



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

**BID BULLETIN NO. 3**

To all Interested Bidders:

1. Section 1 and Section 2.2 (d) in the IPB, which provides for 24 December 2020 as the Bidders' deadline within which to submit additional written queries, or requests for clarifications or revisions to the Bidding Documents, shall now be moved to **3 January 2021**;
2. A matrix showing the amendments to the: (i) Bid Requirements (posted on 1 October 2020) and (ii) Instructions to Prospective Bidders (dated 1 October 2020) ("IPB") are set out in **ANNEX A**;
3. A matrix containing a set of queries that have been received and the response of Meralco's Third Party Bids and Awards Committee ("TPBAC") are set out in **ANNEX B**;
4. Accordingly, the following amended IPB annexes or forms, including the Confidentiality Undertaking template, are set out in **ANNEX C** as the following attachments:

<b>Attachment</b>	<b>FORM</b>
1	Confidentiality Undertaking ("CU") ( <i>an added option for Bidders to execute in exchange of individual CUs that its Representatives need to submit if following the CU form released last 1 October 2020</i> )
2	Annex QD-1 (Application to Qualify and Participate in the Bidding), IPB
3	Annex QD-2 (Company Information), IPB
4	Annex QD-3 (Certification that Nominated Power Plant is Uncontracted), IPB
5	Annex QD-4 (Bidder's Certification of Absence of Unsatisfactory Performance Record, Outstanding Dispute or Due and Demandable Financial Obligation/s), IPB

	Annex A of Annex QD-4 (List of the Bidder's counterpart(ies)/financial lenders), IPB
6	Annex QD-4-A (Counterparty's Certification of Absence of Unsatisfactory Performance Record, Outstanding Dispute or Due and Demandable Financial Obligation/s), IPB
7	Annex QD-5 (Certification Regarding Technical Qualification (Reference Plant)), IPB
8	Annex BID-1 (Bid Letter), IPB
9	Schedule 2 (List of Manila Electric Company's (MERALCO) Affiliates engaged in Power Generation, Distribution and Supply), IPB

The soft copy file of ANNEX C (in MS Word format and with mark-ups/tracked changes intentionally retained for ease of reference) will be released in your respective cloud-based folders containing the Bidding Documents.

Also, for ease of reference, please note that deletions are marked with red highlights and strikethroughs, while insertions/amendments are marked with bold font emphasis and underscoring.

Other than the changes clarified/allowed by the TPBAC as presented in ANNEX B (matrix of queries and responses), we reiterate that no change/deviation from the required wording of the IPB annexes or forms shall be made, without prior request made to the TPBAC and its approval.

5. A formula-viewable soft copy file version of the initial Financial Evaluation Workbook (released through our Bid Bulletin No. 1 dated 23 November 2020), including another soft copy file containing a set of test values and expected output of the seven (7) worksheets of the initial Financial Evaluation Workbook, will be released in your respective cloud-based folders containing the Bidding Documents.

To reiterate from our Bid Bulletin No. 1, please note that the changes to the initial Financial Evaluation Workbook as cited in our responses to the queries (e.g. floor value of Ancillary Services Cost cap) as well as the reflection of available actual assumptions and price indices (Base PH CPI and its annual escalation, Base US CPI and its annual escalation, and Forex and its annual escalation) closest to the Bid Submission Deadline, shall be included in the final version of the Financial Evaluation Workbook to be released no later than 15 January 2021.

For your guidance and information.

Issued on 22 December 2020.

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

*(sgd)*

**Atty. Ferdinand A. Domingo**  
*Chairman*

## AMENDMENTS TO THE BID REQUIREMENTS (posted on 1 October 2020)

Item	Reference / Subject Matter of Amendment	Amendments
1	Pay-as-Bid Mechanism and Bid Offer Evaluation,  p.2	<p><b><u>Pay-as-Bid Mechanism and Bid Offer Evaluation</u></b></p> <p>[...]</p> <p>If the resulting stack of Offered Contract Capacities goes beyond the required Contract Capacity (i.e. more than 1,800 MW), the Qualified Bidder that fills up the stack to complete the required Contract Capacity (hereinafter referred to as the "<b>Marginal Bid Offer</b>") shall have its Offered Contract Capacity reduced accordingly up to the extent of the required Contract Capacity at its Proposed Price. A Bidder with the Marginal Bid Offer and a candidate recipient of a Notification of Best Bid, which refuses to accept the reduction of its Offered Contract Capacity up to the extent of the required Contract Capacity at its Proposed Price, shall have its Bid Security forfeited <b><u>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 1,000 MW but only 200 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.</u></b></p> <p>[...]</p>
2	Legal Qualification Requirements  • Unsatisfactory Performance  • Outstanding Dispute  pp. 3-5	<p><b>1. Legal Qualification Requirements</b></p> <p>[...]</p> <p>(c) The Bidder and any of its Affiliates engaged in power generation must have no record of Unsatisfactory Performance. For this purpose, "<b>Unsatisfactory Performance</b>" means any of the following:</p> <p>(a) In relation to any project or contract <b><u>with Meralco and/or its Affiliates engaged in power generation, distribution, and supply (the list of Meralco's Affiliates are provided in the IPB)</u></b> that was commenced or in the process of implementation within the last five (5) years prior to the Bid Submission Deadline (as defined below) by the Bidder –</p> <p>(i) a record of failure by the Bidder or any of its Affiliates engaged in power generation to satisfactorily perform any of its material obligations for any such project or contract, (such as, but not limited to, Power Supply Agreements, financing documents, etc.) within the last five (5) years. It also includes</p>

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		<p>a record of failure to timely pay or comply with its material obligations in any of its finance documents with creditors entered into in connection with the development and implementation of the said project or contract.</p> <p>The Bidder shall submit notarized certifications issued by <b><u>Meralco and/or its Affiliates engaged power generation, distribution, and supply</u></b> the Counterpart(ies) (defined below) of the Bidder and any of its Affiliates engaged in power generation attesting that within the last five (5) years the Bidder or any of its Affiliates engaged in power generation has no previous record of failure to perform any of its material obligations for such project or contract. For this purpose only, <del>Counterpart(ies) may include Meralco</del> <b>(i.e. submission of notarized certifications), the financial lender/s of the Bidder or any of its Affiliates engaged in power generation of any such project or contract need not issue the said certification but their identities must be declared or disclosed;</b></p> <p>(ii) the expulsion of the Bidder or any of its Affiliates engaged in power generation from any such project or contract;</p> <p>(iii) the termination or suspension of any such project or contract due to the willful breach of its obligations by the Bidder or any of its Affiliates engaged in power generation;</p> <p>(iv) the material violation of laws and/or regulations by the Bidder or any of its Affiliates engaged in power generation applicable to any such projects or contracts, including but not limited to environmental, health, safety, labor and social welfare laws and regulations, as evidenced by findings of the relevant competent authority; or</p> <p>(b) Inclusion in a blacklist issued by any governmental agency of the Philippines or in the Debarred and Cross-Debarred Firms &amp; Individuals list posted in the World Bank website (<a href="http://www.worldbank.org/debarr">www.worldbank.org/debarr</a>), whether as an individual contractor, partnership or corporation or as a member of a joint venture or consortium;</p> <p>(d) The Bidder and any of its Affiliates engaged in power generation must not have an Outstanding Dispute <b>or</b> any due and demandable financial obligation/s, <b><u>in each case</u></b> with Meralco <b><u>and/or its Affiliates engaged power generation, distribution, and supply.</u></b> <del>and/or Counterpart(ies) in relation to any project or contract in power</del></p>

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		<p>generation, including <b>The Bidder and any of its Affiliates engaged in power generation must also not have</b> due and demandable energy settlement amounts with the Philippine Electricity Market Corporation ("PEMC") and/or Independent Electricity Market Operator of the Philippines ("IEMOP").</p> <p>For this purpose, "Outstanding Dispute" refers to any pending judicial, administrative, contractual or alternative dispute resolution proceeding between the Bidder or any of its Affiliates engaged in power generation, on one hand, and Meralco <b>and/or its Affiliates engaged power generation, distribution, and supply</b>, and/or Counterpart(ies) in relation to any project or contract in power generation, on the other, provided, that the following instances with respect to pending disputes with <del>with Meralco and/or its Affiliates engaged power generation, distribution, and supply</del> are excluded from this definition:</p> <ul style="list-style-type: none"> <li>(i) <del>disputes where the Bidder/its Affiliates engaged in power generation itself filed a case/suit against its Meralco and/or its Affiliates engaged power generation, distribution, and supply to protect its lawful interests and the Meralco and/or its Affiliates engaged power generation, distribution, or supply did not file a countersuit or counterclaim against the Bidder/its Affiliates engaged in power generation, subject to item (ii) below; and</del></li> <li>(ii) <del>when a suit or countersuit involves Four Hundred Thousand Pesos (PhP400,000.00) or less, and there is no allegation of fraud or intentional non-payment on the part of the Bidder/its Affiliates engaged in power generation;</del></li> </ul> <p>and provided further, that the following pending judicial or administrative cases involving the Bidder or any of its Affiliates engaged in power generation and Meralco are excluded from the definition of Outstanding Dispute:</p> <table border="1" data-bbox="862 1101 2080 1351"> <thead> <tr> <th data-bbox="862 1101 1452 1187">Case Title and Docket Nos.</th> <th data-bbox="1452 1101 2080 1187">Subject Matter</th> </tr> </thead> <tbody> <tr> <td data-bbox="862 1187 1452 1351"> <i>Bayan Muna, et. al. v. Energy Regulatory Commission (ERC), et. al.</i>                       (G.R. Nos. 210245, 210255 &amp; 210502)                 </td> <td data-bbox="1452 1187 2080 1351">                     Supreme Court T.R.O. on MERALCO's December 2013 billing rate increase in relation to the generation cost price spike in November 2013 and December 2013                 </td> </tr> </tbody> </table>	Case Title and Docket Nos.	Subject Matter	<i>Bayan Muna, et. al. v. Energy Regulatory Commission (ERC), et. al.</i>  (G.R. Nos. 210245, 210255 & 210502)	Supreme Court T.R.O. on MERALCO's December 2013 billing rate increase in relation to the generation cost price spike in November 2013 and December 2013
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		<p>For clarity, "<b>Counterpart(ies)</b>" refers to a counterparty, other than Meralco, who has an existing project(s) or contract(s) with the Bidder or any of its Affiliates engaged in power generation, that was commenced or in the process of implementation within the last five (5) years prior to the Bid Submission Deadline. It can also refer interchangeably to the financial lender/s of the Bidder or any of its Affiliates engaged in power generation for the said project(s) or contract(s).</p> <p>[...]</p>									
3	Technical Qualification Requirements,  p.6	<p><b>2. Technical Qualification Requirements</b></p> <p>[...]</p> <p>The Bidder must provide evidence that the Reference Plant is capable of generation of electricity of at least 150 MW, which (i) in case of a Reference Plant located in the Philippines, must be supported by <b>an</b> the latest twelve (12) months official document [<b>G</b>CMR] of the Bidder's Reference Power Plant as submitted by the Bidder to the ERC, showing that it attained a</p>									

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		simple monthly average of at least 85% PCF over a 3-month consecutive period of operations <b><u>within the most recent twenty-four (24) month period of operations.</u></b>
4	Bid Price and Bid Security (Envelope 3), p.11	[...] 3. If the Nominated Power Plant is a coal plant, the Bidder shall indicate the coal rank <b><u>(stated in kcal/kg at GAR)</u></b> and state the Guaranteed Net Plant Heat Rate (GNPHR), in Btu/kWh at HHV. [...] [...]



## AMENDMENTS TO THE INSTRUCTIONS TO PROSPECTIVE BIDDERS (dated 1 October 2020)

Item	Reference / Subject Matter of Amendment	Amendments
1	<p><b>(see Bid Bulletin No. 2)</b></p> <p>Section 2.8</p>	<p><b>(see Bid Bulletin No. 2)</b></p> <p>2.8. PRE-BID CONFERENCE</p> <p>[...]</p> <p>If necessary and in order to comply with the government-mandated and Meralco’s policy of health precaution or safety, the Pre-Bid Conference may be conducted by virtual video/audio conferencing or a hybrid of virtual video/audio conferencing with participants inside one large venue observing the prescribed physical distancing, the process of which will be laid down in a separate bid bulletin or the house rules during the Pre-Bid Conference. xxx.</p> <p>[...]</p> <p>During the Pre-Bid Conference, the TPBAC shall present to the Interested Bidder/s the sealed envelope containing the Reserve Price, signed and prepared by Meralco. The TPBAC shall then place the sealed envelope inside an outer envelope marked as follows:</p> <p>[...]</p> <p>The members of the TPBAC in physical attendance shall then sign over the sealed flap of the outer envelope. <del>One authorized representative of the Interested Bidder/s is</del> <b><u>The captive customer representative members of the TPBAC shall be</u></b> required to attend in person in order to sign over the sealed flap of the outer envelope to ensure its integrity. [...]</p>
2	<p>Section 2.2, p.12-13 of the IPB</p>	<p>2.2. SUMMARY OF BIDDING</p> <p>[...]</p> <p>If the Qualified Bidders’ total Offered Contract Capacities go beyond the required Contract Capacity (i.e. more than 1,800 MW), the Qualified Bidder that fills up the last stack (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 Price. A Bidder with</p>

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		<p>the Marginal Bid Offer and a candidate recipient of a Notification of Best Bid, which refuses to accept the reduction of its Offered Contract Capacity up to the extent of the required Contract Capacity at its Proposed Price, shall have its Bid Security forfeited <b><u>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 1,000 MW but only 200 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.</u></b></p>
3	Section 3.3.2	<p>3.3.2 FORFEITURE OF BID SECURITY</p> <p>The Bid Security shall be subject to forfeiture in its entirety in favor of Meralco upon the occurrence of any of the following events:</p> <p>[...]</p> <p>(f) a Bidder with the Marginal Bid Offer and a candidate recipient of a Notification of Best Bid refuses to accept the reduction of its Offered Contract Capacity up to the extent of the required Contract Capacity and at its Proposed Price, <b><u>but in this forfeiture of Bid Security, Meralco shall only retain the amount 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;</u></b></p> <p>[...]</p>
4	Section 2.10.2 (b)	<p>2.10.2 CONFLICT OF INTEREST</p> <p>[...]</p> <p>(b) If at any time prior to the signing of the PSA, any Bidder, <del>or any of its Affiliates,</del> is found to have a Conflict of Interest as defined in this Section 2.10.2 (Conflict of Interest), it shall be disqualified from further participating in the Bidding. If the Conflict of Interest involves another Bidder, then both Bidders shall be disqualified.</p>
5	Section 3.1.3.	<p>3.1.1 Notarized Certification of Absence of Unsatisfactory Performance Record and Outstanding Dispute, or Due and Demandable Financial Obligation/s, using the form in Annex QD-4, and a Notarized Certification from the Bidder's</p>

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		<u>counterparty (i.e. Meralco and/or its Affiliates engaged power generation, distribution, and supply)</u> Counterpart(ies) using the form in Annex QD-4-A (without modification).
6	Section 3.1.4.	<p>3.1.4 Notarized Certification regarding Technical Qualification (Reference Plant), using the form in Annex QD-5, with the following attachments: [...]</p> <p>(b) In respect of any Reference Plant, proof that the Reference Plant is capable of generation of electricity of at least 150 MW, which (i) in case of a Reference Plant located in the Philippines, must be supported <b>an the latest twelve (12) months</b> official document [GCMR] of the Bidder's Reference Power Plant as submitted by the Bidder to the ERC, showing that it attained a simple monthly average of at least 85% PCF over a 3-month consecutive period of operations <b>within the most recent twenty-four (24) month period of operations</b>, certified as a true copy by the corporate secretary, in which case it must be under oath and notarized; or (ii) in case of a Reference Plant located outside the Philippines, any equivalent or similar document; [...]</p>
7	Section 3.3	<p>3.3. BID PRICE AND BID SECURITY</p> <p>No later than the Bid Submission Deadline, a Bidder must submit its Bid Price in a separate sealed envelope (Envelope 3) consisting of the following documents (collectively referred to as the "Bid Price"), using the relevant forms indicated in this Section 3.3: [...]</p> <p>(f) In view of the DOE Circular No. DC2019-012-0018, the Bidder shall also indicate the Ancillary Services (AS) Cost Recovery cap on a yearly basis starting Contract Year 1, in PhP/kWh, <b><u>will be included in the Headline Rate and the LCOE evaluation. To maintain the resulting ranking of the LCOE evaluation regardless of the ERC's resolution on the aforementioned DOE Circular, the AS Cost Recovery cap of each Bidder shall be set at PhP 0.2800 /kWh ("Floor Value") for each Contract Year. The Bidder has the option to nominate its own AS Cost Recovery cap for each Contract Year but can only nominate a value higher than the Floor Value. If the Bidder elects to nominate its own AS Cost Recovery cap on any Contract Year, it will waive its right to protest the resulting ranking of the LCOE evaluation in case the ERC issues a resolution disallowing the AS Cost Recovery as envisioned in the aforementioned DOE Circular</u></b> which will be used in computing the LCOE.</p> <p>This AS Cost Recovery cap shall assume a proportionate allocation of AS charges among the affected generation companies and that such AS charges are considered pass-through costs pursuant to existing government regulations. Note that for purposes of actual implementation of the PSA, the AS charges contemplated under this CSP shall be the</p>

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		<p>lower between the AS Cost Recovery cap or the actual AS charges incurred by the power supplier. Such AS charges will only be imposed and billed to Meralco upon approval by the relevant government agency of the implementing rules or guidelines providing for the imposition of ancillary services charges on account of the Winning Power Supplier; and [...]</p>
8	Section 3.3 (d) 3.	<p>3.3. BID PRICE AND BID SECURITY</p> <p>No later than the Bid Submission Deadline, a Bidder must submit its Bid Price in a separate sealed envelope (Envelope 3) consisting of the following documents (collectively referred to as the "Bid Price"), using the relevant forms indicated in this Section 3.3: [...]</p> <p>(d) A soft copy of the Bidder's duly accomplished Financial Evaluation Workbook submitted as an electronic copy file contained in the CD-R/DVD-R optical storage device or a USB/thumb flash memory drive as required in Section 3.4, which considers the following: [...]</p> <p>3. If the Nominated Power Plant is a coal plant, the Bidder shall indicate the coal rank <b><u>(stated in kcal/kg at GAR)</u></b> and state the Guaranteed Net Plant Heat Rate (GNPHR), in Btu/kWh at HHV. [...] [...]</p>
9	Section 3.4.1 (f)	<p>3.4.1 In all cases of format requirements for the Bidder's submission of Qualification Documents, Technical Proposal and Bid Price: [...]</p> <p>(f) All prices shall be expressed in Philippine Pesos (PHP) <del>and/or in US Dollars (US\$)</del>. The Bidder may write down the prices in words (handwritten will be allowed) to re-confirm the total amounts/figures reflected in the Financial Evaluation Workbook. [...]</p>
10	Section 3.3.1	<p>3.3.1 VALIDITY AND PURPOSE OF BID SECURITY [...]</p> <p>In the case of the Winning Power Supplier, the Bid Security shall be kept valid until replacement thereof with a Performance Security as required under the PSA template. In addition, if the Winning Power Supplier fails to secure an ECC issued by the DENR within six (6) months from filing of the PSA before the ERC for approval, the Winning Power Supplier is required to increase its Bid Security by one hundred percent (100%) of the original value, and shall continue to increase the same by</p>

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		<p>100% of the prevailing value every 6 months thereafter until the ECC is actually submitted to the ERC, provided, however, that in no case shall the total Bid Security exceed the total project cost of the Plant corresponding to the Contract Capacity, <b><u>provided further, that if the Winning Power Supplier still fails to secure the ECC and submit it to the ERC by the date falling six (6) months before the COD, Meralco shall have the right to forfeit the Bid Security in its entirety and to terminate the PSA. In no case shall the Winning Power Supplier's failure to secure and submit the ECC, for any reason, be deemed as an event of force majeure or as a situation that is beyond the control of the Winning Power Supplier.</u></b></p>
11	Section 3.1.2	<p>3.1.2 Company Information, using the form in Annex QD-2, with the following attachments; [...] (d) a diagram of the corporate structure of the Bidder with an indication of which entity has Controlling interest over, or is the Affiliates <b><u>engaged in the power industry</u></b> or Ultimate Parent of the Bidder, which shall be certified by the corporate secretary/assistant corporate secretary as a true and correct depiction of the corporate structure of the Bidder, which certification must be under oath and notarized; [...]</p>
12	Section 9.71	<p>9.71 "<b>Unsatisfactory Performance</b>" means any of the following:</p> <p>(a) In relation to any project or contract <b><u>with Meralco and/or its Affiliates engaged in power generation, distribution, and supply (the list of Meralco's Affiliates are provided in Schedule 2)</u></b> that was commenced or in the process of implementation within the last five (5) years prior to the Bid Submission Deadline (as defined below) by the Bidder –</p> <p>(i) a record of failure by the Bidder or any of its Affiliates engaged in power generation to satisfactorily perform any of its material obligations for any such project or contract, (such as, but not limited to, Power Supply Agreements, financing documents, etc.) within the last five (5) years. It also includes a record of failure to timely pay or comply with its material obligations in any of its finance documents with creditors entered into in connection with the development and implementation of the said project or contract.</p> <p>The Bidder shall submit notarized certifications issued by <b><u>Meralco and/or its Affiliates engaged power generation, distribution, and supply</u></b> the Counterpart(ies) (defined below) of the Bidder and any of its Affiliates <del>engaged in power generation</del> attesting that within the last five (5) years the Bidder or any of its Affiliates engaged</p>

Item	Reference / Subject Matter of Amendment	Amendments
		<p>in power generation has no previous record of failure to perform any of its material obligations for such project or contract. For this purpose only, <del>Counterpart(ies)</del> may include Meralco <b>(i.e. submission of notarized certifications), the financial lender/s of the Bidder or any of its Affiliates engaged in power generation of any such project or contract need not issue the said certification but their identities must be declared or disclosed;</b></p> <p>(ii) the expulsion of the Bidder or any of its Affiliates engaged in power generation from any such project or contract;</p> <p>(iii) the termination or suspension of any such project or contract due to the willful breach of its obligations by the Bidder or any of its Affiliates engaged in power generation;</p> <p>(iv) the material violation of laws and/or regulations by the Bidder or any of its Affiliates engaged in power generation applicable to any such projects or contracts, including but not limited to environmental, health, safety, labor and social welfare laws and regulations, as evidenced by findings of the relevant competent authority; or</p> <p>(b) Inclusion in a blacklist issued by any governmental agency of the Philippines or in the Debarred and Cross-Debarred Firms &amp; Individuals list posted in the World Bank website (<a href="http://www.worldbank.org/debarr">www.worldbank.org/debarr</a>), whether as an individual contractor, partnership or corporation or as a member of a joint venture or consortium;</p>
13	Section 9.46	<p>9.46 <b>“Outstanding Dispute”</b> refers to any pending judicial, administrative, contractual or alternative dispute resolution proceeding between the Bidder or any of its Affiliates engaged in power generation, on one hand, and Meralco <b><u>and/or its Affiliates engaged power generation, distribution, and supply (the list of Meralco’s Affiliates are provided in Schedule 2)</u></b>, and/or <del>Counterpart(ies)</del> in relation to any project or contract in power generation, on the other, provided, that the following instances with respect to pending disputes with <b><u>with Meralco and/or its Affiliates engaged power generation, distribution, and supply</u></b> are excluded from this definition:</p> <p>(i) <del>disputes where the Bidder/its Affiliates engaged in power generation itself filed a case/suit against its</del> <b><u>Meralco and/or its Affiliates engaged power generation, distribution, and supply</u></b> to protect its lawful interests and the <b><u>Meralco and/or its Affiliates engaged power generation, distribution, or supply</u></b> did not file a countersuit or counterclaim against the Bidder/its Affiliates engaged in power generation, subject to item (ii) below; and</p>

Item	Reference / Subject Matter of Amendment	Amendments												
		<p><del>(ii) when a suit or countersuit involves Four Hundred Thousand Pesos (Php400,000.00) or less, and there is no allegation of fraud or intentional non-payment on the part of the Bidder/its Affiliates engaged in power generation;</del></p> <p>and provided further, that the following pending judicial or administrative cases involving the Bidder or any of its Affiliates engaged in power generation and Meralco are excluded from the definition of Outstanding Dispute:</p> <table border="1" data-bbox="862 532 2080 1425"> <thead> <tr> <th data-bbox="862 532 1452 618">Case Title and Docket Nos.</th> <th data-bbox="1452 532 2080 618">Subject Matter</th> </tr> </thead> <tbody> <tr> <td data-bbox="862 618 1452 786"><i>Bayan Muna, et. al. v. Energy Regulatory Commission (ERC), et. al.</i> (G.R. Nos. 210245, 210255 &amp; 210502)</td> <td data-bbox="1452 618 2080 786">Supreme Court T.R.O. on MERALCO's December 2013 billing rate increase in relation to the generation cost price spike in November 2013 and December 2013</td> </tr> <tr> <td data-bbox="862 786 1452 976"><i>SN Aboitiz-Magat, et. al. v. ERC, et. al.</i> (G.R. No. 246641-50, 246729, 246739-48, 246685-94, 246873-82, 246661-70, 246631-40)</td> <td data-bbox="1452 786 2080 976">Supreme Court – Legality of ERC Order voiding the Luzon WESM prices during the November and December 2013 supply months</td> </tr> <tr> <td data-bbox="862 976 1452 1114"><i>ERC I.U. v. Meralco and TMO</i> (ERC Case No. 2015-025 MC)</td> <td data-bbox="1452 976 2080 1114">ERC Investigating Unit complaint in relation to the generation cost price spike in November 2013 and December 2013</td> </tr> <tr> <td data-bbox="862 1114 1452 1252"><i>Meralco v. SPPC, et. al.</i> (ERC Case No. 2013-077 MC)</td> <td data-bbox="1452 1114 2080 1252">Petition for Dispute Resolution with the ERC in relation to the refund of the 2.98% transmission line losses</td> </tr> <tr> <td data-bbox="862 1252 1452 1425"><i>In Re: Petition for Dispute Resolution Meralco vs. NPC et. al.</i> (ERC Case No. 2010-002 MC)</td> <td data-bbox="1452 1252 2080 1425">Petition for Dispute Resolution with the ERC in relation to the implementation of the Mandated Rate Reduction</td> </tr> </tbody> </table>	Case Title and Docket Nos.	Subject Matter	<i>Bayan Muna, et. al. v. Energy Regulatory Commission (ERC), et. al.</i> (G.R. Nos. 210245, 210255 & 210502)	Supreme Court T.R.O. on MERALCO's December 2013 billing rate increase in relation to the generation cost price spike in November 2013 and December 2013	<i>SN Aboitiz-Magat, et. al. v. ERC, et. al.</i> (G.R. No. 246641-50, 246729, 246739-48, 246685-94, 246873-82, 246661-70, 246631-40)	Supreme Court – Legality of ERC Order voiding the Luzon WESM prices during the November and December 2013 supply months	<i>ERC I.U. v. Meralco and TMO</i> (ERC Case No. 2015-025 MC)	ERC Investigating Unit complaint in relation to the generation cost price spike in November 2013 and December 2013	<i>Meralco v. SPPC, et. al.</i> (ERC Case No. 2013-077 MC)	Petition for Dispute Resolution with the ERC in relation to the refund of the 2.98% transmission line losses	<i>In Re: Petition for Dispute Resolution Meralco vs. NPC et. al.</i> (ERC Case No. 2010-002 MC)	Petition for Dispute Resolution with the ERC in relation to the implementation of the Mandated Rate Reduction
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Item	Reference / Subject Matter of Amendment	Amendments						
14	Section 9.21	9.21 [ <i>Section number unused</i> ] <del>“Counterpart(ies)” refers to a counterparty, other than Meralco, who has an existing project(s) or contract(s) with the Bidder or any of its Affiliates engaged in power generation, that was commenced or in the process of implementation within the last five (5) years prior to the Bid Submission Deadline. It can also refer interchangeably to the financial lender/s of the Bidder or any of its Affiliates engaged in power generation for the said project(s) or contract(s).</del>						
15	Schedule 2 (new)	<p style="text-align: center;"><b>SCHEDULE 2</b> <b>List of Manila Electric Company’s (MERALCO) Affiliates engaged in Power Generation, Distribution and Supply</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th data-bbox="692 638 1280 688">Generation</th> <th data-bbox="1280 638 1709 688">Distribution</th> <th data-bbox="1709 638 2245 688">Supply</th> </tr> </thead> <tbody> <tr> <td data-bbox="692 688 1280 1187">                     1. Atimonan One Energy, Inc.                      2. Calamba Aero Power Corporation                      3. LagunaSol Corporation                      4. Meralco PowerGen Corporation (MGen)                      5. MGen Renewable Energy, Inc. (MGreen)                      6. MSpectrum, Inc.                      7. Nortcsol III, Inc.                      8. Powersource First Bulacan Solar, Inc.                      9. San Buenaventura Power Ltd. Co.                      10. Phoenix Power Solutions, Inc.                 </td> <td data-bbox="1280 688 1709 1187">                     1. Clark Electric Distribution Corp. (CEDC)                 </td> <td data-bbox="1709 688 2245 1187">                     1. Clarion Energy Management, Inc.                      2. Cogent Energy                      3. MPower                      4. Vantage Energy Solutions and Management, Inc.                      5. Solvre, Inc.                 </td> </tr> </tbody> </table>	Generation	Distribution	Supply	1. Atimonan One Energy, Inc. 2. Calamba Aero Power Corporation 3. LagunaSol Corporation 4. Meralco PowerGen Corporation (MGen) 5. MGen Renewable Energy, Inc. (MGreen) 6. MSpectrum, Inc. 7. Nortcsol III, Inc. 8. Powersource First Bulacan Solar, Inc. 9. San Buenaventura Power Ltd. Co. 10. Phoenix Power Solutions, Inc.	1. Clark Electric Distribution Corp. (CEDC)	1. Clarion Energy Management, Inc. 2. Cogent Energy 3. MPower 4. Vantage Energy Solutions and Management, Inc. 5. Solvre, Inc.
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## MATRIX OF COMMENTS 1 - FORMATTING/PROCEDURAL RELATED QUERIES/COMMENTS

	TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION  RECOMMENDATIONS / PROPOSED WORDING	RESPONSE
	Response to Queries and Requests	Instructions to Prospective Bidders ("IPB"), Section 2.2(d)	<p>The IPB states that Bidders will have until 24 December 2020 within which to submit their queries or requests and TPBAC shall respond or issue notices/bulletins no later than 14 January 2021. Bid Submission Deadline is on 21 January 2021.</p> <p>We request that the TPBAC reply to queries or requests as soon as possible so that Bidders will still have the opportunity to submit further queries or requests that they may deem necessary following their receipt of the TPBAC's reply.</p>	<p>The TPBAC shall collate its response to all queries and comments of Interested Bidders and release it through a bid bulletin as soon as the deadline to submit advance queries and comments for the Pre Bid Conference lapses.</p> <p>This is to ensure an orderly process because the TPBAC will collate all queries and eliminate repetitive queries before discussing and answering/resolving the Interested Bidder's queries/requests.</p>
	Financial Evaluation Workbook	IPB, Section 2.1(a)(v) Invitation to Bid, p. 5	<p>Among the Bidding Documents to be issued by TPBAC for the bid is the Financial Evaluation Workbook, including all its worksheets. In the Invitation to Bid, it is indicated that: "After receipt and validation of the Interested Bidder's proof of payment by the TPBAC-Secretariat with MERALCO, the TPBAC- Secretariat shall then transmit by email to the Interested Bidder the corresponding scanned copy of the Official Receipt of the payment of the Participation Fee within two (2) business days. This email will be accompanied by a link to a cloud-based online repository/folder containing its Bidding Documents, which shall be accessible and available only for that particular Interested Bidder through the registered email/s of its authorized representative/s indicated in its Expression of Interest and/or bidder specific passwords." In this regard, the TPBAC has acknowledged our payment and has provided us the Bidding Documents, except for the Financial Evaluation Workbook. To date, we have not yet received the Financial Evaluation Workbook, including all its worksheets.</p> <p>We request that the Financial Evaluation Workbook, including all its worksheet, be immediately provided to FGEPS.</p>	Yes, the initial Financial Evaluation Workbook was provided to all Interested Bidders last 24 November 2020, see Bid Bulletin No. 1.
	Pre Bid Conference		Will the Bidders be provided copies of the written responses flashed today?	Yes, all responses to all queries of the bidders will be released through a Bid Bulletin. The target for the TPBAC to release this is December 21-23, 2020 to release all responses to the advance queries. The TPBAC Secretariat even received additional queries even after the deadline of December 7, so we will also include those when the responses are released, hopefully before December 23.

	Pre Bid Conference		<p>Please provide the bidders with your collated/summarize questions and your responses be shared to all bidders for better appreciation of your responses?</p> <p>When will the soft copy of the annexes/appendices give given to the bidders?</p>	-same answer-
	Pre Bid Conference		<p>We understand that in the interest of time we cannot go through all questions today one by one and that bid bulletin containing written responses shall be issued in the "week of December 21". At the same time, the Bidder only has until December 24 to ask follow-up questions, including in respect of the responses. It is requested that the bid bulletin containing the responses be released sooner and that the period to ask follow-up questions be extended.</p> <p>Further to the previous question, it is requested that a copy of the matrices shown today be provided to the bidders after this conference.</p>	<p>Section 1 and Section 2.2 (d) in the IPB, which provides for 24 December 2020 as the Bidders' deadline within which to submit additional written queries, or requests for clarifications or revisions to the Bidding Documents, shall now be moved to <b>3 January 2021</b>;</p> <p>-same answer above-</p>
	Pre Bid Conference		Can you provide the final version of the Final Workbook earlier than your initial schedule?	It was stated in Bid Bulletin 1 that the final version will be released no later than 15 January 2021. The reason for that is we want the values that will be used in the final version to be as close as possible to the bid submission deadline. We will do our best to release the final version earlier, as long as we are able to get the actual values and indices that we will be using for the final version.
	IPB	2.2.f and 4.4.7	<p>the TPBAC may declare the number of days (after the Opening of Pre-Qualification Documents) that it will need to conduct the Pre- Qualification Evaluation</p> <p>The TPBAC shall give the DOE and ERC observers 5-days notice before the date of Opening of Bid Prices (after a Pre-Qualification Evaluation of several days)."</p> <p>There is a maximum of 5 months to conduct the CSP process from the time of publication to submission of the PSA to ERC and an extended period of Pre-Qualification Evaluation may go past the limit. <b>We suggest limiting to a maximum of 7 calendar days to conduct the Pre-Qualification Evaluation.</b></p> <p>If 1800MW CSP will be a failed bidding, TPBAC to confirm <b>if this will be considered as the second round of CSP?</b></p> <p>TPBAC to also clarify the procedures for Meralco to proceed with negotiating a contract after a failed bidding.</p>	<p>The suggested period to conduct the Pre-Qualification Evaluation period is duly noted.</p> <p>If the 1,800 MW CSP is declared a failed bidding by the TPBAC, and pursuant to the 2018 DOE CSP Rules the 5 month period to complete a CSP will be exceeded, the option to proceed to a second round will <b>not</b> be allowed under the 2018 DOE CSP Rules.</p> <p>Without proceeding to a second round (and not having a second failure of bidding), the DU cannot proceed to direct negotiations for its required contract capacity.</p>

	IPB	2.2 Summary (f)	<p>The document states that “on or before 9:00 a.m. of 25 January 2021, the Bidders shall submit to the TPBAC their Document Submission by uploading to the cloud-based online repository folder assigned to the Interested Bidder, three separate and password protected zip folder containing the scanned copies ...”</p> <p>Also, it states that “as part of the Bid Submission deadline, between 8:00 a.m. and 9:00 a.m. of 25 January 2021, the Interested Bidders shall submit, ..., the original copy of all the said documents, ...”</p> <p>Will it be deemed a non-submission if either electronic or Original hard copy are not submitted on time?</p> <p>We suggest providing a mechanism to show evidence of submission in the cloud-based online repository folder.</p>	<p>Yes, the simultaneous punctual and on time uploading to the cloud-based folder and physical submission of the 1-set Original Copy (as defined in the IPB) are both required to be submitted on or before 9:00 AM of the Bid Submission Deadline.</p> <p>The only difference is, in order to allow leeway for a possible scenario of IT/internet system constraint, the uploading to the cloud-based folder is not required to be done between 8:00 A.M. to 9:00 A.M. of the Bid Submission Deadline (unlike the physical submission of the Original Copy). The cloud-based folder will be opened for uploading the day after the Deadline to Increase Offered Contract Capacity (i.e. 19 January 2021). Thus, the onus of ensuring prompt uploading of large-sized files, etc. is on the Interested Bidder to do it ahead of time before 9:00 A.M. of the Bid Submission Deadline, to ensure timely uploading of the same.</p>
	IPB	Sec. 2.2 (f) paragraph 6	<p>“TPBAC shall release the result of the Pre-Qualification Evaluation as to which Interested Bidder/s will be allowed to proceed to Stage 3.”</p> <p>Please advise if all Interested Bidders will be allowed to inquire about the results to the Pre-Qualification Evaluation.</p>	<p>Only Interested Bidders that (i) submitted Document Submissions <b>and</b> (ii) “passed” the pass/fail evaluation during the Opening of the Bids will be provided an update as to the results of the Pre-Qualification Evaluation.</p>
	IPB	2.8	<p>only the Interested Bidders’ authorized representative/s (not more than three (3) persons) indicated in the Expressions of Interest are allowed to attend and participate in the Pre-Bid Conference.</p> <p>We suggest increasing the maximum number of authorized representatives to five (5) persons as per previous bid.</p>	<p>We have to maintain the maximum number of 3 authorized representatives, this is to allow for efficient administration of the videoconferencing/virtual holding of the relevant stage of this CSP.</p>
	IPB - Financial Evaluation Workbook	Sec. 3.3 (d)	<p>Please confirm if a soft copy of the Financial Evaluation Workbook will be sufficient and that it will not be included in the hard copies to be submitted.</p> <p>Please clarify if a separate USB/ thumb flash memory drive will be required for the soft copy of the Financial Evaluation Workbook or if it will be included in the zipped folder for the Bid Price and Bid Security.</p> <p>Will the Financial Evaluation Workbook include printable pages of the submitted bid? Will the Bidder be signing the printable pages to give evidence to the Bidder’s Bid?</p>	<p>Soft copy (for cloud-based folder uploading <b>and</b> USB storage device attachment to the original copies box) and printouts, signed by the bidder’s authorized representative (for the original copy box) are required. See Sec. 3.3 of the IPB, particularly items (d) and (g).</p>

	IPB - Financial Evaluation Workbook	Sec. 3.3 (f)	We noted that the Ancillary Services (AS) Cost Recovery cap is not included in the Bid Requirements. Please clarify if it will still be required to be indicated in the Financial Evaluation Workbook.	Yes, it will be required to be indicated as it is included in the Financial Evaluation Workbook.
	IPB - Financial Evaluation Workbook	Sec. 3.3 (g)	Please clarify if only the worksheets enumerated (as reflected in the Financial Evaluation Workbook) will be submitted in hard copies.	Yes, the worksheets as reflected in the Financial Evaluation Workbook will be printed, signed by the bidder's authorized representative, and submitted as a hard copy submission in the original copies box of the bidder.
	IPB - Stage Three: Opening of Envelope 3	4.5.3	<p>In case of a tie between or among Qualified Bidders having the lowest Bids or whose offers are considered the Marginal Bid Offer, the TPBAC shall give these bidders a period of time, on the same day, to improve their Offered Price by submitting a lower LCOE until the tie is broken. Should both Qualified Bidders refuse to improve their Offered Price, the tie shall be broken through toss coin, drawing of lots, or some other mechanism won by chance.</p> <p>We suggest to break the tie in the following circumstance only: 1)The lowest priced bidders whose prices are tied have a total Offered Contract Capacity exceeding the required Contract Capacity There are at least two Marginal Bidders whose prices are tied</p>	<p>The tie breaking mechanism also has to take into account Qualified Bidders having the lowest Bid but are not considered the Marginal Bid Offer.</p> <p>For example, two Bidders are tied but when stacked/ranked, their Offered Contract Capacities exceed the December 2024 COD requirement of 1,200 MW. Which of the tied Bidders will have its Offered Contract Capacity required to be delivered on December 2024 and, assuming there is excess, the rest for the 600 MW by May 2025 COD requirement? In this scenario, there is a need to break the tie but stacked/ranked offers are not considered Marginal Bid Offers.</p>
	Bid Requirements for Contract Capacity of 1,800 MW (net)		<p>"Bid Price and Bid Security</p> <p>Using the relevant forms prescribed in the IPB, the Bidder must submit its Bid Letter, Bid Security (as defined below), <b>Proposed Price (in hard copy form and in the Financial Evaluation Workbook encoded in a CD-R/DVD-R optical storage device or a USB/thumb flash memory drive)"</b></p> <p>We noted that the Proposed Price is not included in Sec. 3.3 of the IPB. Please clarify if it will still be required.</p> <p>If yes, please confirm that only the Proposed Price will be submitted in a hard copy form. We note that based on Sec. 3.3 (d) of the IPB, the Financial Evaluation Workbook will only be submitted through a soft copy.</p>	<p>The term Proposed Price, as defined in Sec. 9.57 of the IPB refers to "the proposed base values and applicable price escalation for each of the tariff component as set out in the PSA template." By analogy, the Financial Evaluation Workbook's soft copy file and printout includes the term Proposed Price, thus, this is included in Sec. 3.3 of the IPB.</p> <p>Soft copies are to be submitted twice. One is during the uploading for the cloud-based folder uploading <b>and</b> the other is for the USB storage device attachment to the original copies box. The hard copy printouts, to be signed by the bidder's authorized representative, is only for the original copy box. See Sec. 3.3 of the IPB, particularly items (d) and (g).</p>
	IPB	Sec. 2.10.2	<p>"All Bidders found to have conflicting interests shall be disqualified to participate in this Bidding xxx. A Bidder may be considered to have conflicting interests with another Bidder in any of the events described below:</p> <p>(i) A Bidder has the same duly authorized legal representative as that of</p>	

			<p>another Bidder for purposes of this Bid;                  (ii) A Bidder’s Nominated Power Plant or listed portfolio of plants is also a Nominated Power Plant or listed portfolio of plants of another Bidder in (x) this Bidding or (y) in another pending competitive selection process being conducted by Meralco, in which case, both will be considered in Conflict of Interest; or                  (iii) A Bidder submits more than one Bid in this Bidding.”</p> <p>Please (a) confirm that the grounds for conflict of interest enumerated in Section 2.10.2 are exclusive and (b) provide the basis/guidelines for purposes of determining which power generation plants form part of a Bidder’s “listed portfolio of plants” under item (ii).</p> <p>We would also like to request for a list of the other potential Bidders (that have submitted an Expression of Interest) to allow us to make a determination of the existence of a conflict of interest under the IPB.</p>	<p>a. The grounds can be cited against the Bidder in a cumulative manner, not exclusive. But if the intention of the query is to clarify if there are other conflict of interest grounds, for purposes of this bidding, the conflict of interest grounds are only those enumerated in Sec. 2.10.2 of the IPB.</p> <p>b. The basis to determine a “Bidder’s Nominated Power Plant or listed portfolio of plants” is the latest Expression of Interest (<b>EOI</b>) submitted by the Bidders. The basis of determining will be the Nominated Power Plant as submitted in the latest Expression of Interest (i.e. whether the same Nominated Power Plant (single/portfolio) being offered by another Bidder in this Bidding or another pending CSP being conducted by Meralco).</p> <p>c. Instead of issuing a list, TPBAC to determine instead if the Bidders who submitted an EOI have conflict of interest.</p>
	<p>IPB</p>		<p>TPBAC to confirm that Document Submissions can be signed by two (2) authorized representatives of the Bidder.</p> <p>TPBAC to consider the following changes to the relevant Document Submissions to reflect two (2) authorized representatives from the Bidder who will sign the relevant Document Submissions</p> <p>I We, (name 1) and (name 2), Filipinos, both of legal age, with office address at (address), as the (insert position/designation)s of (name of Bidder)</p> <p>In the signature portion:</p> <p>By:                  Name:[Authorized Representative 1] Designation                  and                  By:                  Name: :[Authorized Representative 2] Designation:</p>	<p>This will be allowed provided that the names of the authorized representatives of the Bidder authorized to sign the relevant Document Submissions are specifically indicated or authorized in Secretary’s Certificate or Board/Partnership Resolution, as provided in ANNEX QD-1A of the IPB (Authority to Participate in the Bidding and Designation of Authorized Representative).</p>
<p>Format of Submission of</p>		<p>3.4.2 (a) (i)</p>	<p>One (1) complete original set, clearly marked on each page as “ENVELOPE 1-QD-ORIGINAL/” and numbered continuously, and taped/attached to the said set is a USB/thumb flash memory drive containing the electronic copies/scanned files (PDF format) of the contents of the said original; and</p>	<p>There is no requirement for the authorized representative to sign each and every page, but if the bidder wishes to do so, it will not be considered as a disqualification ground.</p>

	<p>Qualification Documents</p> <p>Page 33</p>	<p>Page 33</p>	<p>One (1) complete original set, clearly marked on each page as “ENVELOPE 2-TP-ORIGINAL/” and numbered continuously, and taped/attached to the said set is a USB/thumb flash memory drive containing the electronic copies/scanned files (PDF format) of the contents of the said original; and</p> <p>One (1) complete original set, clearly marked on each page as “ENVELOPE 3-BID-ORIGINAL/” and numbered continuously, and taped/attached to the said set is a USB/thumb flash memory drive containing the electronic copies/scanned files (PDF format) of the contents of the said original; and</p> <p>QUESTION: Are the pages of each document to be submitted be not required to be signed by the bidder’s authorized representative?</p> <p>Proposed revision:</p>
	<p>Format of Submission of Technical Proposal</p> <p>3.4.3 (a) (i)</p> <p>Page 33</p>	<p>3.4.3 (a) (i)</p>	<p>One (1) complete original set, clearly marked on each page as “ENVELOPE 3-BID-ORIGINAL/” and numbered continuously, and taped/attached to the said set is a USB/thumb flash memory drive containing the electronic copies/scanned files (PDF format) of the contents of the said original; and</p>
	<p>Format of Submission of the Bid Price</p> <p>3.4.4 (a) (i)</p> <p>Page 34</p>	<p>3.4.4 (a) (i)</p>	<p>One (1) complete original set, clearly marked on each page as “ENVELOPE 1-QD-ORIGINAL/”, <b>with the bidder’s authorized representative signature</b> and numbered continuously, and taped/attached to the said set is a USB/thumb flash memory drive containing the electronic copies/scanned files (PDF format) of the contents of the said original; and</p> <p>One (1) complete original set, clearly marked on each page as “ENVELOPE 2-TP-ORIGINAL/”, <b>with the bidder’s authorized representative signature</b> and numbered continuously, and taped/attached to the said set is a USB/thumb flash memory drive containing the electronic copies/scanned files (PDF format) of the contents of the said original; and</p> <p>One (1) complete original set, clearly marked on each page as “ENVELOPE 3-BID-ORIGINAL/”, <b>with the bidder’s authorized representative signature</b> and numbered continuously, and taped/attached to the said set is a USB/thumb flash memory drive containing the electronic copies/scanned files (PDF format) of the contents of the said original; and</p>

	Bid Documents –  Certified True and  Correct Copies	Page 2.1	Can the bidder who certifies a document as true and correct on each and every page; also execute a certification page?  Meralco to provide a template for the certification page for bidders to use for uniformity.	Yes, as Sec. 2.1 (h) of the IPB clearly provides for an alternative. No particular template is required as long as the contents required in Sec. 2.1 (h) is followed.
	Format of Submission of the Bid Price	3.44	The bidder is required to submit one complete original set of its bid price marked with the phrase ENVELOPE 3-BID-ORIGINAL. Question: Will this marking be made on the original bid security issued by the bank as it might affect the integrity or the validity of said bid security?	For purposes of the original Bid Security document, we agree not to stamp the pages with the phrase “ENVELOPE 3- BID- ORIGINAL.” However, please note that if the original Bid Security is contained in a sealed envelope or has cover page/letter, <b>we are amenable if the marking is made on the said sealed envelope or cover page/letter only.</b> If the sealed envelope or cover page is not available, the original Bid Security document is suggested to be photocopied, and the said copy be submitted also and be the one marked as “ENVELOPE3-BID-COPY ONLY.”
	Currency in the Statement of Financial Capability / Annex QD-6	Table in item 2 of Annex QD-6 / Pages 69-70	The currency used in the 2019 audited financial statements is not in Philippine Pesos or in US Dollars. What is the exchange rate to be used for this annex (e.g., Philippine Central Bank reference rate for 31 December 2019)? Can we include another column to show the figures in the currency reflected in the 2019 audited financial statements?	Amenable to add the additional column but it is required to disclose the source of the exchange rate to be used.
	Commitment Letter / Annex QD-7A	Annex QD-7A / Pages 70	For the 2 <sup>nd</sup> paragraph of the Commitment Letter, <b>is it possible to not indicate yet the exact committed amount?</b> Please refer to our proposed wording in the next column.  We own ( <i>insert number of shares</i> ), representing approximately ( <i>insert percentage</i> ) of the issued and outstanding capital stock of the Company. We undertake to provide to the Company <u>such amount equivalent to at least (<i>insert percentage</i>)</u> of the total amount funded by the shareholders, in the form of equity or shareholder loans, for the implementation of the Project.	Amenable to disclose the only the percentage of the commitment but it should clearly state what this percentage is referenced to the Total Project Cost, with easy reference to other financial qualification documents being submitted by the bidder.
	Confidentiality Undertaking	Executed Confidentiality Undertaking dated 19 October 2020	Section 4 of the Confidentiality Undertaking (Communications with Other Bidder) prohibits the signatory to the Confidentiality Undertaking from communicating, directly or indirectly, with any bidder about the competitive selection process, including the power supply agreement template. This limitation cannot be accepted by banks, equipment providers, construction	The intended and specific application of Sec. 4 of the Confidentiality Undertaking is for communications with <b>other</b> Bidders, so that communications are limited only with circle of the Bidder’s Representatives (defined therein) who need to know the Confidential Information for the purpose of evaluating the bidding/Project.

