



BIDDING
CONTRACT CAPACITY OF 1,800 MW (NET), COD 2024-2025

BID BULLETIN NO. 5

To all Interested Bidders:

1. A matrix containing the set of advance queries for the 2nd Pre-Bid Conference that have been received by, and the corresponding responses of, the Meralco's BAC-PSA are set out in **ANNEX A**.
2. A matrix showing the amendments to the Invitation to Bid, Terms of Reference, Bid Requirements, Instructions to Prospective Bidders (dated 1 November 2023) ("IPB") and Power Supply Agreement ("PSA") template is provided herein as **ANNEX B**.

For your guidance and information.

Issued on 7 December 2023.

Bids and Awards Committee-Power Supply Agreements ("BAC-PSA")
Manila Electric Company

(sgd)
Lawrence S. Fernandez
Chairman

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT CAPACITY OF CONTRACT CAPACITY OF 1,800 MW (NET), COD 2024-2025

FORMATTING/PROCEDURAL-RELATED QUERIES/COMMENTS

	TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION RECOMMENDATIONS / PROPOSED WORDING	Initial BAC-PSA's RESPONSE
1.	Invitation to Bid – Fuel Formula	Item (e)(i), Page 2	<p>The Bidder is allowed to submit a Fuel Formula linking its Nominated Fuel Index to its Fuel Price Cost. The Bidder is then allowed to use <u>up to 2 Nominated Fuel Indices representing its fuel commodity cost</u>, which may or may not include freight cost, provided that the Bidder shall also indicate the share or weight of each Nominated Fuel Index in the Fuel Formula.</p> <p>If the Bidder's nominated plant is an LNG plant, can it use a coal price index as one of one of its Nominated Fuel Indices as part of its Fuel Formula?</p>	Yes, it can use a coal price index as one of its Nominated Fuel Indices as part of its Fuel Formula.
2.	Invitation to Bid – Fuel Formula	Item (h), Page 4	<p>For evaluation purposes, the BAC-PSA shall use the <u>historical value of the Bidder's Nominated Fuel Index/Indices for the period of January 2020 to December 2022 as inputted to the Bidder's submitted Fuel Formula</u>, and the resulting fuel price shall be used. The corresponding submitted GNPHR value at 100% load factor for each Contract Year shall also be used. The resulting fuel cost by using the abovesaid fuel price and GNPHR shall be used for each Contract Year of the evaluation.</p> <p>How are the historical indices used in bid evaluation? Will they use monthly average indices? Will they allow a cap in the inclusion of the indices for purposes of bid evaluation? If a cap is allowed, will the cap be used in determining the average price during this reference period from January 2020 to December 2022?</p>	<p>The monthly historical values of the Nominated Fuel Index/Indices, as released by the publisher of said index/indices, for the period January 2020 to December 2022 shall be averaged (i.e., simple 36-month average) and shall be used in the LCOE evaluation.</p> <p>No capping of the index/indices is allowed.</p>
3.	Invitation to Bid – Fuel Formula	Item (e)(iv), Page 2-3	<p>The Fuel Formula includes other non-fuel commodity costs that the Bidder wants to recover as part of its fuel price (<i>i.e., freight cost, insurance cost, fuel excise tax, etc.</i>). Except for taxes, <u>the Bidder must indicate the actual costs of the other non-fuel items for the period of January 2020 to December 2022, when available, for evaluation purposes</u>. If such actual costs are not available, Bidder must provide a</p>	

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			<p>value that shall be binding to the Bidder, otherwise, the non-fuel commodity costs cannot be passed on to consumers upon implementation of the PSA.</p> <p>Can the Bidder provide evidence of (1) actual costs incurred by third parties on these other non-fuel items for the same fuel type <u>OR</u> (2) actual data based on recognized indices? Will Bidder be required to submit invoices supporting the actual costs incurred?</p>	<p>Yes, Bidder must provide evidence of actual costs incurred on these other non-fuel commodity items for the period of January 2020 to December 2022. Actual costs incurred by third parties on these other non-fuel commodity items for the same fuel type, actual data based on recognized indices, or invoices supporting such actual costs shall be submitted to support the indicated actual non-fuel commodity costs in the Fuel Formula. If no supporting documents are submitted to substantiate the indicated actual non-fuel commodity costs in the Fuel Formula, then the indicated value of the non-fuel commodity costs in the Fuel Formula shall be binding to the Bidder.</p>								
4.	Bid requirements		<p>What is the basis for using the historical average of 2020 to 2022?</p>	<p>Given limitation of this CSP to Greenfield power plants, as defined pursuant to the guidance of DOE on definition of a “Greenfield plant”, the historical value of Nominated Fuel Index/Indices required to be submitted would cover the available data for Bidders. The historical period designated (i.e., January 2020 to December 2022) for market index bid evaluation represents the most recent calendar year periods, and thus, reflects an accumulation of recent market conditions, including both peak and troughs of commodity prices.</p>								
5.	Bid requirements	Project Cost, Commitment Letter and Testimonial and items (a) to (p)	<p>For clarification. if the plant is already operation in 2021, these documents need to be submitted?</p> <table border="1"><tr><td>Bid Requirements</td><td>Envelope 1 - Financial Requirement</td><td>Project Cost, Commitment Letter and Testimonial - is this intended for greenfield power plants?</td><td>Yes, these are intended for Nominated Plant of the Bidder if it has not started commercial operation (between January 2020 to present).</td></tr><tr><td>Envelope 2 - Technical Proposal</td><td colspan="2">For MERALCO's confirmation if item (a) to (p) are intended for greenfield power plants?</td><td>Yes, for those Nominated Plants that have not started commercial operation (between January 2020 to present).</td></tr></table>	Bid Requirements	Envelope 1 - Financial Requirement	Project Cost, Commitment Letter and Testimonial - is this intended for greenfield power plants?	Yes, these are intended for Nominated Plant of the Bidder if it has not started commercial operation (between January 2020 to present).	Envelope 2 - Technical Proposal	For MERALCO's confirmation if item (a) to (p) are intended for greenfield power plants?		Yes, for those Nominated Plants that have not started commercial operation (between January 2020 to present).	<p>Yes, if plant is already operating in 2021, this need not be submitted. Please refer to response in Bid Bulletin #4, item 58.</p>
Bid Requirements	Envelope 1 - Financial Requirement	Project Cost, Commitment Letter and Testimonial - is this intended for greenfield power plants?	Yes, these are intended for Nominated Plant of the Bidder if it has not started commercial operation (between January 2020 to present).									
Envelope 2 - Technical Proposal	For MERALCO's confirmation if item (a) to (p) are intended for greenfield power plants?		Yes, for those Nominated Plants that have not started commercial operation (between January 2020 to present).									
6.	Bid Requirements		<p>Actual costs of the other non-fuel items for the period of January 2020 to December 2022.</p>									

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			<i>What if the plant's COD is 2021, can the bidder submit 2021-2022 only? For the year that is not covered, is a write up needed?</i>	Bidder must provide evidence of actual costs incurred on these other non-fuel commodity items for the period of January 2020 to December 2022. Actual costs incurred by third parties on these other non-fuel commodity items for the same fuel type, actual data based on recognized indices, or invoices supporting such actual costs shall be submitted to support the indicated actual non-fuel commodity costs in the Fuel Formula. If no supporting documents are submitted to substantiate the indicated actual non-fuel commodity costs in the Fuel Formula, then the indicated value of the non-fuel commodity costs in the Fuel Formula shall be binding to the Bidder.
7.	Certified True Copy of Certificate of Registration issued by the Board of Investments (BOI)		The Bidder is a power generation facility located in Mariveles, Bataan. Thus, it is an AFAB-registered enterprise. Will AFAB registration in lieu of BOI registration suffice?	Yes, this will be allowed.
8.	Instructions to Prospective Bidders	Annex QD-1A wording/page 60	<p>One unit of the Nominated Plant is already operating. The original wording in the template reads:</p> <p>3. The Company has been (established to develop, own, operate) a (specify details of the Nominated Plant) with the target completion date of (specify target completion date, as applicable).</p> <p>We propose that this be revised as follows:</p> <p>“3. The Company has been (established to develop, own, operate) a (specify details of the Nominated Plant) with completion dated of [-] for Unit x and target completion date of [-] for Unit y (specify target completion date, as applicable).”</p>	There appears to be a typo in the suggested language “With completion dated <u>d</u> of”. With the revision pointed out, this is acceptable.

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9.	Instructions to Prospective Bidders	Annex QD-1A wording/page 60	<p>Related to the previous question, if we nominate 2 units, with one already operating while the other is under construction, we propose the following revisions:</p> <p>“3. The Company has been (established to develop, own, operate) a (specify details of the Nominated Plant) with the following completion dates: Unit x – Completion Date of [Date of completion of the operating unit] Unit y – Target Completion Date of [Date of target completion of the unit under construction]”</p>	This is acceptable.
10.	Instructions to Prospective Bidders	Annex QD-3 wording/page 65	<p>Please advise if “(position/delegation)” for certifications followed by “and duly authorized representative” may be removed if the position of the representative as stated in the EOI is also “Authorized Representative” to avoid duplicity in the statement.</p> <p>I, (name), (citizenship), of legal age, with office address at (address), as the (position/designation) and duly authorized representative of (insert name of the Bidder) (the “COMPANY”), a (corporation/partnership) organized existing under and by virtue of the laws of the Republic of the Philippines, after having been duly sworn to in accordance with law, depose and state that:</p>	This is acceptable.
11.	Instructions to Prospective Bidders	Annex QD-4 wording/page 67	<p>Please advise if “(position/delegation)” for certifications followed by “and duly authorized representative” may be removed if the position of the representative as stated in the EOI is also “Authorized Representative” to avoid duplicity in the statement.</p>	This is acceptable.

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	TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION RECOMMENDATIONS / PROPOSED WORDING	Initial BAC-PSA's RESPONSE
			I, (name), (citizenship), of legal age, with office address at (address), as the (position/designation) and duly authorized representative of (insert name of the Bidder) (the "COMPANY"), a (corporation/partnership) organized existing under and by virtue of the laws of the Republic of the Philippines, after having been duly sworn to in accordance with law, depose and state that:	
12.	Instructions to Prospective Bidders	Annex QD-6-A wording/page 73	<p>Please advise if "(position/delegation)" for certifications followed by "and duly authorized representative" may be removed if the position of the representative as stated in the EOI is also "Authorized Representative" to avoid duplicity in the statement.</p> <p>I, (name), (citizenship), of legal age, with office address at (address), as the (position/designation) and duly authorized representative of (insert name of the counterparty of the Bidder / its Affiliate engaged in power generation, as applicable) (the "COMPANY"), a (corporation/partnership) organized and existing under and by virtue of the laws of the Republic of the Philippines, hereby represent and undertake that:</p>	This is acceptable.
13.	Change of Name of Bidder in relation to Instructions to Prospective	Section 3.1/page 23 to 28	<p>The Securities and Exchange Commission has recently approved the change in the corporate name of the Bidder.</p> <p>Please advise if Bidder can submit existing permits under its previous corporate name. Kindly note that the Bidder remains to be the same entity regardless of the change in corporate name.</p>	This is acceptable. However, kindly submit documentary proof supporting change in the corporate name of the Bidder.

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	Bidders Section 3.1 Qualification Documents			
14.	Instructions to Prospective Bidders Bid Letter	Annex Bid -1 Page 71 of the IPB	We propose to delete the word “the” as seen below: “5.(Name of Bidder)’s Document Submissions are unconditional and unqualified. (Name of Bidder) understands and accepts all of the terms, conditions and other provisions of the Bidding Documents, including the the Power Supply Agreement (PSA) template.”	This is acceptable.
15.	Instructions Annexes	Annex QD-1A	Can the Bidder create its own Sec Cert covering the same authorities (resolutions provided by MERALCO) or must it strictly follow the same template?	Bidder must follow the Annex QD-1A template.
16.		Annex QD-2	(c) AOI - The Bidder is a partnership, thus, it only has Articles of Partnership (AOP).	This will be allowed.
17.			(c) by-laws - The Bidder is a partnership; thus, it does not have this document. It only has a Limited Partnership Agreement among its partners (LPA). Considering the confidentiality provisions in the LPA, can the Bidder submit another document to certify the specific information required by MERALCO in lieu of the LPA?	The LPA needs to be submitted. Bidder may simply redact portions of its LPA that it believes to be confidential in nature
	Instructions Annexes CN3	ANNEX QD-7	Annexes CN3 file (word doc) in the cloud shows 50MW instead of 150MW, will this be corrected by the BAC-PSA to 150MW?	This is a typographical error and should reflect 150 MW.

