



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

BID BULLETIN NO. 2

To all Interested Bidders:

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

Issued on 13 January 2022.

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

(sgd)

Atty. Ferdinand A. Domingo
Chairman

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

	FORMATTING/PROCEDURAL-RELATED QUERIES/COMMENTS				
		TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION RECOMMENDATIONS / PROPOSED WORDING	TPBAC RESPONSE
1.		Invitation to Bid/ TOR Table	Page 2	<div><div>Tariff Structure of Contract Price</div><div><ul style="list-style-type: none">• Straight energy price (PhP/kWh) subject to the following bandwidths:<ul style="list-style-type: none">- Proposed Minimum Energy Off-Take ("MEOT"), reckoned monthly, should not exceed twenty-four percent (24%) of PCF with respect to the Contract Capacity.</div></div> <p>Question: Please clarify that MEOT is 24% PCF – not 24% OF PCF. PCF is 45%. It might be construed as 24% of 45%. We suggest the following revision:</p> <p>"Proposed Minimum Energy Off-Take ("MEOT") reckoned monthly, should not exceed twenty-four percent (24%) of PCF with respect to the Contract Capacity."</p>	Agree with the proposed wording.
2.		IPB	2.2 (page 8)	<p>"xxx In this Bidding, an Interested Bidder shall submit a Proposed Price indicating its (i) Offered Contract Capacity, and xxxxx"</p> <p>--- #---</p> <p>Question: Can we state a portfolio of plants as our Nominated Power Plant? Can we lump the offered capacity for the portfolio of plants? i.e., not state a specific offered capacity per plant?</p>	<p>The TOR and the Sec. 3.2 of the IPB allows for a Nominated Power Plant as a single or portfolio of proposed power plants.</p> <p>For this particular emergency peaking supply CSP, yes, the lumping and not stating the offered capacity per plant will be allowed as an exceptional case. In any case, the Bidder should issue (as required by Sec. 3.1.2. (f.) of the IPB) a notarized certification (using the Annex QD-3 form), that the Offered Contract Capacity from the Nominated Power Plant is not covered by any offtake agreement (e.g., a power supply agreement or ancillary services procurement agreement, including a financial-type arrangement of power supply agreement) at the time of the Operations Effective Date of the PSA that will conflict with the Bidder’s obligation should it be declared the Winning Power Supplier.</p>
3.		IPB	3.1 (page 21)	<p>Qualification Documents:</p> <p>Questions: If the Prospective Bidder is a consortium of companies, will each company be required to submit its own set of Qualification Documents? i.e. if two companies form a consortium, will the consortium submit two (2) sets of QD-1 etc? Or would it suffice to submit one document containing information on both companies?</p>	<p>As a general rule, this is the requirement of the TPBAC for consortiums joining the CSPs it is conducting. However, in consideration of the emergency nature of this 170 MW CSP and the short duration of the Required Contract Period, by way of exception, the TPBAC will accept the proposed one document containing information of the pertinent companies, or even only the</p>

