



BIDDING
BASELOAD CONTRACT CAPACITY OF 1,200 MW (NET)
FOR CONTRACT PERIOD FROM 26 DECEMBER 2023

BID BULLETIN NO. 4

To all Interested Bidders:

1. A matrix containing the set of queries 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, Instructions to Prospective Bidders (dated 29 November 2023) ("IPB") and Power Supply Agreement ("PSA") template is provided herein as **ANNEX B**.
3. The soft copy file of the IPB' Annex QD-2 (in MS Word format) will be released in your respective cloud-based folders containing the Bidding Documents.

For your guidance and information.

Issued on 8 January 2024.

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 1,200 MW (NET) FOR CONTRACT PERIOD FROM 26 DECEMBER 2023

FORMATTING/PROCEDURAL-RELATED QUERIES/COMMENTS				
	TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION RECOMMENDATIONS / PROPOSED WORDING	BAC-PSA's RESPONSE
1.	Annex TP-1 Technical Proposal (Nominated Plant)		<p><i>"Required Attachments:</i></p> <p>XX</p> <p><i>2. Technical characteristics of the Plant showing evidence of compliance to the technical requirements stated in the Invitation to Bid's Terms of Reference Table ("TOR Table") using the following format and duly signed by the Bidder's authorized representative:"</i></p> <p>May we confirm that Required Attachment No. 2 of Annex TP-1 following the format provided in the template can be submitted <u>as a separate document or file</u> from Annex TP-1?</p>	Yes, this will be allowed provided it is attached to Annex TP-1.
2.	QD 1A	Page 57 of the IPB	<p>Can we revise QD 1-A to consider Bidders who are Independent Power Producer Administrators?</p> <p>We propose to revise as follows: "Proof that the Bidder or its direct shareholder representing Controlling interest is the developer of, owner of, <i>or manages the capacity of,</i> and Controls, the Nominated Plant and has sufficient authority to enter into the offtake agreement with Meralco;"</p>	Yes, this will be allowed.

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3.	Operations Execution Date Invitation to Bid	Terms of Reference	<p>In Bid Bulletin 2, Meralco/BAC stated that <i>"the Operations Effective Dates (OEDs) indicated pertain to the Billing Periods. However, these should be read in conjunction with the PSA, particularly Section 3.2.2 on the Conditions Precedent to OED, which among other things, requires that "on or before the Longstop Date, the ERC shall have issued an ERC Approval, including the pricing structure as set out herein (or as otherwise acceptable to Power Supplier) xxx."</i></p> <p>Reading these together, it would appear that the OED is not a fixed date but a future and uncertain date when all conditions precedent shall have been satisfied. At the very least, the fixed dates in the TOR and Section 3.2.1 of the draft PSA are merely target dates, and the occurrence of OED is always subject to the satisfaction of conditions precedent in Section 3.2.2 of the draft PSA.</p> <p>In any event, it is impossible for the OED for the 810 MW to even occur on December 26, 2023. The stipulated OED for 810 MW has already passed, is about a month earlier than the Bid Submission Deadline set for January 23, 2024 and about two and half months earlier than the scheduled execution of the PSA by Meralco and Winning Bidders and even much earlier than the satisfaction of the conditions precedent for the occurrence of OED.</p> <p><u>Clarification and Recommendation</u></p> <p>A. Please confirm, that:</p> <ol style="list-style-type: none"> 1. The OED is not a fixed date. 2. The occurrence of OED is always subject to the satisfaction of all conditions precedent under Section 3.2.2 of the draft PSA. <p>B. To ensure that the rest of the Bidding Documents are aligned with the correct interpretation of the OED in the TOR alongside Section 3.2.2 of the draft PSA, we propose to amend the following: (i) Technical Parameters in the ITB, (ii) IPB Section 3.2(d), (iii) Bid Requirements p. 13, and (iv) Annex TP-1 Technical Proposal, all of which state that</p> <p><i>"From December 26, 2023 and for the duration of the PSA, no capacity and electrical output within the Contract Capacity shall be contracted under an agreement apart from the resulting PSA of this Bidding; provided that,</i></p>	<p>A. As mentioned in BB#2, item 11, "[the OEDs] should be read in conjunction with the PSA, particularly Section 3.2.2 on the Conditions Precedent to OED xxx."</p> <p>B. The dates indicated are aligned with Meralco's PSPP, as approved by DOE. Notably, Meralco also needs to confirm Plant availability at point of Bid Opening and indicating "OED" creates uncertainty on Plant availability.</p> <p>C. This is the start date per PSPP. simply means commencement of supply of Winning Power Supplier to Meralco.</p>

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			<p><i>if Bidder's Plant is contracted, Bidder must be able to terminate such agreement on or before OED to fulfill requirements under the resulting PSA."</i>, will be amended to read as follows:</p> <p>"From OED From December 26, 2023, and for the duration of the PSA, no capacity and electrical output within the Contract Capacity shall be contracted under an agreement apart from the resulting PSA of this Bidding; provided that, if Bidder's Plant is contracted, Bidder must be able to terminate such agreement on or before OED to fulfill requirements under the resulting PSA."</p> <p>C. Further, in the responses to our bid queries, the BAC stated that "[t]he Operations Effective Dates (OEDs) indicated pertain to the Billing Periods." Please clarify what this means.</p>	
4.	Bid Bulletin No 2.	Question No. 17 p. 8	If the resolution of the contested cases be in favor of MERALCO, does Meralco intend to terminate the resulting PSAs from this CSP? If so, what is the basis under the PSA and/or the other Bidding Documents?	As consulted with the DU, Meralco reiterates its response in item 17, Bid Bulletin #2 that: "it is difficult to predict how the Court of Appeals (or eventually the Supreme Court) will decide the pending cases. However, as all are aware, the DU is required to comply with the final and executory decisions of the court." MERALCO intends to update the Court of Appeals and/or Supreme Court of the conduct and/or completion of the Competitive Selection Process (CSP) for the 1,200 MW Requirement Effective December 2023, as needed, so that this may be considered in the evaluation and resolution of the pending case. At the same time, MERALCO shall be ready to comply with the court's decision, subject to exhaustion of available legal remedies. Nevertheless, Meralco emphasizes that it must be proactive in securing permanent and least cost supply to address the demand of its customers, especially given the maximum term for emergency PSA allowed under prevailing regulations. This notwithstanding, Bidders have been put on notice that the CSP is subject to final resolution of the court case/s, as the ITB's opening paragraph provides: "xxx subject to

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				<i>the resolution of the pending change in circumstance cases involving the power supply agreements dated September 13, 2019 to the extent of the total contract capacity of 1,000 MW (net) xxx."</i>
5.	Invitation to Bid, Opening Paragraph	Invitation to Bid, page 1	<p>The ITB provides that the CSP is "subject to the resolution of the pending change in circumstance cases ["CIC Cases"] involving the power supply agreements ["CIC PSAs"] dated September 13, 2019 to the extent of the total contract capacity of 1,000 MW (net)."</p> <p>In the responses to our previous query, the BAC advised that "[t]his CSP, and the PSA/s resulting from this CSP [are] subject to the outcome of the cases involving said [PSAs]" and that "this is a risk assumed by the bidders and Winning Power Supplier once they participate in this CSP."</p> <p>While we understand that Meralco cannot predict the outcome of the CIC Cases and its effect on this CSP and the resulting PSA, please note that subjecting the effectivity, enforceability, or implementation of the PSA is very disadvantageous to the Power Supplier.</p> <p>As you know, the Power Supplier will have to enter into long term contracts (e.g. fuel supply, O&M, and related arrangements). The Power Supplier will be hard-pressed to enter into these contracts if the purchase and payment for the Contract Capacity and Associated Energy is uncertain and dependent on the outcome of the CIC Cases. On the other hand, if the Power Supplier enters into these contracts without making these dependent on the outcome of the CIC Cases because no one would agree to enter into these contracts with it otherwise, the termination of the Subject PSA by Meralco because of these cases could cause the Power Supplier to be in breach of its obligations under these contracts or to incur significant monetary losses by continuing with these contracts without a source of income to pay for these costs as it had been looking to the Subject PSA for this purpose. This is an unfair outcome for the Power Supplier which would discourage participants from bidding for the supply subject of the CSP.</p> <p><u>To address this, please amend the TOR and the PSA to provide that only the CSP, and not the Subject PSA, is subject to the outcome of the CIC Cases such that: (i) if a final judgment is released declaring that the CIC PSAs were wrongfully terminated by Meralco and the San Miguel entities and therefore remained valid and</u></p>	<p>As relayed by the DU, the matter is already pending before higher courts and inasmuch as the court can be appraised of relevant developments, the outcome of the pending case/s cannot be dictated and Meralco will ultimately need to comply with court directives.</p>

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			<p>effective while the CSP is ongoing, the CSP will be terminated; but (ii) if this final judgment is released after the Subject PSA has been signed, the Subject PSA will not be terminated on this basis and, instead, continue to be implemented as if the CIC PSAs were properly terminated (i.e., Meralco will purchase the Contract Capacity and Associated Energy from the Power Supplier under the Subject PSA rather than from the San Miguel entities under the CIC PSAs).</p> <p>Meralco, in cooperation with the DOE and ERC, should strive to settle the CIC Cases as soon as possible in order to eliminate this CIC risk to the Power Suppliers.</p>	
6.	Nominated Index	TOR	<p>In its advisory dated 11 October 2023, the DOE encourages the use of indigenous natural gas as transition fuel.</p> <p>In ERC's letter to Meralco dated November 13, 2023, it stated in its comments on the 1,800 MW CSP that "xxx if local coal will be used, the actual price should be used for such local component unless an index is available xxx". Similarly, if indigenous natural gas will be used, it should follow that the actual price be used for such local component unless an index is available. Given that there is no such index available for indigenous natural gas, Meralco should allow the use of actual price of indigenous gas as one component of fuel cost.</p> <p>Alternatively, as Meralco is aware that Malampaya gas is indexed on US CPI and a basket of international oil prices, we suggest that BAC-PSA amend the fuel indexation portion of the TOR to accommodate fuel formula requirements of Malampaya (i.e. allow indexation using US CPI and use of a basket of international oil prices).</p>	For the portion of the Fuel Formula pertaining to the indigenous fuel component, US CPI and a basket of international oil prices as long as the total number of Nominated Fuel Indices to be used will not exceed two (2).
7.	Marginal Plant	IPB	<p>The IPB states that:</p> <p><i>"If the resulting stack of Offered Contract Capacities goes beyond the required Contract Capacity (i.e., more than 1,200 MW), the Qualified Bidder that fills up the stack to complete the required Contract Capacity (hereinafter referred to as the "Marginal Bid Offer") shall have its Offered Contract Capacity reduced accordingly up to the extent of the required Contract Capacity at its Proposed Tariff. A Bidder with the Marginal Bid Offer and a candidate recipient of a Notification of Best Bid, which refuses to accept the reduction of its Offered Contract Capacity up to the extent of the</i></p>	The forfeiture of its Bid Security is a competition risk from the Bidders, that is why the forfeiture is made known beforehand. By reason of the Bidder's refusal and withdrawing its offer because its bid was deemed a Marginal Bid Offer, the DU is suddenly exposed to the risk of lack of supply or delay (if another CSP is needed to be conducted to fill up that capacity withdrawn by the said bidder). This forfeiture of the Bid Security tries to mitigate this risk exposure, while at the same time serving as a deterrent for Bidders to game the bidding process for whatever reason.