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT CAPACITY OF CONTRACT CAPACITY OF 1,800 MW (NET), COD 2024-2025

INSTRUCTIONS TO PROSPECTIVE BIDDERS / BIDDING DOCUMENTS-RELATED QUERIES/COMMENTS														
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18.	PSA [Template]	Marginal Bid Offer	<p>Question: what if the scenario is after the opening of bids the lowest may not be capable yet of delivering for December 2024 COD and the marginal plant has the capability to supply on the COD. How will Meralco implement based on this?</p> <table><tr><td>19.</td><td>Terms of Reference (TOR)</td><td>Scheduled Commercial Operations Date ("COD")</td><td>How does MERALCO plan to execute the "Marginal Bid Offer" considering that COD involves two (2) phases? To clarify, is it necessary for bidders to submit two offers for each term/phase? Or how will MERALCO determine/assign the capacity of the winning bidder/s for each phase?</td><td>Bidders should only submit one offer. As the Bid Requirements and IPW describe, "all the Offered Contract Capacities of the Qualified Bidders that meet the Reserve Price of the LCDE shall be stacked from lowest to highest LCDE until the required Contract Capacity (i.e., 1,800 MW [net]) is filled up."</td></tr><tr><td colspan="5">For example, two Bidders are tied and ranked the lowest of all bids but when stacked together, their Offered Contract Capacities exceed the December 2024 COD requirement of 1,200 MW. Which of the tied Bidders will have its Offered Contract Capacity required to be delivered on December 2024 and, assuming there is excess, the rest for the 600 MW by May 2025 COD requirement? In this scenario, there is a need to break the tie but stacked/ranked offers are not yet considered Marginal bid Offers. This example also answers the question – the stacking and term/phase will follow the stacking of the bids from lowest to highest.</td></tr></table>	19.	Terms of Reference (TOR)	Scheduled Commercial Operations Date ("COD")	How does MERALCO plan to execute the "Marginal Bid Offer" considering that COD involves two (2) phases? To clarify, is it necessary for bidders to submit two offers for each term/phase? Or how will MERALCO determine/assign the capacity of the winning bidder/s for each phase?	Bidders should only submit one offer. As the Bid Requirements and IPW describe, "all the Offered Contract Capacities of the Qualified Bidders that meet the Reserve Price of the LCDE shall be stacked from lowest to highest LCDE until the required Contract Capacity (i.e., 1,800 MW [net]) is filled up."	For example, two Bidders are tied and ranked the lowest of all bids but when stacked together, their Offered Contract Capacities exceed the December 2024 COD requirement of 1,200 MW. Which of the tied Bidders will have its Offered Contract Capacity required to be delivered on December 2024 and, assuming there is excess, the rest for the 600 MW by May 2025 COD requirement? In this scenario, there is a need to break the tie but stacked/ranked offers are not yet considered Marginal bid Offers. This example also answers the question – the stacking and term/phase will follow the stacking of the bids from lowest to highest.					<p>The example scenario should be qualified further. The lowest bid that is not capable yet of delivering for December 2024 COD was found to be capable of delivering during the Pre-Qualification Evaluation of its Technical Proposal (Envelope 2), however, upon the Opening of Bid Prices, the Bidder, having been determined the lowest bid, manifested that it is not capable of delivering for December 2024 COD. In this case, the Bidder not capable of delivering by December 2024 COD will be disqualified and its bid security may be forfeited. It should be noted, however, that the assumption/requirement for this bidding is that the Nominated Plant should be capable of delivering supply to MERALCO by December 2024. In such case, the capacity allocated to the disqualified Bidder will be awarded to the next best bid who may or may not be the Bidder with the Marginal Offer.</p> <p>Had the said Bidder's Technical Proposal (Envelope 2) indicated that its Nominated Plant is not capable yet of delivering for December 2024 COD, then it will be disqualified during the Pre-Qualification Evaluation, but its bid security will not be forfeited.</p>
19.	Terms of Reference (TOR)	Scheduled Commercial Operations Date ("COD")	How does MERALCO plan to execute the "Marginal Bid Offer" considering that COD involves two (2) phases? To clarify, is it necessary for bidders to submit two offers for each term/phase? Or how will MERALCO determine/assign the capacity of the winning bidder/s for each phase?	Bidders should only submit one offer. As the Bid Requirements and IPW describe, "all the Offered Contract Capacities of the Qualified Bidders that meet the Reserve Price of the LCDE shall be stacked from lowest to highest LCDE until the required Contract Capacity (i.e., 1,800 MW [net]) is filled up."										
For example, two Bidders are tied and ranked the lowest of all bids but when stacked together, their Offered Contract Capacities exceed the December 2024 COD requirement of 1,200 MW. Which of the tied Bidders will have its Offered Contract Capacity required to be delivered on December 2024 and, assuming there is excess, the rest for the 600 MW by May 2025 COD requirement? In this scenario, there is a need to break the tie but stacked/ranked offers are not yet considered Marginal bid Offers. This example also answers the question – the stacking and term/phase will follow the stacking of the bids from lowest to highest.														
19.	Instructions to Prospective Bidders – Bid Security	Section 3.3(b), Page 31	<p>Bidder is required to submit a Bid Security, equivalent to <u>three (3)-month contract cost of the proposed PSA computed using the bid price offered by the Interested Bidder</u>, in the form of a managers check or an irrevocable standby letter of credit, <u>which must be issued by one or more universal or commercial banks</u>.</p> <p>Please confirm the following:</p> <ol style="list-style-type: none">Bid Security may be issued by a universal or commercial bank that is an Affiliate of the Bidder.The amount of the Bid Security may be denominated in USD. If USD-denominated Bid Security is acceptable, kindly provide the exchange rate to be used to compute for the bid security amount.	<p>1. There is no prohibition in the ERC CSP Guidelines (Sec. 10, Appendix B) if the chosen universal or commercial bank to issue the Bid Security is an Affiliate of the Bidder, hence, this will be allowed.</p> <p>2. The ERC CSP Guidelines (Sec. 10, Appendix B) provide that the Bid Security amount should be expressed in Philippines Pesos and if issued by an international bank, "said security has to be confirmed and validated by its local branch in the Philippines or by a bank that is duly registered and authorized by the BSP. The Bid Security shall be expressed in or converted to Philippine Peso at the exchange rate prevailing on the date of its issuance."</p>										

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20.	<p>Invitation to Bid, Terms of Reference, Plant Type – Age of the Plant</p> <p>Instructions to Prospective Bidders – Technical Proposal</p>	<p>Invitation to Bid, page 2</p> <p>Instructions to Prospective Bidders, Section 3.2, page 28</p>	<p>The Invitation to Bid requires that the nominated plant be a <i>“single or portfolio of plant/s, provided that the power plant/s should <u>be in commercial operation not earlier than January 2020 but no later than May 2025.</u>”</i></p> <p>We previously requested that plants that achieve commercial operation <i>“not earlier than <u>January 2015</u> but no later than May 2025”</i> also be allowed to participate to increase competition in the CSP.</p> <p>On November 20, 2023, the BAC-PSA denied our request, stating: <i>“This CSP is limited to Greenfield power plants. This is provided in the ‘Nature of Power Supply Agreement and Plant Type’ provision in the TOR that requires that ‘Nominated Power Plant/s should be in operation not earlier than Jan 2020 but no later than May 2025’, which qualification is based on previous guidance of DOE on what may be deemed as greenfield, i.e., should not be more than five (5) years old at SCOD.</i></p> <p><i>The requirement for the ‘qualifying age’ of the power plant is consistent with the policy under DC2023-06-0021 (DOE CSP Circular) of “xxx encourage(ing) the development of greenfield power projects to provide additional power generation capacity xxx” which is also reflected in the ERC CSP Guidelines, in particular, Article I Section 1(h).”</i></p> <p>In response, we respectfully reiterate our request that plants that have been in commercial operations <u>no earlier than January 2015</u> (but no later than May 2025) be qualified to participate in this CSP. We do so for the following reasons:</p> <ol style="list-style-type: none"> 1. While the DOE CSP Circular and the ERC CSP Guidelines encourage greenfield projects, they do not require that CSPs only allow greenfield plants to participate. 2. This CSP does not actually encourage greenfield projects, 	<p>To reiterate, this bidding is simply a rebidding of MERALCO's 1,800MW CSP commenced in 2020. Thus, most of the TOR provisions, as still applicable, were simply retained as these provisions were previously approved by the DOE. This includes the plant type requirement that the Nominated Plant should be in commercial operation not earlier than The qualifying age power plants to be not earlier January 2020 but no later than May 2025 is based on the previous guidance of DOE on what may be deemed as greenfield, i.e., should be no more than five (5) years old at point of SCOD. In addition, the TOR in this CSP is covered by Certificate of Conformity from DOE.</p> <p>The requirement for the “qualifying age” of the power plant is consistent with the policy under DC2023-06-0021 (DOE CSP Circular) of “xxx encourage(ing) the development of greenfield power projects to provide additional power generation capacity xxx” which is also reflected in the ERC CSP Guidelines, in particular, Article I, Section 1(h).”</p> <p>It should be noted that several bidders with greenfield projects that have manifested their intention to participate by submitting their Expressions of Interests, and the total capacity offered by all of the bidders significantly surpassed the required contract capacity of 1,800 MW.</p>
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			<p>especially taking into account its tight timeline.</p> <ul style="list-style-type: none">• The Invitation to Bid for this CSP was only published on November 1, 2023 and requires that plants supplying 1,200 MW be operational by December 2024.• On average, it takes 3 to 4 years to construct plants and achieve commercial operations.• This means that only plants that are already in commercial operations no earlier than January 2020 or are presently at least midway into construction can qualify for this CSP. This CSP thus does not actually encourage the development of new or greenfield projects. <p>3. Plants have a useful life of at least 25 years. Allowing these plants to participate in the bid will not result in diminution of service quality.</p> <p>4. These plants, precisely because they have been operating for some time, have skilled operators with experience running the plant and have already overcome the learning curve associated in operating new power plants.</p> <p>5. Allowing these plants to participate in the bid increases the possible number of bidders, and ultimately <u>competition</u> and consumer choice. In this regard, there are currently only five other bidders in this CSP, indicating limited competition.</p> <p>6. With more choices, there is a greater chance that Meralco (and ultimately, the public) can get the best possible bid available – providing quality service in the least cost manner.</p> <p>7. Furthermore, by amending the age requirement, it will allow existing natural gas fired plants to participate in the CSP following the objectives of DOE Advisory dated 11 October 2023 on the <i>Conduct of Competitive Selection Process for Power Supply Using Indigenous Natural Gas as Transition Fuel</i>. Under the said advisory, <u>DUs are enjoined to provide a transparent</u></p>	
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			<p><u>and competitive environment for natural gas stakeholders, specially the DU offtake for greenfield and brownfield natural gas power facilities. This is in line with the declared policy of the State to pursue energy transition in a manner that meets the energy security requirements of the country through a holistic, inclusive, transparent, fair, and optimal development and utilization of natural gas in the electric power industry.</u></p>	
21.	Instructions to Prospective Bidders Certification Regarding Technical Qualification (Reference Plant)	<p>Section 3.1.4 of the IPB and ANNEX QD-7</p> <p>Pages 25-27 and 76 -77 of the IPB</p>	<p>Can the following documents on Reference Plant be certified by the corporate secretary/assistant corporate secretary of the owner of Reference Plant instead of the corporate secretary/assistant corporate secretary of the Bidder?</p> <ol style="list-style-type: none"> 1. proof that the Reference Plant is capable of generation of electricity of at least 50 MW (AC, net), which must be supported by an official document [GCMR] of the Bidder's Reference Power Plant as submitted by the Bidder to the ERC, showing that it attained a simple monthly average of at least 87.75% PCF over a 3-month consecutive period of operations within the most recent forty-two (42) month period of operations, or similar official document like the GCMR which is submitted to or issued by that foreign country's regulatory body or agency 2. Certificate of Compliance (COC) or Provisional Authority to Operate (PAO) from the ERC, or if the COC/PAO is not available as of Bid Submission Deadline, the application for a COC/PAO pending before the ERC or any other official document coming from the ERC confirming the Reference Plant's authority to operate at least 50 MW (AC, net) or if the Reference Plant is located outside of the Philippines, the license or permit equivalent to the ERC's COC/PAO (e.g. a certification issued by that foreign country's regulatory body or agency for the power industry that the Reference Plant is licensed or authorized to operate a power plant 3. Market Participation Agreement for the Reference Power Plant, or equivalent document if in a foreign country 	<p>Reference Plant is defined in Section 9.60 of the IPB as: "xxx a single power plant of at least 150 MW (AC, net) installed capacity (firm, dispatchable and has attained a simple monthly average of at least 87.75% plant capacity factor (PCF) over a 3-month consecutive period of operations) and which, in the reasonable opinion of the BAC-PSA, has been satisfactorily developed, constructed, and/or operated or maintained by the <u>Bidder, its direct shareholders representing Controlling interest, Affiliates or Ultimate Parent.</u>"</p> <p>Hence, the corporate secretary/assistant corporate secretary of the Bidder, direct shareholder representing Controlling interest, Affiliate or Ultimate Patent may certify the document.</p>

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			<div>4. Transmission Service Agreement (TSA) or a Distribution Wheeling Service Agreement (DWSA), or equivalent of these documents if in a foreign country</div> <div>5. Fuel Supply Agreement, or equivalent document if in a foreign country</div>	
22.	Instructions to Prospective Bidders Section 3.2 Technical Proposal	Section 3.2 Technical Proposal and Annex TP-1 Pages 28-31 and 88-94 of the IPB	<div>For clarity, if one unit of the Nominated Plant is already operational, does Bidder still have to submit the documents required under Section 3.2 Technical Proposal and Annex TP-1 for the unit already in operation, specifically the following items in Section 3.2 (collectively, referred herein as the “Greenfield Plant Documents”):</div> <div>(c) description for the Nominated Plant, and of its use of a technology that complies with the prevailing emission standards under pertinent DENR issuances on emission and other environmental standards for power plants as well as the appropriate international codes and standards (e.g. IEC-International Electro-technical Commission, IEEE-Institute of Electrical and Electronics Engineers, ANSI-American National Standards Institute, ASME-American Society of Mechanical Engineers, ASNT-American Society for Non-destructive Testing, ASTM-American Society for Testing and Materials, BSI-British Standards Institute, ISO-International Organization for Standardization, NBS-National Bureau of Standards, USA, NACE-National Association of Corrosion Engineers, NEMA-National Electrical Manufacturers Association, PBC-Philippines Building Code, etc.), provided compliance with statutory and local Philippines laws and regulations shall take precedence over international standards;</div> <div>(d) proof that the technology of the Nominated Power Plant is of proven design, which means that a generating unit of the same technology, with at least 150 MW installed capacity, must have been engaged in reliable commercial operation for at least one (1) year in a 60 Hertz system (“Comparable Plant”).</div> <div>(e) The Project’s Feasibility Study;</div>	<div>Please refer to response in Bid Bulletin #4, item 52:</div> <div>If the Nominated Plant of the Bidder started commercial operation (between January 2020 to present), it only needs to submit the documents listed in Section 3.2 (q.) of the IPB.</div>

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			<p>(f) Details of the Project’s execution, where the Bidder shall provide a description on how it will carry out the development, financing, construction, interconnection, operation, and maintenance of the Nominated Plant, including but not limited to general information on the Nominated Plant and its key components, such as the design data (e.g., type, including specific fuel, number of units, and capacity), proposed plant site/s, and proposed interconnection site/s; the key project milestone schedule, if available; and the details on the development, engineering, procurement and construction plan of the Nominated Plant</p> <p>(l) Environmental Compliance Certificate issued by the Department of Environment and Natural Resources</p> <p>(m) Grid Impact Study (GIS) / System Impact Study/ies (SIS)</p> <p>(n) If applicable, Certificate/s of Non-Overlap (CNO) and/or Free and Prior Informed Consent (FPIC) Certificate/s issued by the National Commission on Indigenous Peoples (NCIP)</p> <p>(o) If applicable, Water Rights Permit/s issued by the National Water Resources Board (NWRB) and</p> <p>(p) If applicable, Certificate of registration issued by the Board of Investments</p> <p>Otherwise stated, please confirm if the Bidder must submit the documents listed in Section 3.2(q) of the IPB for the operational unit of the Nominated Plant in lieu of all the Greenfield Plant Documents listed above.</p>	
23.	Instructions to Prospective Bidders	Sections 3.1 Qualification Documents and 3.2	To clarify, if one unit of the Nominated Plant is already in commercial operations, can such unit be used as the Reference Plant and the Comparable Plant for the other unit under construction?	Please refer to response in Bid Bulletin #4, item 53:

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	Reference Plant and Comparable Plant	technical Proposal Page 25-26 and 29 of the IPB		Yes, if the Nominated Plant started commercial operation (between January 2020 to present), for as long as the Plant meets the applicable requirements for both Reference Plant and Comparable Plant.
24.	Instructions to Prospective Bidders Annex QD-2		<p>“(c)if applicable (i.e., corporations), copy of articles of incorporation and by-laws or articles of partnership, which shall be certified as a true copy by (i) the SEC; or (ii) the corporate secretary/assistant corporate secretary, in which case, it must be under oath and notarized;”</p> <p>Do we provide only the latest amended articles of incorporation and by-laws or copies of all Certificates of Filings issued by the SEC for each amendment since incorporation?</p>	<p>Interested Bidders shall submit copies of the original AOI and By-Laws, and preferably all amendatory documents. If an Interested Bidder could not provide copies of all amendatory documents, it shall at least provide copies of the latest amendatory documents on clauses relating to:</p> <p style="padding-left: 40px;">(1) For AOI – Name of the Corporation, Purpose/s (Primary and Secondary), Address of the Corporation, No. of Directors, and Authorized Capital Stock.</p> <p style="padding-left: 40px;">(2) For the By-Laws – Quorums for meetings</p> <p>These are necessary for the BAC-PSA to evaluate the Legal and Financial Qualifications of the Bidder, and the latter’s compliance of all other applicable requirements under the IPB.</p> <p>In addition, the Bidders shall submit copy/ies of the SEC Certificate/s of Filing of the Amended AOI and/or By-Laws, as applicable.</p>
25.	Instructions to Prospective Bidders Annex TP-1 Technical Proposal (Nominated Plant)	Technical Parameters Page 88	<p>If multiple units, minimum of 150 MW per unit and it should have <u>the same fuel type and Guaranteed Net Plant Heat Rate</u>.</p> <p>Guaranteed Net Plant Heat Rate (GNPHR) is defined in Schedule 2, Appendix E of the PSA as “to be provided by the Supplier”.</p> <p>Please confirm that the Power Supplier has the sole discretion to nominate the same GNPHR for both units of the Nominated Plant.</p>	Yes, the submitted GNPHR Table by the Bidder shall be used for all generating units of the Nominated Plant.
26.	Instructions to Prospective Bidders	Sec. 3.1.6 (b) Qualification Documents, Page 27	Can the Bidder submit an explanation in lieu of this requirement if the Project Cost is fully funded from equity of the shareholders?	<p>If the Project will be fully funded from equity, the expectation is for the Bidder to submit the following:</p> <p>“Details of the Project Cost and the proposed financing plan, specifically indicating the portion of the Project Cost to be financed by equity and by debt, using the form in Annex QD-9, with the following attachments:</p>

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				Commitment Letter from the relevant shareholders of the Bidder confirming their respective equity commitment for the amount of the Project Cost that will be funded through shareholders' equity using the form in Annex QD-9A , and signed by the Chief Financial Officer, Treasurer or equivalent officer of the relevant shareholders of the Bidder."
27.	Instructions to Prospective Bidders	All Document Submissions	If certain Document Submissions are not applicable, should the Bidder provide an explanation in lieu of such requirement?	Please refer to response in Bid Bulletin #4, item 54: Since it is the Bidder determining for itself the non-applicability of a particular requirement prescribed under the Bid Documents for this CSP, the Bidder bears the risk of the BAC-PSA interpreting differently the applicability or non-applicability of the said requirement – especially during the BAC-PSA's non-discretionary "Pass/Fail" assessment for completeness.
28.	Instructions Annexes CN3	ANNEX TP-1	For Items that may not be applicable (item 12-14), do we need to submit narrative/non-applicability?	Alternatively, Bidder can pose a query on the justification it intends to provide, on or before the deadline of bidders to submit comments, to allow the BAC-PSA, on or before the deadline to respond to bidders' queries, to also respond to the query with respect to this item.
29.	BID BULLETIN 2	Item 1	<p>[. The Independent Engineer shall assess and determine if the provided GNPHR Table and Cumulative Degradation Factor of the GNPHR adheres closely to the technical specifications of the power plant generating unit/s;]</p> <p>Who's the Independent Engineer?</p> <p>Will the audit of the independent engineer occur prior to being a winning bidder?</p>	<p>It will be the same Independent Engineer that evaluated the 1,800MW CSP held last Oct. 2020 to February 2021, Leidos Engineering LLC. ("Leidos").</p> <p>Leidos will coordinate with the TWG during the Pre-Qualification Evaluation (i.e., prior to opening of bid prices/declaration of a best bid).</p>
30.	Annexes	Annex QD-8	<p>Please clarify if consolidated means, the total amount of the submitted AFS? if the decision making requires the approval of all shareholders, which parent conso[olidated] AFS will we submit[?]</p> <p><i>Question also asked during the 2nd Pre-bid Conference.</i></p>	<p>The requirement pertains to the copy of the audited and closed parent and consolidated, if applicable, financial statements, of the interested bidder. The consolidated financial statements are applicable only for companies who prepare and file consolidated financial statements to the SEC.</p> <p>If a company has subsidiaries or, for example, is a publicly listed company, they are required to file consolidated financial statements. If that is the case, then the interested bidder should submit both parent and consolidated</p>

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				financial statements. But if the company is not required to prepare any consolidated financial statement, then the parent or standalone financial statement will suffice the requirement.
31.	Instructions Annexes CN3	Annex TP-1	The Project's Feasibility Study #6, 7and 11: If a plant and its units are already in commercial operations, is it required to submit the feasibility studies, details of the execution, and GIS?	<p>Sec. 3.2. (q) of the IPB will be followed.</p> <p>(q) If the Nominated Plant is already in commercial operation, it must be:</p> <ol style="list-style-type: none">covered by a Certificate of Compliance (COC) or Provisional Authority to Operate (PAO) from the ERC at the start of the Operations Effective Date of the PSA, as submitted by the Bidder as a certified true copy by (i) the ERC; or (ii) the corporate secretary, in which case it must be under oath and notarized;be registered as a direct member of the WESM and a copy of its Market Participation Agreement for the Nominated Plant, which shall be certified as a true copy by (i) the PEMC and/or IEMOP; or (ii) the corporate secretary, in which case it must be under oath and notarized, must be submitted;covered by a valid Fuel Supply Agreement, which shall be certified as a true copy by the corporate secretary, in which case it must be under oath and notarized; andcovered by a valid Transmission Service Agreement (TSA) or, if embedded, a Distribution Wheeling Service Agreement (DWSA), which shall be duly certified by the National Grid Corporation of the Philippines (NGCP) or applicable distribution utility, or the corporate secretary, in which case it must be under oath and notarized.
32.	Instructions Annexes CN3	ANNEX TP-1	<p>Table []. Comparable Power Plant Requirement, item 3 [State document submitted to show that Comparable Power Plant has been in reliable commercial operation for at least one (1) year operating in a 60 Hertz system]</p> <p>On GCMR:</p>	

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			A response on the Matrix of Comments is that the DOE Monthly Operations Report (MOR) is an accepted document as an alternative, given that the 2023 GCMR is to be submitted on January 2024. Will the MOR be specifically written in the Annex?	Bidder can submit a certified true copy of the MOR/s it submitted to the DOE in lieu of the GCMR requirement of Annex TP-1.
33.	Instructions Annexes CN3	ANNEX QD-7	<p>Certification regarding Technical Qualifications:</p> <p>Is the required data the name plate information, if applicable, or what is tested and certified under the COC?</p>	Technical data should be the same as the data stated in the COC, if applicable.
34.	Annex	ANNEX QD-9	Please confirm if this for greenfield only?	Annex QD-9 pertaining to Project Cost, Commitment Letter and Testimonial are intended for Nominated Plant of the Bidder if it has not started commercial operation (between January 2020 to present).
35.	Annexes	TP-1 ITEM 12	Please clarify if this is for greenfield plant?	There is no item 12 in TP-1. If question pertains to item (I), i.e., [t]he Environmental Compliance Certificate/s (ECC) issued by the Department of Environment and Natural Resources (DENR) for the Nominated Plant, or application/s for ECC pending before the DENR xxx, this is required to be submitted for all Nominated Plants under this bidding.

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PSA TEMPLATE-RELATED QUERIES/COMMENTS

	TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION RECOMMENDATIONS / PROPOSED WORDING	INITIAL BAC-PSA's RESPONSE
36.	PSA [Template]	Recital portion, paragraph B. [B. Power Supplier intends to construct, own, operate, manage and maintain a [•] Power Plant located at [•] (the "Plant"), on the island of Luzon in the Philippines.]	The plant is already operational. Is this applicable? or we need to propose language to reflect the current status of the plant.	<p>This is noted. If the Winning Power Supplier's Nominated Plant is already a commercially operational, as confirmed by the DU/Meralco, the PSA provision will be revised to:</p> <p>B. Power Supplier [intends to construct, own, operate, manage and maintain/owns, operates, manages and maintains] a [•] Power Plant located at [•] (the "Plant"), on the island of Luzon in the Philippines.</p> <p>Please see Annex B of Bid Bulletin No. 5 reflecting the amendment to the PSA template.</p>
37.	PSA [Template]	1.1, definition of Business Day [Business Day means any Day from Monday to Friday on which banking institutions are open for the transaction of business, excluding national holidays in the Philippines and	Can we include reference to place of business of the supplier, in addition to Pasig, the place of business of MER.	<p>As relayed by DU, Meralco prefers to retain this provision.</p> <p>No, Power Supplier's principal place of business cannot be included in the definition of Business Day under the PSA. It is standard across all MERALCO's PSA that reference to place in the definition of Business Day is exclusive only to Pasig. Notably, the defined term is used in relation to payment obligations which primarily is the responsibility of MERALCO.</p>

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		local holidays in Pasig City, as the context may require.]		
38.	PSA [Template]	Section 1.1, Definition of Change of Control	We propose to make this applicable to both parties (instead of just the Power Supplier), consistent with Section 21.3.	As relayed by the DU, Meralco prefers to retain this provision. Change of Control with respect to Meralco has no significant impact on Power Supplier considering that under the PSA, Meralco's main obligation is to pay for the Contract Capacity and Associated Energy in accordance with the PSA, and charges therefor are pass-through to customers.
39.	PSA [Template]	2.2 [2.2 Term of Agreement xx The Term may be renewed for an additional period of up to one (1) year 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.]	Extension of contract term is not allowed and any changes on the PSA needs ERC approval. Can this be deleted?	Consistent with the ERC CSP Guidelines, Section 2.2 will be revised as follows: "2.2 Term of Agreement Subject to Article 3, this Agreement shall become effective on the Execution Date, and shall remain in force and effect until the last day of the 15th Contract Year, unless terminated earlier in accordance with the terms of this Agreement and upon approval by the ERC, or extended by the application of Section 2.2 and Section 17.3.3 (the "Term"). <u>The Term may be renewed for an additional period of up to one (1) year 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.</u> "
40.	PSA [Template]		Term renewal/extension may not be allowed by ERC given the maximum allowed term for physical PSAs	In addition, Section 18.6.3 on Termination on Expiry where Section 2.2. is referenced will also be revised as follows: "This Agreement shall terminate on the last Day of the Term unless otherwise extended by the application of Section 2.2, Section 17.3.3 or upon the mutual agreement of the Parties." Please see Annex B of this Bid Bulletin No. 5 reflecting the amendment to the PSA template.

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41.	PSA [Template]	3.2.1(e)	<p>[3.2.1(e) The “Commencement Date” shall occur upon the satisfaction of the conditions below: xxx (e) Financial Close shall have occurred.]</p> <p>If we are dealing with an already built plant, this may not be applicable. Propose to delete</p>	<p>As relayed by the DU, MERALCO prefers to retain this provision. If Power Supplier has already complied with the Required Financial Close as described and defined under the PSA, then it can propose to treat the provision as fully complied with, for confirmation of MERALCO. In addition, the "financial close" may not be applicable to the one bidder but may be applicable another bidder.</p>
42.	PSA [Template]	3.2.3	<p>[3.2.3 If Financial Close has not occurred by the Required Financial Completion Date, the Parties shall meet to discuss and agree upon the conditions under which this Agreement may be continued xxx.]</p> <p>If we are dealing with an already built plant, this may not be applicable. Propose to delete</p>	
43.	PSA [Template]	3.3.3	<p>[3.3.3 xxx If Power Supplier fails to provide Replacement Power despite availability from WESM or any other source, Meralco will be deemed to have sourced the Replacement Power, subject to reimbursement by Power Supplier of the difference between (i) WESM price and (ii) the Price, plus all relevant transaction cost and taxes. xxx]</p> <p>From how we understand Section 3.3.3, the amount to be paid by Meralco for replacement power provided during an unexcused delay event is the lower between (i) actual cost or (ii) contract rate. The last paragraph, however, states that Meralco will pay for any replacement power between the lower of the WESM and Contract Price. Please clarify if the last paragraph should be deleted and the price payable is the lower between (i) actual cost or (ii) contract rate.</p>	<p>Section 3.3 contemplates two scenarios when the Commercial Operations Date has not occurred by the Scheduled Commercial Operations Date (SCOD).</p> <p>First, from SCOD, Power Supplier will be the one to supply Replacement Power (RP) which is to be paid by MERALCO at the lower between actual price and Price in Appendix E.</p> <p>Second, if Power Supplier fails to provide the Replacement Power despite availability, then MERALCO is deemed to have sourced the RP, in which case, Power Supplier should reimburse MERALCO the difference between WESM price and the Price.</p> <p>Hence, in the first instance, it is Power Supplier who sourced RP, while in the second instance, it is MERALCO who sourced RP.</p>
44.	PSA [Template]	3.3.3; Price for Replacement Power	<p>Please clarify, will it be the lower of WESM Price and price under Appendix E or actual price and the price under Appendix E?</p>	<p>To avoid confusion, Section 3.3.3 will be revised as follows:</p> <p>"If the Commercial Operations Date has not occurred by the Scheduled Commercial Operations Date, from and after the Scheduled Commercial Operations Date, Power Supplier shall, for each Day of unexcused delay, (i) procure and cause delivery to Meralco of Replacement Power of up to 1,800 MW (net), as may be applicable, subject to Article 6 and in accordance with</p>