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					companies' Ultimate Parent's qualification document (e.g. AFS / financial statements).
4.		Past and existing contracts with Meralco	Annex A of Annex QD-4 Page 57 of ITB	<p>Annex A of Annex QD-4 requires Bidders to provide a complete list of all project(s) and contract(s) with Meralco and/or its Affiliates engaged in power generation, distribution, and supply/financial lenders of the (Insert name of Bidder) and any of its Affiliates engaged in power generation, which was commenced or in the process of implementation within the last five (5) years prior to the Bid Submission Deadline. Such project(s) and contract(s) shall only refer to power supply or off take agreements and financing documents with creditors in connection with the development and implementation of the said power supply or off take agreements.</p> <p>Please clarify if these include expired contracts.</p>	<p>Even if the project/contract with Meralco and/or its Affiliates engaged in generation, distribution and supply is terminated or expired before the Bid Submission Deadline, if it is within the last 5-year coverage period requirement, a certification from Meralco and/or its Affiliates engaged in generation, distribution and supply needs to be obtained by the Bidder or its Affiliate engaged in power generation.</p> <p>The TPBAC further announces that according to the DU, six (6) PSAs entered into with Meralco on April 2016 were not implemented by reason of Supreme Court's ABP Decision, hence, there is no need to secure a certification for those PSAs. It is also the same (i.e. certification not required) for PSAs that were not implemented because their respective applications for approval with the ERC were never acted upon by ERC until their respective Terms expired.</p>
5.		IPB	3.1.2 (c) (page 22)	<p>"copy of latest General Information Sheet (GIS), stamped "received" by the SEC, xxx"</p> <p>Question: Will SEC acknowledgment suffice if GIS was electronically filed?</p>	For the GIS, yes, a stamped "received" or an acknowledgement receipt from the SEC will be allowed.
6.		IPB / Annexes	3.2 (IPB page 23) vs Annex TP-1 (page 66)	<p><u>On delivery points:</u></p> <p>Section 3.2 states:</p> <p>The Interested Bidder must identify its single or portfolio of proposed power plant/s, which must be located in Luzon or Visayas and which must be capable of supplying the Offered Contract Capacity to Meralco for the Required Contract Period beginning on the Operations Effective Date ("Nominated Power Plant"). To reiterate, the Nominated Power Plant shall be with one Delivery Point (for purposes of settlement and transfer of risk and loss), which Delivery Point should be nearest to Meralco's load center and subject to Meralco's approval.</p> <p>Whereas, TP-1 states:</p>	<p>This is a typographical error on Annex TP-1. It should be Sec. 3.2 that should prevail. As such, Bidders may freely edit item 2, last row of the table providing for the Technical Parameters, as such:</p> <p>"One Delivery Point (for purposes of settlement and transfer of risk and loss), which Delivery Point should be within the Luzon Grid, nearest to Meralco's load center, and subject to Meralco's approval."</p>

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				<ul style="list-style-type: none"> One Delivery Point (for purposes of settlement and transfer of risk and loss), which Delivery Point should be within the Luzon Grid, nearest to Meralco's load center, and subject to Meralco's approval. <p>Question: Kindly clarify the requirement in Annex TP1 that says Deliver Point should <i>within</i> the Luzon Grid. There is no such requirement in IPB Section 3.2. Since MERALCO is accepting bidders who may nominate power plants located in Visayas, may we propose that delivery point be either in Luzon <i>and/or</i> Visayas?</p>	
7.		IPB	3.2 (b) (page 24)	<p>Requirement of COC</p> <p>Question: Will an application for COC renewal/PAO extension suffice as an alternate document? We have timely filed our application for COC renewal / PAO extension but we are still waiting for ERC's approval.</p>	<p>As a general rule, the Bidder must submit the prevailing COC/PAO of its Nominated Power Plant that is effective upon the TOR's Operations Effective Date. The TPBAC may, at its sole discretion on justifiable grounds, allow an application for the renewal of the COC/PAO to be submitted, provided that the Bidder could not use an unsuccessful renewal as a reason for non-performance of its obligations under the PSA. The Bidder is advised to include a write-up explanation when submitting a mere application for COC renewal/PAO extension, which should include a discussion of the status of such application and any recent developments. Including a certification issued by the ERC which states that the COC/PAO is being evaluated for renewal or extension is also recommended to support such write-up explanation.</p> <p>Furthermore, if the Bidder is deemed the Winning Power Supplier, should the ERC not accept the application for approval of the PSA, holds in abeyance, delays or disapproves the said application for the reason that the Power Supplier's COC/PAO is a mere application for renewal, the said Power Supplier's Bid Security will be forfeited pursuant to Section 12.1.2 of the PSA which states that: "<i>In the event that a delay in ERC Approval is</i></p>

