to payment by Power Supplier of fifty percent (50%) of the liquidated damages calculated in accordance with Section 16.4.1; provided further that, upon resolution of the Dispute, including a determination that the Material Adverse Government Action does not exist, Power Supplier shall pay additional fifty percent (50%) of the liquidated damages calculated in accordance with Section 16.4.1.- **Shouldn't this be Article 18?** | |
| 33. | | Article 19. Assignment and Change of Control | Article 19.1.2 | 2. Contract Capacity and Associated Energy that is no longer required by Meralco shall not be assigned, transferred, designated, delegated or allocated (collectively in this context, "Transfer") by Meralco to another, except (i) if required for project financing in the case of Power Supplier, **as provided in Article 19;** (ii) when allowed by the ERC; or (iii) when necessary to mitigate or avoid any losses or costs due to stranded contract capacity; provided that, any assignment or transfer to a distribution utility shall comply with applicable competitive selection process rules. In the case of item (iii), Meralco shall be entitled to Transfer its rights and obligations to purchase a portion of Contract Capacity and Associated Energy that is no longer required by Meralco (a) to any of its business segments or wholly-owned Affiliates without the prior consent of Power Supplier, or (b) to any other Person, subject to the consent of Power Supplier, which consent shall not be unreasonably withheld, delayed or conditioned, it being understood that withholding consent would not be considered unreasonable if the proposed Transfer would be contrary to the reasonable requirements of Finance Parties under the **Finance Documents**, as evidenced by a written confirmation by the relevant **Finance Parties.** In the case of (b), Power Supplier shall exert reasonable efforts to (i) procure that only the consent of Finance Parties representing no more than seventy-five percent (75%) of the debt plus undrawn commitments shall be required for a Transfer under the Finance Documents; and (ii) upon written notice being given by Meralco, procure such consent for the Transfer; and Meralco shall endeavour to cooperate with Power Supplier by providing documents and | Reference to "project financing" and "Finance Documents"/"Finance Parties will be deleted since these terms are not defined and considering that this PSA is brownfield. Section 19.1.2 shall be revised to read as follows:<br><br>19.1.2. Contract Capacity and Associated Energy that is no longer required by Meralco shall not be assigned, transferred, designated, delegated or allocated (collectively in this context, "**Transfer**") by Meralco to another, except (i) ~~**if required for project financing in the case of Power Supplier, as provided in Article 19; (ii)**~~ when allowed by the ERC; or (ii~~i~~) when necessary to mitigate or avoid any losses or costs due to stranded contract capacity; *provided* that, any assignment or transfer to a distribution utility shall comply with applicable competitive selection process rules. In the case of item (ii), Meralco shall be entitled to Transfer its rights and obligations to purchase a portion of Contract Capacity and Associated Energy that is no longer required by Meralco (a) to any of its business segments or wholly-owned Affiliates without the prior consent of Power Supplier, or (b) to any other Person, subject to the consent of Power Supplier, which consent shall not be unreasonably withheld, delayed or conditioned~~**, it being understood that withholding consent would not be considered unreasonable if the**~~ |

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| | | | | information in relation to the Transfer as may be reasonably required by the Finance Parties.<br><br>**Article 19 - This Article does not pertain to project financing. Is there another portion of the PSA that talks about this?**<br><br>**Finance Parties and Documents are both not defined. Please define** | ~~**proposed Transfer would be contrary to the reasonable requirements of Finance Parties under the Finance Documents, as evidenced by a written confirmation by the relevant Finance Parties. In the case of (b), Power Supplier shall exert reasonable efforts to (i) procure that only the consent of Finance Parties representing no more than seventy-five percent (75%) of the debt plus undrawn commitments shall be required for a Transfer under the Finance Documents; and (ii) upon written notice being given by Meralco, procure such consent for the Transfer; and Meralco shall endeavour to cooperate with Power Supplier by providing documents and information in relation to the Transfer as may be reasonably required by the Finance Parties**~~. |
| 34. | | Appendix C CALCULATION OF PAYMENT | Energy Payments FPact definition | Suggest to include wordings in **bold.**<br><br>FPact = the actual weighted average price of the fuel inventory (in USD/MMBtu) **of the Power Supplier's Nominated Plant/s** for the relevant Billing Period, inclusive of any actual fuel handling cost, actual freight cost, and actual fuel excise tax. <u>In the event that Power Supplier has provided BCQ in accordance with Section 7.4 or Section 15.3.1 of the Agreement, and the FPact for the relevant Billing Period is not available, the FPact for the relevant Billing Period shall be the FPact used in the most recent Final Invoice served by Power Supplier to Meralco. –</u> **Question on highlighted portion. What if during a Supplier's outage, the FPact is not available, what would be the basis?** | As stated in the definition, "...the FPact for the relevant Billing Period shall be the FPact used in the most recent Final Invoice served by Power Supplier to Meralco." |
| 35. | | Pre-Bid Conference questions | | Under Section 7.1 outage allowance and replacement power, We suggest that when plant is unavailable (outage), price shall be at Contract Price since Power Supplier guarantees 24/7 availability to Meralco. Power Supplier is already taking the risk of WESM price volatility. | The IPSA should provide physical power to MERALCO that is generated from the Nominated Plant. The main reason for pegging the price at the lower between the variable cost and WESM during outages of the plant is to ensure that the power supplier will not just buy from cheaper source (i.e., cheaper than the Contract Price) and pass it to MERALCO at Contract Price. This guarantees that whatever the source of supply of the power supplier, MERALCO's |