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				<p>Appendix E, to be paid for by Meralco at the lower between the actual price of Replacement Power and the Price specified in Appendix E</p> <p style="text-align: center;">xxx</p> <p>For any deliveries of Replacement Power made pursuant to this Section 3.3.3, Meralco shall pay for such Replacement Power at the lower between the WESM price and the Price specified in Appendix E.</p> <p>If Power Supplier fails to provide Replacement Power despite availability from WESM or any other source, Meralco will be deemed to have sourced the Replacement Power from WESM. If the WESM price for the Replacement Power is higher than the Price, Power Supplier shall, subject to reimbursement by Power Supplier of MERALCO the difference between (i) WESM price and (ii) the Price, plus all relevant transaction cost and taxes. <u>If the WESM price for the Replacement Power is lower than the Price, MERALCO shall not be liable to Power Supplier for the difference between WESM price and Price.</u></p> <p>Please see Annex B of this Bid Bulletin No. 5 reflecting the amendment to the PSA template.</p>
45.	PSA [Template]	3.3 to 3.4 [3.3 Commercial Operations Date xxx 3.4 Early Occurrence of	If we are dealing with an already built plant, this may not be applicable. Propose to delete	As relayed by the DU, MERALCO prefers to retain Sections 3.3 and 3.4 . Please note that even if Plant is already built, Power Supplier still needs to submit the required documents under Section 3.3.2 of the PSA and Parties shall issue the relevant certification. Section 3.4 also allows for possibility of Early COD and Section 5.1 requires initial supply of Commissioning Energy from a plant already in operation.
46.	PSA [Template]	the Commercial Operations Date xxx]	<p>Please clarify if the delay event limit and excused delay events can be used cumulatively.</p> <p>For example, if an excused delay event extends the SCOD, can the supplier still incur delay in COD and just provide replacement power?</p>	Yes. Unexcused delay and Excused Delay Event are separate circumstances of delay under the PSA. If Power Supplier encounters an Excused Delay Event, it may seek extension of COD following Section 3.3.4. If thereafter, Power Supplier experiences unexcused delay, then Power Supplier may subsequently invoke Section 3.3.3.
47.	PSA [Template]	3.3; 18.6.2	Is this interpretation correct - The cutoff date for trigger of termination in case of Delay Limit Date may actually be extended in	Yes.

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			case there is an Excused Delay Event since the SCOD will necessarily be adjusted in case of an occurrence of an Excused Delay Event.	
48.	PSA [Template]	Article 4	<p>[Bid Security and Performance Security</p> <p>xxx</p> <p>4.7 Within (30) Days after the later of the Scheduled Commercial Operations Date or Commercial Operations Date, Meralco shall return to Power Supplier the Performance Security or replacement thereof less any amount properly due and owing from Power Supplier to Meralco under this Agreement as of the date of the return.]</p> <p>As we understand it, performance security is only meant to secure obligations of supplier if plant is yet to be built. Propose to delete if supplier has an already built and operating plant</p>	As relayed by the DU, MERALCO prefers to retain Article 4. As stated in Section 4.6, each Performance Security shall stand as security for the faithful and proper compliance by Power Supplier of its obligations under the PSA and shall be procured and maintained by Power Supplier until the satisfaction of the conditions for the Commercial Operations Date. Note that return of the Performance Security or replacement thereof, as stated in Section 4.7, is within (30) Days after the later of the Scheduled Commercial Operations Date or Commercial Operations Date (which is premised on the satisfaction of certain conditions and issuance of relevant joint certification), less any amount properly due and owing from Power Supplier to Meralco under the PSA as of the date of the return.
49.	PSA [Template]	Article 5	<p>[Commissioning Energy</p> <p>xxx</p> <p>Subject to an agreement by the Parties to declare Early COD in accordance with Section 3.4, Power Supplier shall make available to Meralco the electrical energy quantities in MWh generated by the Plant to the extent of the Contract Capacity (the “Commissioning Energy”), during the period for Commissioningxxx For clarity, this provision applies regardless of the date the Plant has achieved actual commercial operations.]</p> <p>If we are dealing with an already built plant, this may not be applicable. Propose to delete</p>	As relayed by the DU, MERALCO prefers to retain Section 5.1. For reference, Section 5.1 provides: <p>“Subject to an agreement by the Parties to declare Early COD in accordance with Section 3.4, Power Supplier shall make available to Meralco the electrical energy quantities in MWh generated by the Plant to the extent of the Contract Capacity (the “Commissioning Energy”), xxx and Meralco shall have the option to purchase a portion or all of such available Commissioning Energy. For clarity, this provision applies regardless of the date the Plant has achieved actual commercial operations. If the Plant has achieved commercial operations as of 26 May 2024 [with respect to Phase 1 and 26 November 2024 with respect to Phase 2], Power Supplier shall make available to Meralco the Commissioning Energy for the maximum period for Commissioning allowed under relevant regulations reckoned from 26 May 2024 [with respect to Phase 1 and 26 November 2024 with respect to Phase 2]. If the Plant is still under or is about to undergo Commissioning, Power Supplier shall notify Meralco of the availability of Commissioning Energy and make available to Meralco the Commissioning Energy for the longer period between (i) the actual Commissioning of such Plant, and (ii) the maximum period for Commissioning allowed under relevant regulations reckoned from the start of actual Commissioning, which maximum period shall not exceed six (6) months. Power Supplier may be excused from providing Commissioning</p>
50.	PSA Template CN3	Article 5 Commissioning Energy	<p>Commissioning Energy</p> <p>Is this applicable to a plant/nominated units that is already in commercial operations?</p>	

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				<p>Energy under this Section only when prevented by technical constraints or an Event of Force Majeure.”</p> <p>Hence, if plant is already built, then Power Supplier is nevertheless required to provide Commissioning Energy for the maximum period for Commissioning under regulations. This is to allow MERALCO customers to benefit from the Commissioning Energy rate, regardless of whether the power plant has yet to achieve commercial operations or will still undergo Commissioning.</p>
51.	PSA [Template]	6.1.1	<p>[6.1.1 From the Commercial Operations Date of the Plant until the expiration of the Term or earlier termination of this Agreement, Power Supplier shall:</p> <p>(a) make available to Meralco, and Meralco shall purchase from Power Supplier, at the Price determined in accordance with Appendix E, the Contract Capacity of the Plant; and</p> <p>(b) deliver and sell to Meralco, and Meralco shall purchase from Power Supplier, at the Price determined in accordance with Appendix E, the Associated Energy (and Replacement Power), to the extent of Meralco’s relevant day-ahead nominations.]</p> <p>If this will involve a plant already in operation, suggest to peg this from the Commencement Date</p>	<p>Commencement Date is defined differently from Commercial Operations Date (COD). Specifically, even if Plant is already in commercial operations, Power Supplier still needs to submit the required documents under Section 3.3.2 of the PSA and Parties shall issue the relevant certification. Note, however, that Section 3.4 allows for possibility of Early COD and Section 5.1 requires initial supply of Commissioning Energy from a plant already in operation.</p>
52.	PSA [Template]	6.1.2	<p>[6.1.2 Unless otherwise expressly permitted by this Agreement, Power Supplier shall not, without Meralco’s prior written consent:</p> <p>xxx</p> <p>(b) provide Meralco with capacity and/or electrical energy from any source other than the Plant; provided, however, that Power Supplier shall be allowed to deliver and sell to Meralco the Associated Energy from WESM or any other source only when the Plant is on Outage beyond Full Load Equivalent Scheduled Outage Allowance Days and/or Full Load Equivalent Forced Outage Allowance Days. For this purpose, should Power Supplier fail to source from the Plant when it is available, Meralco shall pay the lower between WESM price and Price, in accordance with Appendix E.]</p>	<p>Last sentence of Section 6.1.2(b) refers to a scenario when Power Supplier fails to source from the Plant when it is actually available, while Section 4.6.2 of Appendix C2 of the ERC Guidelines applies to a case when Power Supplier provides RP beyond the outage allowance. Since this is a physical contract and Power Supplier is required to supply from the Plant, when it fails to do so even if the Plant is available, last sentence of Section 6.1.2(b) applies. Notably, in this case, (a) MERALCO will be constrained to be the oneto source the replacement power given Power Supplier’s failure to do so, and (b) MERALCO can only source that from the WESM, hence, the price to be paid is whichever is lower between WESM price and Price. Nevertheless, for clarity, Section 6.1.2(b) will be revised as follows:</p> <p>“(b) provide Meralco with capacity and/or electrical energy from any source other than the Plant; provided, however, that Power Supplier shall be allowed</p>

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			<p>New CSP Rules state that replacement power, in case the Plant is unable to provide electricity, should be at the approved PSA rate or the actual cost of replacement power, whichever is lower. This doesn't necessarily have to be WESM rate so propose to revise 6.1.2</p>	<p>to deliver and sell to Meralco the Associated Energy from WESM or any other source only when the Plant is on Outage beyond Full Load Equivalent Scheduled Outage Allowance Days and/or Full Load Equivalent Forced Outage Allowance Days, to be paid for by Meralco at the lower between the actual Replacement Power cost and Price, in accordance with Appendix E. For this purpose, -Should Power Supplier fail to source from the Plant when it is available, Meralco shall pay the lower between WESM price and Price, in accordance with Appendix E.”</p> <p>Please see Annex B of this Bid Bulletin No. 5 reflecting the amendment to the PSA template.</p>
53.	PSA [Template]	6.3.1, 6.3.2	<p>[Nominations</p> <p>6.3.1 For administrative and planning purposes only, Power Supplier shall furnish Meralco with year-ahead, month-ahead and week-ahead capacity availability, and Meralco shall furnish Power Supplier with non-binding year-ahead, month-ahead and week-ahead nominations of xxx</p> <p>6.3.2 Power Supplier shall furnish Meralco with its day-ahead capacity availability and Meralco shall furnish Power Supplier with binding day-ahead nominations on an hour-by-hour basis xxx]</p> <p>Nominations (Year, Month, Week. Day)</p> <p>Will MERALCO provide their prescribed template?</p>	<p>Yes. The template shall be agreed on the operating protocol with the Winning Power Supplier/s.</p>
54.	PSA [Template]	6.3.3	<p>[Notwithstanding Section 6.3.2, Meralco shall have the option to increase or decrease its day-ahead nominations, subject to the Technical Limits, Operating Procedures, WESM Rules and Grid Code.]</p> <p>Option to decrease or increase its day ahead nomination</p> <p>Will this be on a day ahead or real time basis?</p> <p>For instances that Meralco is under ALD due to external factors, will the nominations by Meralco be submitted to the suppliers real time?</p>	<p>Yes. The option to decrease or increase will be on both day ahead and intraday basis. Aside from this, MERALCO also has the option to increase up to the Metered Quantity on a day-after basis.</p>

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55.	PSA [Template]	8.1.1	<p>[8.1.1 Power Supplier shall design, procure, supply, deliver, install, erect, test and commission the Plant in accordance with Legal Requirements and Prudent Operating Practices and shall commence work as soon as reasonably practicable after Commencement Date.]</p> <p>Not applicable if plant already in operation. Propose to delete.</p>	<p>This is noted. PSA provision will be revised to delete this for commercially operational plant, as confirmed by MERALCO.</p> <p>This will be referred to the MERALCO/DU PSA Team so that the modifications will made ready to be reflected on the PSA template to be executed by the Winning Power Supplier.</p>
56.	PSA [Template]	8.3 Operations Log	<p>[Power Supplier shall keep a daily operations log for the Plant and the Electrical Interconnection Facilities, which shall include information on the Plant Availability, Outages (including Scheduled Outage), circuit breaker trip operations requiring a manual reset and any significant events related to the operation of the Plant and the Electrical Interconnection Facilities. Meralco may request a report from Power Supplier, which request shall not be unreasonably denied, regarding any significant event or information relating to the operation of the Plant and the Electrical Interconnection Facilities.]</p> <p>"may request a report"</p> <p>Is there a prescribed template or is the current document form of the generator/supplier sufficient?</p> <p>Is the request for a report limited only to grid events where the generator is affected?</p>	<p>The template shall be agreed on the operating protocol with the Winning Power Supplier/s.</p> <p>Yes.</p>
57.	PSA [Template]	8.4.1	<p>[Power Supplier shall, at its own cost, conduct in connection with achieving commercial operation a Net Dependable Capacity test ("NDC Test"). Power Supplier shall, at its own cost, thereafter conduct on an annual basis an NDC Test at a date scheduled by Meralco (in coordination with the System Operator), during which the Plant is capable of steady state operation. The Parties shall mutually agree on the testing principles, criteria and protocols for the NDC Test. Either Party may call for the conduct of the retest subject to seven (7) Days prior notice. The Party calling for the retest shall bear the cost of such retest, <i>provided</i> that, if Meralco called for such retest, Meralco shall be liable for the cost of the retest only if the results of the retest confirms the results of the immediately preceding NDC Test.]</p>	<p>The Bidder has the discretion to conduct an NDC test, if applicable, prior to the submission of its GNPHR Table in the FEW.</p> <p>The GNPHR Table submitted in the FEW during the evaluation shall be used starting Contract Year 1. The GNPHR Table explicitly states what set of GNPHR shall be used for each Contract Year.</p>