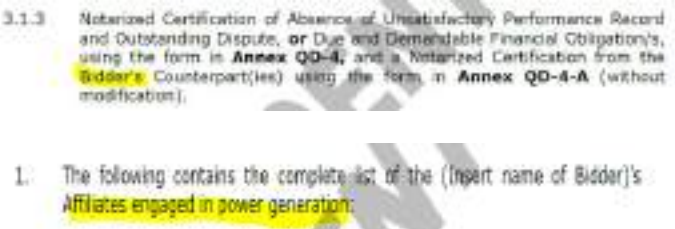
			<p>contractors or other service providers that service the Philippines energy market because it would operate as an exclusivity restriction on their business.</p> <p>Is it the intention of Meralco that Section 4 of the Confidentiality Undertaking should operate to prevent these parties from supporting multiple bidders or is Section 4 not applicable to such parties?</p> <p>Please confirm that Section 4 only applies to the bidder, its officers, directors, employees and affiliates.</p>	
	Initial Financial Evaluation Workbook		<p>The Financial Evaluation Workbook has been provided in a protected format such that Bidders are unable to see the calculations and linkages between the sheets.</p> <p>Please provide the Financial Evaluation Workbook in a viewable format which will allow Bidders to view the formulas and linkages associated in the computation of LCOE and headline rates.</p>	This is purposely done in order for the TPBAC to ensure the calculations and formula in computing the LCOE and other items in the Financial Evaluation Workbook are not tampered/changed, thus, easier to verify/confirm during the Opening of the Bid Prices (without needed to check each and every formula if it was changed by the bidder or not).
	Initial Financial Workbook		<p>It is implied in the Financial Evaluation Workbook that the line rental and AS Cost is VAT Included as it is being added to the "Delivered (VAT Inc)" portion.</p> <p>Please clarify if we need to include VAT in the Annual Line Rental Cap (LR<sub>CAP</sub>) and the Annual Ancillary Service Cost Recovery Cap (ASCR<sub>CAP</sub>), and if so, at what rate.</p>	No. Based on the Financial Evaluation Workbook, VAT is on the plant gate only.
	Form Documents		<p>PSA template and PSA template Appendices</p> <p>Please provide an unprotected word version of the PSA and the PSA appendices to allow us to provide a mark-up of the documents with the submission of our comments.</p>	As relayed to the TPBAC by the DU PSA team, they have previous experience of plagiarism violations of its PSA template and its appendices. Thus, it is preferred that any circulation of such template be made using a secured .PDF file only.
	Instructions to Prospective Bidders "Queries and Comments"	Section 2.9, Page 18	<p>Could we request the TPBAC to release or answer the bidder's queries no later than at least 14 days before the Bid Submission Deadline instead of 7 days to give the bidders ample time for revisions of their documents?</p> <p>Thereafter, the TPBAC shall respond or issue the necessary notices and bid bulletins to said queries or comments at least <del>seven (7) working days</del> <b>fourteen (14) working days</b> prior to the Bid Submission Deadline</p>	This is noted. The TPBAC has a deadline to respond to queries or comments on the Bidding Documents, it is on 14 January 2021.



	<p>Instructions to Prospective Bidders "Forfeiture of Bid Security"</p>	<p>Section 3.3.2 (j), page 30</p>	<p>We propose to add the wording "within a reasonable timeframe" in order to consider reasonable time for bidder to submit any documents that ERC may require.</p> <p>The Bid Security shall be subject to forfeiture in its entirety in favor of Meralco upon the occurrence of any of the following events:</p> <p>(j) the Winning Power Supplier fails to timely submit, without justifiable cause, any document that the ERC may require, <b><u>within a reasonable timeframe</u></b> for the successful filing of the relevant ERC application for approval of the PSA</p>	<p>No. For example, the ERC requires that the Winning Power Supplier submit the ECC for its Nominated Power Plant, since the Winning Power Supplier only submitted an ECC application during the Bid Submission Deadline. The onus is on the Interested Bidder that if it submits an ECC application during the Bid Submission Deadline and is later on declared a Winning Power Supplier, the risk of the ERC not accepting the PSA application for approval because it requires the submission of the ECC itself, and not just a mere application, falls on the said Interested Bidder/ Winning Power Supplier. Hence, the Interested Bidder must submit its bid with a mindset that if it is declared the Winning Power Supplier, it must possess the documents required by the ERC in its pre-filing checklist for the successful filing of the PSA (or anytime when the ERC is requiring such ECC to be submitted).</p> <p>In any case, Sec. 3.3.2. (j) is qualified that the failure to timely submit must be "without justifiable cause."</p>
	<p>Instructions to Prospective Bidders "Submission of Qualification Documents, Technical Proposal and Bid Price"</p>	<p>Section 3.4, Page 31</p>	<p>We request to change "5 days" to "5 working days" for the release of the checklist of Document Submissions to allow more time for Bidder's preparation.</p> <p>A checklist of Document Submissions, summarizing the Document Submissions of the Bidders as prescribed under Section 3 of this IBP, as amended or clarified by the bid bulletins, shall be prepared by the TPBAC and released to the Bidders through a bid bulletin at least five <b><u>working</u></b> (5) days before the Bid Submission Deadline.</p>	<p>Noted, however, the checklist is a mere reference guide. Whether it is released 5 days before or 5 working days before, the Interested Bidder should not rely on the said checklist to check its Document Submissions.</p> <p>As the cited IPB provision state: "The checklist of Document Submissions is being provided for the sole purpose of reference and convenience of the Bidders only. No reliance can be made on the said checklist and its issuance (including its contents) does not relieve Bidders of their responsibility to examine all the Bidding Documents and comply with the provisions of this IPB. In the event of a conflict or discrepancy between the checklist of Document Submissions and the IPB, the latter shall prevail."</p>

## MATRIX OF COMMENTS 2 - INSTRUCTIONS TO PROSPECTIVE BIDDERS / BIDDING DOCUMENTS-RELATED QUERIES/COMMENTS

	TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION	RESPONSE
			RECOMMENDATIONS / PROPOSED WORDING	
	Increase in Offered Capacity  Instructions to Prospective Bidders	2.2(e), Page 10	<p>(e) Interested Bidders shall no longer be allowed to <b>reduce</b> their indicated Offered Contract Capacity after the Expression of Interest Deadline, but <b>may increase</b> their indicated Offered Contract Capacity on or before <b>4:00 P.M. of 18 January 2021</b>, 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 increased Offered Contract Capacity on or before said deadline.</p> <p>Given that the Bidder may increase Offered Contract Capacity until 18 January 2021, can it also be allowed to increase the Installed Capacity of the Nominated Power Plant stated in its submitted Expression of Interest?</p>	<p><b>EOI re Nominated Power Plant</b> Yes, the Bidder may change the Installed Capacity of the Nominated Power Plant until 18 January 2021, by submitting a new EOI reflecting the change.</p>
	Instructions to Prospective Bidders "Summary of Bidding"	Section 2.2 (c), Page 9	Can the bidders revise their Expression of Interest particularly the details of the Nominated Power Plant?	Yes, the Bidder may change the details of the Nominated Power Plant until 18 January 2021, by submitting a new Expression of Interest reflecting the change.
	BOI Registration  Instructions to Prospective Bidders	Page 21, Section 3.1.2 and Annex QD-2; Page 21, Section 3.2	<p>IPB Page 21, Section 3.1.2 and Annex QD-2</p> <p>(e) if applicable, <b>copy of its registration</b> with the BOI, which shall be certified as a true copy by (i) the BOI; or (ii) the corporate secretary/assistant corporate secretary, in which case, it must be under oath and notarized;</p> <p>IPB Page 21, Section 3.2</p> <p>(i) If applicable, the Certificate of Registration issued by the Board of Investments (BOI), which shall be certified as a true copy by (i) the BOI; or (ii) the corporate secretary, in which case it must be under oath and notarized; and</p> <p>Can we submit on Bid Submission Deadline the application for BOI registration of the Nominated Power Plant; provided when declared as Winning Power Supplier, BOI registration certificate will be submitted at Post-Qualification?</p>	Yes, this will be allowed, as the requirement states "if applicable."
	TECHNICAL PROPOSAL, Certificate of Registration	Section 3.2 (l) / Page 26	For confirmation, the inclusion of the term "if applicable" implies that a similar document issued by another government entity is acceptable form of compliance on this regard. For instance, for Freeport- or PEZA-registered companies, a Certificate of Registration issued by the Freeport Authority or PEZA should suffice.	The term "if applicable" here is the requirement will only be required if the Nominated Power Plant is issued by the BOI a Certificate of Registration. If none, then a write-up/explanation will suffice why it is not applicable.

	TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION  RECOMMENDATIONS / PROPOSED WORDING	RESPONSE
	Bid Requirements "Technical Proposal (Envelope 2)"	Item (I), page 10	<p>We request that BOI Registration is presumed to be obtained given the long lead time between PSA award and COD.</p> <p><del>(I) If applicable, the Certificate of Registration issued by the Board of Investments (BOI), which shall be certified as a true copy by (i) the BOI; or (ii) the corporate secretary, in which case it must be under oath and notarized;</del></p>	-same answer-
	Affiliates  Instructions to Prospective Bidders	Page 21, Section 3.1.3 / Annex QD-4 /Annex QD-4-A	<p>IPB Page 21, Section 3.1.3 / Annex QD-4 /Annex QD-4-A and all other references to "Affiliates engaged in power generation" in the IPB relating to Outstanding Disputes and Unsatisfactory Performance</p>  <p>Can we <b>exclude</b> from the Affiliates engaged in power generation the <b>IPPAs</b> since they are not generating power but only managing the capacity of certain plants?</p> <p>Can we also <b>exclude</b> from the "Affiliates engaged in power generation" those companies with <b>no operational power plant</b> yet since they are not yet engaged in or in the business of power generation as of Bid Submission Deadline?</p>	<p><b>Unsatisfactory Performance certification</b></p> <p>The main purpose of the Counterparty certifications is because the extra diligence that is required to evaluate the reputation, track record, and capability of the Bidder or its Affiliates engaged in power generation, considering this is a CSP involving a large contract capacity, for a baseload supply requirement and for a long 20-year term, yet relatively young and brand new power plants are qualified to join. Most important of all, this being an open and competitive bidding already, where the DU cannot conduct due diligence on its possible counterparty for the PSA (unlike in a directly negotiated PSA in the past), this serves as a check to the reputation, goodwill or capability of Bidder as a possible PSA counterparty of the DU if declared a Winning Power Supplier. Hence, any Unsatisfactory Performance and/or pending Outstanding Disputes must be scrutinized properly.</p> <p>However, we took note of the concerns raised by the bidders' queries and suggested revisions on this Legal Requirement of the Bidder's Absence of Unsatisfactory Performance and Outstanding Dispute, thus, the TPBAC will revise the said requirement by limiting the coverage of "any project and contract" commenced or in the process of implementation within the last 5 years by the Bidder or any of its Affiliates engaged in power generation to <b>only those "with Meralco and/or its Affiliates engaged power generation, distribution, and supply"</b>. As a result, the Bidder/its Affiliate engaged in power generation shall only submit notarized certifications if it has a contract/project with <b>Meralco and/or its Affiliates engaged power generation, distribution, and supply</b> within the last 5 years, whereby Meralco/its Affiliates engaged in power generation, distribution and supply attests that the Bidder or any of its Affiliates engaged in power generation has no previous record of failure to perform any of its material obligations for such project or contract. <u>As a result of this revision, certifications from counterparties other than Meralco</u></p>

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				<p><u>and/or Meralco's Affiliates engaged in power generation, distribution, and supply are no longer required.</u></p> <p><b>A Bid Bulletin amending the provisions of the Bid Requirements, IPB, and Annex QD-4 (and attachments) will be prioritized and issued immediately.</b></p> <p>a. The IPPAs are included still if it has a contract/project with Meralco and/or Meralco's Affiliate engaged in power generation, distribution and supply.</p> <p>b. No. If this will be allowed, we will not be able to check projects that did not deliver as scheduled, etc. If such non-operational power plant had a project/contract with Meralco and/or Meralco's Affiliate engaged in power generation, distribution, and supply within the last 5 years, a certification of absence of unsatisfactory performance still needs to be secured.</p>
	<p>Contracts</p> <p>Bid Requirement</p> <p>Instructions to Prospective Bidders</p>	<p>Page 3</p> <p>Annex A of QD -4</p>	<p>What contracts are covered here since the rules provides for five years and three years? Does it cover contracts executed in the last 3 years only?</p> <p>In relation to any project or contract that was commenced or in the process of implementation <u>within the last five (5) years</u> prior to the Bid Submission Deadline (as defined below) by the Bidder –</p> <p>(1) a record of failure by the Bidder or any of its Affiliates engaged in power generation to satisfactorily perform any of its material obligations for any such project or contract, (such as, but not limited to, Power Supply Agreements, financing documents, etc.) <u>within the last three years</u>, including failure to timely pay or comply with its material obligations in any of its finance documents with creditors entered into in connection with the development and implementation of the said project or contract. The Bidder shall submit notarized certifications issued by the Counterpart(ies) (defined below) of the Bidder and any of its Affiliates engaged in power generation attesting that within the last three years the Bidder or any of its Affiliates engaged in power generation has no previous record of failure to perform any of its material obligations for such project or contract.</p>	<p><i>With the revision explained above</i>, the distinction from the 3-year requirement will also be removed.</p> <p>With the limitation of the coverage of the projects/contract only to those with Meralco and/or its Affiliates engaged in generation, distribution and supply only, the coverage period for the required certification will be made uniform – all project or contract that was commenced or in the process of implementation <u>within the last five (5) years</u> prior to the Bid Submission Deadline, shall also require a certification of the absence of record of failure of material obligations for such project/contract <u>within the last five (5) years</u> also.</p> <p><b>A Bid Bulletin amending the provisions of the Bid Requirements, IPB, and Annex QD-4 (and attachments) will reflect this change.</b></p>
	Notarized Certifications		Do we have to submit Notarized Certifications from all of Bidder's Counterparties? (Annex QD-4-A)	<i>This is subject to the revision explained above.</i>

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	Instructions to Prospective Bidders	3.1.3, page 22	<p>What if the Counterparties are from outside the Philippines? Should the Certifications be apostilled or consularized? Can we exclude from the requirement of notarization certifications signed abroad by counterparts?</p> <p>Given that we need to ask our coal suppliers from Indonesia or Singapore to sign the certification, does the certification need to be authenticated by the relevant Philippine embassy abroad?</p>	The said revision may omit the need for such certifications as mentioned in this query.
	IPB – Unsatisfactory Performance	3.1.3 Annex QD-4	<p>Kindly clarify the definition of Counterparties.</p> <p>We note that Counterparties definition in the IPB is <b>broad</b> (a counterparty, other than Meralco, who has an existing project(s) or contract(s) with the Bidder or any of its Affiliates engaged in power generation, that was commenced or in the process of implementation within the last five (5) years prior to the Bid Submission Deadline. It can also refer interchangeably to the financial lender/s of the Bidder or any of its Affiliates engaged in power generation for the said project(s) or contract(s).)</p> <p>In this regard, TPBAC to consider limiting Counterparties to financial lenders and/or Counterparties in contracts involving transactions not lower than One Billion Pesos (Php 1,000,000,000)</p> <p><b>We request TPBAC to confirm that certifications from counterparties with terminated contracts before January 25, 2021 will not be required.</b></p> <p>We suggest TPBAC to consider proposed Counterparties definition below:</p> <p>“Counterpart(ies)” refers to a counterparty, other than Meralco, who has an existing project(s) or contract(s) with the Bidder or any of its Affiliates engaged in power generation, that was commenced or in the process of implementation within the last five (5) years prior to the Bid Submission Deadline with contract value more than One Billion Pesos (Php 1,000,000,000). It can also refer interchangeably to the financial lender/s of the Bidder or any of its Affiliates engaged in power generation for the said project(s) or contract(s).</p>	<p><i>This is subject to the revision explained above.</i></p> <p>Even if the project/contract with Meralco and/or its Affiliates engaged in generation, distribution and supply is terminated before January 25, 2021, if it is within the last 5-year coverage period requirement, a certification from Meralco and/or its Affiliates engaged in generation, distribution and supply needs to be obtained by the Bidder or its Affiliate engaged in power generation.</p>

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	IPB – Unsatisfactory Performance	3.1.3 Annex QD-4A	<p>The certification in the Annex QD-4A document is limited to Unsatisfactory Performance only and does not include representations on outstanding disputes and due and demandable financial obligations.</p> <p>We request TPBAC to confirm that Annex QD-4A certification from Counterparties is limited to Unsatisfactory Performance.</p>	<p><i>This is subject to the revision explained above.</i> Annex QD-4-A will be revised.</p> <p>In addition, we took note of the concern that with regard to Annex QD-4-A, some items therein, a counterparty might not be the proper authority to certify, thus, it will be revised to amend item 5 of the said template, to read as follows:</p> <p><b><u>“5. I certify that based on information and documents that were made available to me, the statements and information contained in this Certification are true, accurate and complete. Any breach of the representations and undertakings provided herein shall be deemed a material or willful misrepresentation and a ground for the disqualification of the Bidder submitting this Certification in accordance with the IPB.”</u></b></p> <p><b>The Bid Bulletin amending the provisions of the Bid Requirements, IPB and its Annex QD-4 (and attachments) will include this change.</b></p>
	IPB	Annex QD-4A	<p>Bidder is required to submit Notarized Certification from the Bidder's Counterpart(ies) using the form in Annex QD-4-A (without modification).</p> <p>TPBAC to confirm that if there is no Unsatisfactory Performance, the Bidder/Affiliate may indicate “NOT APPLICABLE” in paragraph 3.</p>	<p>For Annex QD-4-A, if Meralco and/or its Affiliates engaged in generation, distribution and supply certifying answers Item No. 2 positively (i.e. no unsatisfactory performance), Item 3 may be left blank or “Not Applicable” may be indicated.</p>
	Bid Requirements for Contract Capacity of 1,800 MW (net)		<p>“Legal Qualification Requirements</p> <p>The Bidder and any of its Affiliates engaged in power generation <b>must have no record of Unsatisfactory Performance.</b>”</p> <p>What is the meaning of "record of failure"?</p> <p>What is the meaning of "material" obligations? <b>"Material" should be objectively quantified</b> because the <b>Counterparties could subjectively consider an obligation as material</b> while the facts and/or the bidder show/believe otherwise.</p> <p>Furthermore, the Bidders and their Affiliates will have had <b>numerous counterparties</b> in connection with their power generation projects/contracts, including trade suppliers. It is practical to <b>limit the counterparties to those</b></p>	<p>a. A “record of failure to satisfactorily perform any of its material obligations” may include, but is not limited to, for example a Bidder or any of its Affiliates engaged in power generation was not able to deliver the required contract capacity/energy of a power supply agreement, etc.</p> <p>b. <i>This is subject to the revision explained above.</i> The coverage will now be limited.</p>

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			<p><b>reasonably expected to those to which Bidder/Affiliates could have "material" obligations</b> (with "material" obligation being objectively defined by the TPBAC). How will Meralco know that a bidder submitted certifications from all of the latter's Counterparties -- if some bidders included small trade suppliers and other did not (this comes back to the need for objective measurement of "materiality" of the obligations)?</p> <p>To what extent can the bidder disclose the terms of these bidding documents (<b>in relation to the Confidentiality Undertaking</b>) in order to allow the Counterparties to make the determinations of Unsatisfactory Performance and Outstanding Dispute?</p> <p>For material violation of laws and/or regulations, it appears that Bidder/Affiliates' contractual Counterparties will not be aware of these? Is it expected that Bidder secure <b>certifications from government authorities</b>?</p> <p>Meaning of "Unsatisfactory Performance":</p> <p>"(1) a record of failure by the Bidder or any of its Affiliates engaged in power generation to satisfactorily perform any of its material obligations for any such project or contract, (such as, but not limited to, Power Supply Agreements, financing documents, etc.) within the last three years, including failure to timely pay or comply with its material obligations in any of its finance documents with creditors entered into in connection with the development and implementation of the said project or contract. The Bidder shall submit notarized certifications issued by the Counterpart(ies) (defined below) of the Bidder and any of its Affiliates engaged in power generation attesting that within the last three years the Bidder or any of its Affiliates engaged in power generation has no previous record of failure to perform any of its material obligations for such project or contract. For this purpose only, Counterpart(ies) may include Meralco; <b>and for this purpose only, "failure to timely pay or comply with its material obligation means (a) with respect to a payment obligation, failure to pay at least One Billion Pesos (Php 1,000,000,000), and (b) with respect to a power supply obligation, failure to comply with the obligation to supply power or replacement power as provided in the power supply agreement"</b></p>	<p>c. The Bidder may disclose the Invitation to Bid and Bid Requirements, and other bid documents posted in the MERALCO's website: <a href="https://company.meralco.com.ph/news-and-advisories/invitation-to-bid">https://company.meralco.com.ph/news-and-advisories/invitation-to-bid</a></p> <p>d. <i>This is subject to the revision explained above.</i> The coverage will now be limited.</p> <p>e. Not amenable. Please see item a.'s answer above.</p>

	TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION  RECOMMENDATIONS / PROPOSED WORDING	RESPONSE
			<p>"(4) the material violation of laws and/or regulations by the Bidder or any of its Affiliates engaged in power generation applicable to any such projects or contracts, including but not limited to environmental, health, safety, labor and social welfare laws and regulations, as evidenced by findings of the relevant competent authority. <b>For this purpose only, material violation of laws and/or regulations means a violation such that the Bidder will not be able to conduct its business as a power supplier"</b></p>	
	<p>Annex A of Annex QD – 4</p> <p>Annex QD-4-A</p>	<p>Pages 61-64</p>	<p>What is the rationale requiring information on financial lenders/counter-parties for the bidder's affiliates? Disclosure of information needed may be covered by Non-Disclosure provision in the contract of loan with the banks.</p>	<p><i>This is subject to the revision explained above.</i> The coverage will now be limited.</p> <p>Going back to the query, the Bidders or any of its Affiliates engaged in power generation who have financial lenders on a project or contract with Meralco and/or Meralco's Affiliates engaged in generation, distribution, supply are required to be identify/disclose the said financial lenders (<b>using Annex A</b> of ANNEX QD-4) so that the TPBAC can conduct due diligence during Pre-Qualification Evaluation, if necessary.</p> <p>However, financial lenders are not required to issue the certification using the form ANNEX QD-4-A, since we understand the difficulty of securing consent/certification from financial institutions.</p>
	<p>Instructions to Prospective Bidders "Annex QD-4-A"</p>	<p>Annex QD-4-A, page 62</p>	<p>We would like to clarify the minimum number of Counterparties that must provide the required Annex QD-4-A Certification?</p>	<p><i>This is subject to the revision explained above.</i> The coverage will now be limited.</p> <p>Going back to the query, there is no minimum number prescribed because the requirement is that <b>all</b> projects/contracts within the last 5 years with Meralco and/or its Affiliates engaged in power generation, distribution, and supply are covered and must be disclosed. However, the financial lenders are not included to those who need to issue the ANNEX QD-4-A certification.</p>
	<p>IPB</p>	<p>Annex QD-4A</p>	<p>Bidder is required to submit Notarized Certification from the Bidder's Counterpart(ies) using the form in Annex QD-4-A (without modification). We understand that Counterparty/ies include financial lenders. In the event that financial lenders are part of a consortium of lenders, can their Facility Agent execute Annex QD-4A one behalf of all the lenders in the consortium?</p>	<p><i>As discussed above,</i> financial lenders are not required to execute the Certification under Annex QD-4-A.</p>



	TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION  RECOMMENDATIONS / PROPOSED WORDING	RESPONSE
			TPBAC to confirm that the Facility Agent of the lenders may issue QD4-A in lieu of the lenders themselves.	
	IPB	Annex QD-4A	<p>Bidder is required to submit Notarized Certification from the Bidder's Counterpart(ies) using the form in Annex QD-4-A (without modification).</p> <p>We understand that Counterparty/ies include financial lenders. Feedback from some lenders is that they intend to substantially modify/qualify their QD-4-A Certifications. We reiterate that the Counterparty may not have any interest or inclination to assist the Bidder or the Affiliate. In fact, in the absence of Unsatisfactory Performance or Outstanding Dispute, the Counterparty may not want to issue QD4-A because doing so might serve to estop the Counterparty from alleging a belated discovery of such performance or basis for a claim that already existed at the time of issuing QD4-A (but was not yet discovered at that time).</p> <p>The Counterparty's QD-4-A allows the TPBAC, Meralco, or any of their authorized representatives to inquire into and check with the Counterparty as to the veracity of the Certification. Thus, the TPBAC should allow modification or qualification of the QA-4-A Certification, since the TPBAC can seek clarifications with the Counterparty in connection with modifications/qualifications.</p> <p>In addition, we would like to request TPBAC to consider the proposed revisions to Annex QD-4A that will be issued by financial lenders of Bidder's Affiliate.</p>	As discussed above, financial lenders are not required to execute the Certification under Annex QD-4-A.
	<p>Projects and Contracts</p> <p>Instructions to Prospective Bidders</p> <p>Outstanding Dispute</p> <p>Unsatisfactory Performance</p>	<p>Annex QD-4, Annex A of Annex QD-4 and Annex QD-4-A</p> <p>Definition</p> <p>Definition</p>	<p>Annex QD-4, Annex A of Annex QD-4 and Annex QD-4-A on the coverage of "projects and contracts" for Outstanding Disputes and Unsatisfactory Performance</p> <p>2. (Insert name of Bidder) and/or any of its Affiliates engaged in power generation do not have any record of <b>Unsatisfactory Performance</b> on any of their projects and contracts.</p> <p>3. (Insert name of Bidder) and/or any of its Affiliates engaged in power generation do not have any <b>Outstanding Dispute</b> or due and demandable financial obligation/s with Meralco and/or Counterparties in relation to any project or contract in power generation, including due and demandable energy settlement amounts with the Philippine Electricity Market Corporation (PEMC) and/or Independent Electricity Market Operator of the Philippines (IEMOP).</p>	This is subject to the revision explained above. The coverage will now be limited.

	TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION  RECOMMENDATIONS / PROPOSED WORDING	RESPONSE
	Bid Requirements	Article 1 (d), page 4	<p>4. Annex A of Annex QD-4 is a complete list of all project(s) and contract(s) with the Counterpart(ies)/financial lenders of the (Insert name of Bidder) and any of its Affiliates engaged in power generation, which was commenced or in the process of implementation within the last five (5) years prior to the Bid Submission Deadline. Such project(s) and contract(s) include but are not limited to Power Supply Agreements and financing documents with creditors in connection with the development and implementation of the said project or contract.</p> <p>9.71. "Unsatisfactory Performance" means any of the following:</p> <p>(a) In relation to any project or contract that was commenced or in the process of implementation within the last five (5) years prior to the Bid Submission Deadline by the Bidder –</p> <p>(i) a record of failure by the Bidder or any of its Affiliates engaged in power generation to satisfactorily perform any of its material obligations for any such project or contract, (such as, but not limited to, Power Supply Agreements, financing documents, etc.) within the last three years, including failure to timely pay or comply with its material obligations in any of its finance documents with creditors entered into in connection with the development and implementation of the said project or contract. The Bidder shall submit notarized certifications issued by the Counterpart(ies) of the Bidder and any of its Affiliates engaged in power generation attesting that within the last three years the Bidder or any of its Affiliates engaged in power generation has no previous record of failure to perform any of its material obligations for such project or contract. For this purpose only, Counterpart(ies) may include Meralco.</p> <p>9.46. "Outstanding Dispute" refers to any pending judicial, administrative, contractual or alternative dispute resolution proceeding between the Bidder or any of its Affiliates engaged in power generation, on one hand, and Meralco and/or Counterparties in relation to any project or contract in power generation, on the other, provided, that the following instances with respect to pending disputes with Counterpart(ies) are excluded from this definition:</p> <p>Can we limit the "projects and contracts" only to <b>top (10) existing Power Supply Agreements with Distribution Utilities</b> within the last 5 years <b>based on contract value</b>?</p> <p>Please also confirm that the <b>retail supply contracts executed by Affiliate generator RES will be excluded</b> from this coverage since RSCs are not contracts normally executed by power generators.</p> <p>Annex QD-4-A will also be executed only by Counterparties of Bidder and Affiliates engaged in power generation under <b>top (10) existing Power Supply Agreements with Distribution Utilities</b> within the last 5 years <b>based on contract value</b>.</p>	<p>a. No need to limit to the top 10 PSAs. There is enough latitude given by changing and limiting the coverage of projects and contracts to <b>only those "with Meralco and/or its Affiliates engaged power generation, distribution, or supply."</b></p> <p>b. Given the revision explained above, only the supply contracts between the Bidder/Affiliate engaged in power generation and Meralco's Affiliate engaged in power supply is covered. Thus, <b>Retail Supply Contracts (RSC) with contestable customers are excluded.</b></p>

	TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION	RESPONSE
			RECOMMENDATIONS / PROPOSED WORDING	
			Definitions of Outstanding Dispute and Unsatisfactory Performance should also refer to: "in relation to an existing Power Supply Agreement between the parties" instead of "a project or contract".	
	Reference Error  Instructions to Prospective Bidders	Annex A of Annex QD-4, page 61	"In compliance with the requirement under Section 3.1.3 (b) xxx xxx xxx <ul style="list-style-type: none"> <li>There is no such "3.1.3 (b)" only "3.1.3" can be found on page 22.</li> </ul> Delete "(b)" so as to conform to the provisions found on page 22.	We agree. This will be included in the <b>Bid Bulletin amending the Annex QD-4 (and attachments)</b> , see revisions described above.
	Outstanding Dispute  Bid Requirements	Article 1 (d), page 4	"Outstanding Dispute" – refers to any pending judicial administrative, contractual or alternative dispute resolution proceeding between the Bidder or any of its Affiliates engaged in power generation -xx- and Meralco and/or Counterparties <u>in relation to any project or contract in power generation -xxx-</u> Please add the following clause.  "in relation to an existing Power Supply Agreement between the parties".	<b>Outstanding Dispute</b> Related to the no Unsatisfactory Performance legal qualification requirement revision discussed above, considering various suggested revisions by the Interested Bidders on the Legal Requirement of no Outstanding Dispute, the TPBAC will revise the said Outstanding Dispute coverage by limiting it to those <b>only disputes with Meralco and/or Meralco's Affiliate engaged in generation, distribution or supply</b> . The bid requirement will now read as such:  "(d) The Bidder and any of its Affiliates engaged in power generation must not have an Outstanding Dispute or any due and demandable financial obligation/s, <b>in each case</b> with Meralco <b>and/or its Affiliates engaged power generation, distribution, and supply.</b> <del>and/or Counterpart(ies) in relation to any project or contract in power generation, including</del> <b>The Bidder and any of its Affiliates engaged in power generation must also not have</b> due and demandable energy settlement amounts with the Philippine Electricity Market Corporation ("PEMC") and/or Independent Electricity Market Operator of the Philippines ("IEMOP").  <b>A Bid Bulletin amending the provisions of the Bid Requirements, IPB and its Annex QD-4 (and attachments) will be issued.</b>

Final and Executory Judgment  Instructions to Prospective Bidders	(iii), (a), 2, Annex QD-4A, page 62	<p>“the termination or suspension of any such project or contract due to the willful breach of its obligations by the Bidder or any of its Affiliates engaged in power generation;”</p> <p>This must be qualified as there are frivolous suits which are merely filed to harass a bidder.</p> <p>This must be edited to read as --- “xxx xxx engaged in power generation, <b>by a final and executory judgment;</b>”</p>	<p>If already resolved with finality then that will not be considered a dispute anymore since there is already a final resolution on the matter. This being an open and competitive bidding already, where the DU cannot conduct due diligence on its possible counterparty for the PSA (unlike in a directly negotiated PSA in the past), this serves as a check to the reputation, goodwill or capability of Bidder for a possible counterparty of the DU in a PSA if it is declared the Winning Power Supplier. Hence, pending Outstanding Disputes must be scrutinized properly.</p> <p>However, <i>this is subject to the revision explained above.</i></p>
Final and Executory Judgment  Instructions to Prospective Bidders	(iv), (a), 2, Annex QD-4A, page 62	<p>“xxx, as evidenced by findings of the relevant competent authority;”</p> <p>This must also be qualified as there may be findings based on evidence that are not sufficient to fully establish breaches or violations unless and until it has been decided through a decision which must be final and executory.</p> <p>This must be edited to read as --- “xxx xxx, as evidenced by findings of the relevant competent authority and proven as such <b>by a final and executory judgment;</b>”</p>	-same answer-
Final and Executory Judgment  Bid Requirements	Legal Requirements, Item no. (3), Pg. 3	<p>“the termination or suspension of any such project or contract due to the willful breach of its obligations by the Bidder or any of its Affiliates engaged in power generation;”</p> <p>This must be qualified as there are frivolous suits which are merely filed to harass a bidder.</p> <p>“xxx xxx engaged in power generation, <b>by a final and executory judgment</b>”</p>	-same answer-
Final and Executory Judgment  Instructions to Prospective Bidders	Page 47, Definitions	<p>IPB page 47 Definition of Outstanding Dispute</p> <p>9-46. <b>“Outstanding Dispute”</b> refers to any pending judicial, administrative, contractual or alternative dispute resolution proceeding between the Bidder or any of its Affiliates engaged in power generation, on one hand, and Meralco and/or Counterparties in relation to any project or contract in power generation, on the other, provided, that the following instances with respect to pending disputes with Counterpart(ies) are excluded from this definition:</p> <ul style="list-style-type: none"> <li>(i) disputes where the Bidder/its Affiliates engaged in power generation itself filed a case/suit against its Counterpart(ies) to protect its lawful interests and the Counterpart(ies) did not file a countersuit or counterclaim against the Bidder/its Affiliates engaged in power generation, subject to item (ii) below; and</li> <li>(ii) when a suit or countersuit involves Four Hundred Thousand Pesos (P400,000.00) or less, <b>and</b> there is no allegation of fraud or intentional non-payment on the part of the Bidder/its Affiliates engaged in power generation;</li> </ul>	-same answer-

			<p>Please limit Outstanding Dispute to cover only those disputes <b><u>with final and executory judgments.</u></b></p>	
	<p>Final and Executory Judgment</p> <p>Instructions to Prospective Bidders</p>	<p>Page 51, Definitions</p>	<p>IPB page 51 Definition of Unsatisfactory Performance</p> <p>(iii) the termination or suspension of any such project or contract due to the willful breach of its obligations by the Bidder or any of its Affiliates engaged in power generation; or</p> <p>(iv) the material violation of laws and/or regulations by the Bidder or any of its Affiliates engaged in power generation applicable to any such projects or contracts, including but not limited to environmental, health, safety, labor and social welfare laws and regulations, as evidenced by findings of the relevant competent authority; or</p> <p>Please limit coverage of these items to those that have been adjudged by a final and executory judgement of relevant courts.</p> <p>(iii) <b><i>“xxx xxx willful breach of obligations by Bidder or any of its Affiliates engaged in power generation, as adjudged by relevant competent authority pursuant to final and executory judgment;”</i></b></p> <p>(iv) <b><i>“xxx xxx, as evidenced by findings of the relevant competent authority pursuant to a final and executory judgment;”</i></b></p>	<p>-same answer-</p>
	<p>IPB</p> <p>PSA</p>	<p>Page 13</p> <p>Page 17, Article 3, Section 3.3.1</p>	<p>Page 13 of the IPB states that 1,200 MW (net) must be made available only starting December 2024 and that the remaining 600 MW shall be made available starting May 2025.</p> <p>In the PSA, the Commercial Operations Date shall be no later than 26 November 2024 and 26 April 2025.</p> <p>The IPB states that in the event of a conflict between the bidding documents and the PSA template, the provisions of the PSA template shall prevail.</p> <p>Please clarify and confirm whether the required COD and the amount of contract capacity associated with each COD are those set forth in the bid documents or the PSA template.</p> <p>We request that Meralco considers extending the required dates for COD by a period of at least 6 months from the current proposed schedule so that the respective COD dates are 30 June 2025 for 1,200 MW and 30 November 2025 for 600 MW.</p>	<p><b>COD</b></p> <p>The PSA template provides for a ready reference for use of the Winning Power Supplier, with the COD indicated therein (highlighted in yellow) subject to change as to which is applicable to a particular Winning Power Supplier.</p> <p>The TOR requirement that the COD must be 1,200 MW (net) by December 2024, and the additional 600 MW (net) by May 2025 will still prevail.</p> <p>The Scheduled CODs in the TOR and IPB pertain to Billing Periods (e.g., December 2024 Billing Period begins on November 26, 2024). To reiterate, these indicated timelines are consistent with Meralco’s PSPP, as approved by the DOE.</p> <p>As relayed to the TPBAC by the DU, that this COD provision of the TOR was already approved by the DOE, and the COD requirement cannot be extended or amended as it must be consistent with the DU’s Power Supply Procurement Plan as submitted to and approved by the DOE.</p>



<p>Scheduled COD</p> <p>Invitation to Bid</p>	<p>Page 2</p>	<p>“with option by Meralco to take available energy up to 1,200 MW (net), at Commissioning Energy Charge, starting December 2023”...</p> <ul style="list-style-type: none"> <li>• What does it mean? What if the supplier cannot supply at that date?</li> <li>• What happens when Power Supplier cannot supply power during the period before Scheduled COD? Will it be considered in default of the PSA?</li> </ul> <p>The PSA template provides:</p> <p>5.1 Subject to an agreement by the Parties to declare Early COD in accordance with Section 3.4, Power Supplier shall, for a period of one (1) year, make available to Meralco the electrical energy quantities in MWh generated by the Plant to the extent of the Contract Capacity after 26 [November 2023/April 2024] (the “Commissioning Energy”), and Meralco shall have the option to purchase a portion or all of such available Commissioning Energy. For clarity, this provision applies regardless of the date the Plant has achieved actual commercial operations. Power Supplier may be excused from providing Commissioning Energy under this Section only when prevented by technical constraints or an Event of Force Majeure.</p> <p>For clarification.</p>	<p>If the Winning Power Supplier’s Nominated Power Plant is not yet operational <b>before SCOD</b>, then, MERALCO has <b>no</b> option to take and the Winning Power Supplier has no obligation to deliver energy.</p> <p>If it is operational before COD, then the Winning Power Supplier already has the obligation to deliver available energy, at the option of MERALCO to take available energy up to 1,200 MW / 600 MW starting December 2023 / May 2024. If the Winning Power Supplier cannot provide it, it will be in default under the PSA-template provisions.</p> <p><b>After/during COD</b> and the Nominated Power Plant is still undergoing testing-commissioning, Article 5 (Commissioning Energy) of the PSA-template will prevail.</p>												
<p>COD</p> <p>Instructions to Prospective Bidders</p> <p>PSA Template</p>	<p>Annex TP-1 (TOR Table)</p> <p>3.4.1</p>	<p>Annex TP-1 (TOR Table) and Power Supply Agreement Template</p> <table border="1" data-bbox="685 747 1482 1096"> <thead> <tr> <th></th> <th>Requirement</th> <th>Bidder’s Submission</th> </tr> </thead> <tbody> <tr> <td>Offered Contract Capacity</td> <td>• At least 150 MW (net)</td> <td>{Must be 150 MW (net) or more}</td> </tr> <tr> <td>Plant Type</td> <td>• Baseload (firm and dispatchable)</td> <td>{Yes or No}</td> </tr> <tr> <td></td> <td>• Single or portfolio of plant/s, provided that the power plant/s should be in commercial operation not earlier than January 2020 but no later than May 2025.</td> <td>{Single or portfolio} {Date of commercial operation}</td> </tr> </tbody> </table> <p>Power Supply Agreement Template</p> <p>3.4.1 In the event that Power Supplier anticipates that the Plant shall achieve Commercial Operations Date prior to the Scheduled Commercial Operations Date (“<b>Early Commercial Operations Date</b>”), Power Supplier shall promptly deliver a written notice to Meralco of such anticipated Early Commercial Operations Date indicating the anticipated date thereof (the “<b>Early COD Notice</b>”), at least three (3) months prior to the then anticipated date of the Early Commercial Operations Date. For clarity, in <b>no case shall Early COD occur earlier than 26 [November 2023/April 2024]</b>.</p> <p>Can the Nominated Power Plant commence Commercial Operations before 26 November 2023?</p>		Requirement	Bidder’s Submission	Offered Contract Capacity	• At least 150 MW (net)	{Must be 150 MW (net) or more}	Plant Type	• Baseload (firm and dispatchable)	{Yes or No}		• Single or portfolio of plant/s, provided that the power plant/s should be in commercial operation not earlier than January 2020 but no later than May 2025.	{Single or portfolio} {Date of commercial operation}	<p>Yes, it can start commercial operations before 26 November 2023. Then starting Dec. 2023 / May 2024 (i) it is obligated to make/deliver available energy if Meralco exercises its option to take available energy up to 1,200 MW / 600 MW; (ii) or Meralco may exercise its option for an Early COD under the PSA-template.</p>
	Requirement	Bidder’s Submission													
Offered Contract Capacity	• At least 150 MW (net)	{Must be 150 MW (net) or more}													
Plant Type	• Baseload (firm and dispatchable)	{Yes or No}													
	• Single or portfolio of plant/s, provided that the power plant/s should be in commercial operation not earlier than January 2020 but no later than May 2025.	{Single or portfolio} {Date of commercial operation}													

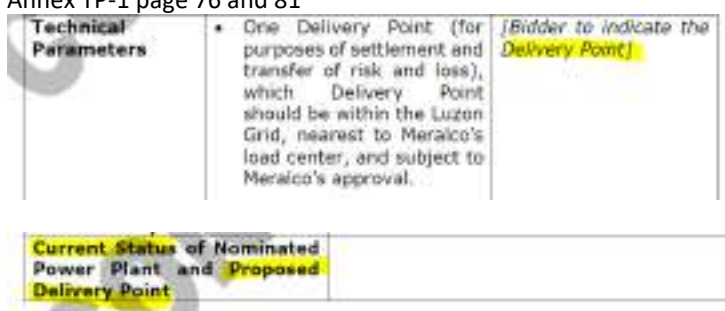
<p>Fuel Cost Invitation to Bid</p>	<p>Page 3</p>	<p>“For Contract Years 11 to 20, the fuel cost shall be a pass-through cost” How about prior (i.e., for Contract Years 1 to 10), who will shoulder the same?  For clarification.</p>	<p>It will also be a pass-through cost subject to a cap determined using the DOE-recommended fuel cost adjustment formula, as provided to in page 3 of the Invitation to Bid (Tariff Structure).</p>
<p>Reference Plant - Technical Qualification Requirements  Bid Requirements  Instructions to Prospective Bidders</p>	<p>Letter “d”, page 6  3.1.4 “d”, page 23</p>	<p>Reference Plant, if located in the Philippines, must be covered by a COC from the ERC, as submitted by the Bidder as a certified true copy by (i) ERC; or (ii) the <b>corporate secretary</b>, in which case must be under oath and notarized.  “corporate secretary or <u>assistant corporate secretary</u>”</p>	<p>Yes, and in addition any reference to under oath certifications/notarizations to be executed by the Corporate Secretary of the Bidder, Affiliate, Ultimate Parent, <b>may be accomplished by the Assistant Corporate Secretary also</b>, especially if authorized under the company’s by- laws.</p>
<p>Offered Contract Capacity from the Nominated Power Plant  Instructions to Prospective Bidders</p>	<p>Annex QD-3, page 58</p>	<p>There is a discrepancy between the statement in this Annex -- “xxx that based on the records of the (insert name of Bidder), the Nominated Power Plant/s is not covered by any offtake agreement xxx xxx xxx that will conflict with the Bidder’s obligation should it be declared the Winning Power Supplier”; from letter (g),pg. 22 which reads -- - “xxx xxx xxx using the form in Annex QD-3 that the Offered Contract Capacity from the Nominated Power Plant is not covered by any offtake agreement”.</p> <ul style="list-style-type: none"> <li>• The words “Offered Contract Capacity” must be inserted in the template Annex QD-3.</li> <li>• Otherwise, the entire capacity of a Nominated Power Plant which still has a residual capacity after committing a portion thereof to this bidding process will be covered by the provisions that “it must not be covered by any offtake agreement.”</li> </ul> <p>It is hereby suggested that the subject provisions must not only applicable “during the Bidding”, but it must also be applied in the implementation of the PSA with the Winning Power Supplier.</p> <p>The words “Offered Contract Capacity” must be added in Annex QD-3 which will now read as - - - “xxx xxx that based on the records of the (insert name of Bidder), the <b>Offered Contract Capacity from</b> the Nominated Power Plant/s is not covered by any offtake agreement xxx xxx xxx”</p>	<p>We agree. This was inadvertently not included when Annex QD-3 was drafted, however, the words “Offered Contract Capacity” are clearly intended to be added as indicated in p.5, Bid Requirements and letter (g.), p.22 of the IPB.</p> <p>In the interest of time, Bidders may reflect this suggested change when they execute <b>Annex QD-3</b>: “xxx xxx that based on the records of the (insert name of Bidder), the <b>Offered Contract Capacity from</b> the Nominated Power Plant/s is not covered by any offtake agreement xxx xxx xxx</p> <p>If the Bidders already executed Annex QD-3 without executing this change, such Annex QD-3 will be deemed by the TPBAC, during its evaluation, to have the words “Offered Contract Capacity” so that it will read as - - - “xxx xxx that based on the records of the (insert name of Bidder), the <b>Offered Contract Capacity from</b> the Nominated Power Plant/s is not covered by any offtake agreement xxx xxx xxx.”</p>