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			<p><i>required Contract Capacity at its Proposed Tariff, shall have its Bid Security forfeited equivalent to the proportionate percentage amount of the Bidder's Bid Security, based on the ratio of the required Contract Capacity that needs to be filled up (which the Bidder with the Marginal Bid Offer refused) to the Bidder's Offered Contract Capacity. For example, if the Marginal Bid Offer is for 100 MW but only 20MW is needed to fill up the required Contract Capacity, Meralco shall draw on the entire amount of the Bid Security, retain twenty percent (20%) of its value, and return the balance to Bidder."</i></p> <p>The above seems unfair to the Bidder with the Marginal Bid Offer, who would also have considered the volume of its Offered Contract Capacity in developing its Proposed Tariff. This is especially true if, for example, Meralco will only get 20MW from the Bidder with the Marginal Bid Offer even if the Bidder's Offered Capacity is 1200MW since its Proposed Tariff was likely developed on the basis of this Offered Capacity (i.e. Capacity Charge, FOM, fuel cost, etc.).</p> <p>Note that it is possible that a Bidder may consider to offer the entire plant capacity and bid at the most competitive price based on economies of scale. The economics, however, will not apply and may leave the bidder with tremendous losses if only a small portion of the capacity will be accepted as Marginal Bid Offer.</p> <p>We suggest that the Bidder with the Marginal Bid Offer and a candidate recipient of a Notification of Best Bid be allowed, at its option, to decide whether or not to accept or refuse the reduction of its Offered Contract Capacity up to the extent of the required Contract Capacity without having its Bid Security forfeited.</p>	<p>Notably, as per the IPB [Section 2.2(e)], the "xxx Bid Security forfeited equivalent to the <u>proportionate</u> percentage amount of the Bidder's Bid Security, based on the ratio of the required Contract Capacity that needs to be filled up (which the Bidder with the Marginal Bid Offer refused) to the Bidder's Offered Contract Capacity. For example, if the Marginal Bid Offer is for 100 MW but only 20 MW is needed to fill up the required Contract Capacity, Meralco shall draw on the entire amount of the Bid Security, retain twenty percent (20%) of its value, and return the balance to Bidder.</p>
8.	Fuel Formula, Non-fuel costs	TOR	<p>The TOR states that the Fuel Formula shall be composed of:</p> <p><i>"xxx (iv) Other non-fuel commodity costs that the Bidder wants to recover as part of its fuel price (e.g., freight cost and other fuel handling costs, insurance cost, fuel excise tax, etc.). Except for taxes, 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. If such actual costs are not available, Bidder must provide a 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 xxx"</i></p>	<p>The Bidder is required to provide a description of the non-fuel commodity cost of the Fuel Formula AND indicate the average of the actual monthly values of said non-fuel commodity costs for the period Jan 2020 to Dec 2022 (with supporting documents) in the Fuel Formula during evaluation in order for the non-fuel commodity costs to be fully pass-through during implementation. Failure to submit actual monthly values and its supporting documents during bid submission will result to the non-pass through of the non-fuel commodity costs during implementation.</p>

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			<p>Please confirm that in the Fuel Formula that will be proposed, Bidder is only required to provide a description of non-fuel commodity cost that the Bidder wants to recover. During implementation, such non-fuel commodity cost shall be passed-through as shown, but not limited to the example below.</p> $FP = [60\% * \{(115\% * \text{Nominated Fuel Index No. 1}) + \text{constant}_{\text{index1}}\}] + [40\% * (\text{Nominated Fuel Index No. 2} + \text{constant}_{\text{index2}})] + \text{other non fuel commodity cost}$ <p>Where:</p> <p>Fuel Price = Fuel Price, in USD/MMBtu</p> <p>Nominated Fuel Index No. 1 = value of Nom Fuel Index No. 1, in USD/MMBtu</p> <p>Nominated Fuel Index No. 2 = value of Nom Fuel Index No. 2, in USD/MMBtu</p> <p>constant_{index1} = value of other costs related to index No. 1, in USD/MMBtu</p> <p>constant_{index2} = value of other costs related to index No. 2, in USD/MMBtu</p> <p><u>other non-fuel commodity cost (in USD/MMBtu) shall be the actual cost incurred in relation to the following:</u></p> <ol style="list-style-type: none"> 1) Freight cost 2) Insurance cost 3) Handling cost 4) Excise tax 5) Other items to be listed by the Bidder 	
9.	ITB	Item (e) (iv) of the Bid Price/Tariff Structure of Contract Price, TOR	<p>Please confirm that Bidders will be allowed to include the following items as part of the non-fuel cost in the Fuel Price Formula under Item (e) (iv) of the Bid Price/Tariff Structure of Contract Price Section of the TOR.</p> <ol style="list-style-type: none"> 1. Financing Cost 2. Hedging/Option Cost 3. Customs Duties 4. Fuel Testing 	Yes, subject to the conditions stated in the previous answer.
10.	Non-Fuel Commodity Cost TOR/ITB	ITB p. 3	<p>"(iv) Other non-fuel commodity costs that the Bidder wants to recover as part of its fuel price (e.g., freight cost and other fuel handling costs, insurance cost, fuel excise tax, etc.). Except for taxes, the Bidder must <u>indicate the actual costs of the other non-fuel items for the period of January 2020 to December 2022</u>, when available, for evaluation purposes. If such actual costs are not available, Bidder must provide a 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, and"</p> <p><u>Clarification</u></p> <p>A. If the Bidder started to incur additional non-fuel commodity cost in 2023, can the Bidder provide the actual cost during this period in</p>	Yes.

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			<p>lieu of the requirement to provide non-fuel commodity cost from Jan 2020 to Dec 2022 for purposes of evaluation?</p> <p>B. Please confirm that such non-fuel commodity shall be passed-through during implementation provided that the Bidder submits documents supporting the actual non-fuel commodity cost incurred starting 2023.</p>	Yes.
11.	Maximum offered capacity		<p>In ERC Chairperson Dimalanta's letter to MERALCO dated November 13, 2023, we noted the following statement for the 1,800 MW CSP:</p> <p>"We cite as an example the PSA between MERALCO and South Premiere Power Corporation (SPPC) wherein the full Contract Capacity of 1,200 MW was offered by and awarded solely to SPPC. The unilateral termination of the PSA covering 1,200 MW caused significant impact on the ability of MERALCO to meet its obligation to supply its captive consumers. While the case remains subject of litigation, the experience should prompt MERALCO to ensure that future CSPs should include precautionary measures to prevent the occurrence of the same situation."</p> <p>Will the BAC-PSA impose a cap on Offered Capacity in order to mitigate this risk?</p>	<p>As relayed by the DU:</p> <p>(a) At the outset, we emphasize that the ERC CSP Guidelines does not prescribe a cap on Offered Contract Capacity per Bidder.</p> <p>(b) Prescribing a cap on Offered Contract Capacity per Bidder is evidently not the least cost approach for MERALCO because it will not force the Bidders to put out their best bid offers especially if the likelihood of contracting their Offered Contract Capacities is relatively certain.</p> <p>(c) Economies of scale in utility operations allow for cheaper offers from interested Bidders. At the same time, since the Bidders are ranked according to their levelized cost of electricity ("LCOE"), introducing a cap on Offered Contract Capacity will result in: (i) the inability to maximize the Offered Contract Capacity of Bidders, and (ii) replacement of displaced Offered Contract Capacity with a more expensive offer.</p> <p>Thus, not mandating a cap on Offered Contract Capacity per Bidder provides an avenue for receiving cheaper offers that cover the entire required Contract Capacity, in line with MERALCO's least cost mandate to its customers under the EPIRA. Accordingly, regardless of Offered Contract Capacity, Bidder/s with the lowest LCOE shall be declared the Winning Power Supplier/s and execute the resulting power supply agreement/s ("PSA") with MERALCO.</p> <p>(d) The risk of termination is present regardless of Offered Contract Capacity of the Bidder. Otherwise stated, for as long as there are grounds for termination and the procedure</p>

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				<p>and requirements for termination are complied with, any PSA, regardless of capacity, may be terminated.</p> <p>To safeguard against this possibility, MERALCO's PSAs have long included strict grounds and procedures before any party may terminate the PSA, including imposition of penalties for erroneous or illegal termination thereof by power supplier. MERALCO's PSAs also have provisions aimed at preservation of the PSA with termination as a last resort. For instance, in case of Event of Default ("EOD"), there is a curing period to allow a party to remedy the event.</p> <p>More importantly, it is the ERC itself that indicated safeguards to "[prevent] the occurrence of the same situation" with the recent release of the ERC CSP Guidelines that included additional measures in case of pre-termination of PSAs – such as requiring any pre-termination to be subject to the Commission's approval. Such additional measure has been incorporated by MERALCO in its PSA templates upon the effectivity of the ERC CSP Guidelines, including for its 1,200 MW CSP.</p>
12.	Take-or-Pay Bid Bulletin 2		<p>Under Bid Bulletin 2, it was stated that: <i>"As relayed by the DU, MERALCO follows its mandate to supply least-cost and reliable power to its consumers, hence the no Take-or-Pay in the fuel cost provision of the Invitation to Bid. Rest assured that MERALCO will balance this least cost mandate with the technical requirements of the Winning Power Supplier/s when it comes to its/their actual dispatch."</i></p> <p>Comment:</p> <p>Meralco has sought the approval of the DOE to conduct a CSP for 1200MW Baseload Plant/(s) based on its demand requirements stipulated in its 2023 PSPP. Having certainty on a level of dispatch is typical of any baseload requirement and is important to achieve least cost.</p> <p>Without certainty of dispatch, the Power Supplier is forced to completely rely on spot and short-term fuel supply, thus exposing its consumers to price volatility, unreliability, and unstable supply of fuel. Certainty of fuel requirements will enable Power Suppliers to procure and secure long-term</p>	<p>Yes, there will be certainty of dispatch but this must not be construed as a Take-or-Pay obligation of MERALCO to the Power Supplier.</p>

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			<p>fuel supply, which will redound to better and more stable fuel prices, especially LNG.</p> <p>We reiterate our request for a reasonable certainty of dispatch of this 1200MW CSP, even if it allows some flexibility for fluctuations and catch-up mechanisms.</p>	
13.	Take-or-Pay Bid Bulletin 2		<p>Under Bid Bulletin 2, it was stated that: <i>"As relayed by the DU, MERALCO follows its mandate to supply least-cost and reliable power to its consumers, hence the no Take-or-Pay in the fuel cost provision of the Invitation to Bid. Rest assured that MERALCO <u>will balance this least cost mandate with the technical requirements of the Winning Power Supplier/s when it comes to its/their actual dispatch.</u>"</i></p> <p><u>Clarification:</u></p> <p>We would also like to clarify what technical requirements are being contemplated to be considered in balancing the least cost mandate. Can you cite an example on how Meralco intends to do this?</p>	In following its mandate to supply least-cost and reliable power to its consumers, MERALCO will consider the technical requirements (i.e., ramp rate, etc...) of the winning Power Supplier's Nominated Power Plant during implementation.
14.	Capacity of Smallest Unit Financial Evaluation Workbook	Input_BaseValues	<p>We noticed that in the Input_BaseValues Worksheet of the Financial Evaluation Workbook, The Capacity of the Smallest Unit is labelled "MW (gross)" in Cell D17.</p> <p>Please confirm that:</p> <ol style="list-style-type: none"> 1. The above is incorrect and that it should be "MW (net)", and 2. Bidders should input the <i>Net Dependable Capacity of the Smallest Unit</i> (cell D17) instead of the <i>Gross Capacity</i> in accordance with the Technical Parameters set forth in the Terms of Reference. 	Smallest unit of the Nominated Plant should be 150 MW (gross) as corrected in Bid Bulletin #2.
15.	Annex QD-2 Template IPB	IPB Section 3.1.2	<p>May we request for a copy of the template for Annex QD-2 Company Information?</p> <p>It appears that there's no template for this requirement in the file "<i>1200 MW - Instructions Annexes CN1.doc</i>" and even in the pdf copy of the Instructions to Prospective Bidders.</p>	<p>This is noted.</p> <p>The amendment to the IPB to include Annex QD-2 is reflected in ANNEX B of Bid Bulletin No. 4.</p>