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					<i>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."</i>
8.		PAO	ITB 3.2 Page 23	The extension of [ABC] provisional authority to operate the [ABC] Power Plant is still pending with the Energy Regulatory Commission (ERC). We believe that there is no reason for an extension not to be granted by the ERC and that it is only a matter of time for the ERC to issue said extension. Given that it is not the fault of [XYZ] that it will not be able to submit a COC or PAO for purposes of the CSP, may it be allowed to submit the certification issued by the ERC on October 26, 2021, which states that [ABC]'s [ABC] Power Plant is currently being evaluated for the extension of its PAO instead ?	The Certification will be allowed provided that (<i>same answer above</i>): "the Bidder cannot use the unsuccessful application for the renewal of the COC/PAO as a reason for non-performance of its obligations under the PSA. Furthermore, if the Bidder is deemed the Winning Power Supplier, should the ERC not accept the application for approval of the PSA, holds in abeyance, delays or disapproves the said application for the reason that the Power Supplier's COC/PAO is a mere application for renewal, the said Power Supplier's Bid Security will be forfeited pursuant to Section 12.1.2 of the PSA which states that: "In the event that a delay in ERC 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."
9.		IPB	3.2 (e) (page 24)	Fuel Supply Agreements Questions: May we redact confidential information on the fuel agreements?	Yes, a redacted version of the Fuel Supply Agreement is acceptable.
10.		IPB	3.2 (f) (page 24)	Board of Investment Certificate of Registration Question: If the period for BOI incentives stated in the BOI COR already lapsed, instead of submitting the COR, can we submit an explanation to say that the company/ies are no longer getting BOI incentives?	Yes, Section 3.2 (f) of the IPB states that this BOI requirement must be submitted only "if applicable." The proposed write-up explanation is acceptable.
11.		IPB	3.3 (page 24)	Bid Security Question: Can we insert the phrase in blue font below? The insertion of the phrase is usually required by banks.	The requested revision will be allowed but using the following wording: "...along with the original copy of this Letter of Credit."

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				<p>2. Subject to the other provisions of this Letter of Credit, Meralco is hereby irrevocably authorized to make one drawing for the entire Stated Amount under this Letter of Credit by presenting to the Issuer, at its address set forth above, a demand for payment from Meralco in substantially the form attached as Annex A, duly completed, and is in the form of a letter on Meralco's letterhead signed by any of its authorized signatories <i>along with the original Standby Letter of Credit</i>.</p>	
12.		IPB	3.3 (d)1a (page 25)	<p>"1. The Proposed Price shall comply with the following requirements:</p> <p>a. Straight energy price (Php/kWh), subject to the following bandwidths:</p> <p>i. Minimum Energy Off-Take ("MEOT"), reckoned monthly, should not exceed twenty-four (24%) PCF with respect to Contract Capacity.</p> <p>ii. Proposed Price shall be applied on excess energy above MET up to forty-five (45%) PCF with respect to the Contract Capacity."</p> <p>--- #---</p> <p>Question: May we clarify the distinction between the Proposed Price which shall be applied to energy within and beyond MEOT up to 45%?</p>	The offered Contract Price will be applied to the energy within MEOT while the discounted Contract Price (if any) will be applied to the Excess Energy beyond MEOT up to 45% PCF of the Contract Capacity. For clarity, bidder can offer a discounted or non-discounted Contract Price for the Excess Energy beyond MEOT up to 45% PCF of the Contract Capacity.
13.		IPB	Annex QD-5 Page 62	<p>On the requirement to submit the most recent quarterly financial statements</p> <p>Question: Does the requirement pertain to the immediately preceding quarter only (one quarter)? For example, if bid submission deadline is Feb 2 and our latest quarterly FS is Q3, do we only submit Q3 quarterly FS?</p>	All available quarterly FS after the most recent Audited FS should be submitted. For example, if the latest AFS is for the year ending December 2020, then quarterly FS for 1st to 3rd [or 4th, if available] quarters of 2021 should be submitted.
14.		Not Applicable Requirements	ITB 3.1.2 (e) in relation to Annex QD-2 (e) Partnership/ Consortium formed for the purpose of the	If the requirement is not applicable to the Bidder, should a write-up with explanation be submitted?	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 TPBAC interpreting differently the applicability or non-applicability of the said requirement. As such, it would be best if a write-up/explanation is submitted by the Bidder.