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			<p>Is the NDC test a requirement prior the bid submission of the GNPNHR for the FEW?</p> <p>The NDC and GNPNHR test is done annually, will the data generated be used for the current contract year or for the succeeding year? For example: Supplier, Meralco and Independent engineer agrees to conduct the test on October 2028, will the test result be for the remainder of 2028 or to effect on 2029.</p>	
58.	PSA [Template]	9.1.3	<p>[9.1.3 During Scheduled Outages that exceed the Full Load Equivalent Scheduled Outage Allowance Days and Forced Outages that exceed the Full Load Equivalent Forced Outage Allowance Days, Power Supplier shall purchase Replacement Power, which shall be declared as BCQ and paid for by Meralco at the lower between (a) the actual price of the Replacement Power, and (b) Price as specified in Appendix E. In the event of failure by Power Supplier to source the Replacement Power, Meralco shall be allowed to source replacement energy, subject to reimbursement by Power Supplier of the difference between (i) WESM price and (ii) the Price as specified in Appendix E, plus all relevant transaction cost and taxes.]</p> <p>In case Supplier is unable to source the Replacement Power, reimbursement to Meralco should be difference between actual price of replacement and contract price.</p>	<p>This pertains to outages beyond the outage allowance. Since Power Supplier is responsible for Replacement Power in such case, but Power Supplier fails to source the Replacement Power and MERALCO is constrained to source from the WESM, then Power Supplier is required to reimburse MERALCO for WESM costs above the Price.</p> <p>This is still aligned with the ERC CSP Guidelines since the actual Replacement Power cost (as sourced by MERALCO from the WESM) is equivalent to the WESM price.</p>
59.	PSA [Template]	9.1.4	<p>[On and after the Commercial Operations Date, during any period in which an Event of Force Majeure affects Power Supplier or Meralco, Meralco shall procure replacement energy from the WESM to the extent supply or offtake is so affected. For clarity, the cost of replacement energy shall form part of the price that Meralco will charge its customers.]</p> <p>For clarity, Event of Force Majeure of generator relieves the obligation to supply? Meralco to procure its own replacement power energy.</p>	<p>Yes. However, please also note that Section 17.3.1 provides that in case of force majeure affecting Power Supplier, “Parties may agree that Power Supplier shall make available the Contract Capacity and deliver the Associated Energy from WESM and/or any other source, and Meralco shall pay Power Supplier at the Price.”</p>

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60.	PSA [Template]	9.2.2	<p>[In case of Scheduled Outages other than those in the Annual Maintenance Plan, Power Supplier shall (i) notify Meralco in writing prior to notifying the System Operator and (ii) comply with the requirements of the System Operator, including obtaining Meralco's favorable endorsement, which endorsement will not be unreasonably withheld, delayed or conditioned.]</p> <p>For Maintenance Outages that are not part of the Annual Maintenance Plan (or GOMP for NGCP/DOE), do these fall under the Equivalent Schedule Outage Allowance?</p> <p>For clarity, any scheduled outage even if outside the GOMP may fall under Scheduled Outage as long as informed prior and in writing.</p>	Yes, as long as the outages outside the GOMP are communicated to MERALCO following Appendix G (Section 9) of the PSA
61.	PSA [Template]	10.1	<p>[Subject to the provisions of Section 10.2 below, Meralco shall, from time to time, be entitled to a reduction in the Contract Capacity and Associated Energy (the "Reduction in Contract Capacity and Associated Energy") equivalent to the reduction in the demand of its captive customers in order to avoid stranded contract capacities or costs, or by reason of the enforcement of Retail Competition and Open Access (RCOA), the Renewable Energy Law, Renewable Portfolio Standards (RPS), Green Energy Option Program (GEOP), Net Metering program, and other similar government programs, Laws and Legal Requirements.]</p> <p>Suggest to add this provision: "provided that this right may only be exercised in the event that Meralco, after exercising best efforts and in good faith, is unable to transfer or assign the Contract Capacity in accordance with Section ___ of this Agreement"</p>	Upon consultation with the DU, MERALCO is not amenable to this proposal and pointed out that the ERC CSP Guidelines does not require any such qualification. Rest assured however, that reduction in contract capacity will be done in a manner consistent with MERALCO's least cost obligation to its captive customers.
62.	PSA [Template]	11.2.4	[If any withheld amount under Section 11.2.1 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 20 to be owing (including the refund of any amount so paid under	Section 11.2.1 refers to an amount on any Invoice that is manifestly in error, apparently invalid, or not in the form or substance contemplated by the PSA [as may be modified by the ERC approval of the PSA].

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			<p>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. xxx]</p> <p>The provision makes reference to withheld amounts under Section 11.2.1. Kindly clarify what this pertains to</p>	
63.	PSA [Template]	12.2.2 (a) "...provided that, if after six months from filing of the Application, ...no action has been taken upon such application.."	<p>"no action has been taken" seems vague and can be subject to dispute between the parties. Does this mean a letter of acceptance by ERC would already be considered as an action, denying Supplier the right to suspend?</p> <p>Propose to be more specific with language. "...if after six months from filing and acceptance by the ERC of the Application.. no further action has been taken upon such application"</p>	Current language (as reflected below) is already the same as the proposed language, hence, no more need to revise.
64.	PSA [Template]	12.2.3	<p>[12.2.3 In the event that, as a result of a Material Adverse Government Action and pursuant to a corresponding order of the ERC or any other Governmental Instrumentality:</p> <p>(i) Meralco is prevented from making a pass through to its customers of any charges under this Agreement as approved by the ERC in the ERC Final Approval as accepted by Power Supplier (such amounts referred to hereinafter as "Disallowed Pass-Through Amounts"); or</p> <p>(ii) any portion of the Price that has been paid to Power Supplier is required to be refunded to Meralco or Meralco's customers in connection with the ERC Application or any petition, claim, case, proceeding or other action involving any of the Parties brought before any judicial, administrative or quasi-judicial body (such portion of the Price referred to hereinafter as "Refundable Amounts") xxx]</p> <p>For clarification, any additional charges should be ERC approved</p>	The provision does not pertain to additional charges but Disallowed Pass-Through Amounts and Refundable Amounts. Further approval from ERC is not necessarily secured given the premise that such amounts are already pursuant to "order of the ERC or any other Governmental Instrumentality".

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65.	PSA [Template]	14.2.1	<p>[Within five (5) Days after receipt from Power Supplier of the documents set forth in Appendix C (or such other period agreed upon by the Parties), the Parties shall jointly file with the ERC the necessary application for the approval of this Agreement (the “ERC Application”) and shall exert best efforts to obtain such approval as promptly as practicable following the submission of the ERC Application and to allow for the issuance of the ERC Final Approval on or before the Longstop Date and occurrence of the Acceptance Date.</p> <p>For clarity, in case of Power Supplier’s failure, inability, refusal or delay to provide or comply with ERC requirements, which results in failure to timely file the ERC Application, Meralco shall have the right to forfeit the Bid Security.]</p> <p>Suggesting to incorporate new timelines set by ERC: 15days from PSA execution - technical prefilling 30days from PSA execution – filing</p>	Both timelines under the ERC CSP Guidelines pertain to the maximum period, hence, any other period can be indicated for as long as the maximum is not exceeded. Given the repercussions of delayed pre-filing and filing, it is prudent to not rely on the maximum periods.
66.	PSA [Template]	14.2.2	<p>[Power Supplier shall fully cooperate with Meralco with respect to the ERC Application and shall furnish Meralco: (i) all documents set forth in Appendix C prior to Execution Date; and (ii) those documents that the ERC may require in connection with the ERC Application and any other review or examination conducted by the ERC with respect to this Agreement promptly upon request by Meralco; <i>provided</i> that, Power Supplier shall submit directly to the ERC any information which it deems to be confidential and shall give written notice to Meralco of such direct filing.</p> <p>In the event that a delay in ERC Final Approval is due to Power Supplier’s failure to comply with any order or directive of the ERC or provide any document required by the ERC, Meralco reserves the right to forfeit ten percent (10%) of the Bid Security amount for each month of such delay.]</p> <p><i>(i) All documents set forth in Appendix C prior to PSA Execution</i></p>	As relayed by the DU, MERALCO prefers to retain the provision. Note that Execution Date is defined in the PSA, and nothing precludes Power Supplier from furnishing MERALCO the indicated documents prior to the deadline indicated in the PSA.

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67.	PSA [Template]	17.2 (j) Curtailment of the Plant output by the System Operator.	Apart from System Operator Curtailment, are extended congestions or price separations computed by the Market Operator during the Real Time Dispatch included in Events of Force Majeure?	Any Events of Force Majeure should meet the requisites as stated in Articles 17.1 of the PSA.
68.	PSA [Template]	18.3.3(c) [In the event that (i) a Power Supplier	Propose to delete right to buy the plant; this penalty will be too drastic, especially for a supplier xxx where only a part of the capacity will be for this contract. Or please clarify if this is for greenfield plant.	As relayed by the DU, Meralco prefers to retain this provision. Please note that in the contemplated scenario, Power Supplier's Event of Default continues to be unremedied and Power Supplier fails to make Available the Contract Capacity or deliver the Associated Energy to Meralco, hence, unnecessarily exposing Meralco customers to WESM for the period of default. This remedy is indicated as an option for instances when it may be the best recourse to ensure that needed energy is delivered to Meralco's customers. Nevertheless, the right to buy or acquire the Plant is only one of several remedies available to Meralco, and Power Supplier has the right to "Buy-Back" the Plant (see item b of paragraph 2 of the same provision).
69.	PSA [Template]	Event of Default continues unremedied upon the expiration of the relevant Curing Period; and (ii) where applicable, Power Supplier fails to make Available the Contract Capacity or to deliver the Associated Energy, Meralco shall be entitled to any of the following reliefs, at the option of Meralco, xxx	<p>Propose to delete the right to acquire the Plant.</p> <p>Right to acquire is not one of the rights available under the ERC Template PSA. Any vertical integration may also be violative of competition laws. Lastly, a provision like this will be contrary to the intention of the EPIRA and the ERC's Rules. Any addition to the ERC Template PSA should be in line with the guidelines that it should be equitable for both parties.</p> <p>Plant is already in operation and Meralco will not be the only customer of the Plant. Acquisition will affect other customers.</p>	

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		(c) require Power Supplier to sell the Plant at the price equivalent to the Net Book Value of the Plant at the time of occurrence of Power Supplier Event of Default xxx]		
70.	PSA [Template]	1.1 re Equity Transfer Procedure; 18.3.3	Is the acquisition clause under Section 18.3.3 also exercisable in view of the Equity transfer Procedure to be agreed with the lenders? If yes, could you confirm that this is only applicable to greenfield plants?	All plants joining this bidding are considered as greenfield plants.
71.	PSA [Template]	18.6.2 (b)	<p>[Termination Upon Non-Occurrence of Commencement Date or Commercial Operations Date xxx</p> <p>(b) If, after the Commencement Date:</p> <p>(i) the Commercial Operations Date does not occur by the Delay Limit Date xxx</p> <p>(ii) the Excused Delay Limit is reached, the Parties shall meet and confer about the terms on which the Agreement might be continued]</p> <p>If Plant is already in operation, propose to delete</p>	As relayed by the DU, MERALCO prefers to retain Section 18.6.2. Please note that even if Plant is already built, Power Supplier still needs to submit the required documents under Section 3.3.2 of the PSA and Parties shall issue the relevant certification. Section 3.4 also allows for possibility of Early COD and Section 5.1 requires initial supply of Commissioning Energy from a plant already in operation.