<p>Certificati on on no offtake agreement t</p>	<p>IPB, Section 3.1.2(g)  Annex QD-3</p>	<p>Section 3.1.2(g) of the IPB requires a Bidder to submit “a notarized certification, using the form in Annex QD-3, that the <u>Offered Contract Capacity</u> from the Nominated Power Plant is not covered by any offtake agreement (e.g., a power supply agreement or ancillary services procurement agreement, including a financial-type arrangement of power supply agreement) that will conflict with the Bidder’s obligation should it be declared the Winning Power Supplier.”</p> <p>Annex QD-3, on the other hand, does not just state that the Offered Contract Capacity is not covered by any offtake agreement, but that the entire Nominated Plant is not covered by any offtake agreement.</p> <p><b>Please clarify the inconsistency.</b></p> <p>We propose that Annex QD-3 be revised as follows:</p> <p style="padding-left: 40px;">I, (insert name), (insert citizenship), of legal age, with office address at (insert address), as the (insert position/designation) of (insert name of Bidder), a (partnership/corporation) organized and existing under and by virtue of the laws of the Philippines, hereby certify, for and on behalf of (name of Bidder), that, based on the records of the (insert name of Bidder), the <b>Offered Contract Capacity from the</b> Nominated Power Plant/s is not covered by any offtake agreement (e.g., a power supply agreement or ancillary services procurement agreement, including a financial-type arrangement of power supply agreement) that will conflict with the Bidder’s obligation should it be declared the Winning Power Supplier.</p>	<p>-same answer-</p>
<p>CERTIFICATIO N THAT NOMINATED POWER PLANT IS UNCONTRACT ED</p>	<p>Annex QD-3, Page 58</p>	<p>The Certification should be specific that the uncontracted capacity should be with respect to the Offered Capacity and subsequently the Winning Capacity upon Commencement Date consistent with the TOR and to avoid ambiguity.</p> <p>We propose to supplement the following statement with the underlined under Annex QD-3:</p> <p>Xxx that, based on the records of the (insert name of Bidder), the Nominated Power Plant/s, <b><u>with respect to the Offered Capacity and subsequently, the Winning Capacity upon Commencement of Delivery Date,</u></b> is not covered by any offtake agreement (e.g., a power supply agreement or ancillary services procurement agreement, including a financial-type arrangement of power supply agreement) that will conflict with the Bidder’s obligation should it be declared the Winning Power Supplier.</p>	<p>-same answer-</p>



<p>Reference Plant Requirements</p> <p>Instructions to Prospective Bidders</p>	<p>Annex QD-5, Page 65</p>	<p>Concerning the required attachments, will there be separate forms for the enumerated proofs listed therein?</p>	<p>The only prescribed form as attachment to Annex QD-5 is the Certification regarding Technical Certification (p. 66, IPB).</p> <p>However, a table of contents page (that may include a short write-up/explanation for all the required attachments) would be helpful for the TPBAC’s ease of evaluation of the Bidder’s Technical Qualification.</p>
<p>Disclaimer</p> <p>Instructions to Prospective Bidders</p>	<p>Last paragraph, page 3</p>	<p>“the provisions of the PSA shall be read in light of the Bidding Documents, including relevant bid bulletins, and the document Submissions of the Winning Power Supplier, all of which shall remain binding upon said Winning Power Supplier”.</p> <ul style="list-style-type: none"> <li>• Which will prevail in case of conflict or variance between the provisions of the Bidding Documents and that of the PSA as well as in the interpretation(s) thereof?</li> <li>• Please take note that in the relevant provisions of the PSA more particularly 1.2 pg.13 thereof, there is also no provision that will govern the interpretation of the PSA in the event of any variance or conflict of any of the provisions thereof with the Bidding Documents.</li> </ul> <p>There must be a specific provision which will dictate as to which between the Bidding Documents and the PSA will prevail in the event of conflict(s) thereof.</p>	<p><b>PSA-template</b></p> <p>Upon execution of the PSA with the Winning Power Supplier, all the parameters of this Bidding, the Winning Power Supplier’s representations and warranties, issued certifications, its Technical Proposal and factors determining its Bid Price shall be read together with the PSA. The bid parameters won by the Winning Power Supplier must be read in conjunction with its PSA, but in case of conflict, the bid bulletins, bid parameters won by the Winning Power Supplier will prevail.</p> <p>The purpose of this provision is to emphasize that the Winning Power Supplier cannot disregard all the parameters of this Bidding, including the bid bulletins issued, the bidder’s representations and warranties, issued certifications, and the factors determining its Bid Price after it executes a PSA with MERALCO. These parameters were issued/occurred after the PSA-template was released to the bidder.</p> <p>During the Bidding process, however, the provisions of the PSA template will prevail over the Bidding Documents in case of discrepancy. (see query <i>immediately</i> below)</p>
<p>Conflict between Bidding Documents and PSA</p> <p>Instructions to Prospective Bidders</p>	<p>(c), last sentence, page 7</p>	<p>“During the Bidding, in case of conflict between the Bidding Documents and the PSA template, the provisions of the PSA template shall prevail”.</p> <ul style="list-style-type: none"> <li>• It is clear during the Bidding as to which will prevail in case of conflict, a similar provision must also be provided to govern during the implementation of the PSA.</li> </ul>	<p>-see answer above-</p>
<p>Changes on the PSA Template</p>		<p>Concerning the exceptions as regards the provisions - - “no changes will be made on the PSA template”, can we have a list or a definition of those which are classified as necessary to reflect the terms and conditions of the Technical Proposal and Bid of the Winning Power Supplier?</p>	<p>The yellow highlighted items in the PSA template are those which require necessary insertion of details to reflect the particular details or terms offered by the Technical Proposal and Bid Price of the Winning Power Supplier. <i>See also</i> Secs. 2.1 (c) and 5.4, IPB.</p>

	Instructions to Prospective Bidders	Annex Bid - 3, Item 1, Page 93		Impliedly, the non-yellow highlighted items cannot be changed by the Interested Bidder/Winning Power Supplier.
	Form Document		Several of the documents, such as the PSA template and PSA template Appendices include yellow highlighting in various sections of the document. Please confirm the purpose of these highlighted sections of the documents.	The yellow highlighted items are those which require necessary insertion of details to reflect the particular details or terms offered by the Technical Proposal and Bid Price of the Winning Power Supplier. See Sec. 5.4 and Annex BID-3, IPB.  Impliedly, the non-yellow highlighted items cannot be changed by the Interested Bidder/Winning Power Supplier.
	PSA template	IPB, Section 2.1(c)	<p>Section 2.1(c) of the IPB states: <i>“The PSA template and its appendices and attachments shall be the principal document governing the contractual terms between Meralco and the Winning Power Supplier with regard to this Bidding, except to the extent that the terms of the PSA template are modified after the Bidding to reflect the terms and conditions of the Technical Proposal and Bid Price of the Winning Power Supplier for purposes of signing/executing the PSA.”</i></p> <p>However, based on our experience with previous bids conducted by Meralco, it is possible that modifications would be made by the TPBAC to the PSA template in response to queries or recommendations from the Bidders, and that these modifications could be made during the Bidding and prior to the submission of bids. Moreover, Section 2.1(b) of the IPB states that <i>“[f]rom time to time, the Bidding Documents may be amended or revised through the issuance of bid bulletins by the TPBAC. Upon issuance of the bid bulletin by the TPBAC, the same shall automatically be incorporated into and made an integral part of the particular Bidding Document to which it relates.”</i></p> <p>Accordingly, please confirm that the PSA template may be modified during or after the Bidding as follows and that, in both instances, the modified PSA template and its appendices and attachments shall be the principal document governing the contractual terms between Meralco and the Winning Power Supplier:</p> <ol style="list-style-type: none"> <li>1. <u>during</u> the Bidding or before the submissions of bids, as a result of queries and clarifications between the TPBAC and the Bidders; or</li> <li>2. <u>after</u> the Bidding, to reflect the terms and conditions of the Technical Proposal and Bid Price of the Winning Power Supplier for purposes of signing/executing the PSA”.</li> </ol> <p>We propose the following amendment to Section 2.1(c) for the avoidance of doubt: The PSA template and its appendices and attachments shall be the principal document governing the contractual terms between Meralco and the Winning</p>	Modifications on the PSA template and its appendices, approved by the TPABC based on the clarifications made during the Bidding, will be reflected by the TPBAC in its Bid Bulletin issuance/s, which is immediately referred to the DU PSA Team so that the modifications will be made ready to be reflected on the PSA template to be executed by the Winning Power Supplier.

			Power Supplier with regard to this Bidding, except to the extent that the terms of the PSA template are modified: <b>(a) during Bidding or before the submissions of Bids as a result of queries and clarifications between the TPBAC and the Bidders, which modifications shall apply to all Bidders; or (b)</b> after the Bidding to reflect the terms and conditions of the Technical Proposal and Bid Price of the Winning Power Supplier for purposes of signing/executing the PSA.	
	Delivery Point  Instructions to Prospective Bidders	Annex TP-1, page 76 and 81	<p>Annex TP-1 page 76 and 81</p>  <p>What do you mean by Delivery Point? Please also clarify "Current Status of Proposed Delivery Point".</p>	<p>Sec. 1.1 of the PSA-template defines "Delivery Point" as Delivery Point means the high side of the connection of Power Supplier to the Luzon Grid, nearest to Meralco's load center, and subject to Meralco's approval.</p> <p>The Current Status of the Nominated Power Plant and the Proposed Delivery Point can only refer to its development stage. For the Proposed Delivery Point, the Bidder is to indicate here again its proposed Delivery Point/s of its Nominated Power Plant for the DU to evaluate and approve.</p>
	Bid Requirement	1 Interested Bidders and Qualifying to Bid	<p>To reiterate, the Nominated Power Plant/s shall be with one Delivery Point (for purposes of settlement and transfer of risk and loss) within the Luzon Grid, nearest to Meralco's load center, and subject to Meralco's approval.</p> <p>If Delivery Point is already approved by NGCP, why is it still subject to Meralco's approval?</p>	As relayed to the TPBAC by the DU, it is for the DU to have the ability or chance to check, especially if there are multiple delivery points, the nominated Delivery Point which has the lowest line rental.
	Invitation to Bid TOR Table: "Technical Parameters"	Page 2	Can we clarify how the Delivery Point will be determined?	<i>See discussion of answers above.</i>
	Portfolio of Plants  Invitation to Bid	Page 3	<p>Supply - Single or portfolio of plant/s, provided that the power plant/s should be in commercial operation not earlier than January 2020 but no later than May 2025.</p> <p>What is meant by portfolio of plants? Does it refer to a plant with multiple units?</p>	<p>a. As relayed to the TPBAC by the DU, this requirement in the TOR allowing "portfolio of plants" refers to the option allowing an Interested Bidder to submit multiple power plants to deliver the Contract Capacity, but those plants must be in commercial operation within/between January 2020 and May 2025.</p> <p>b. The mention of "plant" here, for this purpose, refers to a power plant as a whole <b>and</b> can also refer to generating units.</p>

<p>Templates</p> <p>Instructions to Prospective Bidders</p>	<p>Page 28</p> <p>3.3 BID PRICE AND BID SECURITY</p>	<p>(g) Print outs of the relevant worksheets enumerated below, as reflected in the Financial Evaluation Workbook of the Bidder and signed by the Bidder's authorized representative:</p> <ul style="list-style-type: none"> <li>i. LCOE Result Worksheet;</li> <li>ii. GNPHR Table Worksheet;</li> <li>iii. LR Cap and AS Cost Recovery Cap Worksheet;</li> <li>iv. Quarterly Fuel Price Forecast Worksheet;</li> <li>v. Base Rates Table Worksheet;</li> <li>vi. Bid Security Worksheet; and</li> <li>vii. Performance Security Worksheet.</li> </ul> <p>No templates are provided in the ITB. Is the GNPHR Table worksheet the one provided under Schedule 2 of Appendix E?</p>	<p>The printouts of these enumerated worksheets will be generated/coming from the Financial Evaluation Workbook after it is filled out by the Bidder, to serve as the original hard copies of the Bidder's submitted Bid Price.</p>
<p>Authorized Representatives</p>	<p>IPB Sections 2.2(c), 2.2(f), 2.8, 2.9, 3, 3.4, and 4.1 Expression of Interest</p>	<p>The template Expression of Interest requires Interested Bidders to specifically identify two (2) authorized representatives. It also provides that the Interested Bidder shall undertake "to provide the TPBAC Secretariat the name of one (1) additional authorized representative (for a maximum total of only three (3) contact persons/authorized representatives per Bidder) no later than five (5) days prior to the Pre-Bid Conference and/or the Opening of Bids."</p> <p>In this regard, various IPB provisions that refer to the Bidders' authorized representatives appear to exclude the third authorized representative that is not specifically identified in the Expression of Interest. For example:</p> <ol style="list-style-type: none"> <li>1. Section 2.2(c) of the IPB states: "Only the Interested Bidders' authorized representative/s (not more than three (3) persons) indicated in the Expression of Interest are allowed to attend and participate in the Pre-Bid Conference, and to submit written queries or comments to the Bidding Documents."</li> <li>2. Section 2.2(f) of the IPB states: "As part of the Bid Submission Deadline, between 8:00 A.M. to 9:00 A.M of 25 January 2021, the Interested Bidder shall submit through its authorized representative/s indicated in the Expression of Interest, [...] the original copy of all the said documents [...]."</li> <li>3. Section 2.2(f) of the IPB also states: "Only the Interested Bidder/s that timely submitted their Document Submissions (represented by their authorized representative/s named in their Expressions of Interest) by the Bid Submission Deadline are allowed to attend and participate in the Opening of the Pre-Qualification Documents, together with the DOE and ERC observers invited by the TPBAC."</li> </ol> <p>Please also refer to Sections 2.8, 2.9, 3, 3.4, and 4.1 of the IPB.</p> <p>We understand that all references to a Bidder's authorized representative in the IPB includes the third authorized representative that is not specifically</p>	<p>Any addition of a third (3<sup>rd</sup>) authorized representative will necessitate the filing of a new/updated Expression of Interest (EOI) indicating the name and contact information of the third (3<sup>rd</sup>) representative.</p> <p>This negates the concern of an unnamed authorized representative.</p> <p>As far as the TPBAC is concerned, whatever <b>latest</b> EOI it has on its file, the names of the Interested Bidder's authorized representatives indicated there are the only authorized representatives the TPBAC will recognize.</p>

			<p>identified in the Expression of Interest but which the Bidder shall undertake to identify no later than five (5) days prior to the Pre-Bid Conference and/or Opening of Bids.</p> <p>For the avoidance of doubt, we request the TPBAC to confirm that all references to a Bidder’s authorized representative in the IPB includes the third authorized representative that is not specifically identified in the Expression of Interest but which the Bidder undertook to identify no later than five (5) days prior to the Pre-Bid Conference and/or Opening of Bids. This would be more consistent with the intent of the template Expression of Interest, which specifically allows that Bidder to name the third authorized representative no later than five (5) days prior to the Pre-Bid Conference and/or the Opening of Bids.</p>	
	<p>Bid Security</p>	<p>IPB, Section 3.3.1</p>	<p>The Bid Security shall be kept valid until replacement thereof with a Performance Security as required under the PSA template. <b>Given that there is no mention as to the tenor required for the extension of the Bid Security, please confirm our understanding that the Bidder can opt to provide an extension Bid Security with a tenor shorter or longer than the original tenor of 60 days provided that the Bidder ensures that, at least 15 days prior to the expiration of the extended Bid Security, it is amended or replaced so that it would subsist until the Performance Security is issued. We believe this should be allowed because under the foregoing, there will always be a subsisting Bid Security until the Performance Security is issued.</b></p>	<p>For the <b>Bid Security</b> to be included in the Bid Price submission, it may be issued for a validity period longer than 60 days (counting from the Bid Submission Deadline) but cannot be shorter than 60 days.</p> <p>To extend the Bid Security under Sec. 3.3.1 of the IPB, we agree that the Bidder can opt to provide an extension Bid Security with a term shorter or longer than the original tenor of 60 days provided that the Bidder ensures that, at least 15 days prior to the expiration of the extended Bid Security, it is amended or replaced so that it would subsist until when it is replaced with a Performance Security, as provided in the PSA-template.</p>
	<p>Marginal Bid Offer</p>	<p>IPB, Section 2.2(f) Invitation to Bid, p. 1 Bid Requirements, p. 2</p>	<p>Section 2.2(f) of the IPB and the Invitation to Bid provide that the Bidder with the Marginal Bid Offer <i>“shall have its Offered Contract Capacity reduced accordingly up to the extent of the required Contract Capacity at its Proposed Price.”</i> The IPB and Invitation to Bid also provide that a Bidder with the Marginal Bid Offer and a candidate recipient of a Notification of Best Bid that refuses to accept the reduction of its Offered Contract Capacity up to the extent of the required Contract Capacity at its Proposed Price, shall have its Bid Security forfeited. 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 Price. This is especially true if, for example, Meralco will only get 10MW from the Bidder with the Marginal Bid Offer even if the Bidder’s Offered Capacity is 1800MW since its Proposed Price was likely developed on the basis of this Offered Capacity.</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>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.</p> <p>However, the valid concerns from the queries of various bidders is duly noted by the TPBAC. Thus, to give latitude, the TPBAC will revise the said rule by <b>forfeiting 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.</b></p>

			<p>We suggest that the Bidder with the Marginal Bid Offer and a candidate recipient of a Notification of Best Bid that refuses to accept the reduction of its Offered Contract Capacity up to the extent of the required Contract Capacity at its Proposed Price should not have its Bid Security forfeited.</p>	<p>For example, if the Marginal Bid Offer is for 1,000 MW but only 200 MW is needed to fill up the required Contract Capacity, the DU shall draw on the entire amount of the Bid Security, retain 20% of its value, and return the balance to Bidder</p> <p><b>A Bid Bulletin to reflect this change and the necessary amendment to the provisions of the Bid Requirements and IPB shall be issued.</b></p>
	<p>Marginal Bid Offer</p> <p>Bid Requirements</p> <p>Instructions to Prospective Bidders</p>	<p>Page 2</p> <p>3.3.2; Page 29</p>	<p>A Bidder with the Marginal Bid Offer and a candidate recipient of a Notification of Best Bid, which refuses to accept the reduction of its Offered Contract Capacity up to the extent of the required Contract Capacity at its Proposed Price, shall have its Bid Security forfeited.</p> <p>We request to remove this among the events that result in forfeiture of Bid Security. The Bidder with the Marginal Bid Offer must not be penalized, through forfeiture of the Bid Security, for refusing to push through with the transaction when the Marginal Bid Offer is perceived, based on sound business judgment, by such Bidder as commercially unsound.</p>	<p><i>See answer above.</i></p>
	<p>IPB - Forfeiture of Bid Security</p>	<p>Section 3.3.2</p>	<p>Please advise if Bidders will be given an opportunity to provide an explanation before the bid security is forfeited or/and remedy the cause of forfeiture, if possible.</p> <p>Alternatively, please advise if Bidders will be given notification by the TPBAC before bid security is forfeited.</p>	<p>If a Bidder is disqualified based on the cited grounds of Sec. 3.3.2., the disqualification notice/decision is already the notification of the TPBAC.</p> <p><i>Note that Sec. 3.3.2 will be amended, particularly item (f) to reflect the change re Marginal Bid Offer vis-à-vis proportionate forfeiture of the Bid Security.</i></p>
	<p>Bid Requirements for Contract Capacity of 1,800 MW (net)</p>		<p>"Pay-as-Bid Mechanism and Bid Offer Evaluation</p> <p>If the resulting stack of Offered Contract Capacities goes beyond the required Contract Capacity (i.e. more than 1,800 MW), the Qualified Bidder that fills up the stack to complete the required Contract Capacity (hereinafter referred to as the "<b>Marginal Bid Offer</b>") shall have its <b>Offered Contract Capacity reduced accordingly up to the extent of the required Contract Capacity at its Proposed Price</b>. A Bidder with the Marginal Bid Offer and a candidate recipient of a Notification of Best Bid, which refuses to accept the reduction of its Offered Contract Capacity up to the extent of the required Contract Capacity at its Proposed Price, <b>shall have its Bid Security forfeited.</b>"</p> <p>For such Qualified Bidder, this rule appears to favor bidders that will offer lower capacities. If the last stack will allow only a very small portion of a bidder that</p>	<p><i>This is subject to the revision explained above.</i></p> <p>We prefer to retain only the change of reducing the forfeiture of the Bid Security from having the full amount forfeited, to only a proportionate amount.</p>

		<p>offers higher offered capacity, then that would tend to disrupt that bidder's computations for its cost of feasible operations. For example, if the last stacked bidder offers 1,800MW, but only 200 MW will be purchased by Meralco, <b>the resulting offered price applied to a much actual lesser capacity would not be fair to the bidder.</b> The Bid Security of the bidder of the Marginal Bid Offer should be forfeited only if the Contract Capacity required by Meralco is at least 75% of said bidder's offered Contract Capacity.</p> <p>If the <b>reduced Offered Contract Capacity is at less than 75% of said Bidder's offered Contract Capacity, and said Bidder refuses to accept the reduction, then the TPBAC should not forfeit on the Bid Security, and instead proceed to the Next Best Bid.</b></p> <p>We suggest that "If the resulting stack of Offered Contract Capacities goes beyond the required Contract Capacity (i.e. more than 1,800 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 Price. A Bidder with the Marginal Bid Offer and a candidate recipient of a Notification of Best Bid, which refuses to accept the reduction of its Offered Contract Capacity up to the extent of the required Contract Capacity at its Proposed Price, <b><u>where such reduced Offered Contract Capacity is at least 75% of said Bidder's offered Contract Capacity or at least equal to the minimum capacity offered by the Bidder,</u></b> shall have its Bid Security forfeited."</p>	
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<p>Bid Requirements for Contract Capacity of 1800MW</p>	<p>Page 2</p>	<p>If the resulting stack of Offered Contract Capacities goes beyond the required Contract Capacity (i.e. more than 1,800 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 Price. A Bidder with the Marginal Bid Offer and a candidate recipient of a Notification of Best Bid, which refuses to accept the reduction of its Offered Contract Capacity up to the extent of the required Contract Capacity at its Proposed Price, shall have its Bid Security forfeited.</p> <p><b>Comment/s &amp; Question/s:</b></p> <p>In a worst-case scenario that the Reduced Offered Contract Capacity is even lower than the minimum running stable capacity of the bidder’s proposed plant, is the bidder compelled to accept the award even if at the onset the bidder could not perform its obligation because it will be difficult to market the remaining capacity; and to convince financial institution to finance the project despite of a meager contracted capacity? If such being the case, will MERALCO automatically forfeit the Bid Security?</p> <p>Who will benefit from the proceeds received by MERALCO on the Forfeiture of the Bid Security? Will it be MERALCO or shouldn’t this be shared equally by MERALCO and its Captive Market, which is consistent with existing policies of the Energy Regulatory Commission?</p> <p>It is suggested that prior to the forfeiture of the performance security as a consequence of being a Bidder with the Marginal Bid Offer, MERALCO must consider checking first the implication of such reduction to the financial and technical feasibility of the bidder’s offered plant especially if the prospective financial institution will back-out from their commitment due to the reduction of bidder’s capacity offer.</p> <p>It is suggested that the proceeds from the forfeiture of the bid security will be shared by MERALCO and its captive market. This is equitable because ultimately the captive market will likewise be affected in case the bidder will not perform its obligations. This suggestion is consistent with MERALCO’s objective/mandate to lower the generation cost of its captive market.</p> <p>In line with the foregoing, changes in the terms of the PSA is suggested.</p>	<p>Sec. 3.3.2 will be amended, particularly item (f).  <i>to reflect the change re Marginal Bid Offer vis-à-vis proportionate forfeiture of the Bid Security.</i></p>
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	IPB	Art 2.2 / page 13 paragraph 1	<p>“A Bidder with the Marginal Bid Offer and a candidate recipient of a Notification of Best Bid, which refuses to accept the reduction of its offered Contract Capacity up to the extent of the required Contract Capacity at its Proposed Price, shall have its Bid Security forfeited.”</p> <p><b>Question:</b>  <i>What amount of the Bid Security will be forfeited?                  Since the Bidder refuses to accept the capacity to be contracted based on the Marginal Bid Offer, the amount for forfeiture shall be limited to the equivalent amount of the Marginal Bid Offer.</i></p> <p>Proposed wording:                  The amount of Bid Security to be forfeited shall be equivalent to the portion of the Marginal Bid Offer from the offered Contract Capacity.</p>	See answer above.
	Marginal Bid Offer; Forfeiture of Bid Security / IPB	Section 2.2 / Pages 12-13; Section 3.3.2(f) / Page 29	<p>We refer to the paragraph below under Section 2.2 of the IPB:</p> <p>“If the Qualified Bidder’s total Offered Contract Capacities go beyond the required Contract Capacity (i.e. more than 1,800 MW), the Qualified Bidder that fills up the last stack (hereinafter referred to as the “<b>Marginal Bid Offer</b>”) shall have its Offered Contract Capacity reduced accordingly up to the extent of the required Contract Capacity at its Proposed Price. A Bidder with the Marginal Bid Offer and a candidate recipient of a Notification of Best Bid, which refuses to accept the reduction of its Offered Contract Capacity up to the extent of the required Contract Capacity at its Proposed Price, shall have its Bid Security forfeited.”</p> <p>The forfeiture of Bid Security contemplated above is reflected also in Section 3.3.2(f) of the IPB.</p> <p>Since the financial model and funding of the Bidder are anchored on it supplying the entire Offered Contract Capacity, we suggest Meralco to consider giving a Bidder with the Marginal Bid Offer the option to withdraw its Bid without forfeiture of the Bid Security. Please take into account the different economics between greenfield and brownfield projects for the above provisions.</p> <p>We suggest adding the paragraph below in Section 2.2 and Section 3.3.2(f):</p> <p>“Notwithstanding the foregoing, a Bidder with the Marginal Bid Offer, which has provided prior written notice that it cannot reduce its Offered Contract Capacity at its Proposed Price since its financial model and funding are based on the assumption that</p>	See answer above.

			it will supply the entire Offered Contract Capacity, shall have the option to withdraw its Bid without forfeiture of its Bid Security.”	
	Bid Security / IPB	Section 3.3(b) / Page 26	<p>We refer to Section 3.3(b) of the IPB:</p> <p>“(b) Bid security equivalent to <u>Three Million Pesos (Php3,000,000.00) multiplied by Megawatt (MW) of Offered Contract Capacity</u>, in the form of an irrevocable standby letter of credit issued by an Allowed Bank listed in Schedule 1 and using the template in <b>Annex BID-2</b> (without modification);”</p> <p>Please <b>consider reducing the amount of Bid Security</b> at a more reasonable level.</p>	<p>No. The Bid Security represents an equivalent cost of the exposure or risk of the customers of the DU to the risk of lack of supply or delay (if another CSP is needed to be conducted to fill up that capacity withdrawn/foregone) by the bidder’s action due to the cited grounds of forfeiture of the Bid Security (i.e. illegal conduct, Conflict of Interest, or material or willful misrepresentation on the part of the Bidder, etc.)</p> <p>In any case, Sec. 3.3.2 will be amended, particularly item (f). <i>See discussion above on the change re Marginal Bid Offer vis-à-vis proportionate forfeiture of the Bid Security.</i></p>
	ITB	Page 29, Section 3.3.2(f)	<p>The provision states “The Bid Security shall be subject to forfeiture in its entirety in favor of Meralco upon the occurrence of any of the following events:” ...“a bidder with the Marginal Bid Offer and a candidate recipient of a Notification of Best Bid refuses to accept the reduction of its Offered Contract Capacity up to the extent of the required Contract Capacity and its Proposed Price.”</p> <p>Please confirm how the Bid Security will be treated in the event the Bidder is determined to have the Marginal Bid Offer and the amount of Contract Capacity is less than the capacity proposed by the Bidder.</p> <p>Bidders cannot bear the risk of having their capacity significantly reduced and allowing Meralco to impose conditions that would require the execution of a PSA at the Bid Price. In the case of filling the last block of capacity, the Marginal Bidder must have the flexibility to either revise their offer or reject any offer for the award of partial capacity. Furthermore, Meralco should not be entitled to the full value of the Bid Security, but rather the Bid Security for any Marginal Bid should be reduced with the reduced amount of Contract Capacity to be purchased by Meralco. For example, if a Bidder bids 500 MW and Meralco only offers to contract 100 MW because this is the Marginal Bid, the Bidder’s Bid Security should be reduced by the ratio of 100/500 or 1/5 of the original Bid Security posted.</p>	<i>This is subject to the revision explained above.</i>
	ITB	Page 26, 28 and 29, Section 3.3 and 3.3.1	The ITB requires Bidders to post a Bid Security equivalent to Php 3,000,000 multiplied by the MW of the Offered Contract. In addition, the procedures require Bidders to use the form provided in Annex BID-2.	No. The Bid Security represents an equivalent cost of the DU’s customers exposure, to the risk of supply deficiency or delay (if another CSP is needed to be conducted to fill up that capacity withdrawn/foregone) while also serving as a deterrent against the commission by a Bidder of

		<p>Please note that the amount of the Bid Security requested by Meralco is exceptionally high compared to similar bid security posted as part of a competitive selection process.</p> <p>In addition, please note, <b>the proposal of increasing the Bid Security up to the total project costs will not be possible, as it effectively means that Bidder would (in the event the ECC is not secured) be required to fully backstop the funding of the project prior to having achieved financial close.</b></p> <p>We propose the Bid Security be based on PSALM’s prior practice and sized at 1% of the Bidder’s estimated project cost. For example, a project with an estimated cost of 1,000,000,000 Php would be required to post a Bid Security of 10,000,000 Php.</p> <p>Under Meralco’s current proposal, the proposed amount for the Bid Security is more than sufficient to mitigate any impacts that may arise from a Bidder being unable to fulfil their obligations after being declared the Winning Power Supplier. <b>As such, there should be no requirement for the Winning Power Supplier to increase their Bid Security at any time after the initial posting.</b></p>	<p>any of the grounds that result/s to the forfeiture thereof (note the cited acts are those either tinged with fraud, misrepresentation, or illegal conduct; refusal to sign the PSA; or negligence/failure to act to have the PSA successfully filed with the ERC). Thus, in a sense, the Bid Security shall also be applied as damages in the event the grounds that result/s to the forfeiture of the Bid Security occurs, without prejudice to the DU’s exercise of any other rights and remedies available to it under applicable laws and regulations.</p> <p>As to the reason the <b>Bid Security needs to be topped up</b> due to the power supplier’s failure to submit an ECC, as relayed to the TPBAC by the DU, the ECC requirement is presently an ERC pre-filing requirement prior to acceptance of a PSA application for approval. If for some reason, the ERC relaxed this requirement and accepted the PSA application without requiring the power supplier to submit its ECC, and continued to not require the submission of the ECC, the DU’s customers will be put at a significant risk of being exposed to the delay of the PSA approval, the plant not attaining commercial operations by the COD date, and thus, the risk of supply deficiency by COD. Therefore, the topping up of the bid security mitigates the consumer’s risk of supply deficiency equivalent to the Offered Contract Capacity of the said power supplier, while at the same time serving notice to the bidder of this risk if it submits a bid without an ECC. This is also brought about by the DU’s past experience that the ERC held in abeyance indefinitely a PSA’s application for approval until the submission of the ECC by the power supplier.</p> <p>Another reason is because the IPB, to allow more bidders to participate in this bid, only required a mere application for ECC to be submitted by the bidder to qualify. However, as explained above, there is a significant risk on the part of the DU in allowing this because if the ECC is not submitted and the ERC’s PSA approval is delayed because of it, this exposes the DU’s customers to significant risk of supply deficiency and exposure to volatile WESM prices by the required COD, considering that this is a CSP for a large contract capacity. Thus, the only recourse for the DU is to ask for an increased Bid Security which the DU can call to mitigate its risk/exposure caused by the Winning Power Supplier’s delay in securing the ECC.</p> <p>Considering that the pertinent provision in the IPB did not provide for a longstop date wherein the DU can call upon/already forfeit the Bid Security upon the power supplier’s continued failure to secure and</p>
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				<p>submit the ECC, <b>Sec. 3.3.1 of the IPB (and Sec. 4.1 of the PSA-template) is hereby amended</b> as the DU, to protect its customers, cannot afford to keep waiting indefinitely and without being proactive in its imminent exposure to a looming supply deficiency.</p> <p>Thus, Sec. 3.3.1 will be revised to read as:</p> <p style="padding-left: 40px;">“In the case of the Winning Power Supplier, the Bid Security shall be kept valid until replacement thereof with a Performance Security as required under the PSA template. In addition, if the Winning Power Supplier fails to secure an ECC issued by the DENR within six (6) months from filing of the PSA before the ERC for approval, the Winning Power Supplier is required to increase its Bid Security by one hundred percent (100%) of the original value, and shall continue to increase the same by 100% of the prevailing value every 6 months thereafter until the ECC is actually submitted to the ERC, provided, however, that in no case shall the total Bid Security exceed the total project cost of the Plant corresponding to the Contract Capacity, <b><u>provided further, that if the Winning Power Supplier still fails to secure the ECC and submit it to the ERC by the date falling six (6) months before the COD, Meralco shall have the right to forfeit the Bid Security in its entirety and to terminate the PSA. In no case shall the Winning Power Supplier’s failure to secure and submit the ECC, for any reason, be deemed as an event of force majeure or as a situation that is beyond the control of the Winning Power Supplier.</u></b>”</p> <p><b>A Bid Bulletin to reflect this change and the necessary amendment to the provisions of the IPB and PSA-template shall be issued.</b></p>
	IPB	Page 12	<p>Definition of <b>“Marginal Bid Offer”</b>.</p> <p>Please confirm if the Marginal Bid Offer will in fact be subject to having an imposed capacity reduction, regardless of the offer. For example, is the expectation that Meralco will be permitted to reduce a bid for 500 MW of capacity to only 100 MW, thereby leaving 400 MW of capacity uncontracted while imposing all other conditions of the bid on the Bidder, including the Bid Price and schedule?</p> <p>Should Meralco retain such a right as currently defined in the Marginal Bid Offer, we believe it is likely that Bidders will not be able to submit offers given the risk associated with having to provide less capacity from a project that has been designed and priced</p>	<p><b>Selling to third parties or WESM</b></p> <p>a. <i>See discussion above on the change re Marginal Bid Offer vis-à-vis proportionate forfeiture of the Bid Security.</i></p> <p>b. Yes, as Sec. 6.1.1.1 (a) of the PSA-template only requires that the Power Supplier is only obligated from COD to “make available to Meralco, and Meralco shall purchase from Power Supplier, at the Price determined in accordance with Appendix E, <b>the Contract Capacity of the Plant.</b>”</p>

		<p>to provide a substantially larger amount of capacity, for example 100 MW of capacity from a project designed to provide 1,000 MW.</p> <p>We would strongly request and recommend that Meralco consider that Meralco shall not have the right to reduce a Bidders' capacity, but alternatively allow qualified Bidders an opportunity to either (1) withdraw their offer in full with no penalty or (2) revise their offer through a revised and expedited auction process.</p> <p>Note, <b>we believe another alternative would be to allow a limited reduction in capacity of no more than 5%, while allowing Bidders to sell all additional capacity and energy above the Contract Capacity to the WESM or other customers in the WESM.</b></p> <p><b>We also believe that this provision for the award of a Marginal Bid also requires that the PSA specifically allow the Power Supplier to sell uncontracted energy and capacity from the plant to the WESM or other customers in the WESM.</b></p>	<p>There is no express provision in the bid documents and PSA-template that the bidder may not sell any excess of the Contract Capacity to third parties, including WESM.</p>
	<p>Invitation to Bid</p>	<p>Terms of Reference Table</p> <p>"Technical Parameters</p> <p><b>No capacity and electrical output, to the extent of Contract Capacity, of the Plant shall be contracted</b> under an agreement apart from the Power Supply Agreement ("PSA") resulting from this Bidding"</p> <p>May a winning bidder contract out to other distributors capacity/output in excess of the PSA-contracted capacity/output?</p> <p>May a bidder offer at the bidding only a part of its capacity/output? Otherwise, only the last stacked winning bidder may benefit from being able to contract to other distributors capacity/output in excess of the PSA contracted capacity/output.</p>	<p>Yes, as Sec. 6.1.1.1 (a) of the PSA-template only requires that the Power Supplier is only obligated from COD to "make available to Meralco, and Meralco shall purchase from Power Supplier, at the Price determined in accordance with Appendix E, <b>the Contract Capacity of the Plant.</b>"</p> <p>There is no express provision in the bid documents and PSA-template that the bidder may not sell any excess of the Contract Capacity to third parties, including WESM.</p>
	<p>Bid Requirements for Contract Capacity of 1,800 MW (net)</p>	<p>"Pay-as-Bid Mechanism and Bid Offer Evaluation</p> <p>For clarity, in relation to the Scheduled Commercial Operations Date ("COD") under the Terms of Reference Table of the Invitation to Bid, the order of stacking of Bid Prices from lowest to highest using LCOE shall determine which Bidder/s with the Best Bid/s need(s) to attain Scheduled COD by <b>December 2024.</b>"</p> <p>What if the bidder's offered capacity overlaps the December 2024 schedule -- for example, if the winning bidder offers 1,800 MW capacity, and Meralco will only buy 1,200MW as of December 2024, <b>should not the bidder be allowed to sell to other distributors and third parties and WESM its excess 600MW until May 2025?</b></p>	<p>-same answer-</p>

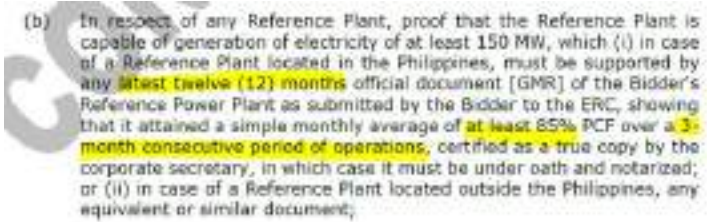
			<p>For clarity, in relation to the Scheduled Commercial Operations Date (“COD”) under the Terms of Reference Table of the Invitation to Bid, the order of stacking of Bid Prices from lowest to highest using LCOE shall determine which Bidder/s with the Best Bid/s need(s) to attain Scheduled COD by December 2024. <b><u>If a Bidder's Offered Capacity exceeds the 1200MW what Meralco will buy as of December 2024, then until May 2025 said Bidder may sell its excess Offered Capacity to other distributors and third parties and WESM.</u></b></p>	
	<p>Marginal Bidder</p>	<p>Instructions to Prospective Bidders (“IPB”), Section 2.2</p>	<p>Section 2.2 of the IPB provides in part that “[i]f the Qualified Bidders’ total Offered Contract Capacities go beyond the required Contract Capacity (i.e. more than 1,800 MW), the Qualified Bidder that fills up the last stack (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 Price.”</p> <p>Section 3.1.2(g) of the IPB requires that a Bidder to submit a notarized certification that “the Offered Contract Capacity from the Nominated Power Plant is not covered by any offtake agreement (e.g., a power supply agreement or ancillary services procurement agreement, including a financial-type arrangement of power supply agreement) that will conflict with the Bidder’s obligation should it be declared the Winning Power Supplier).”</p> <p>If (a) the Qualified Bidder with the Marginal Bid Offer offered a Offered Contract Capacity higher than “the extent of the required Contract Capacity”, and (b) such Qualified Bidder accepted the reduction of its Offered Contract Capacity (subject to our previous comment that the Bidder with the Marginal Bid Offer can refuse such reduction without forfeiting its Bid Security), <b>kindly confirm that such Qualified Bidder with the Marginal Bid Offer has the right to sell energy beyond the reduced Contract Capacity to third parties.</b></p>	<p>-same answer -</p>
	<p>Ownership of Documents</p>	<p>IPB, Section 2.5</p>	<p>Section 2.5 of the IPB states: “All documents submitted by a Bidder to the TPBAC pursuant to this IPB shall become the property of Meralco and any information obtained by Meralco from such documents may be reasonably used by them subject to the confidentiality clause in Section 2.6 (Confidentiality).”</p> <p>Given that the documents to be submitted by a Bidder will be submitted solely for purposes of its Bid and will contain proprietary and competitive information of the Bidder not known to its competitors, please clarify for what purposes Meralco intends to use these documents. Presumably, these documents will be used by Meralco and the TPBAC solely for purposes of evaluating the Bid and determining the Winning Bidder, and these purposes will have been accomplished once the Winning Bidder has been determined.</p>	<p>If a bidder is declared the Winning Power Supplier, its Document Submissions are necessary to be part of the records of the DU PSA Team, as after execution and upon implementation of the PSA between Meralco and the Winning Power Supplier, the provisions of the PSA shall be read in light of the Bidding Documents, including relevant bid bulletins, and the Document Submissions of the Winning Power Supplier, all of which shall remain binding upon said Winning Power Supplier.</p> <p>If the Interested Bidder is disqualified or fails to get the Best Bid, the unopened Document Submissions of the Bidder will be returned to the said bidder immediately or upon coordination with the TPBAC Secretariat.</p>

			<p><b>Please clarify why all the documents submitted by a Bidder must become the property of Meralco.</b></p> <p>Given that the documents to be submitted by a Bidder will be submitted solely for purposes of its Bid and will contain proprietary and competitive information of the Bidder not known to its competitors, we request that Meralco return to the Bidders all copies of the documents submitted by them, except documents submitted by the Winning Bidder who shall execute the PSA with Meralco.</p>	
	Confidentiality	IPB, Section 2.6	<p>Section 2.6 of the IPB states: <i>“Information relating to the examination, clarification, evaluation and comparison of Document Submissions, and recommendations concerning the award of the Project shall not be disclosed to any of the Bidders or other persons not involved with the Bidding; provided that the TPBAC or Meralco shall not have the obligation to keep any information submitted by a Bidder confidential after the signing of the PSA or the lapse of sixty (60) days after the Bid Submission Deadline, whichever comes earlier.”</i></p> <p>Considering that the documents to be submitted by a Bidder (whether the Winning Power Supplier or unsuccessful Bidder) will contain proprietary and competitive information not typically known to its competitors and may cause irreparable damage to the Bidder if disclosed to unauthorized parties <b>specially if the Bidder wishes to participate in the other scheduled CSPs of Meralco, please advise why the TPBAC and Meralco’s obligations to keep such information confidential are not tied to the period during which they remain in possession of these documents.</b></p> <p>Considering that the documents to be submitted by a Bidder (whether the Winning Power Supplier or unsuccessful Bidder) will contain proprietary and competitive information not typically known to its competitors and may cause irreparable damage to the Bidder if disclosed to unauthorized parties, especially if the Bidder wishes to participate in the other scheduled CSPs of Meralco, we request that the TPBAC and Meralco’s confidentiality obligations to the Bidder should at least cover the period during which they remain in possession of the documents up to , and thereafter a period of not less than two (2) years from end of the CSP.</p>	No, this is a standard discretion to the entity conducting the bid in various bidding rules.
	Confidentiality Undertaking	Form of Confidentiality Undertaking	<p>Under Clause 3(c) of the Confidentiality Undertaking, unless Meralco gives its prior written authorization, a Bidder shall, during a period of one (1) year from the date of disclosure of any Confidential Information, <i>“limit circulation of Confidential Information to its officers, directors, employees, affiliates, outside auditors and legal, technical, financial advisors, agents or other representatives (collectively, the “Representatives”) who need to know such Confidential Information only for the purpose of evaluating the Project, and who have executed and delivered a confidentiality undertaking in favor of Meralco covering the Confidential Information”.</i></p>	The TPBAC notes this concern. Thus, a revised or second template version of the Confidentiality Undertaking (“CU”) template will be released to allow an option for Interested Bidders to execute it in exchange for the individual CU’s that needs to be executed by its Representatives, with the said revised or second template CU providing expressly that the Interested Bidder/bidding entity will be held ultimately responsible (or having command responsibility) for any unauthorized disclosure of Confidential Information by its Representatives.