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			bidding Page 22		
15.		Bid Security Forfeiture	ITB 3.3.2 (g), (h) and (j) Page 27	<p>Suggest that the failure of the Winning Power Supplier to submit the following documents be considered as a ground for forfeiture of the Bid Security only when failure to submit the following documents is without justifiable cause:</p> <p>a. documents and evidence set forth in the PSA template or any other documents that forms part of the pre- filing requirements with the ERC within the period provided;</p> <p>b. the Winning Power Supplier fails or refuses to accept the Notice of Award, or fails or refuses to sign the PSA template within the period provided;</p> <p>c. A Bidder with the Best Bid failed to submit the documents required in this IPB to be submitted during Post-Qualification</p> <p>Accordingly, we suggest to reword Section 3.3.2 of the ITB as follows:</p> <p>(g) the Winning Power Supplier fails to submit the documents and evidence set forth in the PSA template or any other documents that forms part of the pre- filing requirements with the ERC within the period provided <u>without justifiable cause</u>;</p> <p>(h) the Winning Power Supplier fails or refuses to accept the Notice of Award, or fails or refuses to sign the PSA template within the period provided <u>without justifiable cause</u>; xxx</p> <p>(j) a Bidder with the Best Bid failed to submit the documents required in this IPB to be submitted during Post-Qualification <u>without justifiable cause</u>;</p>	<p>Not amenable.</p> <p>For example, the ERC requires that the Winning Power Supplier submit the actual application for renewal of the COC/PAO of the Nominated Power Plant, since the Winning Power Supplier only submitted proof of negotiation of a renewal for COC/PAO during the Bid Submission Deadline. The onus is on the Interested Bidder that if it submits such proof of COC/PAO renewal or negotiation, the risk of the ERC not accepting the PSA application for approval because it requires the submission of the actual application for renewal of the COC/PAO itself, and not just a mere discussion or negotiation to renew or extend, falls on the said Interested Bidder/ Winning Power Supplier. Hence, the Interested Bidder must submit its bid with a mindset that if it is declared the Winning Power Supplier, it must possess the documents required by the ERC in its pre-filing checklist for the prompt and successful filing of the PSA for approval.</p> <p>In any case, Sec. 3.3.2. (k) is qualified that the failure to timely submit must be "without justifiable cause."</p>
16.		Condition Precedent to the PSA	ITB 5.4 Page 38	<p>Section 5.4 provides that from receipt of the Notice of Award, the Winning Power Supplier must immediately submit the following documents to the TPBAC and Meralco as conditions precedent for the execution and signing of the PSA template among others:</p> <p>i. the documents and evidence set forth in the PSA template or any other document that forms part of the pre-filing requirements with the ERC for an application for approval of a power supply agreement; and</p> <p>Additional documents, including confirmations and certifications, that</p> <p>ii. the TPBAC may require to ensure that the Winning Power Supplier is able to comply with the requirements under the PSA.</p>	