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| | | | | | consumers are guaranteed the least cost power available at that time. |
| 36. | | Pre-Bid Conference questions | | Allocation of Available Capacity: If the Availability of the Plant is impaired for any reason such that Power Supplier is unable to make Available all or a portion of the Contract Capacity - The definition of Availability / Available refers to the Plant capable of generating 100% of the Plant's capacity. But this clause refers to Contract Capacity, which does not necessarily equal the Plant's total capacity. If source of Contract Capacity will only be the Plant, this (or the definition of Availability) should still be revised to consider situations such that Availability will refer to capability of Plant to deliver the Contract Capacity. | The concern raised is well noted. For clarity, Section 6.3 of the PSA template shall be revised to read as follows:<br><br>"6.3 Allocation of Available Capacity<br><br>If the Availability of the Plant is impaired for any reason such that Power Supplier is unable to make ~~Available~~ **available** all or a portion of the Contract Capacity, Power Supplier shall promptly notify Meralco in writing of such impairment. In the event that Meralco exercises its right under Article 8 and/or Section 19.1, notwithstanding the impairment, Power Supplier undertakes to give Meralco ~~Available~~ **available** capacity (and associated energy) equivalent to at least Meralco's pro-rata share in the net dependable capacity." |
| 37. | | Pre-Bid Conference questions | | When will the generator start its dispatch of power? Will MERALCO still wait for the ERC Approval before drawing power from the winning generator? | The dispatch of power on this IPSA and the Winning Power Supplier would be dependent on the provisional approval of the ERC. The OED of 26 Feb 2023 is the earliest the winning power supplier can generate or deliver to MERALCO, as long as there is provisional authority from ERC by that date.<br><br>It must be pointed out also that it has been the experience of MERALCO that the ERC issues a Notice of Resolution to inform the parties/applicants (for a PSA application for approval) that the ERC has granted provisional authority in favor of their PSA, even as the complete/actual Order or Resolution is still being prepared and will be released subsequently. We would like to emphasize to the participating bidders that MERALCO considers the ERC's Notice of Resolution (informing the parties ahead that a provisional authority was issued in favor of their PSA) as valid, executable, and sufficient authority for the parties to implement the PSA, despite release or promulgation of the actual Order/Resolution by the ERC (granting provisional authority) at a later date. |
| 38. | | Pre-Bid Conference questions | | Definition of Environmental Law: Can Meralco cite an example of other legal requirements? Is the bidder may only be required to ensure compliance with applicable Legal Requirements. | The phrase "other legal requirements" was inserted in the definition as it was intended to be a catch-all phrase for instances that cannot be provided as an example as of the present time. |

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| | | | | | What this provision in the PSA template is saying (by discussing/including "Environmental Law") is that the power supplier should comply with all requirements, including under Environmental Law. The power supplier is in the best position to know which specific requirements these are for the Nominated Plant/s offered and MERALCO just wants the power supplier to make sure that it complies with these so that fulfilment of obligations under the PSA is not adversely affected by any non-compliance. |
| 39. | | Pre-Bid Conference questions | | Article 13. INSURANCE: We would like to confirm if the coverage and amounts have to met in strict manner | Yes, the provisions on the insurance and the coverage and amounts will be required in a strict manner. That has been the usual practice of MERALCO in implementing that provision in its PSAs. |