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72.	PSA [Template]	18.6.2(b) in relation to Section 3.3.4	<p>[18.6.2(b) If, after the Commencement Date:</p> <p>(i) the Commercial Operations Date does not occur by the Delay Limit Date, the Parties shall meet and confer about the terms on which the Agreement might be continued (provided Power Supplier continues procurement of Replacement Power or payment of the fine in accordance with Section 3.3.3). If an agreement is not reached within sixty (60) Days of the Delay Limit Date, this Agreement may be terminated by Meralco, upon delivery of written notice of termination, and the Performance Security may be forfeited. Notwithstanding the foregoing, the Parties may agree in writing to extend the Scheduled Commercial Operations Date or Delay Limit Date.</p> <p>(ii) the Excused Delay Limit is reached, the Parties shall meet and confer about the terms on which the Agreement might be continued (provided Power Supplier procures Replacement Power or pays the fine in accordance with Section 3.3.3). If agreement is not reached within sixty (60) Days of reaching the Excused Delay Limit, this Agreement may be terminated by (i) either Party for an Excused Delay Event due to Section 3.3.3(a), (b), (d) or (e), or (ii) by Power Supplier for an Excused Delay Event due to Section 3.3.4(c), upon delivery of written notice of termination. In case of (i), Meralco shall have the right to exercise its remedies at law or equity and to draw on the Performance Security the proceeds of which Meralco shall apply to set off of its damages.</p> <p>n the event that Power Supplier (or any contractor of Power Supplier) has, after the Commencement Date, experienced a delay in designing, constructing, testing or Commissioning the Plant or any part thereof, as a result or to the extent of any of the following (each, an “Excused Delay Event”):</p> <p>(a) any action or inaction or delay in action of the System Operator, the Market Operator or any Governmental Instrumentality;</p> <p>(b) subject to Section 17.6, the occurrence of an Event of Force Majeure;</p>	<p>Section 18.6.2(b)(ii) is not a typographical error. It contemplates a scenario when the Excused Delay Limit is already reached but Parties are still negotiating the terms on which the PSA can be extended (as when this may be beneficial to the customers). During this period of negotiation, Power Supplier will provide RP or pay a fine.</p>
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		<p>(c) any breach or default by Meralco of its material obligations under this Agreement or the Direct Agreement;</p> <p>(d) any delay in energizing the Electrical Interconnection Facilities that prevents the export of power from the Plant; or</p> <p>(e) unavailability of back-feed power to synchronize or to dispatch the Plant or absence of suitable Dispatch Instructions so as to allow for the timely completion of the testing and commissioning of the Plant;</p> <p>then (i) if the Excused Delay Event occurs prior to the original Scheduled Commercial Operations Date, the Scheduled Commercial Operations Date shall be extended, Day for Day, by the same period that any Excused Delay Event subsists; and (ii) if the Excused Delay Event occurs from and after the Scheduled Commercial Operations Date, Power Supplier shall, for each Day of delay due to an Excused Delay Event, be relieved of its obligation to provide Replacement Power or the fine provided under this Section 3.3.3, <i>provided</i>, in each case, that Power Supplier has exerted due diligence in achieving Commercial Operations Date by the original Scheduled Commercial Operations Date and has no contributory negligence with respect to any Excused Delay Event, and <i>provided</i> further, that any such extension or relief (whether occurring before or after the Scheduled Commercial Operations Date) shall not exceed one hundred eighty (180) Days (the “Excused Delay Limit”).</p> <p>From and after the lapse of the Excused Delay Limit, either Party shall have the right to terminate this Agreement in accordance with Section 18.6.2(b), except that only Power Supplier can terminate this Agreement if the Excused Delay Event is solely due to Section 3.3.3(c)]</p> <p>Section 3.3.4 states that if the Excused Delay Event occurs from and after the SCOD, then Supplier shall be relieved from its obligation to provide replacement power. 18.6.2b(ii), however, seems to indicate that the Power Supplier is still required to provide replacement power even for an Excused Delay Event.</p>	
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			Can you confirm that the one indicated in 18.6.2(b)(ii) is just a typo?	
73.	PSA [Template]	18.6.4	<p>[Termination in the Event of Certain Events of Force Majeure]</p> <p>If an Event of Force Majeure occurs under the circumstances and having the consequences described in Section 17.4, Section 17.5 or Section 17.6 and the Parties have failed to agree on a solution satisfactory to each of the Parties prior to the lapse of the period of one hundred eighty (180) Days, then upon the lapse of such period, either Party may terminate this Agreement upon sixty (60) Days' prior written notice thereof to the other Party.]</p> <p>Please clarify if termination due to certain events of FM will require the payment of liquidated damages - clarity on application of LD</p>	Under the PSA, no liquidated damages shall be imposed in case of termination by reason of force majeure, considering that an Event of Force Majeure is, by definition, beyond the control of the concerned Party and complies with the requisites in Section 17.1.
74.	PSA [Template]	21.1.1	<p>[Neither Party may assign this Agreement, in whole or part, without the prior written consent of the other Party (which consent shall not be unreasonably withheld); <i>provided</i>, however, that:</p> <p>(a) Power Supplier may, with prior written notice to Meralco, transfer, sell, pledge, encumber or assign its rights or obligations to an Affiliate or its consortium's special purpose vehicle under, pursuant to or associated with (a) this Agreement, (b) the Plant, (c) its movable property and intellectual property, or (d) its revenues or proceeds under this Agreement to or for the benefit of the Finance Parties in connection with any financing for the construction of the Project or permanent or term financing or refinancing of the Project, in which case Meralco agrees to execute and deliver the Direct Agreement, or (e) any of its rights or assets in each of subsections (a) through (c), <i>provided</i> that, any such assignee of Power Supplier shall have the ability to perform all of Power Supplier's obligations under this Agreement; <i>provided further</i> that, such transfer of rights and obligations under this Section 21.1.1(a) shall require prior notification and approval of ERC. Nonetheless, both assignor and assignee are solidarily liable under this Agreement, subject to assignor's right to</p>	<p>We note the observation. For clarity, PSA provision will be revised to:</p> <p>"21.1.1 Neither Party may assign this Agreement, in whole or part, without the prior written consent of the other Party (which consent shall not be unreasonably withheld); <i>provided</i>, however, that:</p> <p>(a) Power Supplier may, with prior written notice to Meralco, transfer, sell, pledge, encumber or assign its rights or obligations to an Affiliate or its consortium's special purpose vehicle under, pursuant to or associated with (a) this Agreement, and its rights and interests hereunder, including but not limited to, the accounts, (b) the Plant, (c) its movable property and intellectual property, or (d) its revenues or proceeds under this Agreement to or for the benefit of the Finance Parties in connection with any financing for the construction of the Project or permanent or term financing or refinancing of the Project, in which case Meralco agrees to execute and deliver the Direct Agreement, or (e) any of its rights or assets in each of subsections (a) through (c), <i>provided</i> that, any such assignee of Power Supplier shall have the ability to perform all of Power Supplier's obligations under this Agreement; <i>provided further</i> that, such transfer of rights</p>

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		<p>seek reimbursement from assignee. In the event that the Finance Parties require additional or different terms and conditions as indicated in the attached form of Direct Agreement, the Parties agree to discuss such terms and conditions in good faith. Meralco shall have no obligation to execute and deliver a Direct Agreement unless such additional or different terms and conditions are agreed upon by the Parties;</p> <p>(b) 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 interests 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, or rights and obligations under this Agreement, with creditworthiness equal to or higher than that of Power Supplier. Power Supplier shall issue a written notice of such assignment within fifteen (15) Days therefrom;</p> <p>(c) In the case of Meralco, Meralco may assign, transfer, designate, delegate or allocate (as determined by Meralco) such portion of Contract Capacity and Associated Energy in accordance with Section 10.1 of this Agreement;</p> <p><i>Provided, further however, that for (a) and (b) above, any such assignee shall agree in writing to be bound by the terms and conditions of this Agreement, and upon any such assumption by the assignee, Power Supplier shall be relieved of any further liability hereunder.]</i></p> <p>How is the assignment to an Affiliate under Section 21.1.1 (a) and Section 21.1.1 (b) different? If the conditions for creditworthiness apply, does this mean that Section 21.1.1 (a) will not apply?</p>	<p>and obligations under this Section 21.1.1(a) shall require prior notification and approval of ERC. Nonetheless, both assignor and assignee are solidarily liable under this Agreement, subject to assignor's right to seek reimbursement from assignee. In the event that the Finance Parties require additional or different terms and conditions as indicated in the attached form of Direct Agreement, the Parties agree to discuss such terms and conditions in good faith. Meralco shall have no obligation to execute and deliver a Direct Agreement unless such additional or different terms and conditions are agreed upon by the Parties;</p> <p>(b) 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 interests <u>pursuant to or associated with (i) this Agreement, (ii) the Plant, (iii) the movable property and intellectual property of Power Supplier, or (iv) the revenues or any of the rights or assets of Power Supplier in each of items (i) through (iii),</u> to (a) 1 an Affiliate <u>[or its consortium's special purpose vehicle]</u> with creditworthiness equal to or higher than that of Power Supplier and (b) 2 any Person succeeding to all or substantially all of Power Supplier's assets, or rights and obligations under this Agreement, with creditworthiness equal to or higher than that of Power Supplier. Power Supplier shall issue a written notice of such assignment within fifteen (15) Days therefrom;</p> <p>(c) In the case of Meralco, Meralco may assign, transfer, designate, delegate or allocate (as determined by Meralco) such portion of Contract Capacity and Associated Energy in accordance with Section 10.1 of this Agreement;</p> <p>Provided, further however, that, for (a) and (b) above, any such assignee shall: <u>(i) agree in writing to be bound by the terms and conditions of this Agreement, and upon any such assumption by the assignee, Power Supplier shall be relieved of any further liability hereunder, and (ii) have the ability to perform all of Power Supplier's obligations and duties under this Agreement; provided further that, such transfer or assignment shall require prior</u></p>
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COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT CAPACITY OF CONTRACT CAPACITY OF 1,800 MW (NET), COD 2024-2025

				<p><u>notification and approval of ERC. Nonetheless, both assignor and assignee are solidarily liable under this Agreement, subject to assignor’s right to seek reimbursement from assignee.</u></p> <p>Please note that Section 21.1.(a) pertains to assignment to or for the benefit of the Finance Parties in connection with any financing for the construction of the Project or permanent or term financing or refinancing of the Project, whereas Section 21.1.(b) pertains to assignment to an Affiliate [or its consortium’s special purpose vehicle] or any Person succeeding to all or substantially all of Power Supplier’s assets, or rights and obligations under this Agreement, with creditworthiness equal to or higher than that of Power Supplier.</p> <p>Please see Annex B of Bid Bulletin No. 5 reflecting the amendment to the PSA template.</p>
75.	PSA [Template]	21.1.1	<p>[Neither Party may assign this Agreement, in whole or part, without the prior written consent of the other Party (which consent shall not be unreasonably withheld); <i>provided</i>, however, that:</p> <p>(a) Power Supplier may, with prior written notice to Meralco, transfer, sell, pledge, encumber or assign its rights or obligations to an Affiliate or its consortium’s special purpose vehicle under, pursuant to or associated with (a) this Agreement, (b) the Plant, (c) its movable property and intellectual property, or (d) its revenues or proceeds under this Agreement to or for the benefit of the Finance Parties in connection with any financing for the construction of the Project or permanent or term financing or refinancing of the Project, in which case Meralco agrees to execute and deliver the Direct Agreement, or (e) any of its rights or assets in each of subsections (a) through (c), <i>provided</i> that, any such assignee of Power Supplier shall have the ability to perform all of Power Supplier’s obligations under this Agreement; <i>provided further</i> that, such transfer of rights and obligations under this Section 21.1.1(a) shall require prior notification and approval of ERC. Nonetheless, both assignor and assignee are solidarily liable under this Agreement, subject to assignor’s right to seek reimbursement from assignee. In the event that the Finance</p>	<p>As stated in Section 21.1.1(a), mere notice to Meralco will suffice in case of assignment to Finance Parties, provided that the Direct Agreement template/s attached thereto are used - any deviation from such template/s will need to be agreed upon.</p>

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT CAPACITY OF CONTRACT CAPACITY OF 1,800 MW (NET), COD 2024-2025

			<p>Parties require additional or different terms and conditions as indicated in the attached form of Direct Agreement, the Parties agree to discuss such terms and conditions in good faith. Meralco shall have no obligation to execute and deliver a Direct Agreement unless such additional or different terms and conditions are agreed upon by the Parties;]</p> <p>To clarify, when the assignment is to lenders, is prior consent no longer required since it becomes the obligation of MER to execute the deed of assignment?</p>	
76.	PSA [Template]	Bid evaluation	How will the BAC PSA Secretariat assess bidders with greenfield nominated plants? Will they consult the records of the nominated comparable plant to make their evaluation?	Yes, the evaluation of the Nominated Plant will consider the submission for the Reference Plant requirement and Comparable Plant requirement, among other things.
77.	PSA [Template]	Annex Bid 3	Bidders are required to sign the Annex Bid 3 confirming acceptance of the PSA. However, there are provisions that are not applicable to existing plants. Will MERALCO allow amendments to align with the nominated plant of the winning bidder/s?	Kindly provide the suggested language, for consideration of MERALCO and/or the BAC-PSA, as applicable. Please also note the earlier responses on related queries involving existing plants.
78.	PSA [Template]	Reference Plant, Comparable Plant, Nominated Plant	Please confirm if these plants should also 150MW net?	Yes, it should be 150 MW net.
79.	PSA [Template]	Replacement Power	Should the bidder fail to meet its committed Commercial Operation Date (COD) for the replacement power, must it align with MERALCO's specified COD timeframe, falling between January 2020 and no later than May 2025?	Kindly clarify the question. Note, however, that Power Supplier's Plant must achieve COD by SCOD.
80.	PSA [Template]	Net Heat Rate	How will MERALCO compute the net heat rate? Direct or indirect?	Actual net heat rate shall be computed via direct method [i.e., actual net heat rate = total heat content of fuel used (in Btu) / total electricity generated by Plant with respect to the contract capacity (in kWh)]

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT CAPACITY OF CONTRACT CAPACITY OF 1,800 MW (NET), COD 2024-2025

81.	Fuel Procurement Protocol		What is the intention of requesting this? The procurement of fuel is of a confidential nature, and there are additional off-takers involved in certain shipments. FSA and submission of actual invoices during implementation should suffice	Please refer to response in Bid Bulletin #4, item 86: Section 11 is applicable to a Winning Power Supplier that has no Fuel Supply Agreement yet. Section 11 mandates the Winning Power Supplier to conduct a competitive selection process for its fuel taking into consideration the parameters it submitted in its Bid during the CSP (i.e., fuel formula, nominated index, etc.)
82.	Planned Maintenance		The supplier is required to obtain approval from the System Operator (SO) for its planned outage. The customer will only receive advice or notifications after obtaining approval. Suggest deletion.	As relayed by the DU, Meralco prefers to retain this provision. The specific mechanism of outage approval [Section 9.2.1 of the PSA] will be discussed in the operating protocol with the Winning Power Supplier/s.
83.	[PSA] Appendices	Appendix E Calculation of Payment	Fuel Formula, for the non-fuel commodity costs, such as freight, incidentals, insurance cost and excise tax, is it okay to define as actual non-fuel commodity costs which does not form part of the fuel commodity cost?	Yes, the Bidder can define the actual non-fuel commodity costs as long as it will be inputted in the submitted fuel formula in the FEW. The Bidder must provide evidence of actual costs incurred on these other non-fuel commodity items for the period of January 2020 to December 2022. Actual costs incurred by third parties on these other non-fuel commodity items for the same fuel type, actual data based on recognized indices, or invoices supporting such actual costs shall be submitted to support the indicated actual non-fuel commodity costs in the Fuel Formula. If no supporting documents are submitted to substantiate the indicated actual non-fuel commodity costs in the Fuel Formula, then the indicated value of the non-fuel commodity costs in the Fuel Formula shall be binding to the Bidder.
84.	PSA Appendices	Appendix G	[4.1 Year-Ahead Capacity Availability and Energy Nomination Schedules] When establishing the year-ahead schedules, the Parties shall observe the following: (a) Power Supplier shall furnish Meralco the year-ahead capacity availability schedule of the Plant for a relevant Contract Year at least one hundred and twenty (120) Days prior to the start of the next Contract Year. Meralco shall furnish Power Supplier with the year-ahead energy nomination schedule at least ninety (90) Days prior to the start of the next Contract Year. The year-ahead capacity availability schedule shall indicate the hourly estimate of capacity	Yes

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT CAPACITY OF CONTRACT CAPACITY OF 1,800 MW (NET), COD 2024-2025

			<p>availability (in kW) of the Plant in accordance with the contracted capacity of the Contract Year (i.e., 8,760 hours for non-leap years, 8,784 hours for leap years) and the schedule of planned maintenance outages calendared for the Contract Year as approved by the System Operator. When establishing the year-ahead energy nomination schedule, Meralco shall provide monthly estimate of energy nomination to Power Supplier for each month of the Contract Year. The year-ahead energy nomination schedule shall be based upon Meralco's good faith estimates of its requirements to serve its customers' aggregate demand, as such estimates may be revised during the course of the Contract Year (as shown in the month-ahead, week-ahead, and day-ahead nominations) to reflect the actual variation in customer demand;]</p> <p>In the event that there is a revision and approval in the GOMP/annual maintenance during the 4th quarter of the year prior the next contract year, is the supplier required to submit a new Year Ahead Capacity Availability?</p>	
85.	PSA Appendices	Appendix G 8.1	<p>[In accordance with Section 9.2 of this Agreement, Power Supplier shall furnish Meralco of its Annual Maintenance Plan. Likewise, Power Supplier shall furnish Meralco its proposed 3-year provisional maintenance plan. Power Supplier shall submit to Meralco and obtain Meralco's favorable endorsement of the said maintenance plans prior to submitting such plan to the System Operator in compliance with the Grid Code. Such maintenance plans shall indicate the dates and duration of each proposed Scheduled Outages and/or Major Maintenance Outages for the relevant calendar years]</p> <p>In what cases may we fail to receive an endorsement/agreement from Meralco on the Three Year Maintenance Plan?</p>	The specific mechanism of outage approval will be discussed in the operating protocol with the Winning Power Supplier/s.
86.	PSA Appendices	Appendix G 11 Competitive Selection	<p>[11.1 A detailed protocol for conducting an international competitive selection process for the fuel supply and its freight for the Plant shall be submitted by Power Supplier for confirmation by the Operating</p>	Yes, since the cost incurred from purchasing the coal will be part of the pass-through fuel costs.