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				The Word soft copy file of Annex QD-2 will also be released to the cloud-based folders of the Interested Bidders simultaneous to the release of Bid Bulletin No. 4.
16.	Annex QD-4 SWORN ATTESTATION OF NO CONFLICT OF INTEREST	Par. 2 of Item No. 2	<p><i>"It does not have any existing, potential, or future conflict of interest with MERALCO's Bids and Awards Committee for the conduct of the CSP (the "BAC-PSA"), such that no existing, potential or future member of the governing Board, officers or management of the Bidder is a relative of a person within the fourth (4th) civil degree of consanguinity or affinity of a member of Meralco's BAC-PSA, its TWG, and its Secretariat."</i></p> <p>In relation to the above statement in Annex QD-4, may we request for the list of the members of the BAC-PSA, TWG and Secretariat?</p>	<p>This is noted.</p> <p>The list of members of the BAC-PSA, TWG and Secretariat will be sent to the Interested Bidders in this Bidding.</p>
17.	Quarterly Financial Statements IPB	Annex QD-7 Statement of Financial Capability	<p>May we confirm that the Unaudited Financial Statement for the Period Ending September 30, 2023 shall be sufficient and acceptable to BAC-PSA to comply with the following requirement?</p> <p><i>"Required Attachments:</i></p> <p>XXX</p> <p><i>(b) Copy of the most recent quarterly financial statements, which shall be certified as a true copy by the chief financial officer or treasurer, and must be under oath and notarized."</i></p>	The unaudited financial statements as of and for the period ended September 30, 2023 is sufficient and acceptable to comply with the requirement in the IPB to submit a copy of the most recent quarterly financial statements.
18.	IPB	Annex QD-7 Statement of Financial Capability	<p>May we revise the statement as follows?</p> <p>A. [1. The (name of entity) has an Unrestricted Net Worth equivalent to [•] based on the submitted consolidated financial statements*, copies or certified true copies of which are attached to this certificate.]</p> <p>[2. The Financial Summary of (name of entity) for the financial year 20212 is as follows:]</p>	<p>The revisions are acceptable.</p> <p>Please see Annex B of this Bid Bulletin No. 4 reflecting the amendment to the IPB.</p>
19.	IPB	IPB Section 3.1.4	In the ERC CSP Guidelines Appendix B – Annex "1" Eligibility Requirements, Bidders are required to submit the following Technical Capability Information, similar to the requirement under IPB Section 3.1.4.	<p>Not amenable to the proposal.</p> <p>With due respect, Section 3.1.4 of the IPB is already aligned with the ERC CSP Guidelines as it was copied in verbatim (without mention that the technical capability should be</p>

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			<ol style="list-style-type: none"> 1. List of projects undertaken over the last ten (10) years; 2. List of electricity generation plants that the Bidder has operated for the last five (5) years; and 3. Proof of/Documentation on track record for the last five (5) years of power plants operated by it. <p>Considering that ERC guidelines above only requires the submission of the items 1-3 that were directly undertaken and/or operated by the Bidder (as opposed to the broader scope covered in the IPB), we request that Meralco and/or BAC-PSA to align with the ERC guidelines and allow the bidders to submit the following:</p> <ol style="list-style-type: none"> 1. List of power plant projects directly undertaken by the Bidder over the last ten (10) years, 2. List of electricity generation plants that the Bidder has directly operated for the last five (5) years, and, 3. Proof /documentation of track record for the last five (5) years of power plants directly operated by the Bidder. 	<p>"directly" undertaken and/or operated by the Bidder) from Item (d), Annex 1, Appendix B (p. 12 of Appendix B) of the ERC CSP Guidelines reads:</p> <p>“(d) Technical Capability Information - To demonstrate compliance with the technical criteria established in the TOR, the Bidder shall submit the following:</p> <p>(i) List of projects undertaken over the last ten (10) years;</p> <p>(ii) List of electricity generation plants that the Bidder has operated for the last five (5) years; and</p> <p>(iii) Proof of/Documentation on track record for the last five (5) years of power plants operated by it.”</p>
20.	IPB	IPB Section 3.1.4	Please confirm that the Generation Company Management Reports of the Bidder for the last five years are acceptable documentations of the Bidder's track record as required in Section 3.1.4 (iii).	Yes, it is allowed.
21.	IPB	IPB Section 3.1.4(i)	<p>Please confirm that the Power Projects undertaken by the Bidder shall refer to the Power Projects included in the following lists published by the DOE:</p> <ol style="list-style-type: none"> 1. List of Existing Power Plants for Luzon, Visayas and Mindanao 2. Private Sector Initiated Power Projects (Committed) for Luzon, Visayas and Mindanao 3. Private Sector Initiated Power Projects (Indicative) for Luzon, Visayas and Mindanao 	Yes, it is allowed.
22.	IPB 3.2. TECHNICAL PROPOSAL	IPB p. 27 IPB 3.2 (b)	<p><i>"(b) Nominated Plant should have a proven ramp rate of at least 10 MW per minute from Pmin to Pmax to adjust accordingly to MERALCO's demand variability;"</i></p> <p>Please confirm that the most recently issued COC/PAO including both Annexes, with Annex B showing the Plant/Unit Ramp Rates will be</p>	Yes, it is allowed.

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			acceptable to MERALCO and/or BAC-PSA as a form of compliance with the requirement above?	
23.	IPB 3.2. TECHNICAL PROPOSAL	IPB p. 27 IPB 3.2 (i)	<p><i>"(i) If applicable, the Bidder shall also provide the specifications of the Performance Fuel by way of a Proximate Analysis and Ultimate Analysis. The Performance Fuel shall be used for the conduct of the Net Dependable Capacity (NDC) Test and the Heat Rate Test (HRT) in accordance with the PSA;"</i></p> <p>Please confirm that:</p> <p>(a) Bidders whose nominated plants use <u>fuel sources other than coal</u> need NOT to submit Item (i) of Section 3.2 of the IPB, which is reflected in Annex TP-1 as Attachment No. 10; and</p> <p>(b) Bidders whose nominated plants use fuel sources other than coal need to submit written explanation of non-applicability of the requirement under IPB Section 3.2 (i).</p>	Yes, understanding is correct.
24.	IPB	Annex Bid-1 Template Bid Letter Item No. 5	<p>May we revise the statement as follows?</p> <p>[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.]</p>	Yes, this is merely a typographical error.
25.	Bid Security IPB	IPB Section 3.3 (b) p. 28	Please confirm that the prescribed amount of the Bid Security in the IPB is only the minimum acceptable level; and Meralco and/or BAC will allow bidders to submit Bid Security higher the prescribed amount.	Yes, this is acceptable as this is above our minimum acceptable level.
26.	Nominated Fuel Supporting Documents IPB	IPB Section 3.3 (f) p. 29	<p><i>"(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,"</i></p> <p>Please confirm that <u>any of the</u> following can be submitted as supporting or source documents:</p>	

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			<p>1. Print outs of the downloaded excel files from the publishers' platform containing daily historical data of Nominated Fuel/Fuel Indices, or</p> <p>2. Print outs of the downloaded excel files from the publishers' platform containing monthly historical data of Nominated Fuel/Fuel Indices</p>	<p>Yes, it is allowed as long as it is certified either by the publisher or by the bidder and converted into monthly data.</p> <p>Yes, it is allowed as long as it is certified either by the publisher or by the bidder.</p>
27.	Non-Fuel Commodity Cost Supporting Documents IPB	IPB Section 3.3 (g) p. 29	<p>" (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"</p> <p>Please confirm that any of the following may also be submitted as supporting or source documents:</p> <p>1. Print outs of the downloaded excel files from the publishers' platform containing daily historical data of actual values of non-fuel commodity costs in the Fuel Formula</p> <p>2. Print outs of the downloaded excel files from the publishers' platform containing monthly historical data of actual values of non-fuel commodity costs in the Fuel Formula</p>	<p>Yes, it is allowed as long as it is certified either by the publisher or by the bidder and converted into monthly data.</p> <p>Yes, it is allowed as long as it is certified either by the publisher or by the bidder.</p>
28.	Net Plant Output IPB	Annex TP-2 Performance Guarantees	<p>In both PSA Appendix B and Annex TP-2 Performance Guarantees, Bidders shall be required to provide the Net Plant Output in MW.</p> <p>In the event that a Bidder's offered capacity is less than the Net Plant Capacity of the plant, please confirm that the Bidder shall only indicate the Offered Capacity in Annex TP-2 and Appendix B of the PSA, which shall be the basis of the Performance Guarantees.</p>	Yes.
29.	Invitation to Bid Prompt Payment Discount	Page 6	<p>"Prompt Payment Discount: Power Supplier shall propose/extend discount to Meralco based on the non-fuel fee (sum of Capital Recovery Fee, Interconnection Fees, Fixed O&M Fee and Variable O&M Fee, if applicable) in case of MERALCO's prompt payment. Percentage (%) of discount and days to be considered as prompt payment shall be proposed by Power Supplier."</p> <p>We suggest including a provision in the PSA that MERALCO shall not automatically deduct the PPD from its payment of the Power Supplier's billing and a Credit Memo shall be issued to be applied to the immediately succeeding Billing Period.</p>	As relayed by the DU, Meralco is not amenable with this proposal. Meralco should be able to immediately extend to its customers the benefit of Prompt Payment Discounts extended by Winning Power Suppliers to Meralco under the resulting PSA. Hence, Meralco should be able to already deduct the Prompt Payment Discount from its payment to Power Suppliers.

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30.	Instructions to Prospective Bidders ("IPB") Qualification Documents	Section 3.1.2 (a)	Please confirm that proof of an Interested Bidder's "relevant capabilities in the construction, operation, and maintenance of a power plant or in the supply of electricity" may be complied with by the submission and/or statement of the Bidder's affiliates' relevant capabilities in the construction, operation, and maintenance of a power plant or in the supply of electricity.	IPB provision states "executive summary showing a brief description of <i>its</i> company history and structure, including relevant capabilities in the construction, operation, and maintenance of a power plant or in the supply of electricity". Relevant capabilities must pertain to Company (of Bidder).
31.	IPB	Section 4.4.3, page 38	<p>"4.4.3 In addition, the Independent Engineer appointed by the BAC-PSA shall proceed to evaluate and determine proper compliance with the technical qualifications of the Reference Plant, Comparable Plant, and Nominated Plant. The Independent Engineer shall submit/present its findings/recommendations to the BAC-PSA."</p> <p>This provision seems to be misplaced given that the Bidding Documents for the 1200MW CSP has no references to "Reference Plant" and "Comparable Plant". Please confirm that this provision is not applicable for this 1200MW CSP.</p>	<p>Section 4.4.3 of the IPB will be revised as follows:</p> <p>"4.4.3 In addition, the Independent Engineer appointed by the BAC-PSA shall proceed to evaluate and determine proper compliance with the technical qualifications of the Reference Plant, Comparable Plant, and Nominated Plant. The Independent Engineer shall submit/present its findings/recommendations to the BAC-PSA."</p> <p>Please see Annex B of this Bid Bulletin No. 4 reflecting the amendment to the IPB.</p>
32.	IPB Technical Proposal ANNEX TP-1 Template	<p>Section 3.2 (e), page 27</p> <p>Item 5, page 75</p>	<p>"(e) The Nominated Plant must be covered by a Certificate of Compliance (COC) or Provisional Authority to Operate (PAO) from the ERC at the start of the OED of the PSA, as submitted by the Bidder as a certified true copy by (i) the ERC; or (ii) the corporate secretary/assistant corporate secretary, in which case it must be under oath and notarized;"</p> <p>Kindly confirm that Meralco will accept COCs/PAOs, without need for accompanying explanation/write-up, which were automatically extended until 2024 by virtue of Section 35, Art. IX of ERC Resolution No. 17, Series of 2023:</p> <p>"ARTICLE IX TRANSITORY PROVISION</p> <p>Section 35. Transitory Provision for GenCo and MGSP.</p> <p>For existing Generation Facilities with pending application for renewal of COC filed before the ERC, the validity period of such COC is extended until 2024, and the date of which shall be the day and month of its original expiry. xxx</p>	COCs/PAOs which were automatically extended until 2024 by virtue of ERC Res. 17, Series of 2023 must be accompanied by the pending application for renewal of the COC/PAO and the original COC/PAO.