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				<p>When exactly does the Winning Power Supplier have to provide these documents?</p> <p>What happens if extension of the PAO is not issued by the ERC in time for BidSubmission Deadline?</p>	<p>(<i>same answer above</i>) The Interested Bidder must submit its bid with a mindset that if it is declared the Winning Power Supplier, it must possess the documents when it is required by the ERC in its pre-filing checklist for the prompt and successful filing of the PSA for approval.</p> <p>(<i>same answer above</i> – item 7. And 8.)</p>
17.		Page numbering	ITB 3.4.1 / Page 29-30	<p>Will the numbering of the pages be continuous for the QD, TP and Bid Docs or can we have separate numbering for each of the 3 set of documents?</p> <p>Can we suggest to have separate numbering for each of the 3 set of documents (QD, TPand Bid Documents) for administrative ease?</p>	<p>The QD, TP, and Bid Docs being referred to are Envelope 1 (QD), Envelope 2 (TP) and Envelope 3 (Bid). Section 3.4.1. (b) already explained that:</p> <p>"In one set of Document Submissions (e.g. Envelope 1), all pages are to be paginated from 1 to xxx, for the ease of monitoring by the TPBAC. As such, all pages are again to be paginated from 1 to yyy for the other set of Document Submissions (e.g. Envelope 2)."</p>
18.		Fuel Supply Agreement	ITB 3.2 and Annex TP-1 Pages 22 and and 67	<p>While [XYZ] owns the output of the [ABC] Power Plant ("Plant") as the Independent Power Producer (IPP) Administrator of the Plant pursuant to an IPP Administration Agreement executed by[XYZ] and the Power Sector Assets and Liabilities Management Corporation (PSALM),[XYZ] has no operational control including fuel for the Plant. It is PSALM who is responsible for providing fuel for the Plant during the term of the IPP AdministrationAgreement or until June 2022.</p> <p>The Agreement for Sale and Purchase of Natural Gas which is the fuel supply contractfor the Plant, was executed by the National Power Corporation with Shell Philippines Exploration B. V. and Occidental Philippines Inc. in 30 December 1997, prior to the appointment of SPPC as the IPP Administrator of the Plant. As such, SPPC cannot provide a copy of the same.</p> <p>This has always been arrangement under the IPP Administration Agreement which Meralco is familiar with given that it is the sole customer of [XYZ] since its appointmentas IPPA Administrator of the Plant. Currently, [XYZ] also has a five-year power supply agreement with Meralco for the supply of 290 MW as a result of the competitive selection process conducted by Meralco in 2019 and the company already underwent previous evaluation of the TPBAC.</p>	<p>The Certification will be allowed.</p>

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				Moreover, considering that the Plant will be turned over by PSALM to [XYZ] by June 2022 upon the expiration of the IPP Administration Agreement, [XYZ] is currently securing short-term and long-term LNG supply based on market conditions. Past June 2022, [XYZ] will have an LNG terminal now being constructed on our behalf by [LM&O] and will be used to store and re-gas the LNG bought on a spot and/or contracted basis. Based on the foregoing, in lieu of the fuel supply agreement, can we submit a certification explaining this instead?	
19.		Technical Proposal Nominated Power Plant	ANNEX TP-1 Proof that the Bidder is the developer, owner or controls the Nominated Power Plant and has sufficient authority to enter into offtake agreement with Meralco Page 66	Can we submit a certification executed by [XYZ] that (i) [XYZ] is currently the administrator of the Plant pursuant to the IPP Administration Agreement with PSALM and (ii) that by June 2022, upon expiration of this agreement, the Plant will be turned over by PSALM to [XYZ], as proof that [XYZ] controls the Nominated Power Plant?	The Certification will be allowed.
20.		Designated Speaker	Annex B of SBB No.1 Page 2	Do we need to provide proof of authority of the designated speaker or can any of the authorized representatives speak on behalf of the Bidder he/she is representing? Can an authorized representative assign a designated speaker for the Pre-Bid Conference, Pre-Qualification Evaluation and Opening of Bid Prices?	Any of the authorized representatives named in the latest Expression of Interest may speak on behalf of the Bidder and may assign a designated speaker. As much as possible, kindly inform the TPBAC Secretariat ahead of time.
21.		Description of Bidder	Annex QD-1A Page 4.	Suggest to revise wording as follows to consider [XYZ] as an IPP Administrator of the [ABC] Power Plant. 3. The Company owns, and/or operates and maintains, <u>administers or manages the capacity or output of</u> (specify details of the Nominated Power Plant, such as capacity and plant type) located in (specify location).	This amendment is acceptable.

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22.		Conditions Precedent to OED	Invitation to Bid	OED starts on Feb 26, 2022, while section (d.) of Conditions Precedent to OED of the Invitation to BID requires ERC approval of the application 6 months (or earlier) from the filing. However, IPB also indicated that filing of ERC approval is within 14 days from execution of the PSA. So what happens on the projected OED? Will Meralco still get supply from Winning Power Supplier even without ERC Approval?	Section 3.2 and 3.2.1. of the PSA template underscores the intent for the parties’ mutual obligations to supply and purchase power to only commence upon ERC approval.