			<p>On its face, the clause appears to prohibit a Bidder from sharing any Confidential Information to any other person but its Representatives, and only if these Representatives first execute a confidentiality undertaking in favor of Meralco covering the Confidential Information. Respectfully, however, this does not appear to make sense or to be practical, especially as regards the Bidder’s officers, directors, employees and affiliates, as a Bidder is a juridical entity and therefore cannot possibly act except through these persons in its organization. It is also common for several people within the Bidder’s organization and within the organizations of its outside auditors and legal, technical and financial advisors, etc. to be involved in preparing the Bidder’s various Document Submissions and Bid. The Representatives’ obligation to keep the Confidential Information confidential should therefore already be covered by the Confidentiality Undertaking executed and delivered by the Bidder, and the confidentiality of Meralco’s Confidential Information should already be protected by this. Against this backdrop:</p> <p><b>(1) Please confirm that a Bidder’s Representatives need not be required to execute a separate confidentiality undertaking in favor of Meralco covering the Confidential Information.</b></p> <p><b>(2) Please also confirm that a Bidder’s potential suppliers and contractors for the Nominated Power Plant whose inputs are required by the Bidder for the purpose of evaluating the Project or preparing its Bid would also fall under the definition of Representatives in Clause 3(c) of the Confidentiality Undertaking, and therefore, need not be required to execute a separate confidentiality undertaking in favor of Meralco covering the Confidential Information.</b></p> <p><b>(3) If a Confidentiality Undertaking will be required of any of the Representatives, please confirm that the language of the Confidentiality Undertaking form may be revised as appropriate to properly identify the personality/role of the person executing it.</b></p>	<p><b>A bid bulletin will be released to reflect this change.</b></p>
	<p>Certification of documents on Technical Qualification (Reference Plant)</p>	<p>IPB, 3.1.4</p>	<p>Section 3.1.4 of the IPB requires that the attachments to the Notarized Certification on Technical Qualification (Reference Plant) be certified by either the relevant government agency or the corporate secretary.</p> <p><b>If the Reference Plant is owned by (1) a direct shareholder representing a controlling interest in the Bidder, (2) the Bidder’s Affiliate, or (3) the Bidder’s Ultimate Parent, please advise whether the corporate secretary that shall certify these documents should be the corporate secretary of the relevant entity that owns the Reference Plant and not the corporate secretary of the Bidder.</b></p>	<p>It depends which entity has authority to issue the pertinent certification. In addition, for this purpose, reference to the corporate secretary can be issued by the <b>Assistant Corporate Secretary</b>, especially if authorized under the company’s by- laws to issue such certifications.</p>



<p>Reference Plant</p> <p>Bid Requirements</p> <p>Instructions to Prospective Bidders</p>	<p>Item 2; Page 5</p> <p>3.1.4; Page 22</p>	<p>9.61. <b>Reference Plant</b> means a single power plant of at least 150 MW installed capacity (base-load, firm, dispatchable, and having attained a simple monthly average of at least 85% plant capacity factor ("PCF") over a 3-month consecutive period of operations) and which, in the reasonable opinion of the TPBAC, has been satisfactorily developed, constructed, and/or operated or maintained by the Bidder, its direct shareholders representing Controlling Interest, Affiliates or Ultimate Parent.</p> <p>Can different Bidders, which are affiliates, have the same Reference Plant?</p> <p>If the answer is "no", does the Reference Plant (the definition states "single power plant") refer to the entire complex or a unit?</p> <p>For example a power plant complex has 2 units and is owned by one company, can Bidder 1 have Unit 1 as its Reference Plant, and Bidder 2, Unit 2?</p> <p>Please confirm if different Bidders, who are Affiliates, may provide <b>the same Reference Plant</b> and will not result to a Conflict of Interest.</p> <p>Can the Reference Plant (the definition states "single power plant") refer to a unit of a plant? For example, if a power plant has 2 units and is owned by Bidder, can Bidder submit Unit 1 as its Reference Plant, and Unit 2 will be its Nominated Power Plant?</p>	<p><b>Reference Plant</b></p> <p>a. Yes, Bidders, who are Affiliates, may provide the same Reference Plant, and will not be considered a Conflict of Interest.</p> <p>b. The Reference Plant should be already existing and in commercial operations.</p> <p>Submitting only Unit 1 of a single power plant as the "Reference Plant" is allowed, provided it can comply with other Technical Qualification requirements.</p> <p>The Unit 2 of a single power plant to be submitted as a Nominated Power Plant will be allowed as long as it complies with the TOR Table requirements, particularly that it should be in commercial operation no earlier than January 2020 but no later than May 2025, as well as the other Technical Proposal (Envelope 2) requirements for the Nominated Power Plant.</p>
<p>Technical Qualification – Reference Plant</p>	<p>IPB, Section 3.1.4(b), in relation to Annex QD-5</p>	<p>Under Section 3.1. of the IPB, among the documents that must be submitted by a Bidder is a Notarized Certification regarding the Technical Qualification of the Reference Plant, including "[p]roof that the Reference Plant is capable of generation of electricity of at least 150 MW, which (i) in case of a Reference Plant located in the Philippines, must be supported by any latest twelve (12) months official document [GMR] of the Bidder's Reference Power Plant as submitted by the Bidder to the ERC, showing that it attained a simple monthly average of at least 85% PCF over a 3- month consecutive period of operations, certified as a true copy by the corporate secretary, in which case it must be under oath and notarized, or (ii) in case of a Reference Plant located outside the Philippines, any equivalent or similar document".</p> <p><b>In this regard, please:</b></p> <p><b>(1) confirm that the "GMR" mentioned above refers to the Generation Company Management Report ("GCMR"), which generation companies are required to submit to the ERC in relation to their ERC certificate of compliance. If not, please specify.</b></p> <p><b>(2) confirm that the official documents for "any latest twelve (12) months" as submitted by the Bidder to the ERC refers to any available GCMR for twelve (12) months.</b></p> <p><b>(3) explain the rationale behind the requirement of 85% PCF over a 3-month</b></p>	<p>1. Yes, the GMR being referred to in the Bid Requirements in relation to the Reference Plant refers to the "Generation Company Management Report ("GCMR"), which generation companies are required to submit to the ERC in relation to their ERC Certificate of Compliance."</p> <p>2. The preference by the TPBAC's for evaluation is the latest 12 months GMR/GCMR, but because of the intervening COVID-19 pandemic, the Bid Requirement Technical Qualification (b) will be amended to read:</p> <p><b>"...in case of a Reference Plant located in the Philippines, must be supported by <u>an the latest twelve (12) months</u> official document [GCMR] of the Bidder's Reference Power Plant as submitted by the Bidder to the ERC, showing that it attained a simple monthly average of at least 85% PCF over a 3-month consecutive period of operations <u>within the most recent twenty-four (24) month period of operations.</u>"</b></p> <p>So, for clarity, the Bidder will need to submit only the data lifted from the GCMR showing the 3-month consecutive period that demonstrates 85%</p>

			<p><b>consecutive period, noting that the PCF is dependent on the electricity market or the requirement of the offtakers of the Reference Plant, which is not entirely within the control of the generation company.</b></p> <p>We propose that the plant’s availability factor, which is within the Power Supplier’s control, be used as basis in evaluating the Reference Plant instead of the PCF.</p>	<p>PCF, but it should be lifted from the most recent 24-month period of operations.</p> <p><b>A Bid Bulletin to reflect this change and the necessary amendment to the provisions of the Bid Requirements and IPB shall be issued.</b></p> <p>3. Not amenable. The PCF already takes into consideration the market dispatch, so for a baseload plant, it is already factored in the market condition. However, the plant’s availability factor cannot show this.</p> <p>PCF was used instead of Availability Factor since Reference Plant’s intention is to show that Bidder can operate a baseload power plant. Allowing the Availability Factor as basis of evaluating the capability of a plant to be baseload, then any power plant (even variable RE plants and diesel plants) can claim that they were available 24/7 and the electricity market just did not need them. If the Reference Plant of the Bidder is indeed a baseload plant, its operation and electricity market dispatch should be reflected in its PCF. The 85% PCF over a 3-month consecutive period was added to show as proof that the Reference Plant can sustain its operation, and is indeed a baseload plant.</p>
	<p>GCMR/GMR</p> <p>Instructions to Prospective Bidders</p>	<p>3.1.4 (b) Annex QD-5, page 65</p>	<p>In respect of any Reference Plant, the Bidder should submit a proof that it is capable of generation of electricity of at least 150 MW which must be supported by any latest 12 months official document (<u>GMR</u>) of the Bidder’s Reference Plant as submitted to the ERC showing that it attained a simple monthly average of at least 85% PCF over a 3-month consecutive period of operations.</p> <p>Is GMR the same as GCMR (Generation Company Management Report) being submitted to the ERC?</p>	<p>-same answer above-</p>
	<p>GMR</p> <p>Instructions to Prospective Bidders</p>	<p>3.1.4 (b) Annex QD-5, page 65</p>	<p>IPB page 22, Section 3.1.4</p>  <p>(b) In respect of any Reference Plant, proof that the Reference Plant is capable of generation of electricity of at least 150 MW, which (i) in case of a Reference Plant located in the Philippines, must be supported by any <del>latest twelve (12) months</del> official document [GMR] of the Bidder’s Reference Power Plant as submitted by the Bidder to the ERC, showing that it attained a simple monthly average of <b>at least 85% PCF over a 3-month consecutive period of operations</b>, certified as a true copy by the corporate secretary, in which case it must be under oath and notarized; or (ii) in case of a Reference Plant located outside the Philippines, any equivalent or similar document;</p> <p>Since Bid Submission Deadline is on 25 January 2021, the GMRs to be considered for the Reference Plant shall be the data in 2020. Given that 2020 has been affected by the Covid-19 pandemic, is it possible <b>to consider 2019 GMRs in computing for the required PCF for the Reference Plant?</b></p>	<p>-same answer above-</p>

			Also, should we only submit the 3 months GMRs used in the computation or the GMRs for the entire 12-month period?	
	IPB – Qualification Documents	3.1.4.b	In respect of any Reference Plant, proof that the Reference Plant is capable of generation of electricity of at least 150 MW, which (i) in case of a Reference Plant located in the Philippines, must be supported by any latest twelve (12) months official document [GMR] of the Bidder's Reference Power Plant as submitted by the Bidder to the ERC, showing that it attained a simple monthly average of at least 85% PCF over a 3- month consecutive period of operations, certified as a true copy by the corporate secretary, in which case it must be under oath and notarized; or (ii) in case of a Reference Plant located outside the Philippines, any equivalent or similar document; Please confirm that "GMR" is actually the <b>GCMR</b> (Generation Company Management Report) that are submitted to the ERC, which is <b>an annual report with details of monthly generation (but is not a monthly report)</b> .	Yes, it refers to the GCMR <i>and this is subject to the revision explained above</i> .
	QUALIFICATION DOCUMENTS, Reference Plant	Section 3.1.4 (b) / Page 22	Reference Plant must be supported by any latest twelve (12) months official document [GMR] submitted by the bidder to the ERC, showing a simple monthly average of at least 85% PCF over a 3-month consecutive period.  We wish to confirm whether "any latest twelve months" may refer to a period covering the last 3 years from 2020.	<i>This is subject to the revision explained above.</i>  So, for clarity, the Bidder will need to submit only the data lifted from the GCMR showing the 3-month consecutive period that demonstrates 85% PCF, but it should be lifted from the most recent 24-month period of operations
	Certification of documents on Financial Qualification Requirement	IPB, Section 3.1.5	Section 3.1.5 of the IPB requires that the attachments to the Notarized Certification of Financial Capability be certified by either the relevant government agency or the chief financial officer or treasurer. <b>If the financial capability requirement is to be fulfilled by (1) a direct shareholder representing a controlling interest in the Bidder, (2) the Bidder's Affiliate, or (c) the Bidder's Ultimate Parent, please advise whether the chief financial officer or treasurer of any of the foregoing (whose financial capability shall be used for the bid) should certify these documents, and not the chief financial officer or treasurer of the Bidder itself.</b>	Yes, the CFO or Treasurer of the entity whose financial capability will be used to fulfill the financial capability requirements should certify the documents.
	Financial Qualification Requirement	IPB, Section 3.1.5(b)	<b>For the most recent quarterly financial statements required under Section 3.1.5(b), can a Bidder submit the parent and consolidated quarterly financial statements, whichever is available?</b> Please note that this is expressly allowed for audited financial statements under Section 3.5.1(a) but Section 3.1.5(b) dealing with the most recent quarterly financial statements is silent on this. Given that Section 3.5.1(a) expressly allows the submission of " <u>copy of the audited (parent and consolidated, if applicable) financial statements of the Bidder or any of its direct shareholders representing Controlling interest, Affiliates or Ultimate Parent,</u> " <b>we propose that Section 3.1.5(b) be revised to reflect that the most recent quarterly annual statements</b>	The FS to be submitted should be the unaudited quarterly FS of the entity proving financial capability, consistent with the audited FS required to be submitted in accordance with Section 3.1.5 of the IPB.

			(parent and consolidated, if applicable) of the Bidder or any of its direct shareholders representing Controlling interest, any of its Affiliates or its Ultimate Parent may be submitted to prove compliance with the Required Unrestricted Net Worth requirement of the IPB.	
	Financial Qualification Requirements	IPB, Section 3.1.6(a) and (b) Annexes QD- 7, QD-7A and QD-7B	Under Section 3.1.6 of the IPB, “the relevant shareholders of the Bidder” shall execute a Commitment Letter using the form in Annex QD-7A. <b>Please clarify which shareholders are considered “relevant shareholders of the Bidder”. Please clarify who are meant by “relevant shareholders”.</b>	Shareholders of the entity proving financial capability.
	Financial Qualification Requirements	IPB, Section 3.1.6(a) and (b) Annexes QD- 7, QD-7A and QD-7B	In Annex QD-7A (Commitment Letter), the relevant shareholders “undertake to provide to the Company the amount of at least (insert amount), in the form of equity or shareholder loans, for the implementation of the Project”. On the other hand, in Annex QD-7B (Testimonial), the debt providers or arrangers indicate their “[commitment/consideration/interest to arrange debt financing] to finance the project should the Bidder be declared as the Winning Power Supplier for the implementation of the of the Project in the aggregate amount of up to (insert amount).” However, the last paragraph of Annex QD-7 (Statement of Project Cost and Financing Plan) provides that “the amount indicated [in the table] above as Project Cost and the attached breakdown of Project Cost represent <u>reasonable estimates</u> [...].”  <b>In view of the language of Annex QD-7, kindly confirm that the amounts of equity financing and debt financing at financial close may differ from the amounts stated in the Commitment Letter from the shareholders (Annex QD-7A) and the Testimonial (Annex QD-7B), so long as the Project Cost is fully funded.</b>  We believe that estimates of debt and equity financing should be allowed so long as the Project Cost is fully funded. Meralco would not be prejudiced whether financing is largely done by debt or equity provided that the Project Cost is fully funded.	Bidder can submit any amount of equity and financing structure as long as Project Cost is fully funded
	Comparable Plant	Section 3.2 (c), in relation to Annex TP- 1, Section 4	Section 3.2 of the IPB requires, as an attachment to the technical proposal, the following: “The Bidder shall provide a description, for the Nominated Power Plant, of its use of a technology that complies with the prevailing emission standards under pertinent DENR issuances on emission and other environmental standards for power plants. The Bidder shall provide convincing proof that the key components of the Nominated Power Plant (e.g., boiler, turbine and generator) are of	<b>Comparable Plant</b> The “at least one (1) year in a 60 Hertz system” requirement for a Comparable Plant (i.e. an existing plant of similar design and technology as the bidder’s Nominated Power Plant and has been engaged in reliable commercial operation for at least 1-year in a 60 Hertz system) is an important requirement for the TPBAC to evaluate the Bidder’s Nominated Power Plant’s proposed design and technology. The

		<p>proven design and technology, which means that generating facility elements of similar design must have been engaged in reliable commercial operation for at least one (1) year in a 60 Hertz system (“Comparable Plant”). The Comparable Plant will be considered to have been in “reliable” commercial operation for the purposes of this requirement if TPBAC’s Independent Engineer determines that the equipment proposed has an average forced outage factor that has not been above five percent (5%) and its average unit equivalent availability factor has not been below 87.67% for the duration of the commercial operation period except in a year of a major planned overhaul”.</p> <p>We understand that the primary purpose of the Meralco CSP for the 1,800 MW Contract Capacity required by Meralco is to select one or more bid proposals that will redound to the benefit of customers of Meralco and to accept those offer(s) that are most advantageous to Meralco's customers.</p> <p>We understand that the best way to ensure the foregoing is to facilitate an effective competitive process that will allow the largest number of qualified bidders to participate in the CSP by removing bid requirements that limit competition.</p> <p>The above requirement – which is intended to demonstrate that a bidder can utilize proven design and technology – is written in a manner that severely restricts the technology that bidders may utilize, and will thus severely restrict competition.</p> <p>We also note that based on the above requirement, the key components of the Nominated Power Plant should be similar to the Comparable Plant. However, we believe that this should not be the case as this effectively limits the technology that can be used for the Nominated Power Plant. Because of this requirement, any new technology which has not been in commercial operation for at least one (1) year in a 60 Hertz system cannot be used, although such technology can be of proven design and technology by the time the Nominated Power Plant is to be built. This requirement will forego new technologies which may be of higher efficiencies, which, in turn, will redound to the benefit of Meralco’s customers.</p> <p>We suggest that the requirements for demonstrating proven design and technology be revised to encourage competition to benefit Meralco's customers. The proposed change will retain the requirement to demonstrate that the Nominated Power Plant will be of a proven design and technology, but will allow competition, and that should result in the most beneficial bids for Meralco's customers while ensuring that Meralco's customers will be sufficiently protected. Meralco's customers will always be sufficiently protected because Bidders will be bound by performance guarantees under their technical proposals, which ensure that the Nominated Power Plant will operate based on the agreed-upon technical parameters, and have obligations to provide Replacement Power, .</p>	<p>requirement is <b>not</b> restrictive as the Bidder only needs to show proof that the proposed design and technology of its Nominated Power Plant is already a proven design and can attain reliable commercial operations, as evidenced by a Comparable Plant. Such requirement is more so important for this Bidding which only allows for relatively young or brand new (so-called greenfield) power plants to qualify, so that the TPBAC can evaluate if the design and technical specification of the bidder’s Nominated Power Plant is of proven design/technology and has an acceptable reliability factor.</p> <p>With regard to the 60 Hertz system requirement, for obvious reasons, it is included as such because the Philippines’ Grid and distribution systems all operate in a 60 Hertz system. The TPBAC should be able to evaluate the Comparable Plant as if it was built for the Philippine’s 60 Hz system and it is proven to have an acceptable reliability factor under such conditions as the Nominated Power Plant will be built in the Philippines.</p> <p>If the concern of some bidder/s is that it must also be the owner or developer of the Comparable Plant, such that it must also come from a location of its place of business, however such jurisdiction operates under a 50Hz system, this understanding is misplaced. A Bidder can submit any other plant (not necessarily owned/developed by it) as long as it has a similar design and technology to its Nominated Power Plant and has been engaged in reliable commercial operation for at least one (1) year in a 60 Hertz system. For further clarity and distinction, the Bid Requirements does <u>not</u> require the Reference Plant for the Bidder’s Technical Qualification requirement (Envelope 1) to be operating in a 60Hz system.</p> <p>We wish to stress the importance of these requirements as these are valid, reasonable, and prudent due diligence measures on the part of TPBAC when evaluating the bids, especially in an open and competitive mode of bidding. The Invitation to Bid is for a baseload, large 1,800 MW contract capacity, and for a 20-year term power supply agreement. This large, 24/7 electricity supply requirement for a long-term PSA should be evaluated with abundance of caution and diligence. Apart from having a mandate under the EPIRA to secure least cost power supply, it is equally important for a DU, especially a large DU like MERALCO with many industrial, commercial and residential consumers, to ensure that it procures quality, reliable, secure power supply for its customers.</p>
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			<p>We propose that Section 3.2 of the IPB be amended as follows:          "The Bidder shall provide a description, for the Nominated Power Plant, of its use of a technology that complies with the prevailing emission standards under pertinent DENR issuances on emission and other environmental standards for power plants. The Bidder shall provide convincing proof that the key components of the Nominated Power Plant (e.g., boiler, turbine and generator) are of proven design and technology, which means that generating facility elements of similar design must have been engaged in reliable commercial operation for at least one (1) year in a 60 Hertz system ("Comparable Plant"). The Comparable Plant will be considered to have been in "reliable" commercial operation for the purposes of this requirement if TPBAC's Independent Engineer determines that the equipment proposed has an average forced outage factor that has not been above five percent (5%) and its average unit equivalent availability factor has not been below 87.67% for the duration of the commercial operation period except in a year of a major planned overhaul may include, but shall not be limited to the following:          (a) Documentation showing that the technologies to be utilized in the Nominated Power Plant have been thoroughly tested and validated through component and/or engine tests over several years.          (b) Documentation showing that the key equipment of the Nominated Power Plant has been accepted by the insurance industry as being commercially insurable."</p>	<p>In summary, as relayed to the TPBAC by the DU, the Comparable Plant requirement is very important as the DU cannot allow itself to be a test bed or be the guinea pig of an unproved design and technology and unproven reliability factor of a Nominated Power Plant, as it is mandated by law to ensure quality, reliability and security of its electricity supply for its customers, while procuring it in a least cost manner.</p>
	<p>Bid Requirements "Technical Proposal (Envelope 2)"</p>	<p>Item (c), page 8 - 9</p>	<p>We propose to remove the need of a Comparable Plant as the list of qualified technologies and technical description should suffice.</p> <p>(c) The Bidder shall provide a description, for the Nominated Power Plant, of its use of a technology that complies with the prevailing emission standards under pertinent DENR issuances on emission and other environmental standards for power plants. The Bidder shall provide convincing proof that the key components of the Nominated Power Plant (e.g., boiler, turbine and generator) is of proven design and technology, which means that generating facility elements of similar design must have been engaged in reliable commercial operation for at least one (1) year in a 60 Hertz system ("Comparable Plant"). The Comparable Plant will be considered to have been in "reliable" commercial operation for the purposes of this requirement once the TPBAC's independent engineer determines and certifies that the equipment proposed has an average forced outage factor that has not been above five percent (5%) and its average Unit equivalent availability factor has not been below 87.67% for the duration of the commercial operation period except in a year of a major planned overhaul;</p>	<p>- same answer above -</p>

	Comparable Plant Location Instructions to Prospective Bidders	Annex TP-1, Page 77	What does “Proof of location of Comparable Plant” mean?	The specific location (locality, city, and country) must be provided to the TPBAC for its ease of evaluating the Comparable Plant – the plant (anywhere in the world) that has similar design and technology as the proposed Nominated Power Plant of the Bidder, so that the TPBAC can evaluate if Nominated Power Plant’s similar design and technology is of proven design and reliability factor.
	Comparable Plant Instructions to Prospective Bidders	page 24, Section 3.2 / Annex TP-1	<p>IPB page 24, Section 3.2 / Annex TP-1</p> <p>(c) The Bidder shall provide a description, for the Nominated Power Plant, of its use of a technology that complies with the prevailing emission standards under pertinent DENR issuances on emission and other environmental standards for power plants. The Bidder shall provide convincing proof that the key components of the Nominated Power Plant (e.g., boiler, turbine and generator) is of proven design and technology, which means that generating facility elements of similar design must have been engaged in reliable commercial operation for at least one (1) year in a 60 Hertz system (“Comparable Plant”). The Comparable Plant will be considered to have been in “reliable” commercial operation for the purposes of this requirement if TPBAC’s Independent Engineer determines that the equipment proposed has an average forced outage factor that has not been above five percent (5%) and its average unit</p> <p>There are no supercritical coal-fired power plants in the Philippines that have been in operations for at least 1 year.</p> <p>Can the Bidder submit separate Comparable Plants for each component (boiler, turbine and generator)?</p> <p>Considering that no Supercritical Power Plants have been engaged in reliable commercial operation for at least one year in the Philippines to date, can we use a Supercritical Power Plant with less than one year of reliable commercial operation in the Philippines as a Comparable Power Plant?</p>	<p>a. The submission of a Comparable Plant is not limited only in domestic/Philippine setting, it can be from abroad.</p> <p>b. No. The TPBAC cannot evaluate a Comparable Plant piece-meal. The TPBAC should not be expected to “build” the Comparable Plant by the Bidder’s submission of separate components in order to determine the proven design and component and reliability of the Comparable Plant.</p> <p>c. No, the requirement is for at least 1 year in reliable commercial operation.</p>
	Different Comparable Plants per Key Component Instructions to Prospective Bidders	3.2, page 24; Annex TP-1	Comparable Plant – can the Bidder have different Comparable Plants per key component?	No. The TPBAC cannot evaluate a Comparable Plant piece-meal. The TPBAC should not be expected to “build” the Comparable Plant by the Bidder’s submission of separate components in order to determine the proven design and component and reliability of the Comparable Plant.



<p>Force Majeure Years</p> <p>Instructions to Prospective Bidders</p>	<p>page 24, Section 3.2 / Annex TP-1</p>	<p>IPB page 24, Section 3.2 / Annex TP-1</p> <p>(c) The Bidder shall provide a description, for the Nominated Power Plant, of its use of a technology that complies with the prevailing emission standards under pertinent DENR issuances on emission and other environmental standards for power plants. The Bidder shall provide convincing proof that the key components of the Nominated Power Plant [e.g., boiler, turbine and generator] is of proven design and technology, which means that generating facility elements of similar design must have been engaged in reliable commercial operation for at least one (1) year in a 60 Hertz system (“Comparable Plant”). The Comparable Plant will be considered to have been in “reliable” commercial operation for the purposes of this requirement if TPBAC’s Independent Engineer determines that the equipment proposed has an average forced outage factor that has not been above five percent (5%) and its average unit equivalent availability factor has not been below 87.67% for the duration of the commercial operation period except in a year of a major planned overhaul;</p> <p>Can we <u>exclude</u> in the computation of the Average Forced Outage Factor and the Average Unit Equivalent Availability Factor <u>such years when there were Events of Force Majeure that prevented the Comparable Plant from generating and supplying capacity?</u></p>	<p>Yes, for the Comparable Plant the average forced outage factor that has not been above five percent (5%) and its average Unit equivalent availability factor is exclusive/net of Event of Force Majeure (EFM).</p> <p>For clarity, if there is EFM during that period, proof of EFM should be submitted for evaluation of the TPBAC/Independent Engineer.</p>
<p>Technical Proposal Convincing Proof</p> <p>Instructions to Prospective Bidders</p>	<p>3.2 (c), page 24; Annex TP-1</p>	<p>The Bidder shall provide <u>convincing proof</u> that the key components of the Nominated Power Plant is of proven design and technology, which means that generating facility elements of similar design must have been engaged in reliable commercial operation for at least 1 year in a 60 Hertz system (“Comparable Plant”). What document can we submit for this requirement?</p>	<p>Annex TP-1, item 4 can serve as a guide but the Bidder is not limited thereto.</p> <p>Apart from the information required in Annex TP-1, item 4, the Bidder should provide as much information as possible of the Comparable Plant, to enable the TPBAC and its Independent Engineer to comprehensively evaluate the Comparable Plant to be of proven design and acceptable reliability factor – thus, proving that the Bidder’s Nominated Power Plant, which is of similar design and technology to the Comparable Plant, is of proven design and have the ability to have an acceptable reliability factor.</p>
<p>TECHNICAL PROPOSAL, Proof of Reliable Commercial Operation of Comparable Plant</p>	<p>Section 3.2 (c) / Page 24</p>	<p>The Bidder shall provide convincing proof that the key components of the Nominated Power Plant (e.g. boiler, turbine and generator) is of proven design and technology, which means that generating facility elements of similar design must have been engaged in reliable commercial operation for at least one (1) year in 60 Hertz system (Comparable Plant).</p> <ol style="list-style-type: none"> <li>We would like to confirm what would be an acceptable “Convincing Proof” of reliable commercial operation for a Comparable Plant. Will Meralco provide a sample template or pro-forma? We would also like to confirm if the document has to be certified/notarized.</li> <li>Given that Meralco recognized that the compliance may be issued abroad and obtaining such document will take time, is it possible for this requirement to be</li> </ol>	<ol style="list-style-type: none"> <li>Annex TP-1’s Certification regarding Technical Proposal (p. 81-82) will be notarized. The required attachments to it are those enumerated in p.76-79, IPB. The required attachments need to be signed only by the Bidder’s authorized representative.</li> </ol> <p>Annex TP-1 item 4. can serve as a guide but the Bidder is not limited thereto.</p> <p>The Bidder should provide as much information as possible of the Comparable Plant, to enable the TPBAC and its Independent Engineer to comprehensively evaluate the Comparable Plant to be of proven design and acceptable reliability factor – thus, proving that the Bidder’s Nominated Power Plant, which is of similar design and technology to the Comparable Plant, is of proven design and have the ability to have an acceptable reliability factor.</p>



			<p>submitted at a later date (which may be beyond bid submission document) or an alternate document subject to submission of actual compliance?</p> <p>3. We want to clarify the rationale in including the 60 Hz requirement for the boiler component considering it only generates steam and is not connected to the grid. Given this, we propose to delete the requirement for 60 Hz for boiler component.</p> <p>4. Supposed one unit of the Nominated Plant is already commercial operations by 2021, can such unit serve as “Comparable Plant” considering that it will already be at least 2 years in operations by 2024?</p>	<p>2. Compliances obtained abroad will be a significant factor to enable the TPBAC and its Independent Engineer to comprehensively evaluate the Comparable Plant. An advance scanned copy/printout, certified by the Bidder’s authorized representative, would suffice, with the original to be submitted no later than Pre-Qualification Evaluation as required by the TPBAC.</p> <p>3. and 4. The 1-year time period required should be reckoned from the bid submission deadline. If it is reckoned from 2024, as the query seems to suggest, how can the TPBAC evaluate/determine during the opening of the bids in January 2021 if the bidder’s Nominated Power Plant / Comparable Plant are of proven design and technology with an acceptable reliability factor? With regard to the 60 Hertz system requirement, for obvious reasons, it is included as such because the Philippines’ Grid and distribution systems all operate in a 60 Hertz system.</p>
	<p>Technical Proposal- Nominated Power Plant</p>	<p>Section 3.2 (d), in relation to Annex TP-1</p>	<p>Kindly confirm that the Nominated Power Plant Requirements required to be filled out in Annex TP-1 (e.g. manufacturer, make/type/model of the power plant boiler/ turbine/ generator) <b>are only indicative and can be subsequently changed by the Bidder.</b></p> <p>Given the requirement that the power plant be a greenfield plant, Bidder should be afforded the possibility of selecting the most economical or efficient technology, or finalizing its Engineering, Procurement, and Construction contract.</p> <p>We believe that the Bidders should be permitted to change the indicated Nominated Power Plant Requirements so long as the Bidders can satisfy their declared performance guarantees.</p>	<p>No. It must be noted that the Technical Proposal (Envelope 2), including Annex TP-1, is a requirement for the Bidder to prove that the Nominated Power Plant it is offering to deliver its Offered Contract Capacity is of proven design and technology and has an acceptable reliability factor. Submitting only indicative information will not allow the TPBAC to comprehensively conduct its due diligence and evaluation of the Bidder’s Nominated Power Plant.</p> <p>This is also the main reason why the Comparable Plant is being required, so that the Nominated Power Plant’s having a similar design and technology is of proven design and reliability factor.</p> <p>Also, upon execution of the PSA with the Winning Power Supplier, all the parameters of this Bidding, the Winning Power Supplier’s representations and warranties, issued certifications, and factors determining its Technical Proposal and Bid Price shall be read together with the PSA (see Sec. 2.1 [c.], IPB). Changing the Technical Proposal would not be fair to other bidders and the evaluation of the TPBAC at the time of the bidding.</p>
	<p>Comparable Plant  Instructions to Prospective</p>	<p>ANNEX TP-1 / Article 4 / Page No. 77</p>	<p>Generating facility elements of similar design must have been engaged in reliable commercial operation for at least one (1) year in a 60 Hertz system (Comparable Plant). How can we classify key components of the nominated power plant to be of similar design with the Comparable Power Plant? Does it require to be the same year model for example?  We request Meralco to allow a Comparable Power Plant that has a similar concept</p>	<p>The Comparable Plant shall be evaluated as a whole by the Independent Engineer, without regard to having one/more major component/equipment to be of similar brand/year/model.</p>

	Bidders		design and technology to that of the Nominated Power Plant and not necessarily the same brand and year model of major components/equipment (e.g. boiler, turbines and generator)	
	Comparable Plant  Instructions to Prospective Bidders	ANNEX TP-1 / Article 4 / Page No. 77-78	<p>1. What document is required as proof of reliable commercial operations for the Comparable Power Plant?</p> <p>Should the major components/equipment (e.g. boiler, turbines, generator) of a Comparable Power Plant be installed in a single power plant facility or is it possible that the boiler, turbines and generator were installed in different power plant facilities?</p> <p>Can a certification from the power plant owner or O&amp;M operator that the equipment (e.g. boiler, turbine and generator) has an average forced outage factor that has not been above five percent (5%) and an average unit equivalent availability factor that has not been below 87.67 % for the duration of the commercial operations period, except in a year of a major planned overhaul, be sufficient as proof of reliable commercial operations?</p>	<p>a. – see answer in item c. below -</p> <p>b. No. The TPBAC cannot evaluate a Comparable Plant piece-meal. The TPBAC should not be expected to “build” the Comparable Plant by the Bidder’s submission of separate components in order to determine the proven design and component and reliability of the Comparable Plant.</p> <p>c. Acceptable, but it should not a self-declaration or self-certification. In any case, the Independent Engineer will still verify this certification, so the certification will not serve, per se, as the sole "proof" of compliance with the requirement.</p>
	Comparable Plant  Instructions to Prospective Bidders	ANNEX TP-1 / Article 4 / Page No. 77	<p>For <b>Comparable Plants</b> held by Independent Power Producer Administrators, will the coverage of the data to be used for the computation of Forced Outage Factor and Equivalent Availability Factor be from the execution date of the IPPA contract?</p> <p>We request that the reference data coverage of the computation be only from IPPA Contract execution date until present.</p>	The reference date starting only from the IPPA Contract execution date until present will be accepted.
	GNPHR  Instructions to Prospective Bidders	Section 3 / Page No. 27	<p>For Natural Gas Plant, can we use Guaranteed Net Plant Heat Rate based on LHV?</p> <p>We request Meralco to allow LHV as basis for the GNPHR.</p>	Not amenable. For applicability to all gas plants, the preference is to use GCV.
	Forced Outage Factor and Availability Factor  Instructions to Prospective Bidders	ANNEX TP-1 / Article 4 / Page No. 77	<p>We would like to confirm the basis of reliable commercial operation for the Comparable Power plant <b>if possible to use “Availability Factor” instead of “Equivalent Availability Factor”</b>.</p> <p>Is it correct that that the average forced outage factor requirement is plant-based while the average unit equivalent availability factor is unit-based?</p> <p>We suggest that the basis of reliable commercial operation for the Comparable Plant be aligned—that is forced outage factor and availability factor (not <i>equivalent</i> availability factor).</p>	<p>a. and b.</p> <p>The intention of the proven reliability factor of the Comparable Plant is to evaluate it as plant-based.</p> <p>c. If the Comparable Plant to be submitted will consist of multiple Units, the simple average equivalent availability factor of all the Units will be used to comply with this requirement. If it consists of a single Unit, then the availability factor of that Unit will only be used.</p>

	<p>Ancillary Services Cost Recovery Payment</p>	<p>Section 3.3(f) of the IPB</p>	<p>The DOE Circular No. DC2019-012-0018 does not provide any formula for AS Cost Recovery. Section 8 of the Circular states that the existing cost-recovery mechanism for Ancillary Services shall continue to be adopted until a new mechanism is recommended by the AS-Technical Working Group and adopted by the DOE and/or ERC. With the existing cost recovery mechanism being charged to Load Customers as a complete pass-through mechanism, we note that requiring power suppliers to specify a cap will inadvertently take on undefined risks which could result in much higher bid prices. Because of the great uncertainties surrounding the estimation of the AS cost recovery, we suggest not to include such cost-recovery amount in computing the LCOE.</p>	<p><b>AS Cost Recovery</b></p> <p>While DOE DC2019-12-0018 does not provide any formula for AS Cost Recovery, Section 1.7 of the said Circular provides as one of its guiding principle for “transparent and equitable allocation of cost for the utilization of AS taking into account each grid user’s responsibility and contribution in maintaining the reliability of the grid”. Clearly, the said Circular’s policy direction is to establish Causer’s Pay principle in the allocation of AS costs. The existing cost recovery mechanism is currently being reviewed by the ERC and the ERC as a member of the AS-TWG solicited inputs on the appropriate cost recovery mechanism consistent with the guiding principle in the DOE AS Circular. In fact, there is already a pending NGCP petition for ERC to revise the current AS Cost Recovery, so that AS costs will be charged not only to load customers but to GenCos as well. Inclusion of the AS Cost Recovery in the Financial Evaluation Workbook is necessary because all costs in the bid documents are binding to the bidder once declared the Winning Power Supplier.</p> <p>Most importantly, removing the AS Cost Recovery Cap in the LCOE evaluation would expose the DU’s consumers to additional pass-through costs in the event that the ERC issues a Resolution that the AS cost recovery can be passed through to our consumers. In order to maintain the resulting ranking from the LCOE evaluation that includes the AS Cost Recovery Cap regardless of ERC’s resolution, a constant value of <b>PhP 0.2800 /kWh</b> shall be set as the floor value of the AS Cost Recovery Cap during each Contract Year for each Bidder that shall be used in the Headline Rate and the LCOE evaluation. This value can be modified by the Bidder in the Financial Evaluation Workbook as long as the revised value shall be higher than the floor value. If the Bidder elects to submit a higher value than the floor value as its AS Cost Recovery Cap, said Bidder waives its right to protest the resulting ranking from the LCOE evaluation in the event that ERC issues a resolution that the AS cost recovery is not a pass-through cost.</p> <p>In any case, the recovery of the AS Cost can only be charged as a pass through cost <u>only upon final approval or resolution by the ERC</u> that the AS cost recovery can be passed through to the DU’s customers.</p> <p><b>A Bid Bulletin will be issued to reflect this change and to be adopted in the Financial Evaluation Worksheet’s final version.</b></p>
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	<p>Bid Price and Bid Security</p> <p>Bid Requirements</p>	<p>3.3 (f) Envelope 3, page 10</p>	<p>The Bidder shall also indicate the <u>AS Cost Recovery Cap</u> on a yearly basis starting Contract Year 1 which will be used in computing the LCOE. What is the rationale for including AS Cost Recovery in the computation of the LCOE?</p>	<p><i>See discussion above.</i></p>
	<p>IPB</p>	<p>Page 28</p>	<p>In view of the DOE Circular No. DC2019-012-0018, the Bidder shall also Indicate the Ancillary Services (AS) Cost Recovery Cap on a yearly basis starting Contract Year 1...</p> <p><b>Comment/s &amp; Question/s</b> Ancillary Services is essential in ensuring reliability of supply, thus this service benefits the End-users and must be part of the cost that they should be paying. As the cliché goes “the most expensive power is no power at all.” Thus, additional costs are involved and necessary for the captive consumer to pay in order to have reliable and quality supply of power. Currently, this cost is a pass-through approved by the Regulator. System Operator (SO) enters into an agreement with a generator for the AS which agreement is subject to the approval of the regulator. The cost of AS is then absorbed by the end-users (whether contestable or captive). It should be noted that the bidder has no participation in determining the cost of the AS. Given the fact that the winning bidder will not benefit from the AS and that it has no control nor influence in the cost of AC, what is the rationale for putting a cap on the AC Cost Recovery? Is it appropriate to penalize the generator in the event that the actual cost of AS is higher than its estimated AC Cost Recovery Cap?</p> <p>In addition, there is no provision in the said DOE Circular that the cost of AC will be shared by the generator.</p> <p><b><i>It is suggested that the cap for the AS Cost Recovery Cap be removed.</i></b></p>	<p><i>See discussion above.</i></p>
	<p>BID PRICE AND BID SECURITY</p>	<p>Section 3.3 (f) / Page 27</p>	<p>In view of the DOE Circular No. DC 2018-009, the Bidder shall also indicate the Ancillary Services (AS) Cost recovery cap on a yearly basis xxx</p> <p>This should only refer to the AS Recovery Cost with respect to the Power Supplier’s delivery to Meralco and should not include the AS Recovery charged to Meralco.</p>	<p><i>See discussion above.</i></p>

	<p>Instructions to Prospective Bidders “Bid Price and Bid Security”</p>	<p>Section 3.3, Item No. 3 (f), page 28</p>	<p>It is not possible for the bidder to determine this AS Cost Recovery cap with some level of certainty. Therefore, it is difficult and unfair to the Bidder to assume this cost/risk especially for 20 years. This could potentially be a big risk. Since it is a pass-through cost, Meralco would be in the position to assume this cost. <b>We request the deletion of this provision.</b></p> <p><del>(f) In view of the DOE Circular No. DC2019-012-0018, the Bidder shall also indicate the Ancillary Services (AS) Cost Recovery cap on a yearly basis starting Contract Year 1, in PHP/kWh, which will be used in computing the LCOE. This AS Cost Recovery cap shall assume a proportionate allocation of AS charges among the affected generation companies and that such AS charges are considered pass-through costs pursuant to existing government regulations. Note that for purposes of actual implementation of the PSA, the AS charges contemplated under this CSP shall be the lower between the AS Cost Recovery cap or the actual AS charges incurred by the power supplier. Such AS charges will only be imposed and billed to Meralco upon approval by the relevant government agency of the implementing rules or guidelines providing for the imposition of ancillary services charges on account of the Winning Power Supplier; and</del></p>	<p><i>See discussion above.</i></p>
	<p>Performance Security</p>	<p>IPB, Sections 3.3.3(d) and 9.49 PSA, Section 4.2 and Appendix D</p>	<p>Neither the IPB nor the PSA appears to indicate how the value and tenor of the Performance Security will be computed or determined.</p> <p><b>Please provide the basis for the computation or determination of the value and the tenor of Performance Security.</b></p>	<p>The Performance Security is equivalent to the Offered Price for 2 months as indicated in the Financial Workbook.</p>
	<p>Stacking of Bids</p>	<p>IPB, Section 4.5.3, in relation to Sections 5.3 and 5.4, last paragraph, and Section 6</p>	<p>Section 4.5.3 of the IPB provides for the process of stacking the bids. Bidders who fill up the required Contract Capacity until the Marginal Bid Offer shall be considered the Best Bid/s and shall be recipients of the Notification of Best Bid/s. Under Section 5.3, if the “Bidder with the Best Bid “failed” the Post- Qualification, [the TPBAC] may proceed to notify the Bidder with the Next Best Bid that it will be subjected to a Post-Qualification evaluation, subject to any reduction of its Offered Contract Capacity, if necessary, should it be the Marginal Bid Offer.” On the other hand, the last paragraph of Section 5.4 provides that “[i]f the Winning Power Supplier refuses or fails, without justifiable cause, to accept the Notice of Award or sign the PSA template within the period prescribed in this IPB *** the TPBAC shall have the discretion to declare a failed bidding or to evaluate and notify a Next Best Bid (if any)”.</p>	

			<p>Section 6 summarizes the above provisions as follows:                  “If a Bidder with the Best Bid fails Post-Qualification; or the Winning Power Supplier refuses or fails, without justifiable cause, to accept the Notice of Award or sign the PSA template within the period prescribed in this IPB; or fails to comply with any of the terms and conditions of this IPB, then, pursuant to Sections 5.3 and 5.4, the TPBAC may notify the Bidder with the Next Best Bid of its selection for Post- Qualification, subject to any reduction of its Offered Contract Capacity, if necessary, should it be the Marginal Bid Offer. If the said Bidder with the Next Best Bid fails the Post- Qualification, the process may again be repeated for the next Bidder with the next lowest LCOE, as may be applicable.                  This option notwithstanding, if all of the Bidders with the Best Bid “failed” the Post- Qualification, then the TPBAC shall have the discretion to declare a failed bidding or to evaluate and notify a Next Best Bid (if any).”</p> <p>Although the foregoing provisions discuss when the Bidder with the Next Best Bid shall be considered, the procedure as to how (a) the TPBAC will issue the Notification of Best Bid/s and (b) the Bidder/s with the Best Bid/s shall signify their acceptance thereof is not specified in the IPB. In addition, the timing of the notification and the corresponding acceptance are unclear – whether it will be done (a) simultaneously where all Bidder/s with the Best Bid/s (e.g., Bidders A, B, and C) shall be notified at the same time and if one of them refuses to continue with the bidding process or accept the reduction of the Offered Contract Capacity with respect to the Marginal Bid Offer, the TPBAC shall proceed with the other Bidders next in rank (e.g., Bidder D) to fill the remaining required Contract Capacity; or (b) sequentially such that the first Bidder with the Best Bid shall be notified first and given a chance to accept or refuse before the TPBAC proceeds with the next Bidder with the Next Best Bid, in which case, the Marginal Bid Offer, if any, will be adjusted depending on the actions of the Bidders which are ranked higher.                  Thus, please clarify the mechanism on how the notification and acceptance of Best Bid/s will proceed.</p>	<p>The stacking and asking of acceptance for Marginal Bid Offers will be done during the Opening of Bid Prices, with all Qualified Bidders in attendance. Once the stack is filled up and Notifications of Best Bids are warranted and issued (verbally and via email), the Post-Qualification stage will proceed next. During this stage, any findings of “fail”/disqualifications of bidders, the Notifications of Next Best Bid, etc. will be made via email communication by the TPBAC.</p>
	<p>Qualifications of Bidder</p>	<p>IPB, Annex QD-1A, par. 3 Bid Requirement s, Legal Qualification Requirement s (e), p. 5</p>	<p>The Bid Requirements provide that the <i>“Bidder must be authorized under its articles of incorporation, constitutive or charter documents, or its equivalent, to engage in the business of power generation and supply of electricity as contemplated under the PSA.”</i>                  Annex QD-1A, on the other hand, states that the Bidder <i>“has been established to develop, own, operate and maintain a (specify details of the Nominated Power Plant) with the target completion date of (specify target completion date, as applicable).”</i>                  Kind confirm that, for purposes of the Bid, it is sufficient that a Bidder which owns the Nominated Power Plant is authorized under its articles of incorporation,</p>	<p>The understanding is correct.</p>

			<p>constitutive or charter documents, or their equivalent, to engage in the business of power generation and supply of electricity.</p> <p>It must also be noted that the particular details of a specific power plant or its target completion date would not yet be known to a corporation at the time of its incorporation. It is also impractical to require a Bidder to amend its articles of incorporation for this purpose, or to make reference to a particular PSA that has not been finalized or executed.</p> <p>Considering that the PSA has not been finalized or executed as at the date the Bidder's articles of incorporation were filed with and approved by the SEC, we propose that the language of paragraph 3 of Annex QD-1A be revised to state that the Bidder <i>"is authorized under its articles of incorporation, constitutive or charter documents, or its equivalent, to engage in the business of power generation and supply of electricity."</i></p>	The TPBAC prefers to retain the original wording.
	Beneficial Owners and Beneficial Interest	IPB, Annex QD-2, item 6	<p><b>Please provide definitions of "Beneficial Owners" and "Beneficial Interest".</b></p> <p><b>Please confirm that for a Bidder whose Parent Company is listed on the PSE, the submission of (1) the latest GIS filed with the SEC and (2) the latest Public Ownership Report and list of top 100 stockholders submitted to the PSE will suffice to comply with this requirement.</b></p>	<p>This is an SEC requirement on Beneficial Ownership on what is to be disclosed in the PSE, if applicable.</p> <p>Yes, it will suffice.</p>
	Statement of Financial Capability	IPB, Annex QD-6	<p><b>Can preferred shares that are perpetual in nature be presented as "preferred shares" in line items 4(b) and 5(b) only?</b></p>	<p>Yes, the bidder can present the preferred shares that are perpetual in nature as "preferred shares" to be consistent with the presentation in the financial statements.</p>
	Amended Articles of Incorporation  Instructions to Prospective Bidders	3.1.2 (b) Annex QD-2	<p>The Bidder must submit a copy of its <u>articles of incorporation and by-laws or articles of partnership</u>.</p> <p>Can we submit only the latest amended articles of incorporation/partnership?</p>	<p>Yes, as long as the SEC Certificate of Amendment is submitted and latest Amended Articles of Incorporation/Partnership reflect all the amended and prevailing provisions.</p>
	Consortium  Instructions to Prospective Bidders	3.1.2 (f) Annex QD-2, page 56	<p>If the Bidder formed a <u>partnership or consortium</u> for the purpose of this Bidding, the Bidders should submit an agreement showing that their liability in this Bidding and the resulting PSA should be solidary for the parties thereto.</p> <p>This is an attachment to Annex QD-2. If this is not applicable to the Bidder, should we just skip this requirement or do we need to submit a write-up stating that the same is not applicable?</p>	<p>The partnership or consortium envisioned in this provision or bid requirement (and the TPBAC in operationalizing it), as requiring separate submissions of Qualification Documents and Technical Proposal, is when the partnership or consortium is between two (2) or more generation companies is <u>specifically formed in order to join this Bidding</u>.</p> <p>If the partnership or consortium was already formed before the contemplation of joining this bidding, and the requirement is deemed not applicable by the Bidder, a write-up should be submitted to explain the non-applicability. However, for any write-up/explanation, the Bidder</p>

				must know that it is a calculated and known risk on its part that it is submitting to the TPBAC's exercise of discretion in allowing/disallowing the explanation provided in the said write-up as to why a particular bid requirement was deemed inapplicable by the said Bidder.
	GIS  Instructions to Prospective Bidders	3.1.2 (c), page 21	Partnerships are not required to submit GIS.  xxx (c) <u>for corporations</u> , copy of its latest General Information Sheet (GIS), stamped "received" 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;	The partnership itself will not file the GIS but each individual generation company as partner of the partnership must submit its General Information Sheet.
	Statement of Financial Capability  Instructions to Prospective Bidders	Annex QD-6, page 68	Most of the items on the table is not applicable to partnerships such as Subscribed and Paid Up Capital and Additional Paid-in Capital. Suggest to allow Bidder to modify fields to fit in partnership capital structure.	Bidder cannot modify fields. Bidder should fill out relevant fields and insert notation /attach FS.
	Project Feasibility Study  Bid Requirements  Instructions to Prospective Bidders	3.2(m), Page 26; Annex TP-1, Page 80	Is there a proposed form and substance for the required Project Feasibility Study?	None, but it should be the standard acceptable industry practice of preparing a Project Feasibility Study prior to developing or constructing a power plant.
	Bid Requirements for Contract Capacity of 1800MW	Page 10	Technical Proposal (Envelope 2) m) A Project Feasibility Study  <b>Comment/s &amp; Question/s:</b> Is there a template or at the very least the minimum information that must be contained in the Feasibility Study?  In order to promote uniformity and simplify preparation of Project Feasibility Study, it is suggested that a Project Feasibility template containing the required information be given to the bidders.	-same answer-



<p>Invitation to Bid</p>	<p>Terms of Reference Table</p>	<p>"Outage Allowance (OA) Scheduled OA not exceeding thirty (30) days xx  No Major Maintenance OA “  <b>In the event that the Power Supplier will have to perform scheduled Major Maintenance activities, may this be covered by a scheduled OA?</b></p>	<p>Yes, if the Power Supplier will follow procedure and consume it as Scheduled OA, provided that the Scheduled OA will not be exceeded.</p>		
<p>Major Maintenance Outage Allowance  Invitation to Bid</p>	<p>page 4</p>	<p><b>Invitation to Bid page 4 and Scheduled Outages under the PSA Template</b></p> <table border="1" data-bbox="660 418 1445 581"> <tr> <td data-bbox="660 418 859 581"> <p><b>Outage Allowance (“OA”)</b></p> </td> <td data-bbox="859 418 1445 581"> <ul style="list-style-type: none"> <li>• Scheduled OA not exceeding thirty (30) days</li> <li>• Forced OA not exceeding fifteen (15) days</li> <li>• No carry-over of OA</li> <li>• <b>No Major Maintenance OA</b></li> </ul> </td> </tr> </table> <p><i>Scheduled Outage means a removal of the Plant or any portion thereof from service initiated by Power Supplier, and scheduled and approved by the System Operator, for regular scheduled inspection, testing, preventive maintenance, corrective maintenance, repairs, replacement or improvement that has been scheduled in accordance with Section 9.2.</i></p> <p><i>Major Maintenance Outage means a removal of the Plant or any portion thereof from service, no more than five (5) times during the entire Term of this Agreement and no more frequent than once every four (4) years, for major repair, replacement, improvement and/or overhaul of the turbine, generator and/or boiler of the Plant, including its auxiliary equipment, which has been scheduled and approved by the System Operator, in accordance with Section 9.2.</i></p> <p><i>9.1.2 During Scheduled Outages within the Full Load Equivalent Scheduled Outage Allowance Days and Forced Outages within the Full Load Equivalent Forced Outage Allowance Days, Meralco shall procure Replacement Power from the WESM and Power Supplier shall not bill Meralco for these quantities.</i></p> <p>Can we include a Major Maintenance Outage Allowance in the PSA not exceeding 30 days every 5 years from Scheduled COD? The supply is specifically secured from the Nominated Power Plant and should consider major maintenance of the plant.</p>	<p><b>Outage Allowance (“OA”)</b></p>	<ul style="list-style-type: none"> <li>• Scheduled OA not exceeding thirty (30) days</li> <li>• Forced OA not exceeding fifteen (15) days</li> <li>• No carry-over of OA</li> <li>• <b>No Major Maintenance OA</b></li> </ul>	<p>Not amenable in including Major Maintenance OA.</p> <p>As relayed to the TPBAC by the DU, when the TOR/Invitation to Bid was submitted for the DOE’s approval, the DOE only granted Scheduled OA and Forced OA. It did not grant the inclusion of Major Maintenance OA.</p> <p>Note also that this is compliant with the ERC’s recently promulgated “Rules for the Interim Reliability Performance Indices and Equivalent Outage Days Per Year of Generating Units” (ERC Resolution No. 10, Series of 2020, 16 December 2020).</p>
<p><b>Outage Allowance (“OA”)</b></p>	<ul style="list-style-type: none"> <li>• Scheduled OA not exceeding thirty (30) days</li> <li>• Forced OA not exceeding fifteen (15) days</li> <li>• No carry-over of OA</li> <li>• <b>No Major Maintenance OA</b></li> </ul>				
<p>Assignment or Transfer of Contract Capacity  Invitation to Bid</p>	<p>page 4</p>	<p>Assignment or Transfer of Contract Capacity – Is this provision applicable to Meralco?</p>	<p>As the provision states, MERALCO will have the option to implement the Assignment or Transfer of Contract Capacity provision if the circumstances mentioned therein are present.</p>		
<p>Invitation to Bid</p>	<p>Terms of Reference Table</p>	<p>Assignment or Transfer of Contract Capacity</p>	<p>No. As relayed to the TPBAC by the DU, this TOR provision was already approved by the DOE.</p>		

			<p>The Contract Capacity and Associated Energy that is no longer required by Meralco shall not be assigned or transferred to another entity, except (i) if required for project financing in the case of Power Supplier; (ii) when allowed by the ERC; or (iii) when necessary to mitigate or avoid any losses or costs due to stranded contract capacity, provided that, in all cases, any assignment or transfer to a distribution utility shall comply with <b>applicable competitive selection process rules</b>.</p> <p>We suggest that “An assignment or transfer of Contract Capacity and Associated Energy by Meralco to another distribution utility should comply with applicable competitive selection rules <b>as may be mandated by the DOE or the ERC.</b>”</p>	
	<p>Invitation to Bid, Assignment or Transfer of Contract Capacity</p>	<p>Page 4</p>	<p>The Contract Capacity and Associated Energy that is no longer required by Meralco shall not be assigned or transferred to another entity, except (i) if required for project financing in the case of Power Supplier; (ii) when allowed by the ERC; or (iii) when necessary to mitigate or avoid any losses or costs due to stranded contract capacity, provided that, in all cases, any assignment or transfer to a distribution utility shall comply with applicable competitive selection process rules.</p> <p>We request that the Power Supplier be allowed to assign to another entity such contract capacity and associated energy no longer needed by Meralco.</p> <p>If the Contract Capacity will be transferred to another DU, suggest that Line Rental Cap will no longer apply. And that Parties can negotiate for other terms of the contract.</p> <p>The assignment by Meralco should be with the consent of the Power Supplier.</p>	<p>a. If it is a reduction of capacity, there’s no prohibition in the PSA-template for power supplier to assign to another entity.</p> <p>b. As to the terms of the PSA with the assignee, while modification in terms may be discussed between assignee and Power Supplier, by default, the same terms and conditions as in this PSA shall be adopted. This after all is the essence of an assignment.</p>
	<p>Cost of Services of Independent Engineer</p> <p>Instructions to Prospective Bidders</p>	<p>2.4. Cost and Expenses, page 15</p>	<p>Why include engagement of services of Independent Engineer as cost of the bidder?</p>	<p>In terms of expected cost and expenses, the Participation Fee was envisioned to account, among other reason, for the expected expenses and costs of the bidding process. The TPBAC cannot foresee the professional service fees of the Independent Engineer to account this in computing the Participation Fee, especially as the number of how many bids submitted (and to be evaluated by the Independent Engineer) will not be known until the Bid Submission Deadline.</p>
	<p>COC Provisional Authority to Operate</p>	<p>3.1.4 (c), page 22;</p>	<p>The Bidder should submit proof that the Reference Plant is covered by a <u>COC or an application for a COC</u> pending before the ERC.</p> <p>(c) Proof that the Reference Plant, if located in the Philippines, is covered by a Certificate of Compliance (“COC”) from the ERC, as submitted by the Bidder as a certified true copy by (i) the ERC; or (ii) the corporate secretary, in which case it must be under oath and notarized. If the COC</p> <p>Can we submit a PAO (Provisional Authority to Operate)?</p>	<p>Yes, PAO will be allowed for the Reference Plant, as long as supported by the required GCMR requirement.</p>

	Instructions to Prospective Bidders	Annex QD-5, page 65		
	IPB	Annex QD-5	<p>“Proof that the Reference Plant, if located in the Philippines, is covered by a Certificate of Compliance (COC) from the ERC.”</p> <p>Please confirm that alternative proof can be a valid and effective Provisional Authority to Operate (PAO) issued by the ERC.</p>	Yes, PAO will be allowed for the Reference Plant, as long as supported by the required GMCR requirement.
	IPB	Annex QD-5	<p>“<b>Proof</b> that the bidder or any of its direct shareholders with controlling interest, affiliate or ultimate parent, has, in the reasonable opinion of the TPBAC, satisfactorily undertaken the development, or construction, or operation maintenance of a Reference Plant, whether in the Philippines or elsewhere; Please confirm that such proof can be a valid and effective Provisional Authority to Operate (PAO) issued by the ERC.</p>	Yes, PAO will be allowed for the Reference Plant, as long as supported by the required GMCR requirement. But PAO/COC is only one part of proving the Reference Plant. The Bidder should also use Annex QD-5 and its required attachments to prove that the Bidder satisfactorily complied in submitting a proper Reference Plant.
	Shareholder Debts  Instructions to Prospective Bidders	page 24, Section 3.1.6; Annex QD-7B	<p>IPB page 24, Section 3.1.6 on Details of Project Cost / Annex QD-7B</p> <p>(b) Testimonial from one or more debt providers or arrangers, for the amount of the Project Cost that will be funded through debt to be obtained either by the Bidder directly or through any of its direct shareholders representing Controlling interest, Affiliates or Ultimate Parent, using the form in <b>Annex QD-7B</b>, if applicable.</p> <p>Item (b) should not cover debts secured by shareholders since the proceeds of such loans will form part of Item (a) to be infused either as equity or shareholder advances. This should include partners/stockholders.</p>	Not applicable to Bidder (equity funded).
	Effluent Standards  Instructions to Prospective Bidders	page 24, Section 3.2 / Annex TP-1	<p>IPB page 24, Section 3.2 / Annex TP-1</p> <p>(c) The Bidder shall provide a description, for the Nominated Power Plant, of its use of a technology that complies with the prevailing emission standards under pertinent DENR issuances on emission and other environmental standards for power plants. The Bidder shall provide</p> <p>Will this also include effluent standards?</p>	Yes, the effluent standards will be included since a Wastewater Discharge Permit is a requirement when obtaining the DENR’s Permit to Operate, which in turn is an ERC requirement for power plants applying for a COC.
	DENR Issuances  Bid Requirement	Page 11  Bid Price and Bid Security (Envelope 3)	<p>The Independent Engineer shall assess and determine if the provided GNPHR can comply with the prevailing emission standards under pertinent DENR issuances on emission and other environmental standards for power plants. What are the DENR issuances and other environmental standards referred to here that Bidder must comply?</p>	<p>a. It will be based on the Republic Act No. 8749, otherwise known as the “Philippine Clean Air Act of 1999” and its implementing rules and regulations. The DENR’s regulation on emission standards based on National Emission Standards for Source Specific Air Pollutants will also be referred to, as well as other DENR issuances on air quality that can be found in this link: <a href="https://air.emb.gov.ph/laws-policies-for-air-quality-management/">https://air.emb.gov.ph/laws-policies-for-air-quality-management/</a></p> <p>b. See answer above re effluent standards.</p>

Reference Plant Fuel Supply Plan or Agreement  Instructions to Prospective Bidders	3.1.4 (e), page 23; Annex QD-5, page 65	<p>The Bidder should submit a valid TSA and <u>Fuel Supply Plan or Agreement</u> for the Reference Plant. Should both documents be submitted?</p> <p>Can we submit a redacted Fuel Supply Agreement in view of its confidential nature? Or in lieu thereof, can we submit our Fuel Procurement Plan?</p>	<p>Fuel Supply Agreement or Fuel Supply Plan, whichever is applicable.</p> <p>Yes, a redacted version of the Fuel Supply Agreement is acceptable.</p>
AFS  Instructions to Prospective Bidders	3.1.4 (e), page 23 Annex QD-6, page 68	<p>The Bidder should submit a copy of the AFS <u>for the last 3 years</u> (the latest of which must <u>not be earlier than for the year ending December 31, 2019</u>), certified by the <u>chief finance officer or treasurer</u>. Please clarify. For what years are covered in the submission?</p> <p>Can the certification be done by an equivalent officer?</p>	<p>AFS to be submitted should be for the year ended 2017, 2018, and 2019</p> <p>Certification should be done by CFO or Treasurer or in the absence of CFO, equivalent officer</p>
Reserved Prices for the Headline Rate and LCOE  Instructions to Prospective Bidders	4.5.2, page 39	<p>The Bidder's Headline Rate and LCOE should be equal to or less than the <u>Reserve Prices for the Headline Rate and LCOE</u>.</p> <p>How were the Reserved Prices for the Headline Rate and LCOE determined by Meralco?</p> <ol style="list-style-type: none"> <li>1. When computing Po and Fo and Guaranteed fuel, should it be net of adjustments to the index such as incidentals or discounts (for Newc)? How will Meralco convert to US\$/MMBtu from the nominated forecasted index e.g. US\$/MT for Newc? Do we also nominate kcal value levels for the conversion?</li> <li>2. If we use JKM for LNG, that is usually expressed in DES i.e. <b><u>inclusive of freight</u></b>, do we still need to separate freight from fuel in this case?</li> <li>3. What will be the index forecasts used for the LCOE computation: <ol style="list-style-type: none"> <li>a. FX</li> <li>b. USCPI</li> <li>c. PhCPI</li> </ol> </li> <li>4. Can we offer a fixed fuel charge? How will that affect the evaluation?</li> <li>5. What is the premium/ LCOE impact to be considered in the event of outage allowances lower than the allowable 45 days?</li> <li>6. Is Headline Rate based on prices at Fo (3Q 2022-2Q 2023), or at Y1 of the PSA?</li> </ol>	<p>As relayed to the TPBAC by the DU, the Reserve Price is based on the DU's evaluation of the average cost of new entrant power plants based on latest available information and taking into consideration different fuel types and plant technology.</p> <ol style="list-style-type: none"> <li>1.a. The computation of Po and Fo as envisioned by the Financial Evaluation Workbook is for the commodity cost only, so if there are other incidentals related to the commodity cost, then the bidder should factor that in.</li> <li>1.b. If the bidder will be using an index that has a unit of US\$/MT, then it should also nominate its coal rank (stated in kcal/kg at GAR) which shall be binding for the duration of the Term.</li> <li>2. Yes, the Fo envisioned is for the commodity cost only. As provided in the TOR the freight cost should be provided in the FOM and/or VOM.</li> <li>3. It will be the available actual values of each assumptions (i.e. FX, US CPI, PH CPI) closest to the Bid Submission Deadline of 25 January 2021.</li> <li>4. No, setting a fixed fuel charge will violate the DOE-recommended fuel cost adjustment formula, as well as the TOR that specifically states: "no take-or-pay" on variable costs, which includes fuels." The DOE-recommended fuel cost adjustment formula is sound and valid as it allows for adjustment every quarter, which redounds to the benefit of</li> </ol>

				<p>the consumers, while at the same time being fair to the generation companies.</p> <p>5. As shown in the Financial Evaluation Workbook, the premium given to a reduction in outage allowances is a reduction of PhP 0.002/kwh on the Bidder’s computed Headline Rate and LCOE for every OA day reduced.</p> <p>6. The Headline Rate is based on the available actual values of each assumptions (i.e. FX, US CPI, PH CPI) closest to the Bid Submission Deadline.</p>
	Pre Bid Conference		the Docs state that fuel handling and freight costs should be included in the Bidder’s VOM & FOM. In the case of LNG, can liquefaction and regasification costs be considered as “handling and freight” costs?	<p>The Fo should only include commodity cost. Handling and freight cost should be included in the FOM and VOM.</p> <p>If the bidder thinks that the liquefaction and regasification costs are part of handling and freight cost then it should be included in the FOM and/or VOM.</p>
	Corporate Structure  Instructions to Prospective Bidders	3.1.2 (d), page 21	<p>What should be included in the corporate structure of Bidder? Can we only include Affiliates engaged in power generation?</p> <p>diagram of corporate structure with an indication of which entity has Controlling interest over, or the Affiliate (<u>engaged in power generation</u>) or Ultimate Parent of, Bidder, which shall be certified by the corporate secretary/assistant corporate secretary as a true and correct depiction of the corporate structure of the Bidder, which certification must be under oath and notarized;</p>	<p><b>For purposes of submitting diagram of the corporate structure</b>, we will agree to <b>limit the diagram to Affiliates engaged in the power industry</b>. For example, the telecommunications or food packaging Affiliate of the Bidder need not be disclosed/included in the said corporate structure diagram. However, the RES / private distribution utility / utility scale energy storage, etc. Affiliates of the Bidder, being in the power industry, should be included.</p> <p>The detailed diagram will help the TPBAC evaluate Bidder submissions that will come from its Affiliate/s, etc. and this is also being required by the ERC for PSA applications.</p> <p><b>A Bid Bulletin to reflect this change and the necessary amendment to the provisions of the Bid Requirements and IPB shall be issued.</b></p>
	Pre- Qualification Evaluation  Instructions to Prospective Bidders	4.4, page 37	Will the Pre-Qualification Evaluation be one on one per Bidder?	<p>Sec. 4.4.5. of the IPB states: “In the course of the Pre-Qualification Evaluation and as may be deemed necessary, the TPBAC and/or its TWG, as authorized by the TPBAC, may schedule a video conference with an Interested Bidder, to seek clarification with respect to such Interested Bidder’s Pre-Qualification Documents.”</p>

	<p>Next Best Bid</p> <p>Instructions to Prospective Bidders</p>	<p>5.0, page 40</p>	<p>Please confirm that the Next Best Bid should still have a bid price lower than Reserve Price for Headline Rate and LCOE.</p>	<p>Yes, the Next Best Bid should still be equal to or lower than the Reserve Prices for the Headline Rate and LCOE.</p>
	<p>Stamp on AFS</p> <p>Instructions to Prospective Bidders</p>	<p>3.1.5, page 23; Annex QD-6, page 68</p>	<p>AFS is required to be stamped received by BIR or SEC. We suggest for exemption if the latest AFS is not stamped received by BIR or SEC due to ECQ.</p>	<p>For AFS 2017 and 2018, FS to be submitted should be stamped received by the BIR and SEC.</p> <p>For 2019 AFS , FS without any stamp by the BIR and SEC will be acceptable. Provided that the bidder should also submit the email acknowledgment by the BIR and SEC along with FS signed by the auditors.</p>
	<p>Conflict of Interest</p> <p>Instructions to Prospective Bidders</p>	<p>2.10.2, page 18, Annex QD-1, Annex BID-1, Section 2.10.2</p>	<p>IPB Section 2.10.2</p> <p>(b) If at any time prior to the signing of the PSA, any Bidder, or any of its Affiliates, is found to have a Conflict of Interest as defined in this Section 2.10.2 (Conflict of Interest), it shall be disqualified from further participating in the Bidding. If the Conflict of Interest involves another Bidder, then both Bidders shall be disqualified.</p> <p>Annex QD-1</p> <p>5. (Name of Bidder) and all of the entities it has identified to comply with the Document Submissions under the IPB, have not at any time had a Conflict of Interest.</p> <p>Annex BID-1</p> <p>6. (Name of Bidder), and all of the entities it has identified to comply with Document Submissions requirements under the IPS, have not at any time had a Conflict of Interest.</p> <p>Definition of "Conflict of Interest" in Section 2.10.2 IPB</p> <p>(a) All Bidders found to have conflicting interests shall be disqualified to participate in this Bidding, without prejudice to the imposition of appropriate administrative, civil, and criminal sanctions. A Bidder may be considered to have conflicting interests with another Bidder in any of the events described below:</p> <ul style="list-style-type: none"> <li>(i) A Bidder has the same duly authorized legal representative as that of another Bidder for purposes of this Bid;</li> <li>(ii) A Bidder's Nominated Power Plant or listed portfolio of plants is also a Nominated Power Plant or listed portfolio of plants of another Bidder in (x) this Bidding or (y) in another pending competitive selection process being conducted by Meralco, in which case, both will be considered in Conflict of Interest; or</li> <li>(iii) A Bidder submits more than one Bid in this Bidding.</li> </ul> <p>Please confirm if Bidders, who are Affiliates, will not result to a Conflict of Interest pursuant to those provisions.</p>	<p>Bidders who are Affiliates is not listed in the events described as Conflict of Interest, thus, will not be considered as Conflict of Interest.</p>

			<p>Notwithstanding the confirmation, we suggest the following revisions:</p> <ul style="list-style-type: none"> <li>- Section 2.10.2(b) of the IPB  <i>"If at any time prior to the signing of the PSA, any Bidder <del>or any of its Affiliates</del> is found to have a Conflict of Interest xxx."</i></li> <li>- Item 5 in Annex QD-1  <i>"(Name of Bidder) <del>and all of the entities it has identified to comply with the Document Submissions under the IPB</del> has not at any time had a Conflict of Interest."</i></li> <li>- Item 6 in Annex BID-1  <i>"(Name of Bidder) <del>and all of the entities it has identified to comply with the Document Submissions under the IPB</del> has not at any time had a Conflict of Interest."</i></li> </ul>	<p>We agree with the suggested revisions.</p> <p>In the interest of time, Bidders may reflect this suggested change/deletion when they execute <b>Annex QD-1 and Annex BID-1</b>, in the interest of time.</p> <ul style="list-style-type: none"> <li>- Item 5 in Annex QD-1  <i>"(Name of Bidder) <del>and all of the entities it has identified to comply with the Document Submissions under the IPB</del> has not at any time had a Conflict of Interest."</i></li> <li>- Item 6 in Annex BID-1  <i>"(Name of Bidder) <del>and all of the entities it has identified to comply with the Document Submissions under the IPB</del> has not at any time had a Conflict of Interest."</i></li> </ul> <p>and consider Section 2.10.2 (b) of the IPB as amended to read as:</p> <p><i>"If at any time prior to the signing of the PSA, any Bidder <del>or any of its Affiliates</del> is found to have a Conflict of Interest xxx."</i></p> <p><b>A Bid Bulletin will be issued to reflect these changes/deletions.</b></p>
	<p>Conflict of Interest</p> <p>Instructions to Prospective Bidders</p>	<p>2.10.2, page 18</p>	<p>2.10.2 CONFLICT OF INTEREST</p> <p><i>(a) All Bidders found to have conflicting interests shall be disqualified to participate in this Bidding, without prejudice to the imposition of appropriate administrative, civil, and criminal sanctions. A Bidder may be considered to have conflicting interests with another Bidder in any of the events described below:</i></p> <p style="padding-left: 40px;"><i>(i) <u>A Bidder has the same duly authorized legal representative as that of another Bidder for purposes of this Bid;</u></i></p> <p>If two Bidders, who are Affiliates, have the same CFO or Treasurer or equivalent officer who will execute any of the Document Submissions, will this be considered a Conflict of Interest?</p> <p>If two Bidders have the same Reference Plant, will it be considered a Conflict of Interest?</p>	<p>Yes, this will be allowed. The CFO or Treasurer of the entity whose financial capability will be used to fulfill the financial capability requirements should certify the documents. The cited Conflict of Interest ground was intended to cover the authorized representatives indicated in the Expressions of Interest.</p> <p>Bidders, who are Affiliates, may provide the same Reference Plant, and will not be considered as an event of Conflict of Interest.</p>

<p>Pre- and Post-Qualification Evaluation</p> <p>Instructions to Prospective Bidders</p>	<p>4.4.1, page 37</p>	<p>4.4.1, page 37</p>	<p>What will be the instances which will warrant the conduct of Pre-Qualification Evaluation? What will be the difference of this and the Post-Qualification Evaluation?</p>	<p>It will depend on several factors, for example, but not limited to: the number of bidders submitting bid submissions; technical qualifications and/or technical proposals that require further evaluation, etc.</p> <p>Interested Bidders deemed to have “passed” the Pre-Qualification Evaluation is allowed to proceed to the opening of bid prices (the bidders’ Envelope 3). Bidders whose bid prices are declared the best bid, the Envelope 3 bid prices of the said bidders will undergo Post-Qualification by the TPBAC. Only the contents of the Bid Prices (Envelope 3) shall be the subject of Post-Qualification.</p>
<p>IPB – Unsatisfactory Performance</p>	<p>3.1.3 Annex QD-4A</p>	<p>3.1.3 Annex QD-4A</p>	<p>In Section 3.1.3, Bidder must submit Notarized Certification of Absence of Unsatisfactory Performance Record and Outstanding Dispute, or Due and Demandable Financial Obligation/s, using the form in Annex QD-4, and a Notarized Certification from the Bidder's Counterparty(ies) using the form in Annex QD-4-A (without modification).</p> <p>We believe that the TPBAC should allow the Bidder and the Affiliates to issue QD4-A or a similar certification where a Counterparty fails or refuses to issue QD4-A, whether or not there is Unsatisfactory Performance or an Outstanding Dispute. In either of such cases, or for no reason even in the absence of Unsatisfactory Performance or Outstanding Dispute, the Counterparty may not have any interest or inclination to assist the Bidder or the Affiliate. In fact, in the absence of Unsatisfactory Performance or Outstanding Dispute, the Counterparty may not want to issue QD4-A because doing so might serve to estop the Counterparty from alleging a belated discovery of such performance or basis for a claim that already existed at the time of issuing QD4-A (but was not yet discovered at that time).</p> <p>We request TPBAC to allow the Bidders power generation Affiliates to issue Annex QD-4A or a <b>similar certification in the event Affiliates’ Counterparty/ies fails or refuses to issue QD4-A.</b></p> <p>We also request TPBAC to allow the Bidder to submit the Notarized Certification of Absence of Unsatisfactory Performance Record and Outstanding Dispute, or Due and Demandable Financial Obligation/s (Annex QD-4) <b>even if with incomplete attachments</b> (i.e. no Annex QD-4A submitted by some Co counterparties listed in Annex A of Annex QD-4).</p> <p>Related to this, TPBAC to consider the proposed revision of item 7 in Annex QD-4:</p>	<p>Not amenable. The proposed alternative write-up/self-explanation of the reason/s why the certifications were not obtained cannot be verified by the TPBAC. It can easily be abused and will just encourage the Bidders not to secure Counterparty certifications (Annex QD-4-A).</p>



			7. Failure of the (Insert Name of Bidder) to (i) submit this Certification <del>and any of its attachments required under Section 3.1.3 of the IPB</del> ; or (ii) to truthfully/completely disclose its Counterpart(ies)/financial lenders in the list provided in Annex A herein; and/or any breach of the representations provided herein shall be deemed a material or willful misrepresentation and a ground for the disqualification of the Bidder in accordance with the IPB.	
	IPB – Bid Price and Bid Security	3.3.b	(b) Bid Security equivalent to Three Million Pesos (PhP3,000,000.00) multiplied by MegaWatt (MW) of Offered Contract Capacity, in the form of an irrevocable standby letter of credit issued by an Allowed Bank listed in Schedule 1 and using the template in Annex BID-2 (without modification);  TPBAC to confirm that Bid Security denominated in USD is acceptable.  TPBAC to please provide the exchange rate to be used if USD- denominated to determine peso-equivalent amount.	Yes, Bid Security may be in USD. Exchange rate to be used is the December 31, 2020 PDS closing rate (“reference rate”). This will also be the reference rate in computing Php equivalent upon renewal of the bid security. Provided that if the reference rate depreciates by 5% at the time of bid security renewal, forex rate to be used shall be the PDS closing rate of the month prior to expiry date of the Bid security. (To illustrate, assuming PDS closing rate at Dec. 31, 2020 is PhP 48.00, Bid Security expiry date is March 15, 2021, exchange rate to use is: - Upon bid security renewal : P48 If PDS closing rate upon renewal is P50.4 and above (P48 x1.05), use PDS closing rate of February 2021 (month prior to Bid Security expiry date )
	Bid Security	IPB, Section 3.3(b)	Under Section 3.3(b) of the IPB, a Bidder must submit a Bid Security in the amount of Three Million Pesos (PhP3,000,000.00) multiplied by MegaWatt of Offered Contract Capacity in the form of an irrevocable standby letter of credit issued by an Allowed Bank listed in Schedule 1 and using the template in Annex BID-2.  Kindly clarify if the Bid Security may be denominated in U.S. Dollars and, if that is allowed, the exchange rate that would be used in computing the equivalent amount of the Bid Security in US Dollars. We believe that this should be allowed as Meralco would not be prejudiced if the Bid Security were denominated in a currency other than Philippine Pesos.	-same answer-
	IPB – Bid Price and Bid Security	3.3.d.2	$P_n$ is the simple average of the actual quarterly fuel prices from the preceding four calendar quarters, in USD/MMBtu. For clarity, the calendar quarters are defined by the following dates: (i) December 26 to March 25 (ii) March 26 to June 25 (iii) June 26 to September 25 September 26 to December 25  We note risk of fuel cost under-recovery with the current definition of $P_n$ as discussed below.  a. “ $P_n$ ” is currently defined on the basis of a look-back of quarterly	a. Noted.

		<p>prices</p> <p>b. We propose changing Pn to mean “the month when the Billing Period starts” otherwise the resulting fuel cost or charge would have a very long look back period resulting in under-recovery and will not reflect the generator’s true cost of generation.</p> <p>i. The long long-back basis exposes the generator to losses from fuel charge under-recovery in situations of rising fuel prices because its actual costs would exceed the look back prices and hence, generator would only be allowed to charge a lower cost</p> <p>ii. This method of a long look back is inconsistent with the regulatory concept that generators should recovery or reflect in their fuel charges their true cost of generation on a revenue neutral no-gain- no-loss basis.</p> <p>Since generators are required by DOE rules to keep 30 days inventory (as well as the PSA), the fuel that a generator will use up during a Billing Period is its 30-day inventory at the beginning of the Billing Period (under a first-in-first-out inventory usage basis)</p> <p>iv. This beginning inventory would have been built up from the previous 30-day period and its associated cost is also the fuel prices of the previous 30-day period of its fuel delivery.</p> <p>v. Hence, in previous ERC ruling and decisions, the fuel cost which a generator can charge for its electricity supply in a Billing Period is based on the lower of actual fuel cost or the posted fuel reference index (eg, Newcastle) of the month prior to the Billing Period. A Pn based on four (4) quarters does not reflect the true cost associated with the beginning fuel inventory of a Billing Period</p> <p>Accordingly, we propose “Pn” to be defined as “the posted fuel price, stated in US\$/MMBtu corresponding to the Fuel Index on the month the Billing Period starts”.</p> <p>This basis of aligning calendar quarters with the span of Billing Periods is not workable since the Fuel Indices (such as those posted in the World Bank</p>	<p>b. No, this cannot be allowed. This will change the DOE-recommended fuel cost adjustment formula in the TOR’s Tariff Structure, that the DU and TPBAC cannot revise.</p> <p>-same answer above-</p>
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			<p>Commodities Prices or CoalSpot.com) state the relevant prices based on the calendar month; hence, there is no practical way to calculate or determine an average price a calendar quarter which starts on the 26<sup>th</sup> of a month and ends on the 25<sup>th</sup> day of the third succeeding month). <b>Suggest to simplify and use whole calendar months to define calendar quarters</b></p> <p><b>Should the Bidder be able to secure a Fixed Price contract with a coal supplier, is it possible to bid a fixed fuel price in the LCOE evaluation workbook but not escalating by 2% p.a. in Years 1-10?</b></p>	<p>c. <i>same answer above.</i></p> <p>d. <i>As discussed above/previously</i>, no, this cannot be allowed. Setting a fixed fuel charge will violate the DOE-recommended fuel cost adjustment formula, as well as the TOR that specifically states: “no take-or-pay” on variable costs, which includes fuel.” The DOE-recommended fuel cost adjustment formula is sound and valid as it allows for adjustment every quarter, which redounds to the benefit of the consumers, while at the same time being fair to the generation companies.</p>
	IPB – Bid Price and Bid Security	3.3.d.3	<p>If the Nominated Power Plant is a coal plant, the Bidder shall indicate the coal rank and state the Guaranteed Net Plant Heat Rate (GNPHR), in Btu/kWh at HHV. We suggest adding after “coal rank” the phrase “,stated in kcal/kg at GCV,”</p>	<p>We are amenable to this suggestion by change GCV to GAR instead, like so: “ stated in kcal/kg at <u>GCV GAR</u>,”</p>
	ITB	Page 27, Section 3.3(d)3.	<p>The provision states that if the Nominated Power Plant is a gas plant, the Price Bidder shall state the Guaranteed Net Plant Heat Rate (GNPHR), in Btu/kWh at GCV. <b>Please confirm that GCV means gross calorific value and is also commonly referred to as high heating value or HHV.</b></p> <p>We <b>recommend that all references to GCV be changed to HHV</b> as is normal industry practice.</p>	<p>a. Yes, the understanding is correct.</p> <p>b. Noted.</p>
	IPB – Bid Price and Bid Security	3.3.e.	<p>The Bidder shall also indicate the Line Rental cap on a yearly basis starting Contract Year 1 to Contract Year 10, in PhP/kWh. In no case will the annual Line Rental cap be higher than PhP 0.2000/kWh; We suggest that the <b>line rental cap be stated only for the first 10 years under the same concept that bidder takes only a 10-year risk in its fuel by the ratio of Fo/Fa being applicable only for 10 years</b></p>	<p>No. Putting a line rental cap for the duration of the Term would benefit our consumers and shield them from the volatility of line rental charges.</p>

	IPB	Art 3.3 (e)/ page 28	<p>Line Rental cap  <i>Line Rental is a cost item of MERALCO being charged directly to them by EIMOP and is a pass thru cost allowed by ERC. What is the rationale of passing the cost to Power Supplier?</i>  <i>Power Supplier has no visibility on MERALCO's actual line rental charges and is uncertain of what would be its cost implications. Can this be removed or be made optional in the bidding?</i></p> <p><i>Considering that line rental is pass-through cost of the DU, may we <b>suggest that this be removed as part of the requirement and instead remain as full accountability of the DU.</b></i></p>	Not amenable to remove, this is to limit the exposure of the DU's customers to the volatility of the line rentals.
	Bid Bid Requirements for Contract Capacity of 1800MW	Page 11 – item 4	<p>The Bidder shall also indicate the Line Rental cap on a yearly basis starting Contract Year 1. In no case will the annual Line Rental cap be higher than PhP 0.2000/kWh.</p> <p><b>Comment/s &amp; Question/s</b>  <b>May we know the reason of MERALCO for putting a cap on the Line Rental charges of a generator?</b></p> <p>Is the rise and fall of the Line Rental Cost controlled by the Generator?          At the same time, by regulation, this is a valid cost that can be recovered by the generator in case this burden is shifted to the generator. By putting a cap on the Line rental cost that the generator can charge is unduly penalizing the generator for something beyond its control.</p> <p>Due to the uncertainty in the outcome of this formula during the implementation of the PSA, this may lead to additional risks that will contribute to the increase in the cost of debt, which the Regulator would not consider in determining the allowed WACC.</p> <p><b>It is recommended that the cap for the Line rental be removed and make the cost of line rental to be 100% pass-through.</b></p>	-same answer-
	IPB	Annex QD-6 (b)	<p>“Notarized Statement of Financial Capability</p> <p>b. Most recent quarterly financial statements, certified as true copy by CFO or treasurer in which case must be under oath and notarized”</p> <p>Please confirm that the most recent quarterly financial statements would pertain to those for the third quarter ending 30 September 2020. The next quarterly financial</p>	Yes, the most recent unaudited quarterly FS that will be submitted is as of and for the period ended 30 September 2020.

			<p>statements for the last quarter ending 31 December 2020 and will not yet be available by the Bid Submission Deadline of 25 January 2020.</p>	
	<p>Invitation to Bid</p>	<p>Terms of Reference Table</p>	<p>“Grounds for Termination <b>Non-Occurrence of Commencement Date or COD”</b></p> <p>Please confirm that Non-Occurrence of Commencement Date or COD as a ground for termination <b>is subject to the clauses on Replacement Power and delay in COD.</b></p>	<p>This is subject to the applicable provisions on the PSA-template relating to Excused Delay.</p>
	<p>Bid Requirements for Contract Capacity of 1,800 MW (net)</p>		<p>"Legal Qualification Requirements</p> <p>The Bidder and any of its Affiliates engaged in power generation <b>must not have an Outstanding Dispute</b> with Meralco and/or Counterparties”</p> <p>The requirement on not having an Outstanding Dispute should not prejudice a Bidder where a Counterparty files a counterclaim where there is no allegation of fraud or intentional non-payment on the part of the Bidder/its Affiliates, regardless of amount of the counterclaim. It appears that a Counterparty simply has to file a counterclaim for a small amount, and that by itself already prejudices the Bidder.</p> <p>Please confirm that for Outstanding Dispute, it refers to "<b>proceedings</b>" whether judicial, administrative etc., and does not cover mere discussions or negotiations.</p> <p>"For this purpose, "<b>Outstanding Dispute</b>" refers to... provided, that the following instances with respect to pending disputes with Counterpart(ies) are excluded from this definition:</p> <p>"(i) disputes where the Bidder/its Affiliates engaged in power generation itself filed a case/suit against its Counterpart(ies) to protect its lawful interests and the Counterpart(ies) did not file a countersuit or counterclaim against the Bidder/its Affiliates engaged in power generation, subject to item (ii) below; and</p> <p>"(ii) when a suit or countersuit involves <b>more than</b> Four Hundred Thousand Pesos (PhP400,000.00) or less, <b>but</b> there is no allegation of fraud or intentional non-payment on the part of the Bidder/its Affiliates engaged in power generation..."</p>	<p>Yes, the understanding is correct, as the definition states “refers to any pending judicial, administrative, contractual or alternative dispute resolution proceeding...”</p>

<p>Bid Requirements for Contract Capacity of 1,800 MW (net)</p>		<p>“Technical Qualification Requirements</p> <p>An “<b>Affiliate</b>” means with respect to a specified entity, an entity that directly or indirectly, through one or more intermediaries, Controls (e.g. parent or grandparent company), is Controlled by (e.g. subsidiary) or is under common control (e.g. sister company) with the specified entity.</p> <p>“<b>Control</b>” means: (a) the ownership (whether directly or indirectly) of more than fifty percent (&gt;50%) of the total issued voting share capital or other voting interest of that company or corporation; or (b) the ability to unilaterally appoint a majority of the board directors or equivalent body of that company or corporation through the ownership of securities with voting power or otherwise, without the need of the vote or approval of another; or (c) <b>the ability to otherwise unilaterally direct the business affairs and/or operations of that company or corporation, without the need of the vote or approval of another.</b>”</p> <p>“<b>Affiliate</b>” refers to a controlled “entity” (among others). On the other hand, “<b>Control</b>” refers to controlled “company or corporation” (among others). <b>For consistency, we believe that Control should also refer to control of “an entity”, such as a partnership</b>, e.g. where the bidder is in “Control” of a company or corporation <b>or an entity or partnership</b> that owns the Reference Plant.</p> <p>We suggest that “<b>Control</b>” means: (a) the ownership (whether directly or indirectly) of more than fifty percent (&gt;50%) of the total issued voting share capital or other voting interest of that company or corporation <b>or entity</b>; or (b) the ability to unilaterally appoint a majority of the board directors or equivalent body of that company or corporation <b>or entity</b> through the ownership of securities with voting power or otherwise, without the need of the vote or approval of another; or (c) the ability to otherwise unilaterally direct the business affairs and/or operations of that company or corporation <b>or entity</b>, without the need of the vote or approval of another.</p>	<p>Partnership setup is contemplated in the definition of “Control” and, for this purpose, any reference to “company” shall be interpreted by the TPBAC to include a partnership setup, no need to insert “or entity” as suggested.</p>
<p>Bid Requirements for Contract Capacity of 1,800 MW (net)</p>		<p>“Legal Qualification Requirements</p> <p>The Bidder and any of its Affiliates engaged in power generation <b>must not have an Outstanding Dispute</b> with Meralco and/or Counterparties”</p> <p>Please clarify what “contractual” proceeding refers to in the definition of Outstanding Dispute.</p>	<p>It refers to dispute mechanisms from contractual arrangements (e.g. commercial arbitration, etc.)</p>

<p>Extension of Bid Submission Deadline</p>			<p>A capital-intensive investment project at this magnitude requires careful planning, analysis and feasibility studies. The technology, funding, market, technical, and regulatory components involved must be meticulously studied and evaluated for the development and successful execution of the project. It is in the above circumstances that we would like to request an extension of three (3) month/s from the published date of bid submission. A reasonable time for preparation must be given to all prospective bidders to come up with a realistic and competitive offer for the benefit of Meralco’s customers.</p> <p>Moreover, as indicated on Bid Bulletin No. 1, the final version of the Financial Evaluation Workbook shall only be released ten (10) days prior to the Bid Submission Deadline.</p> <p>We maintain that a reasonable time should be given to all prospective bidders to analyze and incorporate the official assumptions and price indices that shall be used in Meralco’s levelized cost of electricity (LCOE) evaluation. Furthermore, clarifications and questions may arise related to the Financial Evaluation Workbook (initial and final) that may require a separate workshop or seminar for the bidders.</p> <p>In summary, the activity durations reflected on Meralco’s indicative bidding schedule appear to be brief with respect to the size and scale of the project. <b>The activity durations should be scheduled within a reasonable time to suit the project requirements.</b></p>	<p><b>Extend Bid Submission Deadline</b></p> <p>No, unless the DOE is willing to extend the period to conduct a CSP. We need to meet the DOE CSP Rules prescribed deadline to complete the CSP within 5 months from the time of the publication of the invitation to bid up to the filing of the PSA to the ERC for approval (i.e. from 1 October 2020 to 1 March 2021). After the execution of the PSA with the Winning Power Supplier, it is important to account the period of time to pre-file and file the PSA with the ERC.</p> <p>In addition, as relayed to the TPBAC by the DU, the DOE reminded the DU several times, taking into account the COVID-19 pandemic, to ensure that its CSP schedule for this Bidding will not delay the delivery of electric power supply starting in 2024 consistent with MERALCO’s Power Supply Procurement Plan. The ERC’s typical timeframe to review and approve PSAs, as well as the average period to construct, test and declare commercial operations of a power plant, must also be accounted for.</p> <p>For the final Financial Evaluation Workbook, it should not be used as an excuse for an extension the initial version released in Bid Bulletin No. 2 dated 23 November 2020 contain already assumptions and indices that would enable the Interested Bidder to evaluate/simulate/prepare its financial offer. It will just be updated to the latest assumptions and indices no later than 18 January 2021 in order to reflect the available actual assumptions and price indices closest to the Bid Submission Deadline of 25 January 2021.</p>
<p>Invitation to Bid</p>	<p>Page 7</p>		<p>We would like to propose to extend the Bid Submission Deadline by at least 4 weeks to provide the bidders ample time to prepare their Documents Submission.</p> <p>Extend the Bid Submission Deadline from 25 January 2021 to at least 4 weeks later.</p>	<p>No, unless the DOE is willing to extend the period to conduct a CSP. -same answer above-</p>
<p>Supply Type / Terms of Reference (“TOR”) Table</p>	<p>Technical Parameters (TOR Table) / Page 2</p>		<p>To open the bid to a more diverse pool of Bidders and to allow the Bidders to optimize their power supply sources and offer the lowest possible cost of power to Meralco’s consumers, we suggest that in meeting Meralco’s capacity requirements, the CSP be more inclusive to allow other energy sources, supplemented with a Bidder’s supply portfolio, including the WESM.</p> <p><i>Revised provision to read:</i></p> <ul style="list-style-type: none"> <li>• Baseload (firm and dispatchable)</li> </ul>	<p><b>Source from the WESM or other source</b></p> <p>No. As relayed to the TPBAC by the DU, this TOR provision was already approved by the DOE.</p> <p>The TOR and PSA-template’s terms and conditions should be taken as a whole, and it will show that this CSP if for a physical arrangement/contract, with a two-part tariff evaluation, and with the main source of supply of energy should be primarily from the Nominated Power Plant. This is the DU’s way of encouraging and aligning its power</p>

			<ul style="list-style-type: none"> <li>• <b><u>To supply the capacity requirement of Meralco, Bidders may source supply from:</u></b> <ul style="list-style-type: none"> <li>○ Single or portfolio of plant/s, provided that the power plants should be in commercial operation not earlier than January 2020 but no later than May 2025; <b><u>and the WESM</u></b></li> </ul> </li> </ul>	<p>supply procurement plant with DOE’s policy to encourage the development of new capacities.</p>
	<p>Invitation to Bid TOR Table: “Supply Type”</p>	<p>Page 2</p>	<p>We <b>propose to add a provision that explicitly states that the energy can also be sourced from WESM or any other sources</b> to be clear that the Bidder has flexibility over sourcing its power to fulfill the PSA, just as it is in the MERALCO 500MW and 1200MW CSP’s last Sept 2019 .</p> <p>ADDITION:</p> <p><b><u>Associated Energy can also be sourced from WESM or any other sources, delivered at the Contract Price.</u></b></p>	<p>Not amenable.</p> <p>The TOR and PSA-template’s terms and conditions should be taken as a whole, and it will show that this CSP if for a physical arrangement/contract, with a two-part tariff evaluation, and with the main source of supply of energy should be primarily from the Nominated Power Plant. This is the DU’s way of encouraging and aligning its power supply procurement plant with DOE’s policy to encourage the development of new capacities.</p> <p>Thus, this should be differentiated from the September 2019 brownfield CSPs conducted by the DU which was a financial arrangement setup.</p> <p>The relevant provisions of the PSA-template are as follows:</p> <p>Sec. 1.1. defines Contract Capacity that it should be “<b>sourced from the Plant,</b>” while Sec. 6.1.2 states:</p> <p>“6.1.2 Unless otherwise expressly permitted by this Agreement, Power Supplier shall not, without Meralco’s prior written consent:</p> <p>(a) xxx</p> <p>(b) provide Meralco with capacity and/or electrical energy <b>from any source other than the Plant; xxx”</b></p>
	<p>Bid Requirements “Interested Bidders and Qualifying to Bid”</p>	<p>Page 1</p>	<p>We propose to include a provision that explicitly states that the energy can also be sourced from WESM or any other sources to be clear that the Bidder has flexibility over sourcing its power.</p> <p>The Bidder must identify the proposed power plant/s, <del>which must be capable of supplying the Offered Contract Capacity</del> <b>which shall supply to</b> Meralco for the Required Contract Period beginning on the Scheduled Commercial Operations Date ("Nominated Power Plant"). To reiterate, the Nominated Power Plant/s shall be with one Delivery Point (for purposes of settlement and transfer of risk and loss) within the Luzon Grid, nearest to Meralco's load center, and subject to Meralco's approval.</p> <p><b><u>Accordingly, the Bidder may source its energy to be supplied to Meralco from WESM and/or other sources</u></b></p>	<p>-same answer-</p>



<p>Minimum Unit Size and Fuel Type / TOR Table</p>	<p>Technical Parameters (TOR Table) / Page 2</p>	<p>We would like to clarify that the unit size of the Nominated Power Plant refers to the size of the entire plant and not just one generating unit of the Nominated Power Plant.</p> <p>To allow greater participation and provide equal opportunity for all power suppliers, we suggest that:</p> <ul style="list-style-type: none"> <li>a) the requirement for the unit size be removed;</li> <li>b) a technology agnostic approach to the Nominated Power Plant be adopted;</li> <li>c) the requirement for the same Guaranteed Net Heat Rate for multiple units be removed; and</li> </ul> <p>sourcing from a Bidder’s supply portfolio, which will not necessarily have the same fuel technology, and also from the WESM be allowed.</p> <p><i>We suggest to remove bullet #2 under Technical Parameters:</i></p> <p><del>If multiple units, minimum of 150 MW per unit, which all units shall have the same fuel type and Guaranteed Net Plant Heat Rate.</del></p>	<p>No. As relayed to the TPBAC by the DU, this TOR provision was already approved by the DOE, and the TPBAC cannot change the “150 MW per unit” requirement, as this follows the Interested Bidder’s 150 MW minimum Offered Contract Capacity. More importantly, the 150 MW per unit requirement is meant to level the playing field for both small-scale and large-scale generation companies. Since this CSP employs a Pay-as-Bid mechanism and is meant to promote new generation capacity, allowing smaller sized units would disadvantage large-scale generation companies</p> <p>Moreover, having smaller units than 150 MW per unit will make it extremely difficult to operationalize in the implementation of the PSA, such as in terms of determining the actual Outage Allowances, actual fuel cost, as well as the validation of the DOE-recommended fuel cost adjustment formula. With more Units to monitor, particularly on the actual fuel consumption and efficiency, the more difficult it is in implementing the pass through charge of the generation cost. It must also be noted that this minimum unit size was already relaxed from the previous greenfield CSP’s TOR last year, to allow for more generation companies to participate.</p> <p>This is for the same reason that we also cannot change the requirement of having “same fuel type and GNPHR” for plants having multiple units (especially when applied to thermal power plants) as one can only imagine the difficulty evaluating different fuel types and GNPHR per unit in one offered Nominated Power Plant.</p>
<p>Invitation to Bid TOR Table: “Technical Parameters”</p>	<p>Page 2</p>	<p>We propose to remove "If multiple units, minimum of 150 MW per unit, which shall have the same fuel type and Guaranteed Net Plant Heat Rate" in order to be consistent with the bid being technology-neutral</p> <p><del>If multiple units, minimum of 150 MW per unit, which shall have the same fuel type and Guaranteed Net Plant Heat Rate.</del></p>	<p>-same answer-</p>
<p>Fuel Cost for Contract Years 11 to 20 / TOR Table</p>	<p>Tariff Structure (Bullet No. 7) / Page 3</p>	<p>To provide the lowest possible cost of power to Meralco’s consumers, we suggest that Bidders be given the option to cap the volatility in fuel price beyond Contract Years 1 to 10 into Contract Years 11 to 20.</p> <p><i>Revised provision to read:</i></p> <p>For Contract Years 11 to 20, <b>the Bidders shall be allowed to extend the cap in the fuel cost similar to the pricing methodology used in Contract Years 1 to 10 or to impose the fuel cost shall be</b> as a passed-through cost</p>	<p>No, this suggestion will change the DOE-recommended fuel cost adjustment formula. The DOE-recommended fuel cost adjustment formula is sound and valid as it allows for adjustment every quarter, which redounds to the benefit of the consumers, while at the same time being fair to the generation companies.</p>

<p>Technical Proposal / IPB</p>	<p>Section 3.2 / IPB</p>	<p>Depending on the Nominated Power Plants that will be offered by the Bidders, some of the technical documentary submissions may not be applicable. For instance, statement of the fuel source and fuel supply plan are not applicable for Nominated Power Plants that are using renewable energy sources.</p> <p>We suggest that, in lieu of the documentary requirement, a write-up be submitted explaining why the requirement is not applicable to the Bidder.</p> <p><i>We suggest that documents that are not applicable to a Bidder need not be submitted. Revised provision to read:</i></p> <p>xxx No later than the Bid Submission Deadline, a Bidder must submit its notarized Technical Proposal of its Nominated Plant, using the form in <b>Annex TP-1</b>, in a separate sealed envelope (Envelope 2) and with the following attachments, <b><u>if applicable. For documents that are not applicable to a Bidder, a write-up explaining why the documentary requirement is not applicable should be attached.</u></b> xxx</p>	<p>No need to provide a write-up, if the Bidder will use a fuel source other than coal or natural gas, several catch all phrases for other technologies offered are repeatedly provided in the Bid Requirements and IPB:</p> <p><i>“(g) If the Bidder's Nominated Power Plant will use a fuel source other than coal or natural gas, the Bidder shall submit its own technical parameters (which shall nevertheless comply with requirements in the TOR Table and information prescribed in Annex TP-1), fuel forecast and nominated fuel price index for evaluation of the TPBAC.” (see Technical Proposal Envelope 2, Bid Requirements; Sec. 3.2 (g.) of the IPB; Annex TP-1 item 7.)</i></p> <p>In addition, Annex TP-2 (Performance Guarantees [Nominated Power Plant]) of the IPB also provides a catch all phrase that:  <i>“(If the Bidder's Nominated Power Plant will use a fuel source other than coal or natural gas, the Bidder shall submit, for evaluation of the TPBAC, its own technical parameters for the above requirements showing that the Nominated Power Plant is capable of operating consistent with its indicated Performance Guarantees.)”</i></p> <p>The Bidder, which will use a fuel source other than coal or natural gas, can submit its own technical parameters, it just has to ensure that it complies with the requirements in the TOR Table and information prescribed in Annex TP-1 of the IPB, for evaluation of the TPBAC.</p>
<p>Technical Proposal/IPB</p>	<p>Annex TP-1 / page 79</p>	<p>Depending on the Nominated Power Plants that will be offered by the Bidders, the provision requiring the submission of a Fuel Supply Plan or Agreement may not be applicable. Thus, we suggest that the clause “if applicable” be included.</p> <p><i>Revised provision to read:</i></p> <p><b>9. If applicable</b>, the Fuel Supply Plan or Agreement, containing a narrative description of strategies and plans for ensuring long-term availability of fuel and regulatory compliance on fuel inventory and specification. Bidders shall ensure that it shall procure its fuel supply and freight following a competitive selection process to be promulgated pursuant to the PSA.</p>	<p>Discussed above. No need to provide “if applicable.” If the Bidder will use a fuel source other than coal or natural gas, the Bidder shall submit its own technical parameters, as provided in several catch all phrases in the Bid Requirements and IPB.</p> <p>The Bidder, which will use a fuel source other than coal or natural gas, can submit its own technical parameters, it just has to ensure that it complies with the requirements in the TOR Table and information prescribed in Annex TP-1 of the IPB, for evaluation of the TPBAC.</p>
<p>Invitation to Bid, Bid Requirements, Instructions to</p>	<p>All relevant sections</p>	<p>We propose the Bid Documents be explicitly technology-neutral, and as such add qualifiers such as “if applicable” for provisions that refer to fuel or are specific to thermal plants, including but not limited to heat rate, guaranteed net plant heat rate, etc.</p> <p>Adding qualifiers such as “if applicable” for provisions that refer to fuel or are specific to thermal plants, including but not limited to heat rate, guaranteed net</p>	<p><i>See answer above.</i></p> <p>No need to provide “if applicable.” If the Bidder will use a fuel source other than coal or natural gas, the Bidder shall submit its own technical parameters, as provided in several catch all phrases in the Bid Requirements and IPB. Catch all phrases for other technologies offered are repeatedly provided in the Bid Requirements and IPB:</p>

	Prospective Bidder and PSA		plant heat rate, etc.	
	Evaluation / IPB	Sections 4.5.2 and 4.5.3 / Page 39	<p>We note that the Levelized Cost of Electricity (“LCOE”) of each Bidder is evaluated inclusive of Value Added Tax (“VAT”) as reflected in the Initial Version of the Financial Evaluation Workbook. To ensure consistency in the Bidding Documents, we suggest that the IPB also reflect that the evaluation of both the LCOE and the Headline Rate be inclusive of VAT. A post-VAT evaluation ensures the lowest possible cost of power to MERALCO’s consumers.</p> <p><i>Revised provisions to read:</i></p> <p>4.5.2 The TPBAC shall then proceed to evaluate the resulting Headline Rate and LCOE, <b>inclusive of Value Added Tax (“VAT”)</b>, of the Qualified Bidders as computed by the Financial Evaluation Workbook. xxx</p> <p>Thereafter, TPBAC shall proceed to rank the LCOE, <b>inclusive of VAT</b>, of the Bid Price of the Qualified Bidders from lowest to highest. xxx</p>	<p>Yes, the computed Total Headline Rate and the Total LCOE already includes the nominated VAT-rate of the Bidder, as reflected in the Financial Evaluation Workbook.</p>
	Reference Plant	IPB, Sections 3.1.4 and 9.61  Annex QD-5  Bid Requirements, Section 2(a)	<p>Reference Plant is defined as a “single power plant of at least 150 MW installed capacity (baseload, firm, dispatchable, and having attained a simple monthly average of at least 85% plant capacity factor (“PCF”) over a 3-month consecutive period of operations) and which, in the reasonable opinion of the [Third Party Bids and Awards Committee (“TPBAC”)], has been satisfactorily developed, constructed, and/or operated or maintained by the Bidder, its direct shareholders representing Controlling interest, Affiliates or Ultimate Parent.”</p> <p><b>Please confirm that the Reference Plant may be owned by any of the following:</b></p> <ol style="list-style-type: none"> <li>1. Bidder; or</li> <li>2. Direct shareholders representing a controlling interest in the Bidder; or</li> <li>3. Bidder’s Affiliates; or</li> <li>4. Bidder’s Ultimate Parent.</li> </ol> <p><b>Please also confirm that the Reference Plant would be considered as having “been satisfactorily developed, or constructed, and/or operated, or maintained” under Section 9.6.1 if the Bidder presents proof that the Reference Plant is capable of generating electricity of at least 150 MW pursuant to Section 3.1.4.</b></p>	<p>a. The understanding is correct.</p> <p>b. The Bidder should use Annex QD-5 and its required attachments to prove that the Bidder satisfactorily complied in submitting a proper Reference Plant.</p>
	Letter Testimonial	IPB, Section 3.1.6(b) in relation to	In the Letter Testimonial template attached as Annex QD-7B, the Debt Provider shall state that the Letter is to confirm that it has indicated its “[commitment/	Debt Provider can indicate any of the options provided

		Annex QD-7B	<p><i>consideration/ interest to arrange debt financing] to finance the project should the Bidder be declared as the Winning Power Supplier ***.”</i></p> <p><b>Please confirm that because “[commitment/ consideration/ interest to arrange debt financing]” is enclosed in brackets, the Debt Provider has the option to indicate in its Letter Testimonial any of <i>commitment or consideration or interest to arrange debt financing</i>, as applicable.</b></p>	
	Technical Parameters	IPB, Section 3.2(h), Annex TP-1, Section 8 in relation to Annex TP-2, Section 3	<p>Section 3.2(h) requires that the Bidder shall provide the specifications of the Performance Fuel by way of a Proximate Analysis and Ultimate Analysis. This is reiterated in Annex TP-1, Section 8.</p> <p>However, we understand that Proximate Analysis and Ultimate Analysis is more appropriate for coal plants. Also, Annex TP-2, Section 3 seems to indicate that Proximate Analysis and Ultimate Analysis apply to coal plants. It also specifies different test parameters for natural gas plants.</p> <p><b>Please align Section 3.2(h) and Annex TP-1, Section 8 with Annex TP-2, Section 3.</b></p>	<p>We note the concern, however, the Bidder will still need to submit TP-1 and TP-2, but if the specifications of Performance Fuel by way of Proximate Analysis and Ultimate Analysis <b>is not applicable</b> to the Bidder’s Nominated Power Plant, the Bidder should provide a write-up/explanation and submit the Performance Fuel Specification information it deems appropriate for evaluation of the TPBAC and its Independent Engineer.</p>
	Technical Proposal – Nominated Plant (Environmental Compliance Certificate (“ECC”))	IPB, Section 3.2(j), in relation to Annex TP-1, Section 10	<p>Under Section 3.2(j) of the IPB, no later than the Bid Submission Deadline, the Bidder shall submit the “[ECC] issued by the Department of Environment and Natural Resources (“DENR”), or an application for ECC pending before the DENR, provided that if the Bidder’s Bid is declared as the Best Bid (and issued a Notice of Award), a certified true copy of the ECC issued by the DENR must be submitted as required by the [Energy Regulatory Commission (“ERC”)]].”</p> <p><b>Please confirm the following:</b></p> <p><b>(1) That the ECC or an application for ECC pending before the DENR to be submitted by a Bidder by the Bid Submission Deadline need not be a certified true copy.</b></p> <p><b>(2) If such ECC or pending application for ECC must be a certified true copy, such copy may be certified by the Corporate Secretary of the Bidder.</b></p>	<p>For clarity, if the ECC is available before the Bid Submission Deadline and/or when the ERC requires its submission, the ECC to be submitted must be a certified true copy issued by the DENR.</p> <p>If the document to be submitted is a mere application for ECC pending before the DENR, the corporate secretary/assistant corporate secretary of the bidder may certify the duly stamped DENR-received copy of the said application.</p>
	Technical Proposal – Nominated Plant (Grid)	IPB, Section 3.2(k), in relation to Annex TP-1, Section 11	<p>Under Section 3.2(k) of the IPB, no later than the Bid Submission Deadline, the Bidder shall submit the “[GIS]/[SIS], whichever is applicable, issued by [National Grid Corporation of the Philippines (“NGCP”)]; or an application for GIS/SIS pending before the NGCP, provided a certified true copy of the GIS/SIS must be submitted during Post-Qualification if the Bidder’s Bid is declared as the Best Bid[.]”</p>	<p>For clarity, if the GIS/SIS is available before the Bid Submission Deadline a certified true copy of such must be submitted by the Bidder.</p> <p>If the document to be submitted is a mere application for GIS/SIS pending before the NGCP, the corporate secretary/assistant corporate</p>

	Impact Study ("GIS") or System Impact Study ("SIS"))		<p><b>Please confirm the following:</b></p> <p>(1) That the GIS/SIS or an application for GIS/SIS pending before the NGCP to be submitted by a <u>Bidder by the Bid Submission Deadline</u> need not be a certified true copy.</p> <p>(2) If such GIS/SIS or an application for GIS/SIS pending before the NGCP must be a certified true copy, such copy may be certified by the Corporate Secretary of the Bidder.</p>	<p>secretary of the bidder may certify the duly stamped NGCP-received copy of the said application.</p> <p>However, if the bidder is a recipient of a Notification of Best Bid and it only submitted a mere application for GIS/SIS during the Bid Submission Deadline, the said bidder must submit a certified true copy of the GIS/SIS during the Post-Qualification of its Bid Price (Envelope 3).</p>
	Bid Requirements "Technical Proposal (Envelope 2)"	Item (k), page 10	<p>The tender documents already require proof of an ongoing NGCP SIS application during bid submission.</p> <p>(k) The Grid Impact Study (GIS) / System Impact Study (SIS), whichever is applicable, issued by NGCP; or an application for GIS/SIS pending before the NGCP, <del>provided a certified true copy of the GIS/SIS must be submitted during Post-Qualification if the Bidder's Bid Price is declared as the Best Bid;</del></p>	<p><i>-same answer above-</i></p>
	Invitation to Bid Terms of Reference	Supply Type page 2	<p>Single or portfolio of plant/s, provided that the power plant/s should be in commercial operation not earlier than January 2020 but not later than May 2025.</p> <p><b>Comment/s &amp; Question/s:</b>          May we know the reason for not allowing the power plants which have been in operation prior to January 2020? Is there a law or regulation that precludes old but in good and stable running condition from participating in the CSP?</p> <p>For the sake of MERALCO's captive market and to come-up with the cheapest, power plants which have been in operation prior to January 2020 must likewise be considered.</p>	<p>This is a requirement relayed to the TPBAC by the DU.</p> <p>For the DU, the decision to encourage the development of new capacities and greenfield power plants rests solely on the distribution utility's preferred requirement for its energy supply, taking into consideration its Power Supply Procurement Plan as submitted and approved by the DOE and the DOE's list of committed and indicative power projects. The DU explained that the "qualifying age" requirement of a bidder's power plant/s is consistent with its mandate under the law and its franchise to ensure quality, reliable, secure and least cost power supply for its customers.</p> <p>We note that "qualifying age" requirement was already relaxed whereby power plant/s that are in commercial operations not earlier than January 2020 but no later than May 2025 will now qualify to join the bid. It is a significant latitude given to prospective bidders to allow more generators to participate and compete in this CSP and at the same time ensuring continuous reliability of the plants in the delivery of power to MERALCO customers during the entire twenty-year term of the Power Supply Agreement. This is aligned with DOE's policy to encourage the development of new capacities while addressing the common concern in the electric power industry that the older the power plant is, its reliability becomes a larger issue.</p>

	<p>Technical Requirements</p>	<p>IPB, Annex TP-1 IPB, Sections 1, 2.2</p>	<p>Under Annex TP-1, the Nominated Plant “should be in commercial operation not earlier than January 2020 but no later than May 2025.” <b>Please explain why the Nominated Plant cannot be an older plant or one that has been in commercial operations before January 2020 if all other technical requirements are met and the plant would be able to provide the Contract Capacity and Associated Energy required.</b> We note that properly built and maintained power plants can operate reliably and efficiently beyond 30 years, even much longer with lifetime extension measures. We propose that Annex TP-1 be amended such that the Nominated Plant “should be in commercial operation not earlier than January <del>2020</del> <del>2015</del> but no later than May 2025.” Should the TPBAC agree to the above recommendation, we also propose that the deadline for submission of the Expression of Interest be extended within a reasonable time from the adoption of the above recommendation in order to allow previously disqualified entities to submit an Expression of Interest for this bid.</p>	<p>-same answer-</p>
	<p>Bid Requirements for Contract Capacity of 1800MW (LCOE)</p>	<p>Page 1</p>	<p>The Bidder’s Headline Rate and the LCOE are subject to a pre-determined Reserve Price, which will only be revealed by the TPBAC to the Bidders during the Opening of Bid Prices. <b>Comment/s &amp; Question/s:</b> We believe that MERALCO is fully aware of the fact that there a considerable number of variables that affect the generation cost. But to simplify, let’s just focus on the single major cost of generation, which is fuel. As part of MERALCO’s Bid Instructions, the bidder is required to submit its forecast fuel price, which will be determined based on the data available to the bidder. Moreover, in arriving at the Reserve Price, MERALCO will likewise use a forecast fuel price, which may be significantly different from the forecasted figure used by the bidder. <b>Please note that we are dealing with forecasted figures, which are essentially estimates.</b> In addition, it is likewise stated in the bid documents that during the implementation of the PSA, the price of fuel to be used by the winning bidder is whichever is lower between the actual fuel price or the adjusted base fuel price, which came from the forecasted fuel price submitted by winning bidder during the bid. <b>We believe that it is not fair to simply compare the Bidder’s Headline Rate and LCOE against the pre-determined Reserve Price without adjusting the latter.</b>  While we appreciate MERALCO’s efforts in bringing down the cost</p>	<p>As relayed to the TPBAC by the DU, it is based on the DU’s evaluation of average cost of new entrant power plants based on latest available information and taking into consideration different fuel types and plant technology.</p>

			<p>of generation, we believe for fairness and to improve comparability of rates. Adjustment of the fuel tariff component of the Reserve Price using the forecast fuel price of the bidder must be made before the same be compared against the Bidder's Headline Rate and LCOE.</p> <p>For better understanding, <b>it is recommended that MERALCO to explain to bidders on how the pre-determined Reserve Price is computed, during the Pre-Bid Conference or through issuance of a Bid Bulletin.</b></p>	
	<p>Bid Requirements for Contract Capacity of 1800MW</p>	<p>Page 10 Item 1</p>	<p>The fuel handling and freight costs should be included in Bidder's proposed Variable and/or Fixed O&amp;M expense;</p> <p><b>Comment/s &amp; Question/s:</b> We understand that the variable O&amp;M expenses are adjustable by the movement of US and Local CPI and FOREX. However, the rise and fall of the freight cost is not just dictated by the economic factors mentioned. Largely, the freight cost is affected by the movement in the price of oil. Moreover, the cost of freight is also influenced by the availability of vessels. <b>May we know the reason for requiring the bidders to include the fuel handling and freight costs to be either part of the variable and or fixed O&amp;M expenses?</b></p> <p><b>For better transparency, it is suggested that a separate component of the tariff for the costs of fuel handling and freight be considered.</b></p>	<p>The DOE-recommended fuel cost adjustment formula is for the commodity only, this is to give the power suppliers the ability to recover the freight cost associated to their fuel supply.</p> <p>As to the details of the VOM/FOM, it will be also scrutinized per component when presented for justification with the ERC.</p>
	<p>Bid Requirements for Contract Capacity of 1800MW</p>	<p>Page 10 Item 2</p>	<p>The Bidder shall provide a quarterly fuel price forecast for the third quarter of 2022 until second quarter of 2023, in USD/MMBtu. The simple average of this quarterly fuel price forecast shall be used as the reference price (Fo). For Contract Years 1 to 10 implementation, the reference price (Fo) shall be adjusted on a quarterly basis using an adjustment factor and shall serve as the Quarterly Fuel Price Cap. The adjustment factor for a given calendar quarter shall be equal to the ratio of Pn to Po, as defined below. Expressed in formula, <math>110 = \times (/)</math></p>	<p><b>Fuel Cost Adjustment Formula</b></p> <p>As relayed to the TPBAC by the DU, the fuel cost adjustment formula was prescribed by the DOE for MERALCO to adopt when the TOR was submitted to the DOE for approval. The DU and the TPBAC cannot change the DOE-recommended fuel cost adjustment formula. The DOE-recommended fuel cost adjustment formula is sound and valid in principle as it allows for adjustment every quarter, which redounds to the benefit of the consumers, while at the same time being fair to the generation companies. The DOE's fuel cost adjustment formula incentivizes the power suppliers to provide their best forecast of the fuel</p>

Where:  $F_o$  is the simple average of the quarterly fuel price forecast for the four quarters beginning third quarter of 2022 as submitted by the Bidder, in USD/MMBtu  $P_o$  is the simple average of the actual quarterly fuel price for the four quarters beginning third quarter of 2022, in USD/MMBtu  $P_n$  is the simple average of the actual quarterly fuel prices from the preceding four calendar quarters, in USD/MMBtu.

For clarity, the calendar quarters are defined by the following dates:

- (i) December 26 to March 25
- (ii) March 26 to June 25
- (iii) June 26 to September 25
- (iv) September 26 to December 25

For clarity, upon implementation of the PSA, the fuel price shall be the lower between the result of the aforesaid formula and the actual fuel costs.

For Contract Years 11 to 20, the fuel cost shall be a pass-through cost.

**Comment/s & Question/s:**

May we know the rationale of this formula?

This is completely a different mechanism as far as the evaluation of bid offers and the actual fuel cost to be charged during the implementation of the PSA.

The current practice in the conduct of CSP, for uniformity and for fair evaluation in determining the lowest and responsive offer, the distribution utility provides the price of fuel to be used by the bidders. However, for this bid, the fuel price even for the same technology, the price is left to the appreciation or forecast of the bidder.

While we commend MERALCO's efforts in making the generation cost to be predictable, but on the other hand, this mechanism is unwarranted as it creates unnecessary risks which ultimately result to increasing the cost of doing business.

By changing the policy of the Regulators about the nature of fuel price to be a "pass-through" component of the generation charge, MERALCO is giving undue burden to the generator. This risk is certainly considered by the financial institution/s that will provide the necessary funding of the project. Thus, making the Project's cost of debt more expensive and eventually increasing the weighted average cost of capital (WACC).

We believe in the prudence of the Regulator in the determination of the generation cost that can be passed on by the distribution utility to its captive market taking into consideration the efficiencies and

cost, and it does not allow the power supplier to pass on underestimation of fuel cost that makes the bid offer competitive now but more expensive/burdensome upon the consumers after determination of the actual fuel cost in the future. Thus, with the DOE-recommended formula, the power suppliers will have to bear some risk too.

Having said that, the TPBAC notes the suggested revisions/deletions submitted by different bidders after raising concern on the significant risk that the bidders/power supplier face in using the DOE-fuel cost adjustment formula, considering the volatility and unpredictability of fuel prices. As we understood it, the bidders/power suppliers are asking if an extraordinary movement of fuel price results that which adversely affects the ability of the bidder/power supplier to perform its obligations under the PSA or makes the power supplier's ability to continue delivering the Contract Capacity to be significantly more burdensome or causes serious damage to the financial condition of the power supplier, the DOE-recommended fuel cost adjustment formula does not account for this and passes all the risk to the power supplier.

In order to protect the consumers who will benefit using the DOE-recommended fuel cost adjustment formula while also addressing the power supplier's concern, the power suppliers can resort to the Change in Circumstance provision in the PSA-template and, as relayed to the TPBAC by the DU, the DU is considering including an event of extraordinary movement of fuel prices which triggers the Change of Circumstances provision. Please note that under the PSA-template, any changes in the Price resulting from a Change of Circumstance is subject to ERC's approval.



			<p>inefficiencies of the generator. In deciding the amount of generation cost, the Regulator sets the reasonable return that the generator must earn in order for the generator to sustain its operation and fulfill its obligations to the off-taker. The reasonable return is represented by the WACC being computed by the Regulator.</p> <p>Unfortunately, the risk that the generator will not be able to recover the price of fuel, is not considered by the Regulator when it computes the amount of WACC. Thus, the generator is exposed to the risk that it will not be able to recover the economic costs of its project, which contravenes to the objectives of the EPIRA to enhance the inflow of private capital.</p> <p>It is worthwhile to note that the conduct of a Competitive Selection Process automatically encourages, if not compel, the generators to put their best foot forward. Thus, the generators are required to be “cost conscious” and creative in coming up with their respective bids. Unfortunately, their best is not enough because the winning bidder’s rate may not be the same rate that the Regulator will approve for recovery. Worst, imposing unnecessary penalty similar to this mechanism on the computation of fuel fee will give more burden to the generators.</p> <p>It is appropriate to penalize the generator for its inefficiencies and for the things that it can reasonably control but crucifying the generators for the wrong reason is simply denying the generator the opportunity, at the very least, to recover its economic costs.</p> <p>Lastly, what will happen if there will be changes in law that affect the taxes on fuel to the effect that new rates are to be imposed. Can the generator recover the adjustment due to the change in tax rates?</p> <p><b>We appeal for the change in the formula of fuel fee in the evaluation of the bid and the determination of actual fuel fee that the winning bidder can charge during the implementation of the PSA be changed. It is recommended to the TPBAC to disregard the use of fuel price forecast as a basis in computing for the maximum fuel fee that the generator can charge during the implementation of the PSA.</b></p>	
	<p>IPB</p>	<p>Page 13 – 2nd paragraph</p>	<p>For clarity, in relation to the Scheduled Commercial Operations Date (“COD”) under the Terms of Reference Table of the Invitation to Bid, the order of stacking of Bids from lowest to highest using LCOE shall determine which Bidder/s with the Best Bid/s need(s) to attain Scheduled COD by December 2024.</p>	

			<p><b>Comment/s &amp; Question/s</b></p> <p>Funding a capital-intensive project such as construction and operation of a power plant is not simple. The creditors will evaluate whether the project will have an absolute capacity to service the debts. Moreover, these creditors prefer that the project will have predictable and steady cashflow to eliminate the risk of default.</p> <p>Therefore, it is imperative on the part of the creditors, given the magnitude of the project, to check whether the generation rate approved by the Regulator is sufficient to ensure generator’s debt service.</p> <p>Assuming, the generation rate approved by the Regulator does not pass the requirement of the creditors which leads to the delay in the financing of the project and ultimately delaying the commercial operation date (COD) of the plant, can the generator be faulted by MERALCO? Will the performance security of the bidder be forfeited?</p> <p><b>It is recommended that the approval of the Regulator must be considered by MERALCO in establishing the COD of the plant and that the performance security of the generator should not be forfeited in case the generator could not perform its obligations as a result of rate reduction especially if the reduction of the rate will render the project financially not feasible.</b></p>	<p>The COD provisions/schedule for this Bidding cannot be changed as the DOE has repeatedly mandated the DU that it should conduct its CSP that is consistent and takes into consideration that it is parallel with the Power Supply Procurement Plan (PSPP) that the DU has submitted to DOE.</p>
	IPB	Art 2.2 (g)/ page 13	<p>“The TPBAC shall complete a Post-Qualification .....XXX...., to determine to its satisfaction whether the Bidder with the Best Bid complies with and is responsive to all the requirements and conditions specified in this ITB.”</p> <p><b>Questions:</b> <i>What specific criteria will MERALCO be using in the Post-Qualification evaluation?</i></p>	<p>At this stage, the Post-Qualification will evaluate the Bid Price submitted as well as the Bid Security and other contents of Envelope 3. This evaluation will be more than just the document present-“Pass”/document absent-“Fail” evaluation during the Opening of Bid Prices.</p>
	IPB	Art 3.3 Section (d) 2/page 26-27	<p>Fuel Price /Fuel Price Cap</p> <p><i>What is the rationale in using a fuel price forecast as reference in the fuel price bid and at the same time providing a cap in its implementation for the first 10 years? Why not make it a pass-through cost (from Year 1) which is allowed by the ERC? Each Bidder may have different projection which may result to different references in the formulation of its bid.</i></p>	<p>As relayed to the TPBAC by the DU, the fuel cost adjustment formula was prescribed by the DOE for MERALCO to adopt when the TOR was submitted to the DOE for approval. MERALCO, nor the TPBAC, cannot change the said formula.</p>

			<p><i>Having a cap (the lower between projected price and the actual price) will put the Bidder in double exposure. The bidder is already accountable on the degradation of the net plant heat rate and at the same time on the increasing movement of the fuel price.</i></p> <p>For the bidding, MERALCO to provide a reference index as base and for the implementation, use the actual cost as a pass-through cost same from Year 1.</p>	
	IPB	Art 3.3 Section (d) 2/page 26-27	<p>Fuel Price Forecast/Fuel Price Cap <i>Bidder shall provide a quarterly fuel price forecast for the third quarter of 2022 until second quarter of 2023.</i></p> <p>Coal prices are highly volatile and it is very difficult to provide price forecast. <i>Using a fuel price forecast as reference in the fuel price bid and at the same time providing a cap in its implementation for the first 10 years in risky due to high volatility of coal prices. Better if the actual fuel cost be a pass-through cost starting Year 1 similar to existing PSAs approved by ERC.</i> <i>Having a quarterly fuel price cap for the first 10 years will expose bidders to a lot of risk given the high volatility of coal prices.</i></p> <p><i>Bidders to propose a base price of coal and reference index upon submission of bid and adjust the fuel cost based on actual Index.</i></p> <p><i>Use the actual computed fuel cost as a pass-through cost starting Year 1.</i></p> <p><i>Meralco to require bidders to provide Guaranteed Net Heat Rate (GNPHR) at HHV in lieu of fuel price cap</i></p>	No, the suggested revision will violate the DOE-recommended fuel cost adjustment formula. The DOE-recommended fuel cost adjustment formula is sound and valid as it allows for adjustment every quarter, which redounds to the benefit of the consumers, while at the same time being fair to the generation companies.
	IPB	Art 3.3 Section 3/ page 27	<p>GNPHR Load Factor Reference</p> <p><b>Question:</b> <i>What is the rationale on the difference GNPHR Load Factor reference for Coal (40% to 100%) and Natural Gas (50% to 100%)?</i></p>	Minimum load of natural gas plants are only up to 50% of its dependable capacity, unlike coal can be up to 40%.
	IPB	Section	<p>In the event of a tie, how will Meralco evaluate or choose the winning bidder or priority?</p> <p>What criteria and how will Meralco evaluate the Technical Proposal?</p>	a. Sec. 4.5.3 of the IPB – “In case of a tie between or among Qualified Bidders having the lowest Bids or whose offers are considered the Marginal Bid Offer, the TPBAC shall give these bidders a period of time, on the same day, to improve their Offered Price by submitting a lower LCOE until the tie is broken. Should both Qualified Bidders refuse to

	Post Qualification	5/page 40/ in relation to 3.2 (d)Technical Proposal page 25	We suggest that Meralco disclose the criteria in evaluating the technical proposal.	improve their Offered Price, the tie shall be broken through toss coin, drawing of lots, or some other mechanism won by chance.”  b. If the Bidder’s Nominated Power Plant is compliant with the requirements listed under Technical (Proposal Envelope 2) and the TOR Table. The Independent Engineer evaluating the Comparable Plant and other technical proposal submissions will have an independent system to evaluate and cannot be dictated upon by the TPBAC.
	IPB	Bid Bulleting No. 1	Financial Workbook  <i>It is recommended that for the bidders to appreciate the workbook, there should be a separate workshop or session for Meralco to explain the workbook so as to avoid misinterpretation and misappreciation of the financial evaluation.</i> <i>In relation to this, bid submission timeline should be extended to give time to appreciate the financial evaluation/workbook which is one of the bid requirements.</i>	There will be a presentation on the Financial Evaluation Workbook during the Pre-Bid Conference.
	Annex QD – 6	Pages 69 - 70	If bidder is a start-up company, can the Statement of Financial Capability Form be executed by its parent company?	The Financial Qualification Requirements (of Envelope 1) may be complied with by the Bidder directly or through any of its direct shareholders representing Controlling interest, Affiliates or Ultimate Parent. (Item 3, Bid Requirements)
	Annex TP – 1	Page 76	Under item 3 of the form, it requires information that entity is a customer in good standing in the following banks. What is the maximum number of banks that can be listed?	Please list <b>all</b> banks with outstanding loan balances.
	Schedule 1	Page 94	Are the banks listed on Schedule 1 the only banks from which we can secure the bid security?	Yes. Sec. 3.3. (b) of the IPB states only those issued by an Allowed Bank <b>listed in Schedule 1</b> and using the template in Annex BID-2 (without modification).

<p>GENERAL COMMENT</p>			<p>Considering the target Commencement Date of 2024, we understand that a number of requirements under the IPB assume that the Bidder is in the early state of project development and has not achieved major project milestones at the time of Bid submission, thus the need to present these requirements to ensure that it shall be able to construct the power plant and meet the target Commencement Date. However, <b>these requirements should no longer apply to Bidder which are already in the advanced stage of construction.</b></p> <p>A number of requirements under the IPB assume that the Bidder is in the early stage of project development and has not achieved major project milestones at the time of Bid submission, thus the need to present these requirements to ensure that it shall be able to construct the power plant and meet the target Commencement Date. However, these requirements should no longer apply to Bidder which are already in the advanced stage of construction.</p> <p>While there is a provision under the IPB that “The TPBAC also reserves the right to: (a) waive the submission of certain requirements by reason of proven track record and good credit standing, xxx”, <b>we suggest to explicitly state that specified requirements shall apply to Bidders which have not: (i) reached major project milestones such as financial closing; secured major permits such as ECC, BOI Registration or its equivalent; and, (iii) construction progress that is less than 50% completion.</b></p>	<p><b>Inapplicability concerns re brownfield Nominated Power Plants</b></p> <p>For a bidder whose Nominated Power Plant is nearing completion or commercial operation, but within the TOR’s defined “qualified age” of “should be in commercial operation not earlier than January 2020 but no later than May 2025,” instead of determining by itself which requirements in this bidding are applicable nor not applicable, this general rule shall be followed:</p> <ol style="list-style-type: none"> <li>a. For as long as the plant is <b>not</b> commercially operational by the Bid Submission Deadline (i.e. 25 January 2021), the Bidder needs to submit the requirements herein that the present query (and similar queries below) seeks confirmation if the bidder still needs to submit since its plant is nearing completion or commercial operations.</li> <li>b. If the plant is already commercially operational by the Bid Submission Deadline (i.e. 25 January 2021), then it is okay for the Bidder not to submit which requirement it thinks it is not relevant for the TPBAC’s evaluation, by submitting a write-up/explanation. However, in submitting a write-up/explanation, the Bidder must know that it is a calculated and known risk on its part that it is submitting to the TPBAC’s discretion in allowing/disallowing the explanation provided in the said write-up as to why a particular bid requirement was deemed inapplicable by the said Bidder.</li> </ol>
	<p>TECHNICAL PROPOSAL, Project Feasibility Study</p>	<p>Section 3.2 (m) / Page 26</p>	<p>Consistent with our general comment, we understand that this is usually required under the context of a new plant still being developed and major milestones such as permitting, financing, grid connection, among others are not yet achieved.</p> <p>For plants that are already in the final stages of construction, this requirement should no longer be applied.</p> <p>We propose that this requirement be waived for projects which are already in advanced stage of construction and/or are nearing completion. Otherwise, a comparable document showing the project’s milestone and status should suffice as compliance.</p>	<p>-same answer-</p>
	<p>QUALIFICATION DOCUMENTS, Reference</p>	<p>Section 3.1.4 (a) / Page 22</p>	<p>May we know the rationale of providing a Reference Plant? Consistent with our general comment, if this is part of the requirements to provide a convincing proof of the Bidder’s ability to develop a project, then this should no longer be applied to Bidders in advanced stage of construction.</p>	<p>-same answer-</p>

	<p>Plant QUALIFICATION DOCUMENTS, Required Unrestricted Net Worth</p>	<p>Section 3.1.5 / Page 23</p>	<p>We understand that this is usually required under the context of a new plant still being developed to be able to demonstrate that the bidder has sufficient financial capability to support the Project Cost.</p> <p>For plants that are already in the final stages of construction and debt and equity financing already committed (and partially funded), the spirit of the requirement has already been complied with.</p> <p>We propose that this requirement be waived for projects which have already secured financing and construction is nearing completion.</p>	<p>-same answer-</p>
	<p>BIDDING DOCUMENTS</p>	<p>Section 2.1 (c), Page 7</p>	<p>Bidder shall be required to execute an Acknowledgement and Acceptance of the Power Supply Agreement Template. Given that the Bidder, which we believe is acknowledged by Meralco in this bidding, may have requirements and compliances from its lenders under its financing documents, we suggest to include such as part of the exclusion by which the PSA template may be revised and/or supplemented.</p> <p>We propose the inclusion of the underline phrase below under Section 2.1 (c):</p> <p>(c) The PSA template and its appendices and attachments shall be the principal document governing the contractual terms between Meralco and the Winning Power Supplier with regard to this Bidding, except to the extent that the terms of the PSA template are modified after the Bidding to reflect the terms and conditions of the Technical Proposal and Bid Price of the Winning Power Supplier <b>and compliance by the Winning Supplier under the relevant financing documents</b> for purposes of signing/executing the PSA.</p>	<p>As relayed to the TPBAC by the DU, it is not amenable to the change because this may affect the offers of other Bidders in general.</p>
	<p>SUMMARY OF BIDDING</p>	<p>Section 2.2 (f), Page 13</p>	<p>If the TPBAC determines that the Bidder with the Best Bid “failed” the Post Qualification, it may proceed to notify the Bidder with the next lowest ranked LCOE (“Next Best Bid”) that it will be subjected to Post Qualification evaluation (“Notification of Next Best Bid”), subject to any reduction of its Offered Contract, if necessary should it be the Marginal Bid Offer. If the said Bidder with Next Best Bid also fails the Post-Qualification, a similar procedure for Post Qualification may be repeated by the TPCBAC for the Bidder with the next lowest LCOE, and so on until the notified Bidder passes the Post Qualification and is declared as the Winning Power Supplier.</p> <p>This option, notwithstanding if all Bidders with the Best Bid “fails” the Post-Qualification and there are no Bidder/s with the Next Best Bid, the TPBAC shall have the discretion to declare failed bidding.</p>	<p>No, as the TOR did not set a Pay-as-Bid minimum contract capacity.</p>

			<b>Will Meralco declare a failed bidding if the resulting capacity from this process is less than 1,800 MW?</b>	
	DOCUMENT SUBMISSIONS	Section 3, Page 21	<p>For emphasis, when the opening paragraphs of Sections 3.1, 3.2 and 3.3 require the Interested Bidder to submit the pertinent Document Submission in a sealed envelope during the Bid Submission Deadline, it must be uploaded cloud-based online repository/folder assigned to the Interested Bidder in password-protected zip folder (.zip file).</p> <p>To clarify, will Meralco open the access to upload documents in such folder? As of this time, it is limited to download only.</p>	The cloud-based folder will be opened for uploading the day after the Deadline to Increase Offered Contract Capacity (i.e. 19 January 2021). Bidders may then start uploading/edit/change/remove files in the said cloud-based folder until the end of the Bid Submission Deadline, or 9:00 A.M. of 25 January 2021.
	QUALIFICATION DOCUMENTS	Section 3.1.3, Page 22	Please confirm if this requirement applies to ALL Affiliates of the Bidder engaged in power generation or to immediate Affiliates only.	Applies to all Affiliates engaged in power generation and <i>subject to the revision discussed above</i> .
	QUALIFICATION DOCUMENTS	Section 3.1.3, Page 22	Assuming that the requirement applies to ALL Affiliates of the Bidder engaged in power generation, we would like to request that the case entitled <i>Bxxx Corp. v. MERALCO and GXXX</i> , docketed as ERC Case No. 2017-0xxCC be excluded from the definition of Outstanding Dispute as (1) there is no allegation of fraud or intentional non-payment on the part of GXXX in the said case and (2) GXXX maintains that there is no cause of action against it in the said case.	This case is not considered an Outstanding Dispute, as defined in this Bidding.
	TECHNICAL PROPOSAL, Fuel Index	Section 3.2(f) / Page 25	<p>Indonesian Coal Index (ICI) published by Argus/Coalindo was not mentioned as an acceptable fuel price index. However, it is easily accessible by Meralco and the electric power industry participants so we believe that it should be acceptable.</p> <p>We would like to request confirmation that ICI is an acceptable fuel price index.</p>	Yes, the ICI published by Argus/Coalindo will be allowed, provided if this index is not easily accessible to the DU and would require a subscription fee, such subscription fee shall be shouldered by the Bidder during the implementation of the PSA if it is declared a Winning Power Supplier.
	IPB	Annex TP-1, Page 77 and 79	<p>The provision states that "The Bidder shall state its fuel source and a nominated fuel price index. The nominated fuel price index should be among the relevant indices published by the World Bank's Commodity Markets Outlook (i.e. [i] Coal, Australia; [ii] Natural Gas, US; [iii] Natural Gas LNG, Japan), CoalSpot.com for other coal ranks, or any other index that is easily accessible by Meralco and the electric power industry participants."</p> <p>Bidder recommends that JKM [i.e., Platts JKM (Japan Korea Marker) LNG] shall be considered as an index that is easily accessible by Meralco and the electric power industry participants.</p>	Yes, the JKM will be allowed, provided if this index is not easily accessible to the DU and would require a subscription fee, such subscription fee shall be shouldered by the Bidder during the implementation of the PSA if it is declared a Winning Power Supplier.
	BID PRICE AND BID SECURITY	Section 3.3 (d.1) / Page 26	<p>The fuel handling and freight costs should be included in the Bidder's proposed Variable and/or Fixed O&amp;M expense.</p> <p>Fuel handling and freight costs are usually included as part of the Fuel Rate. For freight costs, this is usually treated the same as fuel costs which is subject to</p>	The DOE-recommended fuel cost adjustment formula is for the commodity only, this is to give the power suppliers the ability to recover the freight cost associated to their fuel supply.

			<p>movement of bunker index. Based on Meralco’s bid documents, <b>this should be included in FOM/VOM</b> which may only be subjected to CPI escalations. <b>May we know the rationale of such formulation?</b></p>	
	BID PRICE AND BID SECURITY	Section 3.3 (d.2) / Page 26	<p>The requirement to guarantee a fuel price cap for 2022 to 2023 for ten (10) years of significant Contract Capacity posed significant risks for generators that will require back-to-back commitment from fuel suppliers.</p> <p>We propose to use historical index or the most recent time frame following the bid submission deadline date to mitigate the forecast risk. Otherwise, Meralco should consider reducing the applicable period.</p>	<p>No, this will violate the DOE-recommended fuel cost adjustment formula. The DOE-recommended fuel cost adjustment formula is sound and valid as it allows for adjustment every quarter, which redounds to the benefit of the consumers, while at the same time being fair to the generation companies.</p>
	BID PRICE AND BID SECURITY	Section 3.3 (d.3) / Page 27	<p>If the Nominated Power Plant is a coal plant, the Bidder shall indicate the coal rank and state the Guaranteed Net Plant Heat Rate (GNPHR), in Btu/kWh at HHV. Such GNPHR shall be from 50% to 100% Load Factor xxx.</p> <p>Generally, plants utilizing lower quality of coal (i.e. high in moisture) requires higher minimum stable load at 48% or higher, otherwise, the plant will already utilize diesel oil to support the plant’s operation. We wish to emphasize however, that the utilization of lower kcal coal (as opposed to higher kcal coal) translates to lower fuel cost which is passed-on to Meralco.</p> <p>In view of this, we would like to clarify <b>whether Meralco will consider adjusting the minimum load factor at 50% to compensate the Power Supplier in utilizing lower kcal coals.</b></p> <p><b>Alternately, will Meralco allow the utilization from 50% to 40% as part of the Start-up/Shutdown cost considering that the costs being incurred are substantially the same?.</b></p>	<p>Not amenable. As relayed to the TPBAC by the DU, the PSA-template allows the DU to nominate zero capacity on any interval.</p>
	DEFINITION	Section 9, Page 45	<p>The definition of <i>Control</i> stated in the ITB does not take into consideration a <b>management structure that involves joint control between and among the owners of a company or corporation.</b> In line with the governing principles for the procurement of power supply as provided in DOE’s Department Circular No. DC2018-02-0003, particularly on “competitiveness by extending equal opportunity to eligible and qualified GenCos to participate in the CSP”, <b>we propose to revise the definition of Control.</b></p> <p><b>“Control”</b> means:</p> <p>(a) the ownership (whether directly or indirectly) of more than fifty percent (&gt;50%) of the total issued voting share capital or other voting interest of that company or corporation; or</p>	<p>Not amenable to the proposed revision as this might be applicable to other bidders/parties.</p> <p>No, the deletion in item c. of the words “<i>otherwise unilaterally</i>” and, “<i>without the need of the vote or approval of another</i>” indicate Control. If these are removed, then it is no longer considered in Control, hence, it should be retained.</p>



			<p>(b) the ability to unilaterally appoint a majority of the board directors or equivalent body of that company or corporation through the ownership of securities with voting power or otherwise, without the need of the vote or approval of another; or</p> <p>(c) the ability to <del>otherwise unilaterally</del> direct the business affairs and/or operations of that company or corporation, <del>without the need of the vote or approval of another.</del></p> <p>The terms Controls, Controlled and Controlling shall have correlative meanings. For the avoidance of doubt, if a corporation is owned by two (2) shareholders at exactly fifty percent (50%) each, that corporation shall not be considered under the control of each shareholder.”</p>	
	DEFINITIONS Control	Section 9, Page 45	<p>Please confirm if this clause in the definition of <i>Control</i> applies to sub-item (a) only:</p> <p>“The terms Controls, Controlled and Controlling shall have correlative meanings. For the avoidance of doubt, if a corporation is owned by two (2) shareholders at exactly fifty percent (50%) each, that corporation shall not be considered under the control of each shareholder.”</p>	The understanding is correct.
	DEFINITIONS Reserve Price	Section 9, Page 49	<p>We would like to request the details or basis of its “Reserve Price” computation and whether such basis shall be disclosed to the Bidders.</p> <p>Will Meralco consider disclosing the Reserve Price at an earlier date and prior to the Bid Submission Deadline?</p>	<p>As relayed to the TPBAC by the DU, it is based on the DU’s evaluation of average cost of new entrant power plants based on latest available information and taking into consideration different fuel types and plant technology.</p> <p>No, the Reserve Price will only be revealed right before the Opening of the Bid Prices, as was the case in previous successful CSPs conducted last September 2019. Otherwise, what is the purpose of having a Reserve Price if it is revealed before the Bid Submission Deadline.</p>
	Annex QD-5	Page 65	For item 1, what proof can the Bidder show to comply with the required attachment?	The PAO/COC can be used, but the PAO/COC is only one part of proving the Reference Plant. The Bidder should also use Annex QD-5 and its required attachments to prove that the Bidder satisfactorily complied in submitting a proper Reference Plant.
	COMMITMENT LETTER	Annex QD-7A, Page 74	<p>The draft assumes that the Bidder is a corporation. <b>Some changes are proposed to more accurately reflect partnership ownership structure.</b></p> <p>We write on behalf of (<i>insert name of Bidder</i>) (the “<b>Company</b>”) in relation to the Company’s application for prequalification to make available the Contract Capacity and supply the associated energy to Meralco for the Required Contract Period beginning on the Scheduled Commercial Operations Date (COD), under the terms and conditions set out in the Power Supply Agreement template (“<b>Project</b>”).</p>	We would like to seek clarification from the bidder to expound on what it means about Contingency Equity. Kindly submit an additional comment on this matter.