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			For existing Generation Facilities with issued PAO, the validity period of such PAO is extended until 2024, and the date of which shall be the day and month of its original expiry. xxx."	
33.	IPB Technical Proposal ANNEX TP-1 Template	Section 3.2 (j), page 27 Item 11, page 76	<p>"The Nominated Plant's valid Fuel Supply Agreement, if available, otherwise a Fuel Procurement Plan containing a narrative description of strategies and plans for ensuring long-term availability of fuel and regulatory compliance on fuel inventory and specification, which shall be certified as a true copy by the corporate secretary/assistant corporate secretary, in which case it must be under oath and notarized; and"</p> <p>Can the Bidder submit both a Fuel Supply Agreement (for short-term requirements) and a Fuel Procurement Plan (for the long-term fuel supply)?</p>	Yes, this will be acceptable.
34.	IPB Conflict of Interest	Section 2.10.2 (ii), page 21	<p>"(ii) A Bidder's Nominated Plant or listed portfolio of plants is also a Nominated Plant or listed portfolio of plants of another Bidder in (x) this Bidding or (y) another pending competitive selection process being conducted by Meralco, and for item (x) or (y), the same (or overlapping) contract capacities are being offered such that if declared as Winning Power Supplier in both this Bidding and the other pending competitive selection process, it will result in a conflict with the/Bidder's obligation in or resulting from this Bidding, in which case, both will be considered in Conflict of Interest; or"</p> <p>Kindly confirm that, similar to the exemption provided for in 2.10.2(i), there is no Conflict of Interest between Affiliate Bidders who have the same list of plant portfolio.</p>	<p>There is no exemption provided for in Section 2.10.2(ii). The requisites to fall under this item in Conflict of Interest are:</p> <p>(a) A Bidder's Nominated Plant or listed portfolio of plants is also a Nominated Plant or listed portfolio of plants of another Bidder in (x) this Bidding; or (y) another pending competitive selection process being conducted by Meralco, and</p> <p>(b) the same (or overlapping) contract capacities are being offered such that if declared as Winning Power Supplier in both this Bidding and the other pending competitive selection process, it will result in a conflict with the Bidder's obligation in or resulting from this Bidding, in which case, both will be considered in Conflict of Interest.</p> <p>Hence, to be able to fall under Conflict of Interest in this provision, these twin requisites must be present.</p>
35.	IPB Technical Proposal ANNEX TP-1 Template	Section 3.2 (a), page 26-27 Item 1, page 74	<p>"(a) Technical characteristics of the Plant showing evidence of compliance to the technical requirements stated in the Invitation to Bid's Terms of Reference Table ("TOR Table"). If multiple units, minimum of 150 MW per unit, which should have the same fuel type and Guaranteed Net Plant Heat Rate;"</p> <p>Given that the xxx Plant has been turned over by PSALM to [Bidder] only in June 2022 pursuant to their IPPA Agreement, can the Bidder submit Grid Compliance Management Reports on the xxx Plant only for calendar year 2022 to support the Nominated Plant's compliance with the technical requirements under this item?</p>	While plant was turned over only in June 2022, prior reports are relevant to Bidder being the new administrator. Hence, Bidder should have [or should be able to get] copies of these reports.

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36.	IPB Bid Price Bid Bulletin No. 2 (BB2)	Sections 3.3(f) and 3.3(g) Item 5	<p>IPB: "(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, and (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."</p> <p>BB 2: Can the Bidder provide evidence through copies of <u>(1) actual costs incurred by third parties on these other non-fuel items for the same fuel type OR (2) actual market data on these costs published by recognized providers in the industry?</u> BAC PSA Response: "Yes, Bidder must provide evidence of actual costs incurred on these other non-fuel commodity items. <u>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.</u> 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 shall be binding to the Bidder."</p> <p>In its submission of the above documents, is the Bidder required to submit a certification from its officer/corporate secretary indicating the source of the supporting data? Some of these hard copies have been secured only from the internet and may not be certified by the issuing corporation or by the publisher. Hence, the same should be an exemption to the rules on documents issued in a foreign country or by a foreign authority under the IPB.</p>	Certification from bidder will suffice.
37.	Invitation to Bid Bid Price/Tariff Structure of Contract Price	Page 2 of ITB	<p>"Capital Recovery Fee component of the Tariff should be fixed for the Required Contract Period and in PhP/kW-year; <i>provided</i> that, Bidder: (i) <u>shall not offer Capital Recovery Fee higher than the latest ERC-approved rate/s in its agreements with other off-takers</u> for the same Plant, and (ii) shall submit an undertaking to that effect."</p> <p>Kindly confirm that the latest Capital Recovery Fee (CRF) approved by the ERC in its agreement <u>with MERALCO</u> (which is considered to be an off-taker) for the same Plant may be used as cap for this purpose.</p>	This is a requirement to address a recommendation by Energy Regulatory Commission [ERC] Chairperson Monalisa C. Dimalanta, through a letter dated 13 November 2023 [received by the BAC-PSA on 23 November 2023]. Bidder is in a position to be the one to determine what is the latest ERC-approved rate for its PSAs.

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38.	Bid Security/ Acceptable Issuing Banks		Whether "Bank of China (Hongkong) Limited-Manila Branch [is] one of the acceptable issuing banks for the Bid Security and the Performance Security for this CSP."	As consulted with the DU, this is acceptable to MERALCO.
39.	Instructions to Prospective Bidders ("IPB") Qualification Documents	Section 3.1 Qualification Documents	Kindly confirm that if the Bidder is an Administrator under an IPP Administration ("IPPA") Agreement with the Power Sector Assets and Liabilities Management Corporation (PSALM), the submission of the required or relevant permits, accreditations, certificates, agreements and/or documents of similar nature under the name of the Independent Power Producer ("IPP") or owner-operator of the Nominated Plant as part of the Qualification Documents shall be deemed compliant under the IPB.	Yes.
40.	Instructions to Prospective Bidders (IPB) Qualification Documents	Section 3.1.1(e)	<p>IPB provides: "a diagram of the corporate/partnership structure of the Interested Bidder with an indication of which entity has Controlling interest over, are the Affiliates engaged in the power industry, or is the Ultimate Parent of the Interested Bidder, which shall be certified by the corporate secretary/assistant corporate secretary as a true and correct depiction of the corporate structure of the Interested Bidder, which certification must be under oath and notarized;"</p> <p>Question: Please clarify that Affiliates engaged in the power industry only refer to those engaged in generation, supply or distribution of electricity as defined in the EPIRA Law.</p>	Yes.
41.	Instructions to Prospective Bidders (IPB) Qualification Documents	Section 3.1.1(f), Section 3.2	<p>IPB provides: "if the Interested Bidder formed a joint venture or consortium for the purpose of this Bidding, the Interested Bidders <u>should submit the joint venture or consortium agreement that provides evidence that their rights and obligations, including liabilities in this Bidding and the resulting PSA, are solidary.</u> Each party to the joint venture or consortium must separately submit Qualification Documents (Envelope 1) and Technical Proposal (Envelope 2) (e.g., if each joint venture or consortium member offers a different Nominated Plant), but shall submit (as one) only one Bid Price, including the Bid Security (Envelope 3). For this purpose, in relation to the Qualification Documents and Technical Proposal, each party to a Bidder joint venture or consortium shall be construed as the Bidder. Moreover, each party to the joint venture or consortium must separately submit an undertaking as to its commitment to infuse the required equity contribution to the joint venture or consortium. <u>The submissions should be certified as a true copy by the duly authorized officer of said joint venture/partners/consortium members,</u> in which case, it must be under oath and notarized;"</p> <p>Questions:</p>	<p>1. Yes, items in the JV agreement that bidders may deem as confidential may be redacted by the bidders. However, bidders run the risk of what the BAC-PSA may deem as significant for purposes of evaluating the existence of the "evidence that [the] rights and obligations, including liabilities in this Bidding and the resulting PSA, are solidary".</p> <p>2. No. Since the IPB requires that each of the parties to the joint venture or consortium must submit Qualification Documents (Envelope 1) and Technical Proposal (Envelope 2), and separately execute an undertaking on the infusion of required equity contribution, the corporate secretary or assistant corporate secretary of the relevant party (to the submissions) must certify under oath as true copy the original documents of such relevant party. Thus, a corporate secretary of one party could not certify on the submissions of the other parties to the joint venture or consortium. This is true even if the JV partners are Affiliates, as each of the JV partners has separate and distinct legal personality.</p>

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			<p>1. Can JV bidders submit a copy of the JV agreement that only provides the required information being requested by the BAC-PSA under this IPB (i.e., solidary obligation and equity commitment)? The JV agreement is confidential in respect of most of the rights and obligations of the parties therein. Hence, we propose that a copy of the JV agreement providing only the required information indicated in the IPB will be sufficient for purposes of the bidding.</p> <p>2. Can all the documents of both JV partners be certified under oath as true copy of the original documents by one of the JV bidder's corporate secretary or assistant corporate secretary only despite the JV partners having different corporate secretaries, especially if the JV partners are Affiliates?</p>	
42.	Bid Bulletin No. 2	Item 6	<p>Should an amended Expression of Interest be submitted prior to the Bid Submission Deadline to clarify that the Bidder is in fact an unincorporated joint venture? BAC-PSA Response: "2. Yes, <u>an amended EOI should be submitted to reflect that the bidder is an unincorporated JV.</u>"</p> <p>Question: When is the deadline to submit this amended EOI?</p>	4:00 P.M. of 16 January 2024.
43.	Bid Bulletin No. 2	Item 16	<p>Can Bidder change its Nominated Plant with a power plant owned by its Affiliate? BAC-PSA Response: "<u>Yes, the Bidder can change its Nominated Plant with a power plant owned by its Affiliate on or before 4:00PM of 16 January2024</u>, as stated on page 3 of the Bid Requirements: "(d) An Interested Bidder may increase (but not decrease) its indicated Offered Contract Capacity and/or change its indicated Nominated Plant on or before 4:00 P.M. of 16 January 2024, subject to the Interested Bidder's simultaneous payment of the additional proportionate Participation Fee and submission of a new Expression of Interest form reflecting the said change/s." Thereafter, Bidder's elected Nominated Plant by the deadline on 16 January 2024 will be the basis of the BAC-PSA's evaluation, and it shall no longer be allowed to change its Nominated Plant."</p> <p>Question: Will this apply even if the replacement Nominated Plant is owned by an Affiliate that is under common control with the Bidder? In other words, the owner of the Nominated Plant and the Bidder have the same parent company.</p>	Yes. The same limitation applies.
44.	QD 1A	Page 57 of the IPB	<p>Can we revise QD 1-A to consider Bidders who are Independent Power Producer Administrators?</p> <p>We propose to revise as follows:</p>	Yes, this revision to the requesting Bidder's Annex QD-1-A will be allowed.