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT CAPACITY OF CONTRACT CAPACITY OF 1,800 MW (NET), COD 2024-2025

		Process for the Plant Fuel	<p>Committee not later than one hundred eighty (180) Days before the onset of provision of Commissioning Energy.</p> <p>11.2 Any material deviation from the specifications set out in Section 11.1 shall be subject to the prior written approval of the Operating Committee.]</p> <p>CSP for Plant Fuel</p> <p>Does this include coal that are for test burn, spot purchase, and emergency purchases which are all short term in nature?</p>	
87.	PSA Appendices	Appendix J Tests	When will the indepenent engineer and generator establish the test procedures, requirements, and scheduling of the NDC and GNPNGR?	The tests as stated in Appendix J shall be agreed upon before Testing and Commissioning period.
88.	PSA Appendices Template CN3	Appendix B	<p>Item 2: Performance Guarantee</p> <p>Is the required data the name plate information or what was tested and certified under the COC? This considering that there is a note for Startup times and ramp rate values confirmed at Commercial Operations Date</p>	Technical data should be the same as the data stated in the COC, if applicable.
89.	PSA Appendices Template CN3	Appendix B	<p>Item 2: Performance Guarantee</p> <p>If the COC does not indicate the start up time, what is the alternative document/narrative that can be provided?</p>	Winning Power Supplier can indicate its actual start-up time, if applicable.
90.	PSA Appendices Template CN3	Schedule 2	<p>For the GNPNGR, is this the same table generated from the FEW? 40-100% for 15 years (2025-2039)</p> <p>Does this need to be signed/certified?</p>	Yes, this is the same table as seen in the GNPNGR Table worksheet of the FEW. The aforementioned worksheet forms part of the Bid Submission and must be signed by the Bidder's authorized representative.

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT CAPACITY OF CONTRACT CAPACITY OF 1,800 MW (NET), COD 2024-2025

91.	PSA Appendices Template CN3	Appendix G 3.1.1	Coordinating Committee on Commissioning energy Is this applicable to a plant/nomianted units that is already in commercial operations?	Yes
92.	PSA Appendices Template CN3	Appendix G 3.2.5	Creation of an operating protocol, which shall be completed and agreed upon by the Parties no later than sixty (60) days prior to Commercial Operations Date. What is the scope of the operating protocol? (ie. nomination protocols, etc)	It will cover the mechanisms to implement the provisions stated in Appendix G (Operating Procedures) and Appendix H (Invoicing and Payment Procedures)
93.	PSA Appendices Template CN3	Appendix G 5.3	In addition, Meralco shall have the option to increase its day-ahead energy nomination schedule on a day-after basis, which shall be the Incremental Energy for that Trading Interval To clarify, day after nominations are strictly upward in nature. Is there an option for the supplier to reject or limit to an extent the increased nomination within reasonable cause?	Yes, the day-after revisions are strictly upward in nature. As stated in Appendix G 5.3, Power Supplier is obligated to declare as BCQ the revised day-ahead energy nomination schedule.
94.	PSA Appendices Template CN3	Appendix G, 4	For items requiring Capacity Availability, is this plant availability or capacity made available to Meralco (ie. max of contracted capacity)?	Capacity Availability refers to the capacity made available to Meralco with respect to the Contract Capacity and should reflect the Scheduled Outages.
95.	PSA Appendices Template CN3	Appendix G 6.2	Will Meralco provide a prescribed template in monitoring the daily BCQ, monthly BCQ, daily Equivalent Outages/FM, and monthly Equivalent outages/FM?	The template shall be agreed on the operating protocol with the Winning Power Supplier/s.
96.	PSA Appendices Template CN3	Schedule 1 of Appendix A	For Table 1 Power plant technology and key components, are the required details similar to the Instructions Annexes CN3 > ANNEX TP-1 item 5?	Yes, it should be similar.

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT CAPACITY OF CONTRACT CAPACITY OF 1,800 MW (NET), COD 2024-2025

97.	PSA Appendices	Appendix G Section 5.3	<p>[Meralco shall, in all Trading Intervals not affected by a Scheduled Outage, Forced Outage, Event of Force Majeure, or suspension of delivery of Associated Energy as requested by Meralco, nominate any value from zero up to the Contract Capacity in any interval as its day-ahead energy nomination, subject to the Dispatch Ramp Rates under Appendix B. If Meralco does not furnish Power Supplier with its day-ahead energy nomination schedule, the nomination for the same Day in the week-ahead energy nomination schedule shall be deemed the nominated schedule for the Day. Notwithstanding the foregoing, Meralco shall have the option to increase or decrease its day-ahead energy nomination schedule on an intra-day basis, subject to Operating Procedures and WESM Rules. In addition, Meralco shall have the option to increase its day-ahead energy nomination schedule on a day-after basis, which shall be the Incremental Energy for that Trading Interval. For clarity, the revised day-ahead energy nomination schedule, including the intra-day and day-after revisions, shall be declared by Power Supplier in its day-after declaration to the WESM as BCQs for Meralco]</p> <p>Proposed additional wording:</p> <p>“For the avoidance of doubt, increase of day-ahead nominations on day-after basis shall be limited to the 5-minute intervals of metered quantity.”</p>	Further details, if needed, shall be agreed on the operating protocol with the Winning Power Supplier/s.												
98.	FEW	DU_Inputs sheet	<div><div>FEW</div><div>DU_Inputs sheet</div><div><table><tr><td></td><td>A</td><td>B</td><td>C</td></tr><tr><td>1</td><td></td><td></td><td>2023</td></tr><tr><td>20</td><td>Base PH CPI (2012=100)</td><td>Oct 2023</td><td>123.700</td></tr></table><p>Is the Base CPI reference 2012=100 or</p></div></div>		A	B	C	1			2023	20	Base PH CPI (2012=100)	Oct 2023	123.700	Base PH CPI reference is 2018=100.
	A	B	C													
1			2023													
20	Base PH CPI (2012=100)	Oct 2023	123.700													
99.	FEW	Input_FuelFor mula sheet	Cell C7, what will be referred to as the base indices and the current indices to be incorporated in the formula. Can you please show an example?	<p>For example, if Bidder intends to submit a Fuel Formula with the following structure:</p> <p>Fuel Formula = Base Fuel Cost * (Current Nominated Fuel Index / Base Nominated Fuel Index),</p>												

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT CAPACITY OF CONTRACT CAPACITY OF 1,800 MW (NET), COD 2024-2025

				<p>The Bidder shall input the Base Fuel Cost and Base Nominated Fuel Index values, respectively, in the Fuel Formula. The Current Nominated Fuel Index to be used during the evaluation shall be the resulting 36-month simple average of the historical values of the Nominated Fuel Index as seen in cell C4 (and C5, if using two Nominated Fuel Indices).</p> <p>For clarity, the submitted Base Fuel Cost and Base Nominated Fuel Index shall be binding for the Bidder during the Term of the PSA if it is declared as the Winning Power Supplier.</p>
100.	FEW	Input Base Values	<p>For converting from kcal to BTU, what is the rounding requirement for decimal places that extend 4? round, roundup, or rounddown</p> <p>round(5555.555555,4) = 5555.5556 roundup(5555.555555,4) = 5555.5556 rounddown(5555.555555,4) = 5555.5555</p>	<p>For purposes of evaluation, the FEW will use the ROUND() function of MS Excel.</p>
101.			<p>How delayed can the winning bidder be under the excused and unexcused delay provisions? Can continuous adjustment of the cod be allowed? And as long as meralco captive is kept whole in terms of cost and meralco agrees to accept, is replacement power allowed for the duration of the delay i.e. worst case 2 or 3 years delay from may 2025 cod cutoff)</p>	<p>For unexcused delay under Section 3.3.3, and subject to the provision by Power Supplier of Replacement Power to Meralco, the maximum is until the earlier of (a) the COD, and (b) sixty (60) Days after the Delay Limit Date (as the Delay Limit Date may be adjusted in accordance with the succeeding provisions). For (b), it is 60 plus 180 Days.</p> <p>Excused Delay Limit for an Excused Delay Event is 180 days, as provided in Section 3.3.4. If Excused Delay Limit is reached, then Parties shall confer about the terms on which the PSA might be continued (provided Power Supplier procures Replacement Power or pays the fine in accordance with Section 3.3.3). If agreement is not reached within sixty (60) Days of reaching the Excused Delay Limit, then either Party may terminate the PSA, and Performance Security of the Power Supplier shall be forfeited.</p> <p>As relayed by the DU, adjustment of the COD following Sections 3.3.3 and 3.3.4 of the PSA would depend upon the circumstances.</p>

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102.			What is the maximum duration by which the "excused delay limit" can be extended? we understand that the default values are 180 days for the "excused delay limit" and 60 days for the "unexcused delay limit," but could you provide information on the potential adjustments and their time frames in practice?	Please refer to answer in item 46 herein.
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AMENDMENTS TO THE INVITATION TO BID / TERMS OF REFERENCE (TOR) TABLE (published on 1 November 2023 and 8 November 2023)

Item	Reference / Subject Matter of Amendment	Amendments
1	<p>Bid Price / Tariff Structure of the Contract Price</p> <p>Terms of Reference Table</p> <p><i>(New requirement to address a recommendation by Energy Regulatory Commission [ERC] Chairperson Monalisa C. Dimalanta’s through a letter dated 13 November 2023 [received by the BAC-PSA on 23 November 2023]. The letter recommended to MERALCO that it compare with or otherwise propose to cap the Bidder’s Capital Recovery Fees charged to other offtakers)</i></p>	<p>[...]</p> <ul style="list-style-type: none">Two-part Tariff consisting of Fixed and Variable Costs (inclusive of separate line item proposal for Line Rental cap) shall comply with the following requirements:<ul style="list-style-type: none">a. Capital Recovery Fee component of the Tariff should be fixed for the Required Contract Period and in PhP/kW-year; <u>provided that, Bidder: (i) shall not offer Capital Recovery Fee higher than the ERC-approved rate/s in its agreements with other offtakers for the same Plant, and (ii) shall submit an undertaking to that effect.</u> <p>[...]</p>

Item	Reference / Subject Matter of Amendment	Amendments
2	<p>Bid Price / Tariff Structure of the Contract Price</p> <p>Item (g.)</p> <p>Terms of Reference Table</p>	<p>[...]</p> <p>g. During implementation evaluation, the fuel cost component shall be computed using this formula:</p> <p>$FC = (FP / 1,000,000) * HR * FX$</p> <p>Where:</p> <p>FC = Fuel Cost component, in PhP/kWh FP = Fuel Price, in USD/MMBtu HR = Heat Rate, in Btu/kWh FX = Foreign exchange rate, in PhP/USD</p> <p>For clarity, <u>during implementation</u>, the Fuel Price <u>the fuel cost component, if in US Dollar (USD), shall be paid in USD. Furthermore, the Fuel Price</u> shall be <u>the</u> lower between:</p> <p>(1) the resulting value of the Fuel Formula using the actual value/s, for the relevant billing period, of the Nominated Fuel Index/Indices under item e(i), applying any premium, discount and/or other nonfuel commodity costs specified under items e(iii) and (iv) herein; and</p> <p>(2) actual fuel price as billed by the fuel supplier/s (i.e., supported by actual invoices) for the relevant billing period.</p> <p>The Heat Rate shall be the corresponding value under the GNPHR Table or the actual heat rate for the relevant billing period, whichever is lower.</p> <p>[...]</p>

AMENDMENTS TO THE BID REQUIREMENTS (posted starting 1 November 2023)

Item	Reference / Subject Matter of Amendment	Amendments
1	<p>Bid Price and Bid Security (Envelope 3)</p> <p>p.18</p> <p><i>(New requirement to address a recommendation by Energy Regulatory Commission [ERC] Chairperson Monalisa C. Dimalanta’s through a letter dated 13 November 2023 [received by the BAC-PSA on 23 November 2023]. The letter recommended to MERALCO that it compare with or otherwise propose to cap the Bidder’s Capital Recovery Fees charged to other offtakers)</i></p>	<p>[...]</p> <p>Bid Price and Bid Security (Envelope 3)</p> <p>Using the relevant forms prescribed in the IPB, xxx</p> <p><u>The Bidder shall not offer Capital Recovery Fee higher than the ERC-approved rate/s in its agreements with other offtakers for the same Nominated Plant and is required to submit a sworn undertaking to this effect.</u></p> <p>[...]</p>

AMENDMENTS TO THE INSTRUCTIONS TO PROSPECTIVE BIDDERS (dated 1 November 2023)