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INSTRUCTIONS TO PROSPECTIVE BIDDERS / BIDDING DOCUMENTS-RELATED QUERIES/COMMENTS					
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23.		ITB	Plant Type p.1	Is the Maximum PCF of 45% referring to the plant itself? So if the maximum PCF of the Nominated Power Plant/s is/are more than 45%, the Bidder is automatically disqualified?	The maximum PCF of 45% refers to the Contract Capacity and not to the PCF of the Nominated Power Plant/s. No, the Bidder will not be disqualified since the maximum PCF refers to the Contract Capacity only.
24.		Audited Financial Statements	IPB 3.1.4 (a) & (b) p.23	<ol style="list-style-type: none"> For this requirement, can [the Bidder] submit the AFS and quarterly financial statement of [the Ultimate Parent] instead? The direct shareholder is [the Bidder] but the controlling entity is [the Ultimate Parent]. Do we have to submit any form of proof or documentation for the submission of AP's AFS? <p>Do we also have to submit [the Bidder's] AFS and quarterly financial statements as a supplement to the [Ultimate Parent's] AFS and quarterly financial statement submission?</p>	<p>1. Yes, as stated in the Bid Requirements, the AFS submission requirement may be complied by the Bidder or any of its direct shareholders representing Controlling interest, Affiliates or Ultimate Parent.</p> <p>2. The Bidder's submission of its Ultimate Parent's AFS (and most recent quarterly financial statements) will be verified by the TPBAC using the diagram of corporate structure submitted in Envelope 1 (Sec. 3.1.2 (d) of the IPB). Also, as stated in the Bid Requirements, other proof required is that the AFS should be duly stamped "received" by the Bureau of Internal Revenue (BIR) or Securities and Exchange Commission (SEC) and certified as a true copy by (i) the BIR or SEC or (ii) the chief financial officer or treasurer, in which case, it must be under oath and notarized.</p> <p>3. In connection with the response above, for item 1., if the AFS and quarterly FS submission requirements are already complied by the Ultimate Parent (and found compliant by the TPBAC), the Bidder's submission of its own AFS and quarterly FS, though will not be prohibited or found non-compliant by the TPBAC, will only serve as supplementary information.</p>
25.		MPA, TSA, and Fuel Supply Agreement submission	IPB 3.2 (c) p.24	<p>Can we submit a redacted version of the said documents?</p> <p>Do we have to secure a certificate from IEMOP that the Bidder is a Direct member of the WESM? Or the submission of the MPA suffice?</p>	<p>Yes, redacted versions of the MPA, TSA and FSA are acceptable.</p> <p>The MPA can be "certified as a true copy by (i) the PEMC and/or IEMOP; or (ii) the corporate secretary"</p>
26.		Technical Proposal	Annex TP-1 item 1	"Proof that the Bidder or its direct shareholder representing Controlling interest is the developer of, owner of, and Controls, the Nominated Power	The diagram of corporate structure submitted in Envelope 1 and the required documents for Envelope 2 (COC/PAO,

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		(Nominated Power Plant)		Plant and has sufficient authority to enter into the offtake agreement with Meralco” Query: What document/s should be submitted in compliance with item 1 of Annex TP-1?	etc.) will be evaluated by the TPBAC as proof of this requirement.