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			<p>"3. The Company has been (established to develop, own, operate, <u>manage the capacity of</u>) a (specify details of the Nominated Plant) which started commercial operations on (specify date, as applicable). xxx</p> <p>RESOLVED, AS IT IS HEREBY RESOLVED, that the (name of owner <u>or IPP Administrator</u> of the Nominated Plant) (the "Company") be, and is hereby, authorized to participate in the Bidding to make available the Contract Capacity and supply associated energy, under the terms and conditions set out in the PSA template, to the Manila Electric Company pursuant to its (indicate CSP requirement as appearing on title/cover page of IPB) ("Project"); xxx"</p>	
45.	QD 1B	Page 59 of the IPB	In case of an unincorporated JV, should all members of the JV submit QD 1B or just the owner of the Nominated Plant as the other member of the unincorporated JV may own a power plant (but not the Nominated Plant) which may have a different capital recovery fee?	See response to item 6, Bid Bulletin #2: " xxx as stated in the bidding documents, '[e]ach party to the joint venture or consortium must separately submit Qualification Documents (Envelope 1) and Technical Proposal (Envelope 2) (e.g., if each joint venture or consortium member offers a different Nominated Plant), but shall submit (as one) only one Bid Price, including the Bid Security (Envelope 3). For this purpose, in relation to the Qualification Documents and Technical Proposal, each party to a Bidder joint venture or consortium shall be construed as the Bidder."
46.	Fuel Supply Agreement	Page 28 of the IPB	If Nominated Plant is a hydropower plant, it does not have a Fuel Supply Agreement. Can Bidder just submit an explanation in lieu thereof?	Yes
47.	Technical Proposal	Page 24 of the IPB	<p>We propose that Bidders be allowed to offer as Nominated Plant such power plant the output of which is being administered by the Bidder as an Independent Power Producer Administrator. If allowed, we suggest that Section 3.2 be revised as follows:</p> <p>"The Interested Bidder must identify the proposed power plant/s that it or its direct shareholder representing Controlling interest is the developer of, owner of, <u>administrator of</u>, and Controls, and has sufficient authority to enter into the offtake agreement with Meralco, which must be capable of supplying the Offered Contract Capacity to Meralco for the Required Contract Period, <i>provided</i> that it must be a baseload power plant (firm and dispatchable) wherein each unit of the Plant must be capable of generating its rated capacity for twenty-four hours a day and seven days a week (24/7), <i>provided further</i>, that it must be technically capable of producing the entire Offered Contract Capacity, and <i>provided finally</i> that it is in commercial operation prior to January 2020 ("Nominated Plant")."</p>	<p>This will be allowed, with minor edit for clarity:</p> <p>"The Interested Bidder must identify the proposed power plant/s that it or its direct shareholder representing Controlling interest is the developer of, owner of, <u>or administrator of xxx.</u>"</p> <p>Please see Annex B of this Bid Bulletin No. 4 reflecting the amendment to the IPB.</p>

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT CAPACITY OF 1,200 MW (NET) FOR CONTRACT PERIOD FROM 26 DECEMBER 2023

INSTRUCTIONS TO PROSPECTIVE BIDDERS / BIDDING DOCUMENTS-RELATED QUERIES/COMMENTS				
	TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION RECOMMENDATIONS / PROPOSED WORDING	BAC-PSA's RESPONSE
48.	Instructions to Prospective Bidders	Section 3.1.2(f)/Page 24	If the parties to the joint venture submit the same Nominated Plant, will the parties, considered as separate bidders, submit the same Envelope 2?	Yes.
49.	Instructions to Prospective Bidders	Section 3.1.2(f)/Page 24	Please provide examples of "duly authorized officer" of the joint venture/partners/consortium members. Will the partners' respective duly authorized representatives be considered duly authorized officers of the joint venture/partners/consortium members?	A "duly authorized officer" is an officer of a joint venture partner or member of a consortium who is duly authorized to represent such member in the bidding, including in any of such member's bid submissions. Such authority may be proven by a Secretary's Certificate on a Board Resolution granting authority to such officer, and copies of: (i) the General Information Sheet (GIS), showing the rank/position of the purported "duly authorized officer," and (ii) By-Laws, showing the ranks/positions of people who are considered as "officers."

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT CAPACITY OF 1,200 MW (NET) FOR CONTRACT PERIOD FROM 26 DECEMBER 2023

PSA TEMPLATE-RELATED QUERIES/COMMENTS				
	TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION RECOMMENDATIONS / PROPOSED WORDING	BAC-PSA's RESPONSE
49.	Outage Allowance	PSA Template	<p>PSA Template, Section 8.1.1 states:</p> <p><i>After Operations Effective Date, Power Supplier shall be allowed Scheduled Outages not exceeding [•] ([as indicated in Bid, which shall not exceed allowable planned outages for similar plant technology under relevant ERC Resolution]) Full Load Equivalent Outage Days ("Full Load Equivalent Schedule Outage Allowance Days") and Forced Outages not exceeding [•] ([as indicated in Bid, which shall not exceed allowable unplanned outages for similar plant technology under relevant ERC Resolution]) Full Load Equivalent Outage Days ("Full Load Equivalent Forced Outage Allowance Days") each Contract Year; provided that, a Forced Outage may only be counted towards the Full Load Equivalent Forced Outage Allowance Days upon provision by Power Supplier to Meralco of a copy of the acknowledgment letter from the System Operator or report from the Market Operator that a Forced Outage has occurred.</i></p> <p>On December 12, 2023, the ERC released a public notice concerning ERC Case No. 2023-001. Recall that the Philippine Independent Power Producers Association (PIPPA) initially filed a petition for the suspension of ERC Resolution No. 10 Series of 2020, or "Adopting the Interim Reliability Performance Indices and Equivalent Outage Days Per Year of Generating Units" also known as the Interim Outage Rules back in January 23, 2023.</p> <p>If ERC amends the Resolution No. 10 Series 2020 to increase the allowed scheduled and unscheduled outages, the increase should automatically be applied to the PSA.</p>	The prevailing regulation on period of outages is ERC Resolution No. 10, Series of 2020. Any amendment to said resolution, including the allowed scheduled or unscheduled outages, has prospective application, and subject to ERC approval if to be incorporated in the PSA.
50.	NDC testing PSA Template	PSA Template Section 7.4	<p>As stated under the PSA template Section 7.4, "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...."</p> <p>Considering that (i) the Nominated Plant of the Power Supplier is already in commercial operations, (ii) the Contract Capacity shall remain constant regardless of the actual results of the NDC testing unless otherwise adjusted in accordance with Article 9 of the PSA; and (iii) the Power Supplier is obliged to make available the Contracted Capacity, and the</p>	Please see response in item 29, Bid Bulletin #2: "As relayed by the DU, since this PSA allows full fuel pass-through subject to a heat rate cap, as has been a principle approved by the ERC in the past, the efficiency of the Nominated Power Plant should be checked on an annual basis to see if it is still within the submitted GNPFR Table. xxx"

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			associated energy to the extent of Meralco's relevant day-ahead nomination, we propose that <u>provisions and other references requiring and/or related to NDC testing be deleted from the PSA template.</u>	
51.	Heat Rate Testing PSA Template	PSA Template Section 7.4	<p>Item (f) of the Bid Price/Tariff Structure of Contract Price (p. 4 of the ITB) states that:</p> <p>"If the Bidder shall use non-Renewable Energy (non-RE) source, the Bidder shall also <u>submit a binding Guaranteed Net Plant Heat Rate</u> ("GNPHR") Table (in Btu/kWh, HHV/GCV) showing its heat rate at different load factors (starting at 40% load factor up to 100% load factor, at 1% load factor intervals) for each Contract Year of the Required Contract Period. The GNPHR Table shall be used for each power plant generating unit/s and should adhere closely to the technical specifications of the power plant generating unit/s."</p> <p>However, Section 7.4.2 of the PSA states that the "Power Supplier shall, at its own cost, conduct a heat rate test ("Net Plant Heat Rate Test") <u>in conjunction with the initial NDC Test in order to establish the GNPHR.</u> The GNPHR, or actual heat rate, whichever is lower, shall be factored in the computation of the Monthly Power Bill in accordance with the relevant provisions of Appendix E."</p> <p>Section 7.4.2 contradicts the requirements of the TOR for the submission of binding Guaranteed Net Plant Heat Rate Table. As such, we request Meralco and/or BAC-PSA to amend Section 7.4.2 as follows:</p> <p>[Power Supplier shall, at its own cost, conduct a heat rate test ("Net Plant Heat Rate Test") in conjunction with the initial NDC Test in order to establish the GNPHR. The GNPHR, or actual heat rate, whichever is lower, shall be factored in the computation of the Monthly Power Bill in accordance with the relevant provisions of Appendix E.]</p>	<p>Ok with proposed revision.</p> <p>Please see Annex B of this Bid Bulletin No. 4 reflecting the amendment to the PSA template.</p>
52.	Heat Rate Testing	PSA Template	<p>Clause 7.4.3 states that:</p> <p><i>"The Parties shall mutually agree on the testing principles, criteria and protocols for the NDC Test and the Net Plant Heat Rate Test, provided that, the initial heat rate curve for partial load operations and the factor for plant degradation are set out in Appendix E."</i></p>	<p>Not amenable since in cases that the testing principles, criteria and protocols for the NDC Test and the Net Plant Heat Rate Test has not yet been agreed upon during implementation, the heat rate curve for partial load operations and the factor for plant degradation as set out in Appendix E shall be used.</p>

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PSA TEMPLATE-RELATED QUERIES/COMMENTS				
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			<p>We suggest that this be amended as follows:</p> <p>[The Parties shall mutually agree on the testing principles, criteria and protocols for the NDC Test and the Net Plant Heat Rate Test., provided that, the initial heat rate curve for partial load operations and the factor for plant degradation are set out in Appendix E.]</p>	
53.	Technical Limits	PSA template	<p>PSA Template, Section 5.3.3 states:</p> <p><i>"Notwithstanding Section 5.3.2, 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."</i></p> <p>Kindly provide the definition of Technical Limits. Is this the same as Performance Guarantees under Appendix B?</p>	Yes.
54.	Nomination	PSA template	<p>PSA Template, Appendix G, Section 5.3 states:</p> <p><i>"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. xxx"</i></p> <p>We suggest to amend the said statement as follows:</p> <p><i>"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 and Generating Unit Pmin under Appendix B."</i></p>	Not amenable since this specific technical constraint can be discussed during the crafting of the operating protocol.
55.	Nominations	PSA Appendix G, Section 5.3	<p>How does Meralco intend to operationalize the revisions to the Day-Ahead Nomination Schedule on a day-after basis?</p> <p>Given that the Plant has already operated and dispatched at a level in accordance with the Day-Ahead Nomination (including any Intra-day</p>	Operationalization of the revisions to the Day-Ahead Nomination Schedule shall be discussed during the crafting of the operating protocol using Appendix G as guide.

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			<p>nomination) provided by Meralco, the Generators can no longer change the dispatch or generation on the following day to comply with the <i>revisions in the Day-Ahead Nomination Schedule made on a "day-after basis"</i>.</p> <p>As such, we suggest the following revision on the Appendix G Section 5.3 of the PSA.</p> <p>[XXX. 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>Not amenable since the Incremental Energy is part of the contract capacity hence Power Supplier should always make available said Incremental Energy to MERALCO whenever MERALCO needs it.</p>
56.	PSA	PSA, Article 16.1 (Power Supplier Event of Default), p. 41-42	<p>Under Section 16.1, the events described in that section shall constitute a "Power Supplier Event of Default", provided that such event (with the exception of Section 16.1 (b) and (f)) results in or is accompanied by an actual failure by Power Supplier to make available the Contract Capacity and/or deliver the Associated Energy to Meralco.</p> <p>The effect of the inclusion of paragraph (b) of Section 16.1 (i.e., on the annual Full Load Equivalent Days of Availability), taken together with the introductory wording of Section 16.1 (i.e., even if there is no actual failure by Power Supplier to make available the Contract Capacity and/or deliver the Associated Energy to Meralco), is such that the Power Supplier could still be considered in default even if it is providing Replacement Power. This would be inconsistent with Section 8.1.5, which provides that "[t]he supply by Power Supplier of quantities of Replacement Power shall be deemed fulfillment of Power Supplier's obligation to make available the Contract Capacity and to deliver the Associated Energy during such period."</p> <p>We propose the following revision:</p>	<p>As consulted with the DU, Meralco is not amenable with this proposal. Even if Winning Power Supplier provides RP to Meralco, 16.1(b) will still kick in as the EOD pertains to "Plant's annual Full Load Equivalent Days of Availability" which is tied to the physical plant.</p>