Item	Reference / Subject Matter of Amendment	Amendments
1	Section 2.4 Instructions to Prospective Bidders	<p>[...]</p> <p>2.4. COSTS AND EXPENSES</p> <p>Interested Bidders shall bear all costs, losses and damages associated with or resulting from their participation in the Bidding, whether its bid is accepted or rejected. The BAC-PSA and Meralco shall not be held responsible or liable in any way for any such costs, losses or damages incurred by any Interested Bidder (whether incurred by it directly or indirectly, or by its officers, employees, advisers, contractors, Affiliates, including the BAC-PSA or other persons), regardless of the results of the Bidding.</p> <p>The Winning Power Supplier shall bear all the costs related to engaging the services of an Independent Engineer during this Bidding; pre-filing publication cost and filing fee of the relevant joint application for approval of the PSA with the ERC, while Meralco shall bear the publication cost and posting expenses of the notice of public hearing to be issued by the ERC for the said joint application.</p> <p><u>During the Bidding, should the Interested Bidder submit a Nominated Fuel Index that is not publicly available, the Interested Bidder shall provide to the BAC-PSA the necessary data for the said index for the BAC-PSA’s use/evaluation. During implementation of the PSA, the Winning Power Supplier shall provide to Meralco the necessary data for the said index or opt to shoulder all the costs related to the applicable subscription for Meralco to obtain the necessary data for the said index.</u></p> <p>[...]</p>
2	Sec. 3.1.1. <i>(New requirement to address a recommendation by Energy Regulatory Commission [ERC] Chairperson Monalisa C.</i>	<p>3.1. QUALIFICATION DOCUMENTS</p> <p>An Interested Bidder must submit no later than the Bid Submission Deadline a sealed envelope consisting of the following Qualification Documents, using the relevant forms indicated in this Section 3 (Qualification Documents) (Envelope 1):</p> <p>3.1.1 Application to Qualify and Participate in the Bidding, using the form in Annex QD-1, with attached <u>(i) Authority to Participate in the Bidding and Designation of Authorized Representative using the form in Annex QD-1A, and (ii) Sworn Undertaking that the Bid Price’s Capital Recovery Fee is not higher than the ERC-approved rate/s in its agreements with other offtakers for the same Nominated Plant, using the from in Annex QD-1B;</u></p> <p>[...]</p>

Item	Reference / Subject Matter of Amendment	Amendments
	<i>Dimalanta’s through a letter dated 13 November 2023 [received by the BAC-PSA on 23 November 2023]. The letter recommended to MERALCO that it compare with or otherwise propose to cap the Bidder’s Capital Recovery Fees charged to other offtakers)</i>	
3	<p>Sec. 3.3 (as amended, see <i>Bid Bulletin No. 2</i>)</p> <p><i>Additional clarification on the instructions and amendments introduced in Bid Bulletin No. 2.</i></p>	<p>3.3 BID PRICE AND BID SECURITY</p> <p>No later than the Bid Submission Deadline, an Interested Bidder must submit its Bid Price in a separate sealed envelope (Envelope 3) consisting of the following documents (collectively referred to as the “Bid Price”), using the relevant forms indicated in this Section 3.3:</p> <ul style="list-style-type: none">(a) Bid Letter, using the form in Annex BID-1;(b) Bid Security, equivalent to three (3)-month contract cost of the proposed PSA computed using the bid price offered by the Interested Bidder, in the form of a managers check or an irrevocable standby letter of credit, which must be issued by one or more universal or commercial banks and using the template in Annex BID-2 (without modification). This Bid Security requirement may be complied with by the Interested Bidder directly, or, provided the Bid Security format in the IPB is followed, through any of its direct shareholders representing Controlling interest, Affiliates, or Ultimate Parent;(c) A signed Letter of Acknowledgement and Acceptance of the PSA template, using the form in Annex BID-3;

Item	Reference / Subject Matter of Amendment	Amendments
		<p>(d) A soft copy of the Interested Bidder’s duly accomplished Financial Evaluation Workbook submitted as an electronic copy file contained in a USB/thumb flash memory drive as required in Section 3.4, which considers the parameters, assumptions and/or requirements defined and stated in the “<i>Bid Price / Tariff Structure of Contract Price</i>” row/provision of the TOR Table.</p> <p>(e) Print outs of the relevant worksheets enumerated below, as reflected in the Financial Evaluation Workbook of the Interested Bidder and signed by the Interested Bidder’s authorized representative:</p> <ul style="list-style-type: none">i. Input_FuelFormula worksheetii. Input_HistoricalValues worksheetiii. LCOE Result worksheetiv. Base Rates Table worksheetv. GNPHR Table worksheetvi. LR Cap Table worksheetvii. Bid Security worksheet <p>(f) Hard copy of the supporting or source documents to validate that the provided actual monthly values of the Bidder’s chosen Nominated Fuel Index/Indices for the period January 2020 to December 2022 monthly figures are the actual values of the Nominated Fuel Index/Indices as released by their respective publishers.</p> <p><u>(g) Hard copy of the supporting or source documents to validate that the provided actual values of the non-fuel commodity costs in the Fuel Formula is for the period of January 2020 to December 2022, if applicable.</u></p> <p>[...]</p>
4	(new) ANNEX QD-1B	<p>REPUBLIC OF THE PHILIPPINES } CITY OF _____ }</p> <p><u>SWORN ATTESTATION ON THE CAPITAL RECOVERY FEE OFFER</u></p> <p>I, <i>(name)</i>, <i>(citizenship)</i>, of legal age, with office address at <i>(address)</i>, as the <i>(position/designation)</i> and duly authorized representative of <i>(insert name of the Bidder)</i> (the “COMPANY”), a <i>(corporation/partnership)</i> organized</p>

Item	Reference / Subject Matter of Amendment	Amendments
		<p>existing under and by virtue of the laws of the Republic of the Philippines, after having been duly sworn to in accordance with law, depose and state that:</p> <ol style="list-style-type: none">1. The COMPANY is a prospective Bidder for MERALCO’s Competitive Selection Process for its (<i>capacity</i>) MW power supply requirement (the “CSP”);2. Pursuant to Section 3.1.1 of the Instructions to Prospective Bidders for the CSP,¹ the COMPANY shall not offer a Capital Recovery Fee higher than the Energy Regulatory Commission-approved rate/s in the COMPANY’s agreements with other off-takers for the same Nominated Plant.3. I am executing this Sworn Undertaking to attest to the truth of the foregoing and for whatever purpose it may serve. <p><i>(Date and Place of Execution.)</i></p> <p>By:</p> <p><i>(Name, Designation, and Signature of the Company’s Representative)</i></p> <p>SUBSCRIBED AND SWORN TO before me this ____ day of (month and year) at (place), affiant exhibiting to me his/her (proof of identity acceptable under Philippine notarial regulations) issued at (City) on (date).</p> <p>Doc. No. _____; Page No. _____; Book No. _____; Series of _____.</p>

¹ 3.1.1 Application to Qualify and Participate in the Bidding, using the form in Annex QD-1, with attached (i) Authority to Participate in the Bidding and Designation of Authorized Representative using the form in Annex QD-1A, and (ii) Sworn Undertaking that the Bid Price’s Capital Recovery Fee is not higher than the ERC-approved rate/s in its agreements with other offtakers for the same Nominated Plant, using the from in Annex QD-1B.

AMENDMENTS TO THE POWER SUPPLY AGREEMENT (PSA) TEMPLATE

Item	Reference / Subject Matter of Amendment	Amendments
1	Sec. 14.5.2 Power Supply Agreement (see Bid Bulletin No. 4)	[...] 14.5.2 Power Supplier shall ensure that at all times there is available continuous supply of fuel inventory at the Site sufficient to operate the Plant in accordance with this Agreement and in accordance with Prudent Operating Practices, taking into account all relevant factors such as seasonal and/or climatic factors, which inventory shall be sufficient to supply energy for at least a continuous fifteen (15) Day period based on continuous operation of the Plant at average Associated Energy for the current Billing Period and the next two (2) Billing Periods based on the year-ahead or month-ahead nominations of Meralco at a plant capacity factor of 100% to the extent of the Contract Capacity. [...]
2	Appendix E, Section B Power Supply Agreement - Appendices (see Bid Bulletin No. 4)	[...] "The MPB upon COD shall consist of Capacity Payment, Energy Payment, and Other Payment. The Capacity Payment consists of Component A (MCP), Component B (MIFP) and Component C (MFOMPUSD and MFOMPPHP) and the Energy Payment consists of Component D (MFCP), Component E (MVOMPUSD and MVOMPPHP), and Component F (MRPP). Other Payments are Component G (RCP), and Component H is Component G (LRAP)." [...]
3	Recital Portion, Par. b Power Supply Agreement (see Bid Bulletin No. 5)	[...] "B. Power Supplier [intends to construct, own, operate, manage and maintain/owns, operates, manages and maintains] a [•] Power Plant located at [•] (the "Plant"), on the island of Luzon in the Philippines.
4	Sec. 2.2 (and related Section 18.6.3) Power Supply Agreement (see Bid Bulletin No. 5)	[...] 2.2 Term of Agreement Subject to Article 3, this Agreement shall become effective on the Execution Date, and shall remain in force and effect until the last day of the 15th Contract Year, unless terminated earlier in accordance with the terms of this Agreement and upon approval by the ERC, or extended by the application of Section 2.2 and Section 17.3.3 (the "Term").

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		<p>The Term may be renewed for an additional period of up to one (1) year 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>[...]</p> <p>18.6.3 Termination on Expiry</p> <p>This Agreement shall terminate on the last Day of the Term unless otherwise extended by the application of Section 2.2, Section 17.3.3 or upon the mutual agreement of the Parties."</p> <p>[...]</p>
5	<p>Sec. 3.3 Power Supply Agreement</p> <p>(see Bid Bulletin No. 5)</p>	<p>[...]</p> <p>"If the Commercial Operations Date has not occurred by the Scheduled Commercial Operations Date, from and after the Scheduled Commercial Operations Date, Power Supplier shall, for each Day of unexcused delay, (i) procure and cause delivery to Meralco of Replacement Power of up to 1,800 MW (net), as may be applicable, subject to Article 6 and in accordance with Appendix E, to be paid for by Meralco at the lower between the actual price of Replacement Power and the Price specified in Appendix E</p> <p>xxx</p> <p>For any deliveries of Replacement Power made pursuant to this Section 3.3.3, Meralco shall pay for such Replacement Power at the lower between the WESM price and the Price specified in Appendix E.</p> <p>If Power Supplier fails to provide Replacement Power despite availability from WESM or any other source, Meralco will be deemed to have sourced the Replacement Power from WESM. If the WESM price for the Replacement Power is higher than the Price, Power Supplier shall subject to reimbursement by Power Supplier MERALCO of the difference between (i) WESM price and (ii) the Price, plus all relevant transaction cost and taxes. <u>If the WESM price for the Replacement Power is lower than the Price, MERALCO shall not be liable to Power Supplier for the difference between WESM price and Price."</u></p>

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		[...]
6	Sec. 6.1.2(b) Power Supply Agreement (see Bid Bulletin No. 5)	<p>[...]</p> <p>6.1.2 Unless otherwise expressly permitted by this Agreement, Power Supplier shall not, without Meralco’s prior written consent: xxx</p> <p>(b) provide Meralco with capacity and/or electrical energy from any source other than the Plant; <i>provided</i>, however, that Power Supplier shall be allowed to deliver and sell to Meralco the Associated Energy from WESM or any other source only when the Plant is on Outage beyond Full Load Equivalent Scheduled Outage Allowance Days and/or Full Load Equivalent Forced Outage Allowance Days, to be paid for by Meralco at the lower between the actual Replacement Power cost and Price, in accordance with Appendix E. For this purpose, s Should Power Supplier fail to source from the Plant when it is available, Meralco shall pay the lower between WESM price and Price, in accordance with Appendix E.</p> <p>[...]</p>
7	Sec. 21.1.1 Power Supply Agreement (see Bid Bulletin No. 5)	<p>[...]</p> <p>“21.1.1 Neither Party may assign this Agreement, in whole or part, without the prior written consent of the other Party (which consent shall not be unreasonably withheld); <i>provided</i>, however, that:</p> <p>(a) Power Supplier may, with prior written notice to Meralco, transfer, sell, pledge, encumber or assign its rights or obligations to an Affiliate or its consortium’s special purpose vehicle under, pursuant to or associated with (a) this Agreement, and its rights and interests hereunder, including but not limited to, the accounts, (b) the Plant, (c) its movable property and intellectual property, or (d) its revenues or proceeds under this Agreement to or for the benefit of the Finance Parties in connection with any financing for the construction of the Project or permanent or term financing or refinancing of the Project, in which case Meralco agrees to execute and deliver the Direct Agreement, or (e) any of its rights or assets in each of subsections (a) through (c), <i>provided that, any such assignee of Power Supplier shall have the ability to perform all of Power Supplier’s obligations under this Agreement; provided further that, such transfer of rights and obligations under this Section 21.1.1(a) shall require prior notification and approval of ERC. Nonetheless, both assignor and assignee are solidarily liable under this Agreement, subject to assignor’s right to seek reimbursement from assignee. In the event that the Finance Parties require additional or different terms and conditions as indicated in the attached form of Direct Agreement, the Parties agree</i></p>

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		<p>to discuss such terms and conditions in good faith. Meralco shall have no obligation to execute and deliver a Direct Agreement unless such additional or different terms and conditions are agreed upon by the Parties;</p> <p>(b) 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 interests <u>pursuant to or associated with (i) this Agreement, (ii) the Plant, (iii) the movable property and intellectual property of Power Supplier, or (iv) the revenues or any of the rights or assets of Power Supplier in each of items (i) through (iii),</u> to (a)1 an Affiliate [<u>or its consortium's special purpose vehicle</u>] with creditworthiness equal to or higher than that of Power Supplier and (b)2 any Person succeeding to all or substantially all of Power Supplier's assets, or rights and obligations under this Agreement, with creditworthiness equal to or higher than that of Power Supplier. Power Supplier shall issue a written notice of such assignment within fifteen (15) Days therefrom;</p> <p>(c) In the case of Meralco, Meralco may assign, transfer, designate, delegate or allocate (as determined by Meralco) such portion of Contract Capacity and Associated Energy in accordance with Section 10.1 of this Agreement;</p> <p>Provided, further however, that, for (a) and (b) above, any such assignee shall: <u>(i) agree in writing to be bound by the terms and conditions of this Agreement, and upon any such assumption by the assignee, Power Supplier shall be relieved of any further liability hereunder, and (ii) have the ability to perform all of Power Supplier's obligations and duties under this Agreement; provided further that, such transfer or assignment shall require prior notification and approval of ERC. Nonetheless, both assignor and assignee are solidarily liable under this Agreement, subject to assignor's right to seek reimbursement from assignee.</u></p> <p>[...]</p>