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PSA TEMPLATE-RELATED QUERIES/COMMENTS					
	BIDDER NAME (ACRONYM)	TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION RECOMMENDATIONS / PROPOSED WORDING	TPBAC RESPONSE
27.		PSA	General	Question: May we know if the PSA is explicit about capping the PCF to 45%?	There is no express provision in the PSA capping the plant capacity factor (PCF) at 45%. However, as provided in the PSA, the PSA shall be read in light of Meralco's bidding documents, including the Terms of Reference, which provides for a cap of 45% PCF.
28.		PSA	1.1	<p>"Availability of Supply means Contract Capacity is Available for twelve (12) hours daily covering peak hours of Meralco from 9:00 AM to 9:00 PM."</p> <p>--- # ---</p> <p>Question: May we know if Meralco wishes to dispatch Plant outside of these hours on a non-firm, as available basis?</p>	<p>Meralco has the option, but not the obligation, to dispatch the Plant outside of the Availability of Supply hours.</p> <p>For clarity, Power Supplier may offer up to the Contract Capacity beyond the Availability of Supply hours on a Day-Ahead basis.</p>
29.		PSA	3.2.1	<p>(d) On or before the Longstop Date, (i) the ERC shall have issued an ERC Approval, including the pricing structure as set out herein (or as otherwise acceptable to Power Supplier), and (ii) the Acceptance Date has occurred.</p> <p>Question: Can we have OED even if ERC Approval (Provisional Approval) is still subject to Power Supplier's Motion for Reconsideration? Section 12.2.4 seems to state that Acceptance Date can only happen after the MR has been resolved. We would like to have the flexibility to start supplying power even when the MR is still pending.</p>	<p>Section 12.2.4 provides for implementation upon Acceptance Date, while Section 12.2.2 (i) provides, consistent with prevailing ERC Rules of Practice and Procedure, that in case Power Supplier decides to file a motion for reconsideration (and pending resolution thereof by the ERC), the Parties shall nevertheless implement the ERC Approval subject to any adjustment or amendment that the ERC may direct.</p> <p>Further, to avoid confusion, Section 12.2.1 is revised to delete the last sentence:</p> <p>12.2.1. Upon receipt of the ERC Approval, Meralco shall provide a copy of such ERC Approval to Power Supplier. Power Supplier shall have ten (10) Days from the date of receipt from Meralco of such ERC Approval to notify Meralco in writing that: (i) it accepts such ERC Approval or (ii) it does not accept the ERC Approval, stating the grounds for non-acceptance. For clarity, ERC Approval may be promulgated subsequent to the Operations Effective Date.</p>

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

PSA TEMPLATE-RELATED QUERIES/COMMENTS					
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30.		PSA	4.1	<p>The TOR states that: Supply shall primarily be sourced from the Plant, provided that when the Plant is not capable of delivering a portion of, or the entire Contract Capacity, Power Supplier shall supply from its portfolio of Plants, WESM or any other source, and Meralco shall pay the lower between WESM price and Contract Price.</p> <p>However, Section 4.1. provides that the Contract Capacity and Associated Energy shall be paid by Meralco at the Contract Price determined in accordance with Appendix C.</p>	Following the TOR, the lower between WESM price and Contract Price shall be paid in case Plant is unavailable and Power Supplier sourced from portfolio of Plants, WESM or any other source. Section 4.1 will be revised to conform with TOR.
31.		PSA	10.2 (b)	<p>(b) Actual WESM line rental charges for the transmission of Associated Energy from the Plant to the Delivery Point or line rental cap of PhP [based on Bid which shall in no case be higher than 0.1000] per kWh, whichever is lower. For clarity, anything in excess of the line rental cap shall be for the account of Power Supplier.</p> <p>Question: Delivery point is defined as the Power Supplier's WESM node (i.e., at Plant gate). Effectively, this means that Meralco will only be responsible for LR from the Plant up to (Plant gate) which is practically zero. We suggest to revise this provision as follows:</p> <p>"Actual WESM line rental charges for the transmission of Associated Energy from the Plant to the Delivery Point or line rental cap of PhP [based on Bid which shall in no case be higher than 0.1000] per kWh, whichever is lower. For clarify, anything in excess of the line rental cap shall be for the account of Power Supplier."</p>	<p>For clarity, the proposed revision of the provision will instead be reflected as follows:</p> <p>"Actual WESM line rental charges associated with the declaration of Bilateral Contract Quantities for the transmission of Associated Energy from the Plant's the-Delivery Point to Meralco's WESM Node or line rental cap of PhP [based on Bid which shall in no case be higher than 0.1000] per kWh, whichever is lower. For clarity, anything in excess of the line rental cap shall be for the account of Power Supplier."</p>
32.		PSA	Art. 11 Change in Circumsta nces and VAT status provide in the TOR.	<p>The Tariff Structure of the TOR states that:</p> <ul style="list-style-type: none"> -The VAT status declared by Bidder upon submission of its Bid is binding upon said Bidder for the entire Required Contract Period of the PSA. - If the VAT status of the Bidder changes in the future, then costs resulting from such change cannot be passed on to consumers. <p>What would happen if any subsequent Law came into effect changing the VAT status from 12% applicable VAT to, say for example, 18% applicable VAT? Will this change be considered a Change in Circumstances under the PSA? Please explain the TOR requirement above.</p>	The TOR requirement envisions a scenario where the Bidder indicated a zero-rated VAT status and was able to gain an advantage during the bid evaluation of this CSP. Should such zero-rated VAT status change in the future, the zero-rated VAT status of the bidder that enabled it to win this CSP should still be binding and any costs resulting from the removal of such zero-rated VAT status cannot be passed on to Meralco's consumers.