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			Each of the events described below shall constitute a "Power Supplier Event of Default", provided that such event (with the exception of Section 16.1 (b) xxx)	
57.	PSA	PSA, Article 16.1 (c) (Power Supplier Event of Default), p. 42	<p>Under Art. 16.1 (c), the Power Supplier shall be declared in default if</p> <p>(i) a receiver or liquidator or trustee is appointed unless such appointment is discharged within 60 days; or</p> <p>(ii) the bankruptcy, insolvency, or corporate rehabilitation of Power Supplier, or sequestration of any substantial part of the property of Power Supplier and such decree continues undischarged and unstayed for 60 days after entry thereof; or</p> <p>(iii) the filing of a petition to declare Power Supplier bankrupt or to reorganize Power Supplier pursuant to bankruptcy or rehabilitation Law is not dismissed within 60 days.</p> <p>Given the current proceedings in courts, the 60-day cure period to secure a dismissal or a permanent injunction of a case is not sufficient.</p> <p>We propose to revise Art. 16.1 (c) to allow for a [*180-day] cure period for the instances covered therein.</p>	As consulted with the DU, Meralco is not amenable with the proposed revision. Please note that the lapse of the 60-day period, without the appointment being discharged, in case of i, without the decree undischarged and unstayed in case of ii, without the petition dismissed, in case of iii, will give rise to/trigger the Event of Default. Power Supplier, may, within that period, have the illegality removed, withdrawn or corrected. Note that the Power Supplier has a total of 180 Days to cure the Event of Default.
58.	PSA	PSA, Article 16.1 (e) (Power Supplier Event of Default), p. 42	<p>Art. 16.1 (e) provides that in the event the Power Supplier files a petition or answer in a proceeding under any of the provisions of any applicable bankruptcy, insolvency, or corporate rehabilitation Law admitting the material allegations of a petition filed against it, then, the Power Supplier shall be in default, unless such petition or admission is rescinded, withdrawn, or revoked within 60-days.</p> <p>The Power Supplier should be able to defend itself and answer malicious suits filed against it.</p> <p>As such, we propose to revise this clause as follows: "Power supplier files a petition or answer in a proceeding xxx", and such petition or admission</p>	As consulted with the DU, Meralco is not amenable with the proposed revision. While Meralco recognizes that Power Supplier may pursue actions to defend itself and answer malicious suits filed against it, the provision contemplates that Power Supplier has already admitted the material allegations of a petition filed against it.

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PSA TEMPLATE-RELATED QUERIES/COMMENTS				
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			is not rescinded, withdrawn or revoked within sixty (60) [*180] Days after such filing xxx"	
59.	PSA	PSA, Article 16.1 (f) (Power Supplier Event of Default), p. 42	<p>Art. 16.1 (f) provides that the Power Supplier shall be in default if it becomes illegal for it to generate or supply all or a portion of Contract Capacity and Associated Energy due to Power Supplier's fault, and such illegality is not removed, withdrawn, or corrected within 60 days from notice or effectiveness.</p> <p>We wish to understand the context of this clause. Is the intention to give the Power Supplier 60 days within which to remove, withdraw, or correct the illegality of its power generation?</p>	The lapse of the 60-day period, without the illegality removed, withdrawn or corrected will give rise to/trigger the Event of Default. Power Supplier, may, within that period, have the illegality removed, withdrawn or corrected. At the same time, Power Supplier has a total of 180 Days to cure the Event of Default.
60.	PSA	PSA, Article 16.6.5 (Termination in the Event of Material Adverse Government Action), p. 49	<p>Art. 16.6.5 (a) In the event of a Material Adverse Government Action, the Power Supplier may terminate the Agreement provided that it pays 50% LD.</p> <p>If ERC or any applicable Government Agencies declares that there is no Material Adverse Government Action, and Power Supplier terminates the Agreement, Meralco shall be entitled to impose 100% LD.</p> <p>Until termination occurs, the Parties shall continue performing their respective obligations.</p> <p>We suggest deleting the imposition of LDs since the cause of termination is a Material Adverse Government Action and not a breach by the Power Supplier.</p>	As relayed by the DU, Meralco is not amenable with this proposal. The 50% Liquidated Damages is to cover exposure of Meralco's customers on account of termination of the PSA.
61.	PSA	PSA, Article 16.6.5 (Termination in the Event of Material Adverse Government Action), p. 49	<p>Art. 16.6.5 (b) provides that if the Power Supplier fails to refund Meralco pursuant to Section 11.2.3, then either Party may terminate the Agreement subject to Power Supplier's payment of (i) 50% LDs and (ii) the amount Meralco paid, which Meralco was not able to collect from its customers.</p> <p>Section 11.2.3 provides that if as a result of a Material Adverse Government Action, Meralco is prevented from making a pass through of any charges as</p>	Section 11.2.3 also covers "orders of the ERC or any Government Instrumentality." In any case, this provision is consistent with the pass-through nature of generation charges.

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			<p>approved by the ERC, the Power Supplier is obligated to refund Meralco the portion of the Price that Meralco is not able to collect from its customers.</p> <p>We suggest deleting this Art. 16.6.5 because at the onset, Power Supplier should not be made to refund the portion of the Price that Meralco is unable to collect from its customers pursuant to a Material Adverse Government Action.</p>	
62.	PSA	Insurance	<p>Clause 13.1(a)</p> <p>Marine insurance in respect of the Plant, equipment, parts and accessories to be imported into the Republic of the Philippines, for full replacement cost of imported equipment;</p> <p>Comment: Since the power plant is already in commercial operation, we suggest that this clause be removed. If not, can you please confirm that this should only refer to marine cargo for stocks and spares in operational phase?</p>	<p>As relayed by the DU, MERALCO will revise the insurance provisions to apply to operation plants. For Automobile liability insurance, the same is already covered under the CGL requirement.</p> <p>"Article 13 Insurance</p> <p>13.1 Insurance Policies</p> <p>Power Supplier will endeavor to purchase the following insurance coverage described below to the extent such insurance coverages are commercially available, provided that, the coverages, deductibles, and amounts of insurance indicated below can be adjusted from time to time as market conditions dictate, or based on mutual agreement between and among Power Supplier, Meralco, and the Finance Parties:</p>
63.	PSA	Insurance	<p>Clause 13.1(b)</p> <p>Construction or erection all risk insurance on an all risk basis in an amount not less than the full replacement or estimated maximum loss cost of the Plant to protect against loss or damage to, or destruction of, the Plant. The policies will contain the following deductibles:</p> <p>Property damage – As acceptable to Finance Parties</p> <p>Delay in start-up – As acceptable to Finance Parties</p> <p>Earthquake & flood – As acceptable to Finance Parties;</p> <p>Comment: This should refer to Industrial All Risks and not on Construction or Erection All-risk Insurance since the plant is already in commercial operation. Also, we request to remove Delay in Start-up as this is no</p>	<p>(a) marine insurance in respect of the Plant, equipment, parts and accessories to be imported into the Republic of the Philippines, for full replacement cost of imported equipment;</p> <p>(b) construction or erection all risk insurance on an all risk basis in an amount not less than the full replacement or estimated maximum loss cost of the Plant to protect against loss or damage to, or destruction of, the Plant. The policy(ies) will include coverages for inland transit, expediting expense, demolition and increased cost of the construction, earthquake, and flood. To the extent that sublimits apply to these coverages, such sublimits will be customary for similar facilities in the Philippines. The</p>

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			longer applicable. On the deductibles, we suggest to use "based on commercially reasonable terms" as "Finance Parties" is not applicable to all bidders.
64.	PSA	Insurance	<p>Clause 15.1(d)</p> <p>Automobile liability insurance coverage for all owned, hired, and non-owned vehicles (or the equivalent Philippine coverage) with a combined single limit of liability of Five Million United States Dollars (USD5,000,000.00) (or PhP equivalent).....</p> <p>Comment: USD5M may be too high. Suggest to reduce to USD 1M. Automobile liability is an extension to Comprehensive General Liability Policy. However, this cover is in excess of the motorcar comprehensive insurance.</p>
<p>policy will also provide delay in start up insurance for an indemnity period sufficient to cover lost revenue that results from any peril covered under the policy, and extra expense coverage with customary limits. The policies will contain the following deductibles:</p> <p>Property damage — As acceptable to Finance Parties Delay in start up — As acceptable to Finance Parties Earthquake & flood — As acceptable to Finance Parties;</p> <p>(c) general liability insurance (or equivalent Philippine insurance) to cover third party bodily injury and property damage, covering all premises and operations including products and completed operations, contractual liability, personal injury, and employers liability. Coverage shall be on an "occurrence form." Limits of liability of Five Million United States Dollars (USD5,000,000.00) (or PhP equivalent) shall be per occurrence and in the aggregate;</p> <p>(d) automobile liability insurance coverage for all owned, hired, and non-owned vehicles (or the equivalent Philippine coverage) with a combined single limit of liability of Five Million United States Dollars (USD5,000,000.00) (or PhP equivalent). Excess liability and/or umbrella insurance can be used to satisfy such limits; and</p> <p>(e) workers compensation insurance as required by Governmental Requirements.</p> <p>It is agreed that insurance procured by Power Supplier that meets the requirements of Finance Parties shall satisfy the requirements of this Section 13.1.</p> <p>(a) Industrial All Risks (IAR) insurance with the following minimum coverage: (i) Fire and Allied Perils Insurance (based on sound value of the buildings, machinery/equipment, and all other materials (like fuel and maintenance parts); (ii) Machinery Breakdown</p>			

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				<p>Insurance (based on highest value of machinery/equipment); (iii) Business Interruption (at least twelve months indemnity period);</p> <p>(b) Comprehensive General Liability (CGL) with at least PHP equivalent of Five Million United States Dollars (USD5,000,000.00) per occurrence and annual aggregate with the following coverages: (i) Premises-Operations Liability; (ii) Contractual Liability; (iii) Employer's Liability; (iv) Personal Injury Liability; (v) Excess Auto Liability Extension for all owned, hired, and non-owned vehicles; and (vi) Third Party Liability (at least PHP equivalent of One Million United States Dollars per occurrence and annual aggregate).</p> <p>13.2 Evidence of Insurance</p> <p>On or before the Operations Effective Date, Power Supplier shall provide Meralco with a certificate of insurance <u>copies of the insurance policies as required under Section 13.1 above</u> that <u>which</u> reasonably describes the terms and conditions of the insurance and includes statements <u>certifications</u> from its insurers evidencing payment of the annual premiums in respect of the insurance policies from its insurance brokers or insurance advisors as to the insurance obtained by Power Supplier in connection with this Agreement following the inception or renewal of the relevant policies.</p> <p>13.3 Changes to Policies</p> <p>Any changes in the insurances that are not consistent with the requirements of this Agreement shall require the prior written consent of Meralco, which written consent shall not be unreasonably withheld.</p> <p>13.4 Notification of Claims and Application of Proceeds</p>

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PSA TEMPLATE-RELATED QUERIES/COMMENTS				
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				<p>Power Supplier shall, in relation to each property damage insurance policy for the Plant required by Section 13.1, promptly notify Meralco of any circumstances that give rise or might reasonably be foreseen to give rise to a claim under such policy or policies, which exceeds Five Million United States Dollars (USD5,000,000.00) (or PhP equivalent).</p> <p>Power Supplier shall apply, to the extent required, any and all of the property damage insurance proceeds that it receives regarding any damage to the Plant toward the reinstatement of the Plant, subject to the requirements under the Finance Documents.</p>
65.	Representations and Warranties	PSA template	<p>Please revise Clause 12.7.3 to read:</p> <p><i>"The Plant shall be constructed, operated and maintained in accordance with Legal Requirements and Prudent Operating Practices."</i></p>	<p>As consulted with the DU, Meralco is amenable with the proposed revision. Section 12.7.3 will be revised as follows:</p> <p><i>"The Plant shall be constructed, operated and maintained in accordance with Legal Requirements and Prudent Operating Practices."</i></p> <p>Please see Annex B of this Bid Bulletin No. 4 reflecting the amendment to the PSA template.</p>
66.	Reimbursable Cost Payment	PSA Appendix E	<p>The equation for Monthly Power Bill under Appendix E includes RCP. Please provide details on how this component will be computed.</p>	<p>Monthly Power Bill equation will be revised to remove RCP:</p> <p><i>"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 MFOMPPPhP) and the Energy Payment consists of Component D (MFCP), Component E (MVOMPUSD and MVOMPPPhP), and Component F (MRPP). Other Payments are Component G (RCP), and Component H is Component G (LRAP)."</i></p> <p>Please see Annex B of this Bid Bulletin No. 4 reflecting the amendment to the PSA template.</p>