			We own ( <i>insert dollar value of interests</i> ) of Class ( <i>insert Class and whether LP/GP</i> ) interests, representing approximately ( <i>insert percentage</i> ) of the capital contributions of the Company. We have undertaken to provide to the Company the amount of up to ( <i>insert amount including Contingent Equity commitment</i> ), in the form of equity or shareholder loans, for the implementation of the Project.	
	TESTIMONIAL	Annex QD-7B, Page 75	<p>The draft assumes that the Bidder has not yet secured financing and that it is contingent on being declared as the Winning Power Supplier. <b>Some changes are proposed to reflect projects that already secured commitments for loans.</b></p> <p>We write on behalf of (<i>insert name of Bidder, shareholder or Ultimate Parent</i>) (the “<b>Company</b>”) in relation to (<i>insert name of Bidder</i>)’s application for prequalification to make available the Contract Capacity and supply the associated energy to Meralco for the Required Contract Period beginning on the Scheduled Commercial Operations Date (COD), under the terms and conditions set out in the Power Supply Agreement template (“<b>Project</b>”).</p> <p>This is to confirm that the following commitments are in place for [Bidder] under its [dollar/peso] facility agreement: (<i>insert table showing each lender and their respective commitments</i>).</p>	This is acceptable.
	Annex TP-1 of the IPB	Page 76	<p>For item 1, what proof can the Bidder show to comply with the required attachment?</p> <p>For item 2, would a certification on the existence of the agreement showing the Bidder’s right of legal possession suffice? This is due to the confidentiality provision in the said agreement.</p>	<p>1. Bidder can just resubmit the form as submitted as Annex QD-1A.</p> <p>2. We prefer the redacted version of the agreement, for as long as the TPBAC can still properly evaluate the Bidder has established its right of legal possession.</p>
	TECHNICAL PROPOSAL (NOMINATED POWER PLANT)	ANNEX TP-1, Page 79	Please confirm that there is no item 5. e.	Yes, this is an inadvertent typographical error. The Bidder may renumber, as applicable.
	Affiliate, Control / IPB	Sections 9.1 & 9.20 / Pages 44-45	<p>We refer to the definitions of “Affiliate” and “Control” under Sections 9.1 and 9.20, respectively of the IPB:</p> <p>“<b>Affiliate</b>” means with respect to a specified entity, an entity that directly or indirectly, through one or more intermediaries, Controls (e.g. parent or grandparent company), is Controlled by (e.g. subsidiary) or is under common control (e.g. sister company) with the specified entity.</p> <p>“<b>Control</b>” means:</p>	

			<p>(a) the ownership (whether directly or indirectly) of more than fifty percent (&gt;50%) of the total issued voting share capital or other voting interest of that company or corporation; or</p> <p>(b) the <u>ability to unilaterally appoint a majority of the board directors</u> or equivalent body of that company or corporation <u>through the ownership of securities with voting power or otherwise, without the need of the vote or approval of another</u>; or</p> <p>(c) the ability to otherwise unilaterally direct the business affairs and/or operations of that company or corporation, without the need of the vote or approval of another.</p> <p>Pursuant to the above definitions, please confirm whether Shareholder A is deemed to have “Control” over the Bidder and will qualify as its “Affiliate” under the following proposed arrangements, such that Shareholder A’s Reference Plant could be used to satisfy the qualification requirements:</p> <ul style="list-style-type: none"> <li>● Shareholder A holds 20% equity ownership of the Bidder. There are three (3) other shareholders of the Bidder (“<b>Other Shareholders</b>”), whose respective shareholdings are 30%, 30% and 20%.</li> <li>● Shareholder A and the Other Shareholders will enter into a shareholders’ agreement stipulating that: (a) Shareholder A may nominate and appoint three (3) directors out of the required five (5) seats in the board of the Bidder and it shall always be entitled to appoint a majority of the board directors of the Bidder; and (b) each director shall have one (1) vote each and board approvals will require simple majority of the votes;</li> <li>● Shareholder A and the Other Shareholders also propose to enter into irrevocable proxies giving Shareholder A the right to exercise 60% of the total issued voting share capital in the Bidder at its sole discretion.</li> </ul> <p>The Bidder is not subject to any nationality restriction under applicable law.</p> <p>Please confirm our understanding that the foregoing arrangements make Shareholder A an Affiliate of the Bidder under the 2<sup>nd</sup> definition of Control.</p>	<p>Yes, in this scenario Shareholder A is deemed to have "Control" over the Bidder, provided the Shareholders Agreement and Irrevocable Proxy be submitted and, provided further, that for this particular case (i.e. with Shareholders Agreement <b>and</b> Irrevocable Proxy), to avoid circumvention of the requirement that only <b>direct</b> shareholders with Controlling interest can submit the Technical Qualification requirement, the shareholder with Controlling interest by virtue of the Shareholder’s Agreement and Irrevocable Proxy (i.e. Shareholder A) <b>AND</b> all the other shareholders constituting a majority (i.e. the shareholders that composed the 60% [third bullet example] or any combination of Shareholder B, C, or D resulting in more than 50% of the total issued voting capital/interest), must <b>each</b> provide the Reference Plant / Technical Qualification / Financial Qualification requirements (or other requirements that allows a Bidder’s direct shareholder representing Controlling interest to be the one to submit).</p> <p>This is also to ensure that, after the execution of the PSA, the DU will be dealing with the entity that the TPBAC evaluated during this bidding as having the necessary track record and ability to comply with the Technical Qualification / Financial Qualification of this bidding</p>
	<p>Headline Rate / IPB</p>	<p>Section 2.2 / Page 8</p>	<p>Without defining the term, the IPB has several references to the term “Headline Rate” in the IPB, including in Section 2.2:</p> <p>“This Bidding will be “Pay-as-Bid” type of bidding. ... However, the Qualified Bidders’ <u>Headline Rate</u> and the LCOE are each subject to a pre-determined Reserve Price, which will only be revealed by the TPBAC to the Bidders during the Opening of Bid Prices (hereinafter collectively referred to as the “<b>Reserve Price</b>”).”</p>	<p>The Headline Rate is based on the available actual values of each assumptions (i.e. FX, US CPI, PH CPI) closest to the Bid Submission Deadline.</p>

			<p>For clarity, <b>we suggest inclusion of “Headline Rate” in Section 9. Definitions.</b></p> <p>We refer to the requirement under Section 3.1.4(a) of the IPB:</p> <p>(a) Proof that the Bidder or any of its direct shareholders with Controlling interest, Affiliate or Ultimate Parent, has, in the reasonable opinion of the TPBAC, <u>satisfactorily undertaken the development, construction, and/or operation or maintenance of a Reference Plant</u>, whether in the Philippines or elsewhere;</p> <p>In case the Bidder or any of its direct shareholders with Controlling interest, Affiliate or Ultimate Parent <b>has constructed</b> the Reference Plant <b>pursuant to an EPC contract</b> but it has not undertaken the development and/or O&amp;M, <b>will such experience as EPC contractor be sufficient to address the above requirement?</b></p>	<p>Yes, this is allowed.</p>
	Technical Qualification (Reference Plant) / IPB	Section 3.1.4(a) / Page 22		
	Currency / IPB	Section 2.1(g) / Page 8; Section 3.4.1(f) / Page 32	<p>We refer to the provisions below under Section 2.1 and Section 3.4.1 of the IPB:</p> <p>SECTION 2.1 BIDDING DOCUMENTS</p> <p>...</p> <p>(g) Unless otherwise indicated, all amounts required to be provided must be <u>in Philippine Pesos</u>.</p> <p>Section 3.4.1 In all cases of format requirements for the Bidder’s submission Qualification Documents, Technical Proposal and Bid Price:</p> <p>...</p> <p>(f) All prices shall be expressed <u>in Philippine Pesos (PHP) and/or in US Dollars (USD)</u>. ...</p> <p>Please clarify which currency shall be indicated.</p>	<p>Sec. 3.4.1. (f.) of the IPB’s inclusion of “and/or in US Dollars. (USD)” was made by inadvertence, thank you for pointing this out. However, the Financial Evaluation Worksheet has already reflected the prices in Philippines Pesos (PHP), not in US Dollars.</p> <p><b>A Bid Bulletin will be issued to remove “and/or in US Dollars. (USD)” from Sec. 3.4.1. (f.) of the IPB.</b></p>
	Most Recent Quarterly Financial Statements / IPB	Section 3.1.5(b) / Page 23; Required Attachment for Annex QD-6 / Page 68	<p>We refer to Section 3.1.5(b) of the IPB:</p> <p>“(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; and”</p> <p>While the Ultimate Parent of the Bidder will provide the financial statements from 2017 to 2019, it cannot obtain the quarterly financial statements due to different fiscal rules in China. Please advise how to proceed with this requirement.</p>	<p>Nothing to do with statutory, there is no requirement that the most recent quarterly financial statements should have been filed with any regulatory agency nor is it required that it should be audited.</p>

	Details of Project Execution / IPB	ANNEX TP-1 TECHNICAL PROPOSAL (NOMINATE D POWER PLANT), item 5 / Page 79	<p>There is no sub-item e. in the table under item 5 of Annex TP-1:</p> <p>“5. Details of the Project’s execution, where the Bidder shall provide a description on how it will carry out the development, financing, construction, interconnection, operation, and maintenance of the Nominated Power Plant, including ... Document/Information for Submission</p> <p>a. General Information  b. Committed key project milestone dates of proposed power plant, ...  c. Development and Engineering, Procurement and Construction (EPC) Plan describing methodology, process and schedule ...  d. Financing Plan, ...  f. Interconnection”</p> <p>Please confirm if there is indeed no sub-item e contemplated in the table.</p>	Yes, this is an inadvertent typographical error. The Bidder may renumber, as applicable.
	System Impact Study / IPB	Section 3.2(k) / Page 26	Please clarify the document/s Meralco will require if the System Impact Study pending before the NGCP is still under the name of one of the direct shareholders of the Bidder.	The SIS application in the name of one of the direct shareholders of the Bidder should be accompanied with a proof or undertaking that the SIS will be assigned to the Bidder and the Bidder ensures or undertakes that when the SIS pending before the NGCP is released by NGCP, it should already be under the name of the Bidder.
	ITB  PSA	Page 25, Section 3.2(i)  PSA template, Appendix G, 11. Competitive Selection Process for the Plant Fuel, 11.1	<p>The IPB requires that Bidders using LNG or natural gas to provide a nominated fuel price index and that reimbursement of fuel will be based on an index with a Quarterly Fuel Price Cap.</p> <p>In addition, the ITB states the Bidder shall procure its fuel supply and its freight following a competitive selection process to be promulgated pursuant to the PSA.</p> <p>The provision 11.1 of Appendix G states: “A <i>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 before the onset of provision of Commissioning Energy.</i>”</p> <p>Given that a specific pricing formula must be provided as part of the bid, if a bidder conducted a competitive bid process for the supply of fuel for purposes of bidding in the CSP, that competitive process should satisfy these requirements.</p>	If the Winning Power Supplier already conducted a fuel CSP, then it will just need to submit to the DU the documentation or proof of its compliance with the fuel CSP provision/requirement, but the PSA-template provision will not be removed.

		<p>and 11.2, page 127</p>	<p>Please confirm that if selected as the “Winning Power Supplier”, a bidder that conducted a competitive selection process for the CSP (1) will be exempted from any requirement to complete a competitive selection process under the PSA and (2) the requirement for a competitive selection process for the fuel provided in Section 11 of Appendix G in the PSA template will be removed and actual costs per the proposed fuel price index and associated formula should be used for purposes of the PSA.</p> <p>In the event the Bidder is declared the Winning Bidder, the pricing formula for the Monthly Fuel Payment in Appendix E of the PSA template should be adjusted to reflect the pricing formula/index provided by the Bidder.</p>	
	<p>PSA &amp; ITB</p>	<p>Page 86, PSA, Appendix E, B, Energy Payments, 4. Component D of Monthly Fuel Payment</p> <p>Page 27, ITB</p>	<p>Appendix E of the PSA and the ITB states that for contract years 11 to 20 the fuel cost shall be a pass through.</p> <p>Will the Power Supplier under the PSA be permitted to source fuel as it deems appropriate for year 11 onwards or does Meralco envision (1) fuel pricing for years 11-20 will be the same as years 1-10 without the Quarterly Price Cap or (2) a competitive process as required for the first 10 years of fuel supply?</p> <p>Please clarify how Meralco envisions the fuel procurement process from year 11 onward in the PSA.</p>	<p>a. While CY 11 to 20 are pass through, it does not eliminate the requirement for conducting fuel CSP.</p> <p>b. Bidder to submit fuel CSP protocol, especially if the fuel procurement process was changed from the previous protocol or process it submitted.</p>
	<p>ITB</p>	<p>Page 26 &amp; 27, Section 3.3(d)2.</p>	<p>This section outlines the method for determining a Quarterly Fuel Price Cap based on a quarterly fuel price forecast for the third quarter of 2022 until the second quarter of 2023 provided by the Bidder, however, the section goes further to state that “...the fuel price shall be the lower between the result of the aforesaid formula and the actual fuel costs.”</p> <p>Based on this provision, linking the Fuel Payment in the PSA to an index, Bidders will be subject to incur regular losses on fuel costs when actual costs are higher than the Bidder’s forecast prices.</p> <p>The Monthly Fuel Payment in the PSA should be based on Bidder’s pricing formula linked to a declared fuel price index and there should be no cap on this proposed Fuel Payment. Bidders will assume risks on the GPNHR and be responsible for security of fuel supply and purchasing fuel based upon the nominated fuel price index. Meralco</p>	<p>This DOE-recommended fuel cost adjustment formula cannot be changed and is understood by the DU and the TPBAC to be sound and valid as it allows for adjustment every quarter, which redounds to the benefit of the consumers, while at the same time being fair to the generation companies.</p>

			<p>also has the ability to pass the cost of energy through to its end-users, thereby allowing them to mitigate this risk.</p>	
	<p>ITB</p>	<p>Page 27, Section 3.3(d)3.</p>	<p>The provision states that if the Nominated Power Plant is a gas plant, the Price Bidder shall state the GNPHR from 50% to 100% Load Factor and in increments of 1% Load Factor for Contract Year 1.</p> <p><b>Is it Meralco’s intention that Bidders shall be bound by the 1% increments of Load Factor from 50% to 100% Load Factor?</b></p> <p>In addition, <b>will Bidders be required to perform any performance tests to demonstrate heat rate performance at these various loads?</b></p> <p>We believe that GNPHR should only be used for the calculation of fuel costs within the PSA and that any marginal losses or gains with respect to actual heat rate performance should be to the account of the Bidder.</p> <p>As currently provided in the IPB and PSA template, Meralco gets the benefit of better performance against the GPNHR and the Bidder appears to bear all downside risks on GPNHR. As noted previously, we believe it is appropriate for Bidder to assume all risk associated with meeting the GPNHR and security of supply of fuel and that Meralco should bear all price risks associated with variations (increases or decreases) in the Nominated Fuel Price Index.</p> <p><b>Please confirm whether heat rate performance will be the Bidders risk, both in instances of upside and downside performance, or if it will be borne by Meralco.</b></p> <p>We recommend that GNPHR should be used for the calculation of fuel costs within the PSA and that any marginal losses or gains with respect to actual heat rate performance should be to the account of the Bidder.</p>	<p>a. Yes</p> <p>b. Yes, under the PSA-template the Power Supplier shall, at its own cost, conduct a heat rate test in conjunction with the initial NDC Test in order to establish the GNPHR.</p> <p>c. As relayed to the TPBAC by the DU, the standing ERC rule in deciding power supply agreements is that any efficiency in plant performance should be passed on to the consumers and any inefficiency in plant performance shall be borne by the Power Supplier.</p>
	<p>Initial Financial Evaluation Workbook</p> <p>IPB</p>	<p>Annex TP-1, Page 77 and 79</p>	<p>Upon selecting ‘Natural Gas’ as the nominated fuel source, Bidder is requested to select a nominated fuel price index, of which the IPB clarifies are the (1) World Bank’s Commodity Markets Outlook (Natural Gas, US); and (2) World Bank’s Commodity Markets Outlook (Natural Gas LNG, Japan). Bidder is also able to indicate “any other index that is easily accessible by Meralco and the electric power industry participants.”</p> <p>What is the purpose of specifying the nominated fuel price index in the bid?</p> <p>Does Meralco have a preferred nominated fuel price index for LNG?</p>	<p>a. Those specified indices are what is easily accessible to the DU and the electric power industry participants.</p> <p>b. None.</p>

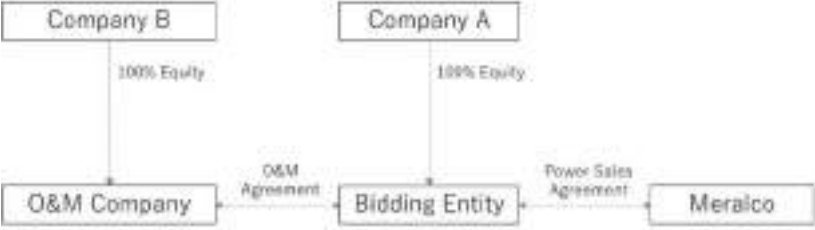
			<p>Please explain the relevance of the nominated fuel price index in the financial evaluation workbook and how it impacts the financial evaluation.</p> <p>Will Meralco accept bids that offer a fixed price for the fuel cost for a portion of the Term of the PSA versus using a nominated fuel price index? Does the LCOE evaluation have the capability to assess a fixed price cost for fuel and if not, can this be included?</p> <p>Furthermore, in both the IPB and the Financial Evaluation Workbook, Bidder recommends that Meralco clarify that the LNG fuel price may be determined by a pricing formula with an input variable tied to the nominated fuel price index. This is typical and customary in the LNG industry. For example, using the average monthly Henry Hub (“HH”) gas prices as the nominated index, the pricing formula could be as follows:</p> <p>Fuel Price = HHavg-M X 1.75 + Fc where:</p> <p>HHavg-M = average price of henry hub gas in month (“M”) expressed in US dollars per MMBtu (HHV) from NYMEX;          NYMEX = New York Mercantile Exchange;          Fc = liquefaction and other fixed costs in US dollars per MMBtu (HHV)</p> <p>The LCOE evaluation should have the capability to assess a fixed price cost for fuel.</p> <p>If a fixed price is offered for fuel, there should be no adjustment to the fuel cost or application of the <math>FP_{cap,m}</math> in the PSA.</p>	<p>c. It binds the Bidder to its nominated fuel price index that it will choose or submit upon implementation for Contract Years 1 to 10 of the Term.</p> <p>d. No, setting a fixed fuel charge will violate the DOE-recommended fuel cost adjustment formula, as well as the TOR that specifically states: “no take-or-pay” on variable costs, which includes fuel and Variable O&amp;M.” The DOE-recommended fuel cost adjustment formula is sound and valid as it allows for adjustment every quarter, which redounds to the benefit of the consumers, while at the same time being fair to the generation companies.</p>
	IPB	Annex QD-5	<p>Attachments to Annex QD-5 are required to be certified as true copy by the corporate secretary.</p> <p>TPBAC to confirm that since it is the Bidder’s corporate secretary that will issue the CERTIFICATION REGARDING TECHNICAL QUALIFICATION (REFERENCE PLANT), then it is also the bidder’s corporate secretary who should certify the true copies of the documents required for QD5.</p>	<p>Yes, this will be allowed.</p>
	IPB	TP-1	<p>Annex TP-1 Required Attachment No. 1 is “Proof that the Bidder or its direct shareholder representing Controlling interest is the developer of, owner of, and Controls, the Nominated Power Plant and has sufficient authority to enter into the offtake agreement with Meralco;”</p>	<p>It is recommended to resubmit Annex QD-1A as proof of item 1 of Annex TP-1, for ease of evaluation by the TPBAC.</p>



			<p>TPBAC to clarify that Bidder need not include copies of Annex QD1-A and QD-2 (including attachments) as evidence of compliance with Annex TP-1 Required Attachment No. 1</p> <p>TPBAC to confirm that Bidder can just issue a certification making reference to the documents in QD1-A and QD-2 without attaching the attachments to QD-2 again.</p>	
	Invitation to Bid	TOR Table – Required Contract Period; page 2	<ul style="list-style-type: none"> <li>- Twenty (20) Contract Years from the Scheduled COD defined above (i.e. 20 Contract Years from December 2024 and May 2025, respectively)</li> </ul> <p><b>Clarification: Can this be lengthened considering the economic life of gas/coal plants</b></p>	As relayed to the TPBAC by the DU, this TOR provision was already approved by the DOE.
	Invitation to Bid	TOR Table – Tariff Structure; pages 2-3	<ul style="list-style-type: none"> <li>- The Bidder shall provide a quarterly price forecast for the third quarter of 2022 until second quarter of 2023, in USD/MMBtu. The simple average of this quarterly price forecast shall be used as the reference price (<math>F_o</math>).</li> </ul> <p>For Contract Years 1 to 10 implementation, the reference price (<math>F_o</math>) shall be adjusted on a quarterly basis using an adjustment factor and shall serve as the Quarterly Fuel Price Cap.</p> <p><b>Recommendation: Propose to bring the base year as close to the year of the bid. If possible, 2020 fuel prices.</b></p> <p><b>Since bidders will submit projections which will be used to evaluate LCOE, this may result in an under-recovery of fuel for the Bidders.</b></p>	As relayed to the TPBAC by the DU, this was discussed by the DU to the DOE whereby year 2020's fuel prices is not reflective of normal fuel prices because of its historic abnormally low international fuel prices and the lingering uncertainty in these fuel prices caused by the COVID-19 pandemic, it will distort the evaluation of the LCOE for long-term PSAs.
	Reduction in Contract Capacity	TOR Table – Reduction in Contract Capacity; page 5	<ul style="list-style-type: none"> <li>- The Contract Capacity and Associated Energy may be reduced equivalent to the reduction in the demand of captive customers of Meralco in order to avoid stranded contract capacity or by reason of the implementation of Retail Competition and Open Access, the Renewable Energy Law, or other Laws and Legal Requirements.</li> </ul> <p><b>Clarification: How will MERALCO distribute the reduction in Contract Capacity to the winning bidders?</b></p>	As relayed to the TPBAC by the DU, the DU will abide by the existing rules at the time this provision will be implemented and be guided by the ERC, and most importantly, the DU's mandate to supply electricity in the least-cost manner.
	Instruction to Prospective Bidders	Qualification Documents (2); page 5	<ul style="list-style-type: none"> <li>- The Bidder, whether directly or through any of its direct shareholders representing Controlling interest, Affiliates or Ultimate Parent, must have a Reference Plant, whether in the Philippines or elsewhere. For this purpose, a "Reference Plant" means a single power plant of at least 150 MW installed capacity (baseload, firm, dispatchable, and having attained a simple monthly average of at least 85% plant capacity factor ("PCF") over a 3-month consecutive period of operations) and which, in the reasonable opinion of the TPBAC, has been satisfactorily developed, constructed, and/or operated</li> </ul>	Having a Reference Plant will help the TPBAC evaluate the capability and track record of a bidder, especially in an open and competitive bidding for fairly new or greenfield capacity such as this one. It will help prove for the Bidder that it has the capability and ability to build/make available a baseload power plant with an acceptable reliability factor (i.e. its Nominated Power Plant) and deliver its Offered Contract Capacity by the required COD.

			<p>or maintained by the Bidder, its direct shareholders representing Controlling interest, Affiliates or Ultimate Parent.</p> <p><b>Clarification: What is the purpose of nominating a Reference Plant?</b></p>	
	<p>Invitation to Bid TOR Table: "Supply Type"</p>	<p>Page 2</p>	<p>We propose to add a provision that explicitly states that the CSP is technology-neutral, consistent with DOE’s direction to have CSP’s open to all technologies. We believe our proposed renewable energy solution would benefit the environment by saving us from needing to use fossil fuel, and we wish for this to be explicitly allowed in the bid documents.</p> <p>ADDITION:</p> <p><b><u>- Technology-neutral - The Plant may use any energy technology, including, but not limited to, coal, oil, gas, geothermal, hydro, wind, biomass, solar, battery storage and combinations thereof.</u></b></p>	<p>This CSP is technology-neutral. The bid documents provide that if the Bidder will use a fuel source other than coal or natural gas, the Bidder shall submit its own technical parameters, as provided in several catch all phrases in the Bid Requirements and IPB:</p> <p><i>“(g) If the Bidder's Nominated Power Plant will use a fuel source other than coal or natural gas, the Bidder shall submit its own technical parameters (which shall nevertheless comply with requirements in the TOR Table and information prescribed in Annex TP-1), fuel forecast and nominated fuel price index for evaluation of the TPBAC.”</i> (see Technical Proposal Envelope 2, Bid Requirements; Sec. 3.2 (g.) of the IPB; Annex TP-1 item 7.)</p> <p>In addition, Annex TP-2 (Performance Guarantees [Nominated Power Plant]) of the IPB also provides a catch all phrase that: <i>“(If the Bidder's Nominated Power Plant will use a fuel source other than coal or natural gas, the Bidder shall submit, for evaluation of the TPBAC, its own technical parameters for the above requirements showing that the Nominated Power Plant is capable of operating consistent with its indicated Performance Guarantees.)”</i></p> <p>The Bidder a fuel source other than coal or natural gas can submit its own technical parameters, it just has to ensure that it complies with the requirements in the TOR Table and information prescribed in Annex TP-1 of the IPB, fuel forecast and nominated fuel price index for evaluation of the TPBAC.</p>
	<p>Bid Requirements "Technical Qualification Requirements"</p>	<p>Item No. 2 (a), page 5</p>	<p>We propose to allow the Technical Qualification to be fulfilled by a shareholder with at least 20% ownership in the Bidding Entity, to allow foreign partners that otherwise qualify for the CSP if not for the 60/40 foreign ownership restriction on Renewable Energy projects. We note that the ownership threshold of a shareholder in the bidding entity (whereby the qualifications of such shareholder can be used for the bidding entity) in the recent New Clark City solicitation was 10%.</p> <p>(a) The Bidder, whether directly or through any of its direct shareholders representing Controlling Interest <del>at least 20% ownership, or this direct shareholder's Affili</del></p>	<p>If the Technical Qualification being referred to is the submission of a Reference Plant, it is required that the “Bidder or any of its direct shareholders with Controlling interest, Affiliate or Ultimate Parent, has, in the reasonable opinion of the TPBAC, satisfactorily undertaken the development, construction, and/or operation or maintenance of a Reference Plant, whether in the Philippines or elsewhere.”</p> <p>Referring to the definition of “Control/Controlling Interest,” a shareholder with a 20% ownership in the Bidding Entity is <b>not</b> considered</p>

			<p><del>ates or Ultimate Parent, must have a Reference Plant, whether in the Philippines or elsewhere. For this purpose, a "Reference Plant" means a single power plant of at least 150 MW installed capacity (baseload, firm, dispatchable, and having attained a simple monthly average of at least 85% plant capacity factor ("PCF") over a 3-month consecutive period of operations) and which, in the reasonable opinion of the TPBAC, has been satisfactorily developed, constructed, and/or operated, or maintained by the Bidder, its direct shareholders representing Controlling Interest <u>at least 20% ownership, or this direct shareholder's</u> Affiliates or Ultimate Parent.</del></p>	<p>to be with Control/Controlling interest. Thus, the said shareholder cannot be considered as the one fulfilling the submission of the Reference Plant.</p> <p>The requirement that aside from the Bidder, Affiliate, Ultimate Parent, only the direct shareholders with controlling interest can submit the Reference Plant/ Technical Qualifications is because the direct shareholders with controlling interest has ultimate control over the decision making of the Bidding Entity. Even if a shareholder with 20% ownership in the Bidding Entity has the requisite Technical Qualifications, the Bidding Entity may, if it wins the CSP, opt not to follow the minority shareholders' advice rendering the Technical Qualifications of said minority shareholder that was submitted, useless.</p> <p>The TPBAC needs to ensure that the shareholders/entities which will eventually control the direction of the Bidding Entity has the Technical Qualifications to fulfill its obligations with Meralco.</p>
	<p>Bid Requirements "Financial Qualification Requirements"</p>	<p>Item No. 3 (a), page 7</p>	<p>We propose to allow the Financial Qualification to be fulfilled by a shareholder with at least 20% ownership in the Bidding Entity, to allow foreign partners that otherwise qualify for the CSP if not for the 60/40 foreign ownership restriction on Renewable Energy projects. We note that the ownership threshold of a shareholder in the bidding entity (whereby the qualifications of such shareholder can be used for the bidding entity) in the recent New Clark City solicitation was 10%.</p> <p>(a) The Bidder must show satisfactory evidence that it has the financial capacity to fulfill its obligations with Meralco. This requirement may be complied with by the Bidder directly or through any of its direct shareholders representing <del>Controlling Interest <u>at least 20% ownership, or this direct shareholder's</u> Affiliates or Ultimate Parent. As evidence thereof, the Bidder or any of its direct shareholders representing Controlling Interest <u>at least 20% ownership, or this direct shareholder's Affiliates</u> or Ultimate Parent, or in case of an unincorporated joint venture or a partnership, each entity or party thereto, must:</del></p>	<p>We cannot accede to this proposal.</p> <p>The percentage ownership of shareholders in the Bidding Entity is usually commensurate to the financial contribution of said shareholders in Bidding Entity (and eventually the Project Cost).</p> <p>The requirement the Bidder, Affiliate, Ultimate Parent or for the direct shareholder with Controlling Interest to meet the Financial Qualification is because they will be the one providing the largest share in the Project Cost. Even if the direct shareholder owning 20% can meet the Financial Qualification, said shareholder will NOT be the shareholder providing 100% of the Project Cost. Simply put, the direct shareholder owning 20% will only be shouldering 20% of the Project Cost. Thus, it is important for the TPBAC to determine that the direct shareholder with controlling interest is able to meet the Financial Qualifications will be able to cover 30% of the Project Cost.</p>

<p>Bid Requirements "Technical Qualification Requirements"</p>	<p>Item No. 2 (a), page 5</p>	<p>May we seek clarification on the following structure:</p>  <pre> graph TD     CB[Company B] -- 100% Equity --&gt; OC[O&amp;M Company]     CA[Company A] -- 100% Equity --&gt; BE[Bidding Entity]     OC -- O&amp;M Agreement --&gt; BE     BE -- Power Sales Agreement --&gt; M[Meralco]             </pre> <p>(* Company A does not meet Technical and Financial requirements. Only Company B meets Technical and Financial requirements.</p> <p>Please confirm that our proposed structure, where Company B will have operational control over the plant owned by the Bidding Entity through a comprehensive O&amp;M Agreement, is deemed compliant with the Technical and Financial Requirements.</p>	<p>The proposed structure is not compliant with the Technical and Financial Requirements because Company B and/or O&amp;M Company is not the Bidding Entity, any of its direct shareholders with Controlling interest, Affiliate or Ultimate Parent, which are the shareholders/entities that must comply with the Technical and Financial Requirements (See: IPB – Section 3.1.4 (a) and Annex QD-5)</p> <p>The O&amp;M Company's compliance with the Technical and Financial Requirements is not acceptable because:</p> <ol style="list-style-type: none"> <li>1. Meralco's PSA will be with the Bidding Entity not the O&amp;M Company. Thus, even if the O&amp;M Company has the financial and technical capabilities, Meralco cannot force said O&amp;M Company to comply with the Bidding Entity's obligations under the PSA.</li> <li>2. The O&amp;M Company can be replaced by the Bidding Entity at any time, which will render the evaluation of its Financial and Technical Qualifications, useless.</li> </ol>
<p>Bid Requirements "Technical Proposal (Envelope 2)"</p>	<p>Item (g), page 9</p>	<p>We propose to delete item (g) to be consistent with the bid being technology- neutral.</p> <p><del>(g) If the Bidder's Nominated Power Plant will use a fuel source other than coal or natural gas, the Bidder shall submit its own technical parameters (which shall nevertheless comply with the requirements in the TOR Table and information prescribed in Annex TP-1 of the IPB), fuel forecast and nominated fuel price index for evaluation of the TPBA</del></p>	<p>On the contrary, this provision allows for neutrality of technology, for as long as the technical parameters submitted (for fuel source other than coal or natural gas) comply with the requirements of the TOR Table and information prescribed in Annex TP-1 of the IPB, the Bidder may submit such for the evaluation of the TPBAC.</p>
<p>Instructions to Prospective Bidders "Conflict of Interest"</p>	<p>Section 2.10.2 (a), Page 19</p>	<p>We propose to change "Bidder's Nominated Power Plant or listed portfolio of plants" to "Bidder's Nominated Power Plant(s)" for clarity and consistency</p> <p><del>(ii) A Bidder's Nominated Power Plant or listed portfolio of plants is also a Nominated Power Plant or listed portfolio of plants of another Bidder in (x) this Bidding or (y) in another pending competitive selection process being conducted by Meralco, in which case, both will be considered Conflict of Interest</del></p>	<p>Noted, but we prefer to retain the original wording.</p>
<p>Instructions to Prospective Bidders "Grounds for</p>	<p>Section 2.10.4 (i), page 20</p>	<p>We propose to remove item (i) to remove ambiguity on what qualifies as Grounds for Disqualification</p> <p><del>(i) other grounds for rejection or disqualification of Bidders this IPB or applicable laws</del></p>	<p>Not amenable, the TPBAC must be guided also by other applicable laws in the conduct of this CSP which would endanger the process or the DU if it is a proper ground for disqualification based on other applicable laws.</p>

	Disqualification”			
	Bid Requirements	Page 6	<p>(c) The Bidder must provide the Reference Plant’s general information and its key components (e.g., boiler, turbine and generator), such as the design (e.g., type, including specific fuel, number of units, and capacity), plant site/s, and interconnection site/s;</p> <p>This requirement is not in Section 3.1.4 of the ITB and Annex QD-5. Do the bidders need to submit additional documents for this requirement or will the submission of those enumerated in Section 3.1.4 suffice for the Reference Plant? If additional documents are necessary, should we attach those documents to Annex QD-5?</p>	The Certification regarding Technical Qualification (p.66, IPB) of Annex QD-5 will comply this requirement.
	Pre Bid Conference “PBC”		<p>Can we request that the formulas in the Financial Evaluation Workbook be shown? We’re okay if it’s locked as long as we can see the basis of the calculation for transparency.</p>	<p>Yes. A Bid Bulletin will be released to provide the Bidders a formula-viewable but edit-protected copy of the initial version of the Financial Evaluation Workbook.</p> <p>The Bid Bulletin shall include also a set of test values and expected output of the seven (7) worksheets of the initial Financial Evaluation Workbook so that when the final version of the Financial Evaluation Workbook is released the bidders can test the values final version of the Financial Evaluation Workbook from the initial version they previously studied already.</p> <p>As a reminder to the bidders, any proof of tampering by the bidders of the formula and other inputs in final version of the Financial Evaluation Workbook, as submitted in their Bid Price (Envelope 3) can be ground for disqualification in this bidding.</p>
	PBC		<p>On conflict of interest, if the TPBAC does not notify a bidder that it has a conflict of interest, the Bidder can already consider it as acknowledgment that it has no conflict of interest?</p>	<p>After the Pre-Qualification <b>and</b> Post Qualification period (i.e. after the TPBAC had the opportunity to review all the submitted bid documents of the Bidder), if the Bidder is not disqualified due to conflict of interest, the Bidder may consider it as acknowledgment that the TPBAC has found no conflict of interest.</p>
	PBC		<p>How are volume or calorific value discounts reflected in the computation of Fuel in LCOE? Are there cv coal discounts?</p>	<p>The LCOE only values the Fo that the bidder will submit. The Fo shall be escalated 2% per year during the evaluation period of the LCOE. Any discount or calorific value discount should be reflected in the Fo. It is within the bidder’s right to reflect that in the Fo that it will submit.</p>
	PBC		<p>Site reference conditions are not specified in PSA. Different bidders will assume different site reference conditions for correction of capacity and net heat rates. How will Meralco evaluate offered net capacity and net heat rates?</p>	<p>During evaluation, the values submitted are to be guaranteed by the bidder. The site specific conditions will be relevant upon the execution of the PSA as a Winning Power Supplier (i.e. NDC test, etc.), which will follow the testing protocol/s in the PSA-template.</p>

	PBC		Please allow unit wise COD for Plant consisting of multiple generating units.	Not amenable, the TOR provides that the required Contract Capacity (1,200 MW by December 2024 / additional 600 MW by May 2025) are those that should be available upon commercial operations by the COD.
	PBC		In the Financial Workbook, the smallest capacity of a unit is required to be indicated. Will it be gross or net capacity of a unit?	It will be the Gross.
	PBC		Will an OEM-approved overhauled zero-hours CCGT can be qualified to bid?  It may be a secondhand plant that is relocated to the Philippines and gets completely refurbished as a brand new plant by the original manufacturer.	The intention is for the Nominated Power Plant, by the time it attains commercial operations, the equipment should be brand new also, not merely refurbished.

MATRIX OF COMMENTS 3 – **PSA TEMPLATE’S MAIN BODY**-RELATED QUERIES/COMMENTS

ITEM #		TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION RECOMMENDATIONS / PROPOSED WORDING	RESPONSE
1		PSA	General Comment on the PSA Structure	<p>The PSA template appears to combine the elements of a financially settled contract as normally provided in the WESM with a physical PSA contract that would have existed prior to the establishment of the WESM.</p> <p>It is our view that the PSA should be a financial contract in line with the functioning of the WESM. This is normal practice in wholesale electricity markets like the WESM, accepted international practice and the WESM has been designed as a competitive marketplace that allows bilateral contracts that can be settled both physically within the WESM and financially between parties. The market administrator has the responsibility of settling all physical deliveries of energy within the market and allow parties to settle financial contracts separately. Provisions that prohibit Bidders from hedging their risks for the delivery of energy, or that prevent the Bidder from using the market to offer more competitive pricing undermine the entire construction of the WESM and liberalization of the Philippines power market. We believe that the IPB can be structured to require the build of new capacity to ensure security of supply for the WESM and allow the PSA to function within the framework of the WESM. Our queries and clarifications have been prepared with the idea that it is in the interest of all parties to work within the WESM to ensure that the market has security of supply and offers competitive pricing for all market participants, this includes generators, distribution companies, retail electricity suppliers and end users.</p> <p>Bidder recommends that the PSA be restructured into a financial contract in line with the functioning of the WESM.</p>	<p>The TOR and PSA-template’s terms and conditions should be taken as a whole, and these will show that since this CSP is for a physical arrangement/contract with a two-part tariff evaluation, the main source of supply of energy should be the Nominated Power Plant. This is the DU’s way of encouraging and aligning its power supply procurement plant with DOE’s policy to encourage the development of new capacities.</p> <p>The relevant provisions of the PSA-template are as follows:</p> <p>Sec. 1.1. defines Contract Capacity as capacity that should be <b>“sourced from the Plant,”</b> while Sec. 6.1.2 states:</p> <p><i>“6.1.2 Unless otherwise expressly permitted by this Agreement, Power Supplier shall not, without Meralco’s prior written consent:</i></p> <p><i>(a) xxx</i></p> <p><i>(b) provide Meralco with capacity and/or electrical energy <b>from any source other than the Plant;</b> xxx”</i></p>
2		Associated Energy / PSA	Article 1 Definitions and Interpretation / Page 2	<p>The definition of Associated Energy is currently restricted to the energy that is being generated by the Plant and declared by Power Supplier to the WESM as BCQ for Meralco.</p> <p>To ensure flexibility in the source of supply whether from the Nominated Power Plant/s, a Bidder’s supply portfolio, third party sources, or from the WESM, we suggest that the term Associated Energy be redefined so as not to limit the source of energy to energy generated by the Plant.</p>	Response is same as for Item#1.

				<p><i>Revised definition to read:</i></p> <p>Associated Energy <del>means the energy generated by the Plant and declared by Power Supplier to the WESM as BCQ for Meralco, in accordance with Appendix G.</del>  <b><u>means the BCQ nominated by Meralco to Power Supplier, and declared by Power Supplier to the WESM.</u></b></p> <p><b><u>For avoidance of doubt, the Associated Energy refers to the BCQ which may be sourced by the Power Supplier from the Nominated Plant, the WESM, or any other sources, and sold by the Power Supplier to Meralco during a WESM Trading Interval at the Delivery Point.</u></b></p>	
<p>3</p>		<p>Forced Outage / PSA</p>	<p>Article 1 Definitions and Interpretation / Page 7</p>	<p>Consistent with our recommendation to provide flexibility to the Power Supplier to allow sourcing from its Nominated Power Plant/s, its portfolio of power sources, third party sources, or from the WESM, the Bidder must be provided with room to decide when to physically dispatch its Nominated Power Plant.</p> <p>We therefore suggest that Forced Outage be redefined so that any supply by the Power Supplier from its portfolio of generation sources or the WESM, even when the Nominated Power Plant is available, shall not be construed as Forced Outage.</p> <p><i>Revised definition to read:</i></p> <p>Forced Outage means (a) any <b><u>unintended</u></b> interruption of the Plant’s generating capability resulting in an unplanned reduction or suspension of the electrical output from the Plant and/or unavailability of capacity in whole or in part from the Plant; (b) any automatic shutdown of any part of the Plant; and (c) any other unavailability of the Plant for operation, in whole or in part, for maintenance and/or repair, and in each of (a), (b) or (c), that is not a Scheduled Outage and not the result of an Event of Force Majeure, and that affects the Plant’s ability to generate and export all or any portion of the Contract Capacity or Associated Energy.</p> <p>Any interruption, reduction or suspension of the Plant’s output as instructed by the System Operator shall not be considered as a Forced Outage.</p> <p><b><u>For avoidance of doubt, intentionally not dispatching the Nominated Power Plant for the purpose of sourcing MERALCO’s electricity requirements from the Power Supplier’s portfolio of generation sources or from the WESM shall not constitute a Forced Outage.</u></b></p>	<p>Response is same as for Item#1.</p>



4		General, PSA Template		<p>Can the Bidder propose revisions to or is Meralco open to negotiate the terms of the PSA template?</p> <p>Other than revisions to reflect the terms and conditions of the Technical Proposal and Bid of the Winning Power Supplier, can the Bidder propose necessary revisions to align the PSA template with its requirements under existing financing documents?</p>	<p>As relayed to the TPBAC by Meralco, it is not amenable to change the terms of the PSA template because this may affect the offers of other Bidders in general.</p> <p>As a general rule, PSA provisions are not subject to change, except to reflect specifics of offer of Winning Power Supplier.</p>
5		General, Minimum Energy Offtake		<p>We note that nowhere in the Terms of Reference, Bid Documents or the PSA template refers to Minimum Energy Offtake by Meralco.</p> <p>While full flexibility is given to MERALCO with regard to its Contract Capacity, all risk in relation to having a stable cash flow will be carried by the Bidder. Note that Bidders with power plants financed by lending institutions have PSAs serve as collateral to prove its long-term capability of fulfilling their debt payment obligation. Hence, a stable offtaker of capacity is vital to have a bankable power supply agreement which will form part of collateral to the lenders. A PSA that is governed by no firm off-take covenants may not qualify as an approved agreement by lenders.</p> <p>In addition, power plants, to ensure its efficient operations, require to maintain a minimum stable load/off-take.</p> <p>It is therefore sound for Parties to have mutual and equal obligation in terms of guaranteeing supply provision as well as offtake by the Buyer to ensure economical business operations.</p>	<p>As relayed to the TPBAC by Meralco, as a general rule, the DU does not commit to MEOT when the tariff structure is two-part tariff, as energy payments (i.e, VOM and fuel) are to be paid only as incurred.</p>
6		Acceptance Date	<p>Power Supply Agreement ("<u>PSA</u>"), Section 1.1, "Acceptance Date"</p> <p>Section 14.3.3</p>	<p>Section 1.1 of the PSA defines "Acceptance Date" as "<i>the date of <u>written</u> acceptance by Power Supplier of the ERC Final Approval in accordance with Article 14.3.3.</i>"</p> <p>However, under Section 14.3.3, it appears that the acceptance by the Power Supplier of the ERC Final Approval is not necessarily written. Section 14.3.3 states: "<i>Following (i) a written notice of acceptance from Power Supplier with respect to the ERC Final Approval (including upon reconsideration under Section 14.3.2 above), or (ii) <u>the lapse of the period referred to in Section 14.3.1 without Power Supplier communicating its acceptance or non-acceptance in writing, the acceptance date shall be considered as having occurred on the date of the written notice of acceptance or on the last Day of such period, as applicable</u> ("Acceptance Date"), provided, in each case, that Meralco has not filed any motion for reconsideration or appeal subsequent to Power Supplier's acceptance of such ERC Final Approval and the Longstop Date has not occurred.</i>"</p> <p><b>Please clarify the definition of Acceptance Date and revise the template PSA accordingly.</b></p>	<p>For clarity, the definition of Acceptance Date will be revised to "has the meaning given to it in Section 14.3.3".</p>

7		Contract Capacity and Net Dependable Capacity	PSA, Section 1.1, "Contract Capacity"  PSA, Sections 8.4 and 14.1  PSA, Appendix J, Part A	Under Section 1.1 of the PSA, Contract Capacity <i>"shall be, subject to Articles 10 [Assignment and Transfer of Contract Capacity] and Sections 18.4 and 18.6, [1,800 MW] (net) sourced from the Plant."</i> Sections 18.4 and 18.6 respectively refer to: (a) Termination upon Event of Default and (b) Termination upon other than upon Event of Default. They do not appear to be relevant to the definition of Contract Capacity.  <b>Please clarify the reference to Sections 18.4 and 18.6 in the definition of Contract Capacity.</b>	This appears to be typographical error. Reference to Sections 18.4 and 18.6 in the definition of Contract Capacity will be deleted.
8		Net Dependable Capacity (" <u>NDC</u> ")	PSA, Section 1.1, "Contract Capacity"  PSA, Sections 8.4 and 14.1	Under the PSA, the Power Supplier is required to perform Annual NDC tests to determine the NDC of the Plant. It is unclear, however, what the purpose of holding annual NDC Tests and determining the NDC is or how it relates to the Contract Capacity or supply obligations of the Power Supplier to Meralco.  The Contract Capacity which the Power Supplier is required to make available is typically linked to the NDC, that is, that Contract Capacity is defined as the Net Dependable Capacity, subject to certain adjustments.  <b>Please clarify the purpose of the annual NDC Test.</b>  We propose that the definition of Contract Capacity be amended as follows:  <b><u>Contract Capacity or CC shall be, subject to Articles 10 and Sections 18.4 and 18.6, [1,800 MW] (net) sourced from the Plant, which shall not be more than the Net Dependable Capacity of the Plant and as determined in accordance with clause 8.4 (Tests) and Appendix J (Tests) from time to time as may be adjusted pursuant to Article 10 (Assignment and Transfer of Contract Capacity).</u></b>	As mentioned in Section 1.1, Part A, Appendix J of the PSA Appendices, the purpose of the Annual NDC Test is to "demonstrate the maximum Net Dependable Capacity of the Plant." The Net Dependable Capacity is material in determining the Full Load Equivalent Days of Availability which, in turn, is significant in monitoring that the ground for a Power Supplier Event of Default in Section 18.1(b) does not materialize or is cured.  For Contract Capacity, only changes shall be as indicated in Item#7.
9		Definition of Longstop Date	PSA, Sections 1.1 and 18.6.2	Under Section 1.1 of the PSA, Longstop Date is defined as <i>"the date falling six (6) months after the date of submission to the ERC by Meralco and Power Supplier of their Joint ERC Application"</i> , while Acceptance Date is defined as <i>"the date of written acceptance by Power Supplier of the ERC Final Approval in accordance with Article 14.3.3"</i> .  In this regard, under Section 18.6.2, if the Acceptance Date has not occurred on or before the Longstop Date, the <u>Power Supplier</u> has the right to terminate the PSA by written notice. However, if any of the conditions precedent in Section 3.3.3 of the PSA have not been fulfilled on or before the Longstop Date, the Parties may agree in writing to extend such Longstop Date. We note that there do not appear to be any conditions precedent in Section 3.3.3. Rather, these are in Section 3.3.2. Please clarify if the reference to Section 3.3.3 in Section 18.6.2 refers to Section 3.3.2.	This is typographical error. Section 18.6.2 should refer to Section 3.3.2.

10		Definitions and Interpretations	Art. 1; page 2	<b>Recommendation: Change the word “Schedule” to “schedule” under the Billing Period definition</b>	This is typographical error. Agree to change “Schedule” to “schedule”.
11		Change in Circumstance	Art. 1.1 (a); page 3	<p>“any Law coming into effect after the signing of this Agreement, including the adoption or enactment, or any change or repeal with respect to the imposition of taxes, duties, levies, fees, charges and similar impositions, and the right to remit or convert currencies, <u>but in all cases excluding any Legal Requirement or the application or interpretation thereof in existence at such date but which by its explicit terms became effective only after the date of this Agreement;</u>”</p> <p><b>Clarification: Are there such Legal Requirements?</b></p>	The provision is intended to cover such instances, if they do arise.
12		Obligations to Finance Parties	Definition	<p>Obligations to Finance Parties means, at any date, the total unpaid principal amount owed by Power Supplier to the Finance Parties under the Finance Documents and accrued and unpaid interest (including default interest) thereon plus any winding-up costs, prepayment charges, or similar charges or costs for which Power Supplier is responsible under the Finance Documents.</p> <p>On the definition of the term “Obligations to Finance Parties,” please confirm if this includes indemnities and other amounts that may be payable to the Finance Parties other than interests, default interests, prepayment penalties, similar charges or costs.</p>	This item is for deletion since the term is not used in the PSA.
13		Definition of Delivery Point	1.1 Definitions	<p>Delivery Point means the high side of the connection of Power Supplier to the Luzon Grid, nearest to Meralco’s load center, <u>and subject to Meralco’s approval.</u></p> <p>We suggest to revised “and subject to Meralco’s approval” to “<u>as submitted in the bid</u>”</p>	<p>The Delivery Point is as indicated by the Bidder in its bid submission. Once a Winning Power Supplier has been determined, the Delivery Point indicated by such Bidder shall be incorporated and defined as the “Delivery Point” in the PSA, provided that for multiple sites, while Power Supplier can nominate its Delivery Point, this shall be subject to approval of the DU prior to reflection in the PSA. Accordingly, for clarity, the definition for Delivery Point will be revised to “<i>means [as indicated by Bidder in bid submission and approved by Meralco], which is the high side of the connection of Power Supplier to the Luzon Grid, <del>nearest to Meralco’s load center, and subject to Meralco’s approval.</del></i>”</p>
14		Definition of Delivery Point	Article 1, Section 1.1, page 5	<p>“Delivery Point” in the PSA template is defined as “the high side of the connection of Power Supplier to the Luzon Grid, nearest to Meralco’s load center, and subject to Meralco’s approval.”</p> <p>How and who will determine the Delivery Point for each Bidder?</p>	Response is same as for Item#13.

				We propose the “Delivery Point” should be defined as the high voltage side of the step-up transformer of the Plant located within the Plant’s substation, at which location power metering will occur.	
15		Definition of Delivery Point	Section 1.1, page 9	Can we clarify how the Delivery Point will be determined? Is it the Luzon Grid or Power Supplier high voltage end? In addition, clarification on Transmission Losses is required if the delivery point is at the Luzon Grid end.	Response is same as for Item#13.
16		Electrical Interconnection Facility	Article 1, Section 1.1, page 6	<p>The definition of “Electrical Interconnection Facility means the switchyard adjacent to the Plant and the associated protective relaying, metering, control, data acquisition and communications facilities required to integrate the operation and control of the Plant with that of the Luzon Grid.”</p> <p>Please confirm the intention of the MIFP is to capture the cost of all assets required to interconnect the Plant with the Luzon Grid. Note, the definition does not include any transmission line/conductor between the switchyard and the Luzon Grid that may be required, as such, we would like to clarify that this should be included.</p>	Bidders may decide whether to incorporate the cost of certain assets in the interconnection fees. However, it should be noted that the classification of the[se] assets may change based on function, as laid down in existing regulations. Reclassification of certain assets may result in removal of the Monthly Interconnection Facilities Payment (MIFP) as a component of the Price (Component B). Hence, the Winning Power Supplier should be prepared to unbundle the MIFP, as needed.
17		Forced Outage	1.1 Definitions	<p>In the Forced Outage definition, it is stated that “... any interruption, reduction or suspension of the Plant’s output as instructed by the System Operator shall not be considered as a Forced Outage”</p> <p>If not a Forced Outage, what it is then? Will the power supplier be able to bill such outage (i.e., fixed costs such as capital and FOM)?</p> <p>An interruption, reduction, or suspension of the Plant’s output as instructed by the System Operator is not a Forced Outage, but is instead considered as an "Exculpatory Provision" under 18.5.</p> <p>Please provide what the rights and obligations of the parties are in the event of an “Exculpatory Provision”.</p> <p>We suggest including “<u>any interruption, reduction or suspension of the Plant’s output as instructed by the System Operator</u>” as an instance of Force Majeure.</p>	<p>As relayed to the TPBAC by Meralco, the contemplated instance is enumerated under Section 18.5.1 [Exculpatory Provisions]. Specifically, the consequence for the described circumstance is provided in Section 18.5.2 of the PSA, as follows:</p> <p><i>“For the avoidance of doubt, Meralco shall not be obligated to make Capacity Payments and Energy Payments for interruptions in the availability of Contract Capacity and supply of Associated Energy as a result of occurrence of any of the events described in Section 18.5.1.”</i></p>
18		Power Supply Agreement template "Definitions and Interpretation "	Section 1.1, page 11	<p>Can we clarify if the Full Load Equivalent Days of Availability aligned with the following examples?</p> <p>(i) One-half of contract capacity in all 24 hours of a given day = 0.5 Full Load Equivalent Days of Availability</p> <p>(ii) Full contract capacity is available only 12 hours in a given day, with the other 12 hours at zero available capacity = 0.5 Full Load Equivalent Days of Availability</p>	Please note that in determining the “Full Load Equivalent Days of Availability”, what should be considered is the Plant’s Net Dependable Capacity, instead of the Contract Capacity cited as sample determinant in this question.

				(iii) One-half of contract capacity is available for only 12 hours in a given day, with the other 12 hours at zero available capacity = 0.25 Full Load Equivalent Days of Availability	
19		Power Supply Agreement template "Definitions and Interpretation "	Section 1.1, page 12	<p>Can we clarify if the Full Load Equivalent Outage day is aligned with the following examples?</p> <p>(i) One-half of contract capacity in all 24 hours of a given day = 0.5 Full Load Equivalent Outage Day</p> <p>(ii) Full contract capacity is available only 12 hours in a given day, with the other 12 hours at zero available capacity = 0.5 Full Load Equivalent Outage Day</p> <p>(iii) One-half of contract capacity is available for only 12 hours in a given day, with the other 12 hours at zero available capacity = 0.75 Full Load Equivalent Outage Day</p>	As relayed to the TPBAC by Meralco, Meralco confirms that the examples illustrate the contemplation for definition of Full Load Equivalent Outage Day.
20		Term of Agreement	2.2	<p>The Term may be renewed for an additional period of up to one (1) year under the same terms and conditions, <u>at the option of Meralco</u>, by giving prior written notice to Power Supplier at least 180 Days prior to the end of the Term.</p> <p>The renewal, although at the option of Meralco, should be mutually agreed upon by the Parties, or subject to the approval of the Power Supplier.</p>	Since same terms and conditions apply, the assumption is that extension of the PSA Terms is acceptable to Power Supplier, provided period is observed by the DU. Hence, the language provides that the option lies with Meralco.
21		CONDITIONS PRECEDENT / ERC APPLICATION	Section 3.1.1 (page 15) / Section 14.2.2 (page 34) / Appendix C Part Three (page 69)	<p>Among the list of documents required for ERC application which shall be submitted prior to the execution of the PSA are details on the procurement process of fuel including requests for proposals, proposals received, ranking of proposal terms, etc. as well as a redacted copy of fuel supply agreements if available.</p> <p>RFPs, the proposals as well as the ranking of proposals are all commercially sensitive and should be kept confidential. Also, there is a timing contradiction with Appendix G which requires a detailed protocol for conducting a competitive bid for fuel procurement.</p> <p>Instead of submitting such documents, can we provide a summary of the salient terms of the fuel supply agreement and the process done for competitive selection?</p>	As relayed to the TPBAC by Meralco, for purpose of the Technical Proposal requirement, it prefers the redacted copy of fuel supply agreements. But for purposes of Appendix C of PSA as pre-filing submission to ERC, this should be readily available for submission to ERC subject to confidentiality. Note that the fuel-related information required in Appendix C is lifted from ERC's pre-filing checklist.
22		Commencement Date	3.2.1	<p>The "Commencement Date" shall occur upon the satisfaction of the conditions in 3.2.1 On or before the Longstop Date, (i) the ERC shall have issued an ERC Final Approval, including the pricing structure as set out herein (or as otherwise acceptable to Power Supplier), and (ii) the Acceptance Date has occurred; and</p> <p>What will the effect be if the ERC issues the ERC Final Approval after the Longstop Date?</p>	<p>If the ERC issues the ERC Final Approval after the Longstop Date, then Acceptance Date will not occur. In such case, under Section 18.6.2(a), the Power Supplier has the right to terminate the PSA. In addition, consistent with the principle laid down in Section 14.3.2 (i), if the delay of ERC approval is due to the fault or inaction of Power Supplier, then Meralco shall have the right to forfeit 10% of the Bid Security for every month of such delay. Accordingly, an additional sentence paragraph will be added to Section 14.2.2, as follows:</p> <p><b><i>"xxx In the event that a delay in ERC Final Approval is due to Power Supplier's failure to comply with any order or</i></b></p>

					<b><u>directive of the ERC or provide any document required by the ERC, including the ECC, Meralco reserves the right to forfeit ten percent (10%) of the original Bid Security amount for each month of such delay.</u></b>
23		Commencement Date	3.2.1	<p>The “Commencement Date” shall occur upon the satisfaction of the conditions in 3.2.1</p> <p>Please clarify whether the commencement date will occur on the day Meralco confirms its occurrence in writing or on the day all the conditions set have been complied with, subject to Meralco’s confirmation in writing.</p>	The Commencement Date will occur upon Meralco’s confirmation in writing but Parties’ agreed upon date for Commencement Date (based on satisfaction of all conditions) may be indicated.
24		Commencement Date	Section 3.2.1(c), Page 16	<p>The “Commencement Date” shall occur upon the satisfaction of the conditions below:</p> <p>(c) On or before the Longstop Date, (i) the ERC shall have issued an ERC Final Approval, including the pricing structure as set out herein (or as otherwise acceptable to Power Supplier), and (ii) the Acceptance Date has occurred.</p> <p>Given that there is a possibility that that the ERC Final Approval will not be issued within 6 months from submission of the joint application for approval, we suggest to include receipt of Provisional Authority or Interim Relief:</p> <p>(c) On or before the Longstop Date, (i) the ERC shall have issued either an ERC Final Approval, <b><u>Provisional Authority or Interim Relief, to implement the Agreement,</u></b> including the pricing structure as set out herein (or as otherwise acceptable to Power Supplier), and (ii) the Acceptance Date has occurred.</p>	The ERC Final Approval does not contemplate provisional authority (PA) or Interim Relief, considering that Meralco will have difficulty justifying urgency to request for PA or Interim Relief as the Commercial Operations Date will not be until 2024, or 3 years from execution of the PSA.
25		Commencement Date	Article 3, Section 3.2, page 16	<p>“On or before the Longstop Date, (i) the ERC shall have issued the ERC Final Approval, including the pricing structure therein...”</p> <p>Has Meralco been able to have PSAs approved by the ERC within 6 months of submission?</p> <p>Provided the Power Supplier is working with Meralco to secure ERC approval, will Meralco agree to an automatic extension of the Longstop Date?</p> <p>Provided the Bidder is working with Meralco to secure ERC approval, the Longstop Date should be extended automatically in six (6) month increments. If after twenty-four (24) months of such automatic extensions with the parties trying to secure the ERC approval, wherein the ERC approval is still pending, the parties will then meet to agree whether to continue pursuing the ERC approval or terminating the process, without penalty or cost.</p>	There is no automatic extension of Longstop Date. However, please refer to Section 18.6.2 which provides that “if any such conditions precedent under Section 3.3.3 (3.3.2) have not been fulfilled on or before Longstop Date, parties may agree in writing to extend.”

<p>26</p>	<p>Failure to reach Financial Close by the Required Financial Completion</p>	<p>PSA, Section 3.2.3(a)</p>	<p>Under Section 3.2.3(a), it states: <i>“any Event of Force Majeure affecting the Philippine electric power sector or financial markets or the Site (including factors which affect liquidity or availability of funds for the financing for the construction of the Plant), or resulting in the non-finality of the ERC Final Approval that renders Power Supplier unable to obtain non-recourse project financing equivalent to seventy percent (70%) of the borrowing commitment from reputable multilateral agencies, governmental/export credit agencies, and commercial lenders and financial institutions involved in the Asian power project market on reasonable commercial terms and conditions (including as to pricing)”</i>.</p> <p><b>Please confirm that “Philippine” above qualifies only “electric power sector” and not “financial markets”, such that an Event of Force Majeure that affects international or foreign financial markets (which affect liquidity or availability of funds for the financing for the construction of the Plant) would be a ground for termination of the PSA and the return of the Performance Security to the Bidder.</b></p> <p>This is the correct interpretation because Events of Force Majeure affecting international or foreign financial markets can adversely affect the Bidder’s ability to securing financing for the project.</p>	<p>It is confirmed that “Philippine” only qualifies “electric” power sector and not “financial markets”.</p> <p>For clarity, Section 3.2.3(a) shall be revised as follows:</p> <p><i>“(a) any Event of Force Majeure: (i) affecting the Philippine electric power sector, or financial markets, or the Site (including factors which affect liquidity or availability of funds for the financing for the construction of the Plant), or (ii) resulting in the non-finality of the ERC Final Approval that renders Power Supplier unable to obtain non-recourse project financing equivalent to seventy percent (70%) of the borrowing commitment from reputable multilateral agencies, governmental/export credit agencies, and commercial lenders and financial institutions involved in the Asian power project market on reasonable commercial terms and conditions (including as to pricing)”</i>.</p>
<p>27</p>	<p>Failure to reach Financial Close by the Required Financial Completion</p>	<p>PSA, Section 3.2.3 in relation to Section 3.2.2 and Section 14.3.3</p>	<p>Under Section 3.2.3(a), if the non-occurrence of timely Financial Close by the Required Financial Completion Date is directly due to, or a direct result of, among others, <i>“any Event of Force Majeure ... resulting in the non-finality of the ERC Final Approval that renders Power Supplier unable to obtain non-recourse project financing equivalent to seventy percent (70%) of the borrowing commitment from reputable multilateral agencies”</i>, etc., the PSA shall be terminated and Meralco shall return the Performance Security.</p> <p>However, under Section 3.2.2, the Required Financial Completion Date is defined as the period of ninety (90) Days from the Acceptance Date. On the other hand, under Section 14.3.3, the Acceptance Date is the date of express or implied acceptance by Power Supplier of the ERC Final Approval “provided, in each case, that Meralco has not filed any motion for reconsideration or appeal subsequent to Power Supplier’s acceptance of such ERC Final Approval and the Longstop Date has not occurred.”</p> <p><b>In view of these, kindly clarify the scenario that is contemplated under Section 3.2.3(a). In particular, under Section 3.2.3(a), under what circumstances</b></p>	<p>As stated in the provision, among the circumstances contemplated wherein Financial Close may not occur by the Required Financial Completion Date is <b>“any Event of Force Majeure xxx”</b>.</p>

				<p><b>can a timely Financial Close not occur by the Required Financial Completion Date due to the non-finality of the ERC Final Approval?</b></p>	
<p>28</p>		<p>Failure to reach Financial Close by the Required Financial Completion</p>	<p>PSA, Section 3.2.3 in relation to Section 3.2.2 and Section 14.3.3</p>	<p>We respectfully submit that, to be fair to the Winning Bidder, Meralco should be expressly prohibited from terminating the PSA in circumstances where a timely Financial Close does not occur by the Required Financial Completion Date due to the unreasonable refusal of Meralco to enter into the Direct Agreement or the Equity Transfer Procedures under Section 3.2.3(b) or due to any other act or omission on the part of Meralco.</p> <p>We recommend the following changes to the last paragraph of Section 3.2.3 of the PSA:</p> <p>Meralco shall return the Performance Security to Power Supplier within thirty (30) Days from the date of termination due to (a), (b), and (c) of this Section 3.2.3, <b>provided that Meralco shall not be allowed to terminate this Agreement if the delay in achieving Financial Close by the Required Financial Completion Date is due to Section 3.2.3(b) of this Agreement.</b></p>	<p>This is well noted. Accordingly, the closing paragraph of Section 3.2.3 shall include the following qualification:</p> <p><i>“xxx, provided that Meralco cannot terminate this Agreement due to Section 3.2.3(b).”</i></p>
<p>29</p>		<p>Commercial Operations Date</p>	<p>Section 3.3, Page 17</p>	<p>The section on Commercial Operations Date and Scheduled Commercial Operations Date assumes that the Plant’s Commercial Operations is the same as the commencement of delivery. In consideration of the plants which have achieved commercial operations way earlier than the intended commencement of delivery under the PSA, Commercial Operations Date and Commencement of Delivery Date should be treated separately.</p> <p>We propose that the Commencement of Delivery Date must be clearly defined and should refer to the target date of delivery under the PSA and should not be anchored to the Plant’s Commercial Operations Date.</p>	<p>This is a requirement relayed to the TPBAC by the DU.</p> <p>For the DU, the decision to encourage the development of new capacities and greenfield power plants rests solely on the distribution utility’s preferred requirement for its energy supply, taking into consideration its Power Supply Procurement Plan as submitted to DOE. The DU explained that the “qualifying age” requirement of a bidder’s power plant/s is consistent with its mandate under the law and its franchise to ensure quality, reliable, secure and least cost power supply for its customers.</p> <p>We note that “qualifying age” requirement was already relaxed whereby power plant/s that are in commercial operations not earlier than January 2020 but no later than May 2025 will now qualify to join the bid. It is a significant latitude given to prospective bidders to allow more generators to participate and compete in this CSP and at the same time ensuring continuous reliability of the plants in the delivery of power to MERALCO customers during the entire twenty-year term of the Power Supply Agreement. This is aligned with DOE’s policy to encourage the development of new capacities while addressing the common concern in the electric power industry that the older the power plant is, its reliability becomes a larger issue.</p>



					In any case, in consideration of plants that may achieve commercial operations earlier, the Scheduled COD is already clearly defined.
30		Commercial Operations Date	Article 3, Section 3.3.1, page 17	In the PSA, the Commercial Operations Date shall be no later than 26 November 2024 and 26 April 2025.  Assuming these are the target dates for commercial operation, we request that Meralco considers extending the required dates for COD by a period of at least 6 months from the current proposed schedule so that the respective COD dates are no earlier than 30 June 2025 for 1,200 MW and 30 November 2025 for 600 MW.	As relayed to the TPBAC by Meralco, the proposal is not acceptable as the indicated timelines are consistent with Meralco's PSPP, as approved by the DOE.
31		Schedule Commercial Operations Date	Art. 3.3.1; page 17	Power Supplier covenants that [1,800 MW] of the Plant shall achieve Commercial Operations Date no later than <u>[26 November 2024 / 26 April 2025]</u> (the " <b>Scheduled Commercial Operations Date</b> ")  <b>Clarification: Please confirm that the Dec 2024 / May 2025 Scheduled COD stated in the TOR &amp; IPB corresponds to the Nov 26, 2024 / April 26, 2025 Scheduled COD stated in the PSA.</b>	The Scheduled CODs in the TOR and IPB pertain to Billing Periods (e.g., December 2024 Billing Period begins on November 26, 2024). To reiterate, these indicated timelines are consistent with Meralco's PSPP, as approved by the DOE.
32		Commercial Operations Date / PSA	Article 3.3.2 (b) / Page 17	Depending on the Nominated Power Plants that will be offered by the Bidders, the requirement of a Net Plant Heat Rate Test Certificate may not be applicable. Thus, we suggest that the clause "if applicable" be included.  <i>Revised provision to read:</i>  3.3.2 Provided that the 1 year period under Section 5.1 has been completed, the Plant shall achieve Commercial Operations Date for [1800MW] upon the delivery by Power Supplier of the documents enumerated below, in form and substance satisfactory to Meralco:  xxx (b) Net Plant Heat Rate Test Certificate, <b>if applicable</b> , dated no earlier than fifteen (15) Days prior to the date of Commercial Operations Date Certificate; xxx	Section 3.3.2(b) may be deleted if not applicable for fuel source of Winning Power Supplier's Plant.
33		Commercial Operations Date	Art. 3.3.2 (c); page 17	<b>Recommendation: Fix typo on word "pertinent"</b>	This is typographical error that will be corrected in the final PSA.
34		Documentary Requirements for Commercial Operations Date	PSA, Section 3.3.2	Section 3.3.2 of the PSA lists the documents that the Power Supplier is required to deliver to achieve Commercial Operations Date. Paragraph (d) of Section 3.3.2 includes " <i>all permits, licenses, authorizations and other approvals from all Government Instrumentalities and third parties needed for the operation of the Plant and the supply of electricity by Power Supplier to Meralco ***</i> ".	Please note that since ERC Final Approval is a requisite of Commencement Date, then Commencement Date will not occur without ERC Final Approval.

				<b>Please advise whether the ERC Final Approval is among the approvals contemplated under paragraph (d).</b>	
35		Replacement Power	3.3.3	If the parties do not exercise their right to terminate pursuant to this provision, will the Power Supplier be obliged to provide Replacement Power or the fine under Sec. 3.3.3 beyond the excused delay limit?	This will be evaluated depending on the circumstance. If the PSA will not be terminated and Excused Delay Limit Date will be extended, then Power Supplier shall be required to continue to provide Replacement Power at the lower between WESM price and Price.
36		Replacement Power	3.3.3	<p>For any deliveries of Replacement Power made pursuant to this Section 3.3.3, Meralco shall pay for such Replacement Power at the lower between the WESM price and the Price specified in Appendix E.</p> <p>TPBAC to confirm our understanding that if Power Supplier provides Replacement Power due to delay in COD, Meralco will only reimburse A1E at the lower of VOM + Fuel and WESM (see Appendix E: Component J).</p> <p>We suggest TPBAC to consider payment of replacement power being the lower of Headline Tariff (instead of VOM + Fuel) and WESM if there is delay in Commercial Operations Date.</p>	The Bidder's understanding is confirmed. This is so since the Term of twenty Contract Years is reckoned from Commercial Operations Date (COD); thus, the period of providing Replacement Power is excluded from the Term and Power Supplier will still recover the Capacity Payments for a period of twenty years even if the COD is delayed.
37		Replacement Power	PSA, Section 3.3.3	<p>The third paragraph of Section 3.3.3 provides, in part: <i>"If Power Supplier fails to provide Replacement Power despite availability from WESM or any other source, Meralco will be deemed to have sourced the Replacement Power, subject to reimbursement by Power Supplier of the difference between (i) WESM price and (ii) the Price, <u>plus all relevant transaction cost and taxes.</u>"</i></p> <p><b>Please clarify the components of the "relevant transaction cost and taxes".</b></p> <p>We propose that there be a cap on the "relevant transaction costs and taxes" that the Power Supplier will reimburse to Meralco.</p>	<p>The phrase "all relevant transaction cost and taxes" pertains to such costs and taxes (e.g., VAT) that may be incurred by Meralco in purchasing the Replacement Power which it would not have incurred otherwise if Power Supplier was able to provide Replacement Power to Meralco in the first place.</p> <p>As relayed to the TPBAC by Meralco, Meralco is not amenable to the proposed cap for reasons previously stated.</p>
38		Excused Delay Limit	Article 3, Section 3.3.3 Pages 18 and 19	<p>If Power Supplier (or any contractor of Power Supplier) has, after the Commencement Date, experienced a delay in designing, constructing, testing or Commissioning the Plant or any part thereof, as a result or to the extent of any "Excused Delay Event", the COD date is extended, and the Power Supplier is excused from buying replacement power.</p> <p>The Power Supplier's relief is limited to 180 days. The 180-day limit, which is not a per event, but aggregate limit, is too short, especially for events outside the Power Supplier's control. In addition, Excused Delay Events include Meralco's breach or default of its material obligations under the PSA or the Direct Agreement.</p> <p>We would propose the Excused Delay Limit be increased to at least 365 days for those delays that are outside of the Power Supplier's control.</p>	The 180-day period is a standard period in Meralco's ERC-approved PSAs. In addition, a period of 1 year is too long to expose Meralco's customers to volatile WESM prices, especially if the Contract Capacity is substantial. In addition, please be reminded that as generation costs are pass through to customers, the proposal of requiring fixed payments is unfair to customers as they will be charged for energy not taken or consumed by them. In any case, it is reiterated that for as long as the PSA remains effective, Power Supplier will still recover the Capacity Payments for a period of twenty years even if the COD is delayed.

				<p>We recommend that for each day of delay that is the result of Meralco’s breach or default of its material obligations, the Scheduled Commercial Operations Date should be extended day-for-day, with no limit.</p> <p>In addition, for any delay due to a Meralco breach or default that results in a delay in achieving the COD, we would propose that the Power Supplier should be entitled to receive the fixed payments provided under the PSA, more specifically the Capacity Payment and the Monthly Fixed O&amp;M payment (MFOM) based on the Contract Capacity (or CC), which shall be subject to any adjustment and rebate for any shortfall in the event the Net Dependable Capacity (or NDC) at COD is determined to be less than the CC.</p>	
<p>39</p>		<p>Scheduled Commercial Operations Date – Extension Termination right as a result of the Excused Delay Limit being reached after the Commencement Date</p>	<p>PSA, Section 3.3.3 and Sections 18.6.2(a) and (b)</p>	<p>There appears to be a cross-referencing error in the final paragraph of Section 3.3.3. Instead of referring to Section 18.6.2(a), should the reference be to Section 18.6.2(b), which refers to a situation when the Excused Delay Limit has been reached? Moreover, shouldn’t the right to terminate under Section 18.6.2(b) be given solely to the Power Supplier, instead of to Meralco, given the circumstances under which this right may arise, i.e., when the Excused Delay Limit has been reached after the Commencement Date? Please note for example that one of the Excused Delay Events in Section 3.3.3 is “any breach or default by Meralco of its material obligations under this Agreement or the Direct Agreement.”</p> <p>We recommend the following changes to Section 3.3.3 and Section 18.6.2(b) of the PSA:</p> <p>Section 3.3.3 *** From and after the lapse of the Excused Delay Limit, either Party <del>the Power Supplier</del> shall have the right to terminate this Agreement in accordance with Section 18.6.2(a) <del>18.6.2(b)</del>.</p> <p>Section 18.6.2 Termination Upon Non-Occurrence of Commencement Date or Commercial Operations Date (b) If, after the Commencement Date, the Excused Delay Limit is reached, the Parties shall meet and confer about the terms on which the Agreement might be continued (provided Power Supplier procures Replacement Power or pays the fine in accordance with Section 3.3.3). If agreement is not reached within sixty (60) Days of reaching the Excused Delay Limit, this Agreement may be terminated by <u>the Power Supplier</u></p>	<p>This is a typographical error and the closing paragraph of Section 3.3.3 should refer to Section 18.6.2(b).</p> <p>This is well noted. Accordingly, the closing paragraph of Section 3.3.3 shall include the following qualification:</p> <p><i>“xxx, <b><u>except that only Power Supplier can terminate this Agreement if the Excused Delay Event is solely due to Section 3.3.3(c).</u></b>”</i></p> <p>Consistent with this, Section 18.6.2(b) is revised as follows:</p> <p><i>“xxx this Agreement may be terminated by <b><u>(i) either Party for an Excused Delay Event due to Section 3.3.3 (a), (b), (d) or (e), or (ii) by Power Supplier for an Excused Delay Event due to Section 3.3.3 (c), Meralco</u></b> upon delivery of written notice of termination. In <b><u>case of (i) such instance</u></b>, Meralco shall have the right to exercise its remedies at law or equity and to draw on the Performance Security the proceeds of which Meralco shall apply to set off of its damages.”</i></p>

				<del>Meralco upon delivery of written notice of termination. In such instance, Meralco shall have the right to exercise its remedies at law or equity and to draw on the Performance Security the proceeds of which Meralco shall apply to set off of its damages.</del>	
40		Excused Delay Limit	Section 3.3.3 / Page 19	<p>We refer to the last paragraph of Section 3.3.3 of the PSA:</p> <p>“From and after the lapse of the Excused Delay Limit, either Party shall have the right to terminate this Agreement in accordance with Section <u>18.6.2(a)</u>.”</p> <p>Should Section 18.6.2(b) the provision cross-referenced above?</p>	Response is same as for Item#39.
41		COD	Definition	<p>Commercial Operations Date (COD) means the date that the conditions set out in Section 3.3.2 have been satisfied.</p> <p>On the definition of Commercial Operations Date, please confirm our understanding that, assuming that it is awarded a contract for the full installed capacity of the Plant (i.e., 1200 MW), Power Supplier must be able to achieve commercial operations for both Units 1 and 2 of the Plant before a COD under the PSA can be declared.</p>	If the contemplated scenario is for 1,200 MW with Scheduled COD of December 2024, then both units should achieve commercial operations before COD is declared under the PSA.
42		COD	Definition / 3.4.1 / 3.4.2	<p>Early COD when the Plant shall achieve COD prior to the Scheduled COD.</p> <p>Under Section 3.4.2 of the Agreement, MERALCO shall, upon receipt of Early COD Notice, determine whether or not to consider the Scheduled Commercial Operations Date shall occur on the Early Commercial Operations Date.</p> <p>On the definition of the Early Commercial Operations Date, please confirm our understanding that the Early COD cannot be declared prior to [26 November 2023 / April 2024].</p> <p>Please describe the process on how the actual verification of occurrence of an Early COD is carried out by MERALCO. Will MERALCO actually deploy its representatives to conduct technical or physical inspection or will the verification be limited to a desktop review and analysis of the documents submitted by Power Supplier?</p>	<p>As stated in 3.4.1, “for clarity, in no case shall Early COD occur earlier than 26 [November 2023 / April 2024].”</p> <p>As to how verification of occurrence of an Early COD will be carried out by MERALCO, this will be included in a protocol to be discussed by the contracting Parties as specifics will depend on the status of commerciality of Winning Power Supplier.</p>
43		Bid Security	4.1	Please clarify whether bid security shall be increased by one percent (as spelled out) or by 100% (as stated in numerical terms, which was subsequently repeated) if the Power Supplier fails to secure an Environmental Compliance Certificate (the “ECC”) from the Department of Environment and Natural Resources within six (6) months from filing of the ERC Application	This is a typographical error. Should read as “one hundred percent”.
44		Bid Security	4.1, par. 2	Upon submission of ECC to the ERC, will the increase in bid security by reason of failure to secure such ECC be returned to the Power Supplier?	To the extent that the Bid Security has not yet been forfeited for reasons provided in the Bidding Documents, amounts in excess of the original Bid Security amount will be returned to Power Supplier.

45		Bid Security and Performance Security	4.2	<p>As used herein, "Allowed Bank" means an international or domestic bank that is <u>not an Affiliate of Power Supplier</u> and is included in the list of banks agreed between the Parties.</p> <p>Suggest to allow an Affiliate Bank from whom the Bid Security and Performance Security may be secured by the Power Supplier</p>	Not amenable with the proposal. Notably, this has consistently been the definition of "Allowed Bank" under Meralco's previous PSAs.
46		Performance Security	3.3.3	<p>In case of any draw by Meralco against the Performance Security, <b>Power Supplier shall, no later than ten (10) Days after the amount falls below thirty percent (30%) of the then required Security Amount</b>, immediately replace and deliver irrevocable stand-by letter of credit or bank guarantee to meet the required Security Amount. In the event that Power Supplier fails to replace and deliver the irrevocable stand-by letter of credit or bank guarantee as required under this Section 3.3.3, Meralco shall have the right to terminate this Agreement and, in such case, Meralco shall have the right to exercise its remedies at law or equity</p> <p>We suggest TPBAC to consider revision below requiring Meralco to notify Power Supplier that the Security Amount is below the 30% threshold:</p> <p>"Power Supplier shall, no later than after ten (10) Days <b>upon receipt of notification from Meralco</b> that the amount fell below thirty percent (30%) of the then required Security Amount, immediately replace and deliver irrevocable stand-by letter of credit or bank guarantee to meet the required Security Amount."</p>	Meralco will not be the one to monitor drawing of the Performance Security. It is incumbent upon the Power Supplier to monitor such threshold, and coordinate with Meralco, if needed, for purposes of complying with this Section.
47		Power Supply Agreement template "Bid Security and Performance Security"	Section 4.2, page 20	We request TPBAC to indicate the amount of the Performance Security that the Winning Supplier shall provide.	As stated in Sec. 4.2, the Performance Security is equivalent to [Security Amount based on Bid] Philippine Pesos [PHP], as reflected in the Financial Workbook based on Bid.
48		Performance Security	Sec. 4.7 in relation to Sec. 4.5	Please clarify if the "Performance Security?" found in Section 4.7 is the same as the "Replacement Performance Security" found under Sec. 4.5.	Section 4.7 should simply refer to "Performance Security or replacement thereof".
49		Performance Security	PSA, Section 4.7	<p>Section 4.7 makes reference to a "Second Performance Security". This is not defined in the PSA.</p> <p><b>Please clarify what the Second Performance Security is.</b></p>	Response is same as for Item#49.

50		Second Performance Security / PSA	Section 4.7 / Page 21	<p>We refer to Section 4.7 of the PSA:</p> <p>“4.7 Within (30) days after the later of the Scheduled Commercial Operations Date or Commercial Operations Date, Meralco shall return to Power Supplier the <u>Second Performance Security</u> less any amount due and owing from Power Supplier to Meralco under this Agreement as of the date of the return.”</p> <p>Please clarify the meaning of “Second Performance Security”.</p> <p>For clarity, we suggest inclusion of “Second Performance Security” in Section 1.1 Definitions.</p>	Response is same as for Item#49.
51		Commissioning Energy	Article 5, Section 5.1, 5.2 and 5.3, pages 21 and 22	<p>Article 5 appears to require the Power Provider to supply 1 year of commissioning energy per the Commissioning Energy Charge more fully outlined in Appendix E.</p> <p>Does Meralco have any expectation on the volume of commissioning energy that must be made available or is it simply any energy generated for up to 1 year prior to COD shall be made available to Meralco at the Commissioning Energy Charge? If the commissioning energy is available earlier than 1 year prior to COD, how will this be handled?</p> <p>In addition, if the Power Supplier is unable to supply Commissioning Energy as a result of having completed the commissioning works more efficiently, will there be any obligation on the Power Supplier to run or operate the facility prior to the Commercial Operations Date and deliver Commissioning Energy to Meralco?</p> <p>We believe that if Meralco exercises their option to buy Commissioning Energy, Meralco should bear the risk of any unserved BCQs given the nature of startup and commissioning activities for the Plant, otherwise, the Power Supplier can sell this Commissioning Energy in the WESM without the risk of having unserved BCQs.</p> <p>We would propose that this provision should be written such that all Commissioning Energy shall be made available to Meralco at the Commissioning Energy Charge from initial startup and commissioning of the Plant up and until COD, regardless of the duration or period between the first delivery of Commissioning Energy and the COD.</p> <p>Meralco should bear all risk for unserved BCQs arising as a result of any Commissioning Energy they purchase from the Plant.</p>	<p>Section 5.1 clearly provides that:</p> <ol style="list-style-type: none"> <li>1. As to volume of Commissioning Energy, it shall be limited to “electrical energy quantities in MWh <u>generated</u> by the Plant”, which shall in no case be more than corresponding to the Contract Capacity. Note that corollary to this, Power Supplier may be excused from provision of Commissioning Energy “when prevented by technical constraints or an Event of Force Majeure”.</li> <li>2. The earliest that Commissioning Energy will be taken by MERALCO is one year prior to the Scheduled COD. Nothing precludes Power Supplier from selling energy not taken by Meralco to WESM or third parties, provided that beginning one year prior to the Scheduled COD, Power Supplier shall be ready to deliver to Meralco if Meralco exercises its option to purchase Commissioning Energy.</li> </ol>
52		Commissioning Energy	Section 5.1, Page 21	xxx Power supplier shall, for a period of one (1) year, make available to Meralco the electrical energy quantities in MWh to the extent of the Contract Capacity after 26 [November 2023/April 2024] xxx.	As relayed to the TPBAC by Meralco, Meralco acknowledges that, in principle, “Commissioning” (defined for this purpose as the act of putting the Plant into operation after the completion of

				<p>xxx this provision applies regardless of the date the Plant has achieved actual commercial operations.</p> <p>This should no longer apply to plants which have already issued with Certificate of Compliance or Provisional Authority to Operate by the Energy Regulatory Commission.</p>	<p>development, construction and installation works prior to commercial operations) is more appropriately related to greenfield projects. However, to level the playing field for all Bidders, and more importantly, to allow customers to enjoy the benefit of supply at Commissioning Energy Charge, for a specified period [discussed below], all Power Suppliers will be required to provide energy generated by the Plant at Commissioning Energy Charge, regardless of the actual commercial operations thereof. In any case, Power Supplier will still recover the Capacity Payments for a period of twenty (20) years after the period of providing Commissioning Energy.</p> <p>Nevertheless, noting the concerns raised by the Bidders, the DU shall consider the following for the PSA:</p> <ul style="list-style-type: none"> <li>(a) For Plants that <b>have achieved commercial operations</b>, Power Supplier shall supply energy available from the Plant at Commissioning Energy Charge for the maximum period for Commissioning allowed in relevant regulations, which shall not exceed six (6) months. As noted above, the same guideline that Power Supplier may be excused from provision of Commissioning Energy only “when prevented by technical constraints or an Event of Force Majeure” applies.</li> <li>(b) For Plants that <b>are still under or are to undergo Commissioning (prior to commercial operations)</b>, Power Supplier shall supply energy generated by the Plant at Commissioning Energy Charge for as long as the Plant is under Commissioning.</li> </ul>
53		Commissioning Energy	Article 5.1 & 5.2; page 21	<p>Subject to an agreement by the Parties to declare Early COD in accordance with Section 3.4, <u>Power Supplier shall, for a period of one (1) year, make available to Meralco the electrical energy quantities in MWh generated by the Plant to the extent of the Contract Capacity after 26 [November 2023/April 2024] (the “Commissioning Energy”)</u>, and Meralco shall have the option to purchase a portion or all of such available Commissioning Energy. For clarity, <u>this provision applies regardless of the date the Plant has achieved actual commercial operations</u>. Power Supplier may be excused from providing Commissioning Energy under this Section only when prevented by technical constraints or an Event of Force Majeure.</p>	<p>Response is same as for Item#52. In addition, since the Term of twenty Contract Years is preserved, the same principle applies that Commissioning Energy Charge as approved by ERC shall be limited to “actual landed fuel cost and Monthly Variable O&amp;M Payment plus any value-added tax and any other applicable taxes, fees and charges”.</p>

				<p>The purchases by Meralco of the Commissioning Energy under Section 5.1 shall be at a <u>rate equivalent to the actual landed fuel cost and Monthly Variable O&amp;M Payment, plus any value-added tax and any other applicable taxes, fees and charges (the "Commissioning Energy Charge")</u> calculated in accordance with Appendix E, as approved by the ERC.</p> <p><b>Recommendation:</b>  <b>Propose to qualify Commissioning to actual/technical commissioning of the plant. For plants that have achieved actual COD before Scheduled COD and within the Commissioning Energy period, Supplier should be paid capacity fees instead of just fuel + VOM.</b></p>	
54		Commissioning Energy	5	<p>Power Supplier shall, <u>for a period of 1 year</u>, make available to Meralco Commissioning Energy.</p> <p>Please clarify if this is allowed under the rules. Under the 2014 COC Rules, test and commissioning of the Plant should only occur for 2 months and thereafter, it shall be deemed to be in commercial operation. Under the <u>draft 2020 COC Rules</u>, the extension of the test and commissioning shall be up to a maximum of 720 hours only and also the sale of commissioning power after the allowed period of test and commissioning shall be free of charge.</p>	Response is same as for Item#52. In addition, PSA will ultimately be subjected to ERC approval.
55		Commissioning Energy	5.1	<p>Under Section 5.1 of the PSA, Power Supplier shall, for a period of one (1) year, make available to Meralco the electrical energy quantities in MWh generated by the Plant to the extent of contract capacity after the 26[November 2024/ April 2024].</p> <p>Under Section 5.1 of the PSA, please clarify if the obligation to supply Commissioning Energy for a period of one year may be cut short if the Power Supplier achieves Early COD or if the supply of Commissioning Energy for a period of 1 year is an absolute requirement.</p>	Response is same as for Item#52.
56		Excess Energy	PSA, Section 1.1, "Excess Energy"  PSA, Appendix G, Section 5.3	<p>Under the PSA, Excess Energy refers to <i>"on a Trading Interval basis, the Metered Quantity or portion thereof nominated by Meralco and declared as BCQ by Power Supplier in excess of the energy corresponding to one Trading Interval of the Contract Capacity, in accordance with Section 1 (Component A) of Appendix E."</i></p> <p>Section 5.2 of Appendix G provides in part that <i>"[i]n case the Metered Quantity exceeds the Contract Capacity, Meralco has the option to take the Excess Energy, subject to the component of Monthly Capacity Payment for Excess Energy, as computed in Section 1 (Component A) of Appendix E. In addition, the Incremental Energy and Excess Energy</i></p>	<p>For clarity, the definition for Metered Quantity shall be revised as follows:</p> <p><i>"Metered Quantity means the actual output of the Plant as metered by the Metering Services Provider. <b><u>If the Plant is only partially contracted to Meralco, the Parties shall agree on a mechanism to allocate the metered quantity of the Plant with respect to the Contract Capacity of Meralco.</u></b>"</i></p>



		PSA, Appendix E, Component D	<p><i>shall be subject to Monthly Replacement Power, Incremental Energy and Excess Energy Payment, as computed in Section 4 (Component D) of Appendix E."</i></p> <p><b>Please advise how energy imbalances (e.g., energy generated due to ambient conditions) in excess of Meralco's nomination shall be treated considering that such imbalances are not due to the fault of the Power Supplier.</b> In Annex QD-3, the Bidder has to certify that its Nominated Plant is uncontracted. Therefore, it appears that the Bidder is not allowed to have any customer other than Meralco and in this instance, any excess energy could only come from imbalances.</p> <p>Considering that the Excess Energy refers to energy in excess of the Contract Capacity, we propose that instead of giving Meralco the option to take and purchase the Excess Energy, the Power Supplier be given the right to choose whether it will sell the Excess Energy to Meralco or to the Wholesale Electricity Spot Market ("<u>WESM</u>").</p> <p>We propose that Section 5.3 of Appendix G be revised as follows:</p> <p><i>"In case the Metered Quantity exceeds the Contract Capacity, <b>Power Supplier has the option, but not the obligation, to sell to Meralco</b> <del>has the option to take the Excess Energy, subject to the component of Monthly Capacity Payment for Excess Energy, as computed in Section 1 (Component A) of Appendix E. In addition, the Incremental Energy and Excess Energy shall be subject to Monthly Replacement Power, Incremental Energy and Excess Energy Payment, as computed in Section 4 (Component D) of Appendix E.</del></i></p> <p><b><i>For the avoidance of doubt, the Power Supplier shall be allowed to sell the Excess Energy to the WESM or to any other third party."</i></b></p>	<p>Corollary to that, the portion of Section 5.2 of Appendix G cited shall be revised as follows:</p> <p><i>"xxx <b>Subject to the allocation of Metered Quantity as agreed by the Parties,</b> in case the Metered Quantity exceeds the Contract Capacity, Meralco has the option to take, <b>Parties may agree to allow Meralco</b> <del>has the option to take the Excess Energy, subject to the component of Monthly Capacity Payment for Excess Energy, as computed in Section 1 (Component A) of Appendix E. xxx"</del></i></p>
57	Excess Energy	5.3	<p><b>PSA Template</b></p> <p>5.3 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. If Meralco does not furnish Power Supplier with its day-ahead energy nomination schedule, the nomination for the same Day in the month-ahead energy nomination schedule shall be deemed the nominated schedule for the Day. Notwithstanding the foregoing, Meralco shall have the option to increase or decrease its day-ahead energy nomination schedule on an intra-day basis, subject to Operating Procedures and WESM Rules. In addition, Meralco shall have the option to increase its day-ahead energy nomination schedule on a day-after basis up to the actual <b>Metered Quantity</b> and shall be declared by the Power Supplier in its day-after declaration to the WESM as BCQs for Meralco. Such revised nomination in excess of the day-ahead energy nomination schedule up to the Contract Capacity shall be the Incremental Energy for that interval. In case the Metered Quantity exceeds the Contract Capacity, Meralco has the option to take the <b>Excess Energy</b>, subject to the component of Monthly Capacity Payment for Excess Energy, as computed in Section 1 (Component A) of Appendix E. In addition, the Incremental Energy and Excess Energy shall be subject to Monthly Replacement Power, Incremental Energy and Excess Energy Payment, as computed in Section 4 (Component D) of Appendix E.</p>	<p>Kindly refer to response for Item#56.</p>

				For Excess Energy, this should be based on available generation capacity over all contracted capacities of the Power Supplier (Meralco and its other customers).	
58		Sale and Purchase of Contract Capacity	Section 6.1.2, Page 22	<p>xxx Power Supplier shall not, without Meralco’s prior written consent:</p> <p>(a) sell, divert, grant, transfer, dedicate, reserve or assign all or any portion of the Contract Capacity and Associated Energy to any Person other than Meralco.</p> <p>There should be an exception on this provision such as during instances that the Seller must comply on the “Must-Offer Rule” and/or optimal plant operations such as running the plant at least in minimum stable load (Pmin).</p>	This can be covered through a protocol between the Parties.
59		Supply of Power	Article 6.1.2 (b) / Page 22	<p>The provision requires Meralco’s prior written consent should the Power Supplier intend to provide capacity and electrical energy coming from any source other than the Plant. Consistent with our request to allow the Power Supplier to provide the capacity requirements of Meralco from a portfolio of sources, including the WESM, we suggest that the entire provision requiring consent from Meralco be removed.</p> <p><i>Remove Article 6.1.2 (b):</i></p> <p><del>(b) provide Meralco with capacity and/or electrical energy from any source other than the Plant; provided, however, that Power Supplier shall be allowed to deliver and sell to Meralco the Associated Energy from WESM or any other source only when the Plant is on Outage beyond Full Load Equivalent Scheduled Outage Allowance Days and/or Full Load Equivalent Forced Outage Allowance Days. For this purpose, should Power Supplier fail to source from the Plant when it is available, Meralco shall pay the lower between WESM price and Price, in accordance with Appendix G.</del></p>	Response is same as for Item#1.
60		Power Supply Agreement template "Sale and Purchase of Contract Capacity and Associated Energy"	Section 6.1.2, page 22	<p>We propose to delete the Section 6.1.2 in line with the requested flexibility of source provision and to clearly allow sale of power to WESM for the plant’s capacity beyond the Contract Capacity.</p> <p><del>Unless otherwise expressly permitted by this Agreement, Power Supplier shall not, without Meralco’s prior written consent:</del></p> <p><del>(a) Sell, divert, grant, transfer, dedicate, reserve or assign all or any portion of the Contract Capacity and Associated Energy to any Person other than Meralco; or</del></p> <p><del>(b) provide Meralco with capacity and/or electrical energy from any source other than the Plant; provided, however, that Power Supplier shall be allowed to deliver and sell to Meralco the Associated Energy from WESM or any other source only when the Plant is on Outage beyond Full Load Equivalent Scheduled Outage Allowance Days and/or Full Load Equivalent Forced Outage Allowance Days. For this purpose, should the Power Supplier fail to source from the Plant whe</del></p>	Response is same as for Item#1.

				<p>n it its available, Meralco shall pay the lower between WESM price and Price, in accordance with Appendix G.</p>	
61		WESM Declarations	6.3.4	<p>Notwithstanding Section 6.3.2, Meralco shall have the option to increase or decrease its day-ahead nominations, subject to the Technical Limits, Operating Procedures and Grid Code.</p> <p>Above clause seem to not include conformity with the WESM Rules.</p> <p>We suggest revising to:</p> <p>Notwithstanding Section 6.3.2, Meralco shall have the option to increase or decrease its day-ahead nominations, subject to the Technical Limits, Operating Procedures, <u>WESM Rules</u> and Grid Code.</p>	This shall be reflected in the PSA.
62		WESM Declarations	Section 6.4.1, Page 23	<p>6.4.1 xxx Any amounts assessed by the Market Operator on the Parties, including amounts for energy imbalances, as a result of an erroneous declaration by Power Supplier of its BCQs shall be borne by Power Supplier, and Power Supplier shall indemnify and hold Meralco harmless from any loss, cost, expense or penalty incurred or paid by Meralco as a result of any such erroneous declaration. If the Market Operator invoices Meralco for any such amounts, Power Supplier shall reimburse Meralco within seven (7) Days from receipt of written demand therefore. Further, Power Supplier shall pay Meralco an administrative fee of Fifty Thousand Philippine Pesos (PhP50,000.00) for each Trading Interval of erroneous BCQ declaration, which is due to Power Supplier’s fault.</p> <p>The imposition of PhP50,000 per interval may result to huge and unreasonable amount considering the 5-minute interval. Furthermore, the result of such misdeclaration may be positive or negative and thus, Supplier should only liable for energy imbalance that will result to additional costs to Meralco. If Meralco will still require such administrative fee, we propose that it will be per Billing Period and not per interval.</p> <p>We propose the following language:</p> <p>Any amounts assessed by the Market Operator on the Parties, including amounts for energy imbalances, as a result of an erroneous declaration by Power Supplier of its BCQs shall be borne by Power Supplier, and Power Supplier shall indemnify and hold Meralco harmless from any loss, cost, expense or penalty incurred or paid by Meralco as a result of any such erroneous declaration. If the Market Operator invoices Meralco for any such amounts <b>that will result to additional costs for Meralco</b>, Power Supplier shall reimburse Meralco within seven (7) Days from receipt of written demand therefore. Further,</p>	Mistakes due to inadvertence and regardless of the affected capacity are covered under this provision. Note, however, that Power Supplier has multiple opportunities to reflect correction before a BCQ declaration becomes final.

				Power Supplier shall pay Meralco an administrative fee of Fifty Thousand Philippine Pesos (PhP50,000.00) <b>for the particular Billing period by which such</b> erroneous BCQ declaration <b>occurred</b> , which is due to Power Supplier's fault.	
63		Power Supplier's Fault	6.4	Power Supply Agreement Template, Section 6.4 <del>seven (7) Days from receipt of written demand therefore. Further, Power Supplier shall pay Meralco an administrative fee of Fifty Thousand Philippine Pesos (PhP50,000.00) for each Trading Interval of erroneous BCQ declaration, which is due to Power Supplier's fault.</del> Will this cover mistakes due to inadvertence and regardless of the affected capacity?	Response is same as for Item#62.
64		WESM Declarations	6.4	Power Supplier shall pay Meralco an administrative fee of PhP50,000.00 for each Trading Interval of erroneous BCQ declaration, which is due to Power Supplier's fault. How was the PhP50,000.00 arrived at/computed?  Should this amount be used to reduce the Generation Charge being passed on to the consumers, similar to the fine on Replacement Power?	This is a standard provision in ERC-approved PSAs of Meralco. This is reckoned per Trading Interval as the basis for settlement of prices at present. The imposition of the administrative fee serves to deter erroneous BCQ declarations by Power Supplier. We note that the lookout is to make use of the multiple opportunities to correct BCQ to make sure that no erroneous declaration will result.  Considering the pass through nature of generation costs, the amounts paid to Meralco pursuant to this provision are used to reduce generation charges imposed on customers.
65		WESM Declaration	Art. 6.4.1; page 23	Power Supplier shall ensure that its daily declaration of BCQ reported to the Market Operator (as required by the WESM Rules) accurately reflects the day-ahead nominations of Meralco. <u>Any amounts assessed by the Market Operator on the Parties, including amounts for energy imbalances, as a result of an erroneous declaration by Power Supplier of its BCQs shall be borne by Power Supplier,</u> and Power Supplier shall indemnify and hold Meralco harmless from any loss, cost, expense or penalty incurred or paid by Meralco as a result of any such erroneous declaration. If the Market Operator invoices Meralco for any such amounts, Power Supplier shall reimburse Meralco within seven (7) Days from receipt of written demand therefore. <u>Further, Power Supplier shall pay Meralco an administrative fee of Fifty Thousand Philippine Pesos (PhP50,000.00) for each Trading Interval of erroneous BCQ declaration, which is due to Power Supplier's fault.</u>  <b>Recommendation: Propose to remove administrative fees of Php50,000