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					On the other hand, if the Bidder offers the applicable VAT rate (i.e., 12%) and such VAT rate is changed by a subsequent Law that falls within the definition of Change in Circumstances, then the Change in Circumstances provision of the PSA may apply.
33.		PSA	13.2	<p>"Instances of Force Majeure... For clarity, Power Supplier shall not be allowed to claim Force Majeure under Article 13 in case there is supply available from the WESM or any other source."</p> <p>--- # ---</p> <p>Question: May we know if the applicability of this statement contemplates availability of supply in the WESM for i) <u>both</u>, or ii) <u>either islands</u> of the Plant and Meralco?</p> <p>Example, there's power in Luzon but none in Visayas where Plant is located? Can Power Supplier invoke FM?</p>	<p>Section 4.1 (a) provides that Power Supplier shall make Available to Meralco the Contract Capacity to be sourced from the Plant, the WESM or any other source. Accordingly, Power Supplier shall not be allowed to claim Force Majeure unless there is lack of supply of power in <u>both</u> Luzon and Visayas.</p>
34.		PSA	17.1.2	<p>17.1.2. Meralco shall be entitled to assign, transfer, designate, delegate or allocate (collectively in this context, "Transfer") its rights and obligations to purchase a portion of Contract Capacity and Associated Energy that is no longer required by Meralco to any of its business segments or wholly-owned Affiliates, to the extent allowed by Law, or to any other Person acceptable to Power Supplier (which consent shall not be unreasonably withheld, delayed or conditioned).</p> <p>Question: Can we clarify that the assignment to other Person is subject to consent of Power Supplier. We respectfully suggest the following revision:</p> <p>"Meralco shall be entitled to assign, transfer, designate, delegate or allocate (collectively in this context, "Transfer") its rights and obligations to purchase a portion of Contract Capacity and Associated Energy that is no longer required by Meralco to any of its business segments or wholly-owned Affiliates, to the extent allowed by Law, or to any other Person acceptable to <u>subject to the consent of</u> Power Supplier (which consent shall not be unreasonably withheld, delayed or conditioned.)"</p>	As relayed to the TPBAC, MERALCO DU prefers to retain this provision, as its standard language already approved by regulator in the past.

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

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35.		PSA	Appendix C A	"Excess Energy means the total declared BCQ by Power Supplier for Meralco in excess of the total energy of the Month Ahead Hourly Nominations Schedule for the relevant Billing Period,..." --- # --- Question: The definition seems to be in conflict with the formula in Appendix C B. 2 Excess Energy Payment, where EEP is charged for energy in excess of MEOT and not Month Ahead Nomination.	The total energy nominated in the Month-Ahead Hourly Nominations Scheduled should be the MEOT energy for the month, so any BCQ declared that is greater than MEOT for the relevant period will be treated as Excess Energy.
36.		PSA	Appendix D 4	"In accordance with Section 6.3.2...." --- # --- Question: There is no 6.3.2 in the PSA	This should be Section 4.4.1.