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT CAPACITY OF 1,200 MW (NET) FOR CONTRACT PERIOD FROM 26 DECEMBER 2023

PSA TEMPLATE-RELATED QUERIES/COMMENTS				
	TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION RECOMMENDATIONS / PROPOSED WORDING	BAC-PSA's RESPONSE
67.	Competitive Selection Process for Fuel	PSA, Appendix G	<p>Section 11 of the Appendix G states:</p> <p><i>"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 Committee not later than one hundred eighty (180) Days after the ERC Approval, if applicable.</i></p> <p><i>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."</i></p> <p>Please clarify the purpose of this provision. This does not appear to be necessary given the requirements already asked from, and risks taken on by, the Power Supplier as per the CSP and the PSA. There are already mechanisms in place (e.g. this CSP and the PSA, including the capping of fuel price in the PSA) to ensure the least cost of energy to Meralco's customers.</p> <p>Please also confirm that the "Operating Committee" referred to above is the "Coordinating Committee" referred to in Appendix G. Operating Committee is not defined or used elsewhere other than in Section 11 of Appendix G quoted above.</p>	<p>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.).</p> <p>The Coordinating Committee is different from the Operating Committee. The Operating Committee will be further defined before the creation of the protocol.</p>
68.	PSA	Section 16.3 Remedies in Case of Event of Default p.44-45	<p>Section 16.3.3 provides that in the event that (i) Power Supplier 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 Associated Energy, MERALCO shall be entitled to exercise any of the following at its option:</p> <p>a. Impose LD on the Power Supplier in lieu of all other damages that Meralco may be entitled to; or</p> <p>b. Avail of remedies at law in lieu of all other remedies available under the PSA; or</p> <p>c. Require Power Supplier to sell the Plant at the price equivalent to the Net Book Value of the Plant at the time of the occurrence of Power Supplier</p>	<p>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 to deliver 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).</p>

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT CAPACITY OF 1,200 MW (NET) FOR CONTRACT PERIOD FROM 26 DECEMBER 2023

PSA TEMPLATE-RELATED QUERIES/COMMENTS				
	TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION RECOMMENDATIONS / PROPOSED WORDING	BAC-PSA's RESPONSE
			<p>Event of Default, the taxes and levies for the sale of the Plant shall be for the account of the Power Supplier.</p> <p>We propose to delete item (c) because options (a) and (b) already exist. Furthermore, it is too onerous and virtually amounts to the taking of the Plant without just compensation.</p>	
69.	Nominated Plant's Fuel Supply Agreement Technical Proposal		<p>Annex TP-1 Attachment 11</p> <p>"11. The Nominated Plant's valid Fuel Supply Agreement, if available, otherwise a Fuel Procurement Plan containing a narrative description of strategies and plans for ensuring long-term availability of fuel and regulatory compliance on fuel inventory and specification," Please confirm that a certification from the Corporate Secretary attesting that the Nominated Plant is covered by a Fuel Supply Agreement may be submitted in compliance with the requirement.</p>	As stated in the provision, if available, what is required to be submitted is the valid Fuel Supply Agreement.
70.	PSA Template	Appendix 4.2 (d) /page 107	<p>"Meralco shall furnish Power Supplier with the month ahead energy nomination schedule."</p> <p>Proposed wording: "Meralco shall furnish Power Supplier with the month ahead energy nomination schedule <u>on or before 19th Day of the calendar month in which such Billing Period starts.</u>"</p>	Not amenable to proposed revision. Exact timeline of operating procedures shall be finalized during the creation of the operating protocol.
71.	PSA Template	Appendix 4.3 /pages 107-108	<p>"Power Supplier shall furnish Meralco the week-ahead capacity availability schedule of the Plant on or before every <u>Friday</u> of the preceding week.</p> <p>Meralco shall furnish Power Supplier with the week-ahead energy nomination schedule."</p> <p>Proposed wording: "Power Supplier shall furnish Meralco the week-ahead capacity availability schedule of the Plant on or before every <u>Thursday</u> of the preceding week.</p> <p>Meralco shall furnish Power supplier with the week-ahead energy nomination schedule <u>every Friday of the preceding week.</u>"</p>	Not amenable to proposed revision. Exact timeline of operating procedures shall be finalized during the creation of the operating protocol.
72.	PSA Template	Appendix 5.1/page 108	<p>"Power Supplier shall furnish Meralco the Plant's Day-ahead capacity availability schedule".</p> <p>Proposed wording: "Power Supplier shall furnish Meralco the Plant's Day-ahead capacity availability schedule <u>on or before 1000H.</u>"</p>	Not amenable to proposed revision. Exact timeline of operating procedures shall be finalized during the creation of the operating protocol.

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT CAPACITY OF 1,200 MW (NET) FOR CONTRACT PERIOD FROM 26 DECEMBER 2023

PSA TEMPLATE-RELATED QUERIES/COMMENTS				
	TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION RECOMMENDATIONS / PROPOSED WORDING	BAC-PSA's RESPONSE
73.	PSA Template	Appendix 5.4/page 109	"Upon receipt of the day-ahead energy nomination schedule submitted by Meralco, xxx" Propose wording: "Upon receipt of the day-ahead energy nomination schedule submitted by Meralco <u>on or before 1200H</u> , xxx"	Not amenable to proposed revision. Exact timeline of operating procedures shall be finalized during the creation of the operating protocol.
74.	PSA Template	Appendix 7.1 page 109	Please insert: "For the avoidance of doubt, the basis of actual Metered Quantity, Associated Energy and Replacement Power for the summary will be Preliminary Data from IEMOP then subject to adjustment if there will be in the Final Data."	Not amenable to proposed revision. Details of operating procedures shall be finalized during the creation of the operating protocol.

AMENDMENTS TO THE INVITATION TO BID / TERMS OF REFERENCE (TOR) TABLE (published on 29 November 2023 and 06 December 2023)

Item	Reference / Subject Matter of Amendment	Amendments
1	<p>Technical Parameters</p> <p>Invitation to Bid</p> <p><i>vis-à-vis</i></p> <p><i>p. 12 of the Bid Requirements and Sec. 3.2 (a) of the Instructions to Prospective Bidders (IPB), which correctly states:</i></p> <p>(a) Technical characteristics of the Plant showing evidence of compliance to the technical requirements stated in the Invitation to Bid’s Terms of Reference Table (“TOR Table”). <u>If multiple units, minimum of 150 MW per unit, which should have the same fuel type and Guaranteed Net Plant Heat Rate</u></p>	<p>[...]</p> <p>If multiple units, minimum of 150 MW (net) per unit and should have the same fuel type and GNPHR</p> <p>[...]</p>

AMENDMENTS TO THE INSTRUCTIONS TO PROSPECTIVE BIDDERS (dated 29 November 2023)

Item	Reference / Subject Matter of Amendment	Amendments
1	Sec. 3.2 IPB	[...] Section 3.2 xxx The Interested Bidder must identify the proposed power plant/s that it or its direct shareholder representing Controlling interest is the developer of, owner of, or administrator of , and Controls, and has sufficient authority to enter into the offtake agreement with Meralco, which must be capable of supplying the Offered Contract Capacity to Meralco for the Required Contract Period, <i>provided</i> that it must be a baseload power plant (firm and dispatchable) wherein each unit of the Plant must be capable of generating its rated capacity for twenty-four hours a day and seven days a week (24/7), <i>provided further</i> , that it must be technically capable of producing the entire Offered Contract Capacity, and <i>provided finally</i> that it is in commercial operation prior to January 2020 (" Nominated Plant "). [...]
2	Sec. 4.4.3 IPB	[...] 4.4.3 In addition, the Independent Engineer appointed by the BAC-PSA shall proceed to evaluate and determine proper compliance with the technical qualifications of the Reference Plant, Comparable Plant, and Nominated Plant. The Independent Engineer shall submit/present its findings/recommendations to the BAC-PSA. [...]
3	Annex QD-2 form/template Inadvertent omission	ANNEX QD-2 COMPANY INFORMATION Required attachments:

Item	Reference / Subject Matter of Amendment	Amendments
		<p>(a) executive summary showing a brief description of its company history and structure, including relevant capabilities in the construction, operation, and maintenance of a power plant or in the supply of electricity;</p> <p>(b) copy of its SEC Certificate of Incorporation/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>(c) if applicable (i.e., corporations), copy of its 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>(d) if applicable (i.e., a corporation), copy of its latest General Information Sheet (GIS), stamped "received" or email acknowledging receipt by the SEC, 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>(e) a diagram of the corporate/partnership structure of the Interested Bidder with an indication of which entity has Controlling interest over, are the Affiliates engaged in the power industry, or is the Ultimate Parent of the Interested Bidder, which shall be certified by the corporate secretary/assistant corporate secretary as a true and correct depiction of the corporate structure of the Interested Bidder, which certification must be under oath and notarized;</p> <p>(f) if the Interested Bidder formed a joint venture or consortium for the purpose of this Bidding, the Interested Bidders should submit the joint venture or consortium agreement that provides evidence that their rights and obligations, including liabilities in this Bidding and the resulting PSA, are solidary. Each party to the joint venture or consortium must separately submit Qualification Documents (Envelope 1) and Technical Proposal (Envelope 2) (e.g., if each joint venture or consortium member offers a different Nominated Plant), but shall submit (as one) only one Bid Price, including the Bid Security (Envelope 3). For this purpose, in relation to the Qualification Documents and Technical Proposal, each party to a Bidder joint venture or consortium shall be construed as the Bidder. Moreover, each party to the joint venture or consortium must separately submit an undertaking as to its commitment to infuse the required equity contribution to the joint venture or consortium. The</p>

Item	Reference / Subject Matter of Amendment	Amendments																										
		<p>submissions should be certified as a true copy by the duly authorized officer of said joint venture/partners/consortium members, in which case, it must be under oath and notarized;</p> <table><tr><td>Name of Entity</td><td></td></tr><tr><td>Type of entity</td><td>[indicate if a Corporation/Partnership, etc.]</td></tr><tr><td>Year of Incorporation or Registration</td><td></td></tr><tr><td>Principal Purposes or Businesses</td><td></td></tr></table> <p>SECTION 2. Shareholder or Partner Information</p> <table><tr><th>Name of Shareholder or Partner</th><th>Nationality</th><th>Percentage total of shareholding or partnership interest</th></tr><tr><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td></tr></table> <p>(Insert rows as necessary)</p> <p>For entities listed on the Philippine Stock Exchange (“PSE”), the Bidder must submit the listed entity’s latest Public Ownership Report and List of Top 100 Stockholders, as submitted to the PSE.</p>	Name of Entity		Type of entity	[indicate if a Corporation/Partnership, etc.]	Year of Incorporation or Registration		Principal Purposes or Businesses		Name of Shareholder or Partner	Nationality	Percentage total of shareholding or partnership interest															
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Item	Reference / Subject Matter of Amendment	Amendments																								
		<p>The information in such Report and List must be as of a date no earlier than 31 December 2022. Shares held by PCD Nominee may be lumped together in the List of Top 100 Stockholders.</p> <p>SECTION 3. If applicable, information on Beneficial Owners who own more than 5% Beneficial Interest</p> <table><tr><th>Name of Beneficial Owner</th><th>Nationality</th><th>Percentage Total of Beneficial Ownership</th></tr><tr><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td></tr></table> <p>(Insert rows as necessary)</p> <p>For and on behalf of <i>(Name of Bidder)</i></p> <p>(Signature of Authorized Representative)</p> <p>_____</p> <p>(Name, Title, and Date)</p>	Name of Beneficial Owner	Nationality	Percentage Total of Beneficial Ownership																					
Name of Beneficial Owner	Nationality	Percentage Total of Beneficial Ownership																								

Item	Reference / Subject Matter of Amendment	Amendments
4	Annex QD-7 Statement of Financial Capability IPB	<p>[...]</p> <p>1. The (name of entity) has an Unrestricted Net Worth equivalent to [•] based on the submitted consolidated financial statements*, copies or certified true copies of which are attached to this certificate.]</p> <p>2. The Financial Summary of (name of entity) for the financial year 2021±2 is as follows:</p> <p>[...]</p>

AMENDMENTS TO THE POWER SUPPLY AGREEMENT (PSA) TEMPLATE

Item	Reference / Subject Matter of Amendment	Amendments
1	Sec. 7.4	<p>[...]</p> <p>Power Supplier shall, at its own cost, conduct a heat rate test (“Net Plant Heat Rate Test”) in conjunction with the initial NDC Test in order to establish the GNPHR. The GNPHR, or actual heat rate, whichever is lower, shall be factored in the computation of the Monthly Power Bill in accordance with the relevant provisions of Appendix E.</p>
2	Sec. 12.7.3	<p>[...]</p> <p>Section 12.7.3</p> <p>“The Plant shall be constructed, operated and maintained in accordance with Legal Requirements and Prudent Operating Practices.”</p> <p>[...]</p>
3	<p>Sec. 12.3 [new provision]</p> <p><i>(New requirement to address a recommendation by Energy Regulatory Commission [ERC] Chairperson Monalisa C. Dimalanta through a letter dated 13 November 2023 [received by the BAC-PSA on 23 November 2023] and subsequent meetings on 4 and 18 December 2023 regarding the Invitation to Bid and Terms of Reference (“ITB/TOR”) of MERALCO’s 1,800 MW CSP. The recommendation was for MERALCO to insert a provision in the PSA template that, in case of substantial</i></p>	<p>[...]</p> <p><u>Section 12.3</u></p> <p><u>Parties shall exert best efforts to agree on way/s to mitigate the impact of any sudden and significant increase in the Monthly Fuel Cost Payment calculated in accordance with Appendix E, which results in a significant increase in the overall retail rate and/or blended generation rate to the customers.</u></p> <p>[...]</p>

Item	Reference / Subject Matter of Amendment	Amendments
	<i>increase in the Monthly Fuel Cost Payment resulting in significant increase in the blended generation rate/overall retail rate, Power Supplier and Meralco shall exert best efforts to agree on ways to mitigate the impact of such increase to MERALCO's customers. The provision was incorporated in the 1,800 MW PSA template. In a letter dated 13 December 2023 [received by the BAC-PSA on 14 December 2023], ERC Chairperson Monalisa C. Dimalanta observed similarity of the provisions in the ITB/TOR of the 1,800 MW CSP and 1,200 MW CSP and raised similar recommendations. Hence, the incorporation of this provision in this 1,200 MW PSA template.)</i>	
4	Article 13	<p>[...]</p> <p>Article 13 Insurance</p> <p>13.1 Insurance Policies</p> <p>Power Supplier will endeavor to purchase the following insurance coverage described below to the extent such insurance coverages are commercially available, provided that, the coverages, deductibles, and amounts of insurance indicated below can be adjusted from time to time as market conditions dictate, or based on mutual agreement between and among Power Supplier, Meralco, and the Finance Parties:</p>

Item	Reference / Subject Matter of Amendment	Amendments
		<p>(a) marine insurance in respect of the Plant, equipment, parts and accessories to be imported into the Republic of the Philippines, for full replacement cost of imported equipment;</p> <p>(b) construction or erection all risk insurance on an all risk basis in an amount not less than the full replacement or estimated maximum loss cost of the Plant to protect against loss or damage to, or destruction of, the Plant. The policy(ies) will include coverages for inland transit, expediting expense, demolition and increased cost of the construction, earthquake, and flood. To the extent that sublimits apply to these coverages, such sublimits will be customary for similar facilities in the Philippines. The policy will also provide delay in start up insurance for an indemnity period sufficient to cover lost revenue that results from any peril covered under the policy, and extra expense coverage with customary limits. The policies will contain the following deductibles:</p> <p style="padding-left: 40px;">Property damage As acceptable to Finance Parties Delay in start up As acceptable to Finance Parties Earthquake & flood As acceptable to Finance Parties;</p> <p>(c) general liability insurance (or equivalent Philippine insurance) to cover third party bodily injury and property damage, covering all premises and operations including products and completed operations, contractual liability, personal injury, and employers liability. Coverage shall be on an "occurrence form." Limits of liability of Five Million United States Dollars (USD5,000,000.00) (or PhP equivalent) shall be per occurrence and in the aggregate;</p> <p>(d) automobile liability insurance coverage for all owned, hired, and non-owned vehicles (or the equivalent Philippine coverage) with a combined single limit of liability of Five Million United States Dollars (USD5,000,000.00) (or PhP equivalent). Excess liability and/or umbrella insurance can be used to satisfy such limits; and</p> <p>(e) workers compensation insurance as required by Governmental Requirements.</p> <p>It is agreed that insurance procured by Power Supplier that meets the requirements of Finance Parties shall satisfy the requirements of this Section 13.1.</p>

Item	Reference / Subject Matter of Amendment	Amendments
		<p>(a) <u>Industrial All Risks (IAR) insurance with the following minimum coverage: (i) Fire and Allied Perils Insurance (based on sound value of the buildings, machinery/equipment, and all other materials (like fuel and maintenance parts); (ii) Machinery Breakdown Insurance (based on highest value of machinery/equipment); (iii) Business Interruption (at least twelve months indemnity period);</u></p> <p>(b) <u>Comprehensive General Liability (CGL) with at least PHP equivalent of Five Million United States Dollars (USD5,000,000.00) per occurrence and annual aggregate with the following coverages: (i) Premises-Operations Liability; (ii) Contractual Liability; (iii) Employer’s Liability; (iv) Personal Injury Liability; (v) Excess Auto Liability Extension for all owned, hired, and non-owned vehicles; and (vi) Third Party Liability (at least PHP equivalent of One Million United States Dollars per occurrence and annual aggregate).</u></p> <p>13.2 Evidence of Insurance</p> <p>On or before the Operations Effective Date, Power Supplier shall provide Meralco with a certificate of insurance <u>copies of the insurance policies as required under Section 13.1 above</u> that <u>which</u> reasonably describes the terms and conditions of the insurance and includes <u>statements</u> <u>certifications</u> from its insurers evidencing payment of the annual premiums in respect of the insurance policies from its insurance brokers or insurance advisors as to the insurance obtained by Power Supplier in connection with this Agreement following the inception or renewal of the relevant policies.</p> <p>13.3 Changes to Policies</p> <p>Any changes in the insurances that are not consistent with the requirements of this Agreement shall require the prior written consent of Meralco, which written consent shall not be unreasonably withheld.</p> <p>13.4 Notification of Claims and Application of Proceeds</p>

Item	Reference / Subject Matter of Amendment	Amendments
		<p>Power Supplier shall, in relation to each property damage insurance policy for the Plant required by Section 13.1, promptly notify Meralco of any circumstances that give rise or might reasonably be foreseen to give rise to a claim under such policy or policies, which exceeds Five Million United States Dollars (USD5,000,000.00) (or Php equivalent).</p> <p>Power Supplier shall apply, to the extent required, any and all of the property damage insurance proceeds that it receives regarding any damage to the Plant toward the reinstatement of the Plant, subject to the requirements under the Finance Documents.</p> <p>[...]</p>
5	Section 16.6.3	<p>[...]</p> <p>Section 16.6.3</p> <p>This Agreement shall terminate on the last Day of the Term, unless otherwise extended by the application of Section 15.3.3 or upon the mutual agreement of the Parties.</p> <p>[...]</p>
6	<p>Sec. 18.3.1</p> <p><i>(New requirement to address a recommendation by Energy Regulatory Commission [ERC] Chairperson Monalisa C. Dimalanta through a letter dated 13 November 2023 [received by the BAC-PSA on 23 November 2023] and subsequent meetings on 4 and 18 December 2023 regarding the Invitation to Bid and Terms of Reference ("ITB/TOR") of MERALCO's 1,800 MW CSP. The recommendation was for MERALCO to insert a provision in the PSA</i></p>	<p>[...]</p> <p>During the Curing Period with respect to a Power Supplier Event of Default, Meralco shall, for each time Power Supplier fails to make Available the Contract Capacity or to deliver the Associated Energy, be entitled to source energy from the WESM. In such case, and provided that, Power Supplier is able to cure Power Supplier Event of Default prior to the exercise by Meralco of its rights under Section 18.3.3, Power Supplier shall be liable to pay Meralco the difference between the amount Meralco actually paid for such energy and the Price. In the event there is inadequate supply from WESM, Power Supplier shall pay a fine in accordance with Section 9.5.</p> <p><u>Immediately upon lapse of the Curing Period with respect to a Power Supplier Event of Default under Section 18.1(b), where Power Supplier fails to cure the Power Supplier Event of Default, if an NDC Test demonstrates that the actual available capacity of the Plant is</u></p>

Item	Reference / Subject Matter of Amendment	Amendments
	<p><i>template that, in the event that actual available capacity of the Plant is consistently lower than the Contract Capacity, MERALCO shall have the option to require Power Supplier to reduce its Capacity Payments (consisting of Monthly Capacity Payment, Monthly Interconnection Facilities Payment [if any] and Monthly Fixed O&M Payment. The provision was incorporated in the 1,800 MW PSA template. In a letter dated 13 December 2023 [received by the BAC-PSA on 14 December 2023], ERC Chairperson Monalisa C. Dimalanta observed similarity of the provisions in the ITB/TOR of the 1,800 MW CSP and 1,200 MW CSP and raised similar recommendations. Hence, the incorporation of this provision in this 1,200 MW PSA template.)</i></p> <p><i>The relevant portions of Appendix E pertaining to Capacity Payments will likewise be revised to capture the reduction to correspond to the actual available capacity of the Plant.)</i></p>	<p><u>lower than the Contract Capacity, Meralco may opt to defer termination of this Agreement as it seeks to secure a replacement agreement for the portion of the Contract Capacity unavailable, as substantiated by the said NDC Test; provided that, the Capacity Payments (consisting of Monthly Capacity Payment, Monthly Interconnection Facilities Payment [if any], and Monthly Fixed O&M Payment) shall be reduced to correspond to the actual available capacity of the Plant; provided further that, Power Supplier shall provide Replacement Power for any deficiency, to meet the Associated Energy corresponding to the Contract Capacity, to be paid for by Meralco at the lower between the actual price of Replacement Power and the Price specified in Appendix E; provided finally that, if Power Supplier fails to meet any of these conditions, Meralco may proceed to terminate this Agreement by reason of a Power Supplier Event of Default. Should Power Supplier comply with all these conditions, upon implementation of the replacement agreement for the portion of the Contract Capacity unavailable, (i) the Contract Capacity under this Agreement shall be re-stated to reflect the NDC Test results, (ii) the corresponding reduced Capacity Payments shall be retained for the remainder of the Term of this Agreement, and (iii) Power Supplier shall cease to provide Replacement Power.</u></p> <p><u>To give effect to the immediately preceding paragraph, Power Supplier shall have an NDC Test conducted and submit an Independent Engineer’s certification of the NDC Test results to Meralco at least thirty (30) days prior to the end of the Curing Period, and Meralco may subject such NDC Test results to further validation by an Independent Engineer of its choice. For this purpose, Power Supplier shall bear all costs in relation to said NDC Test and validation by an Independent Engineer deemed necessary by Meralco.</u></p> <p>[...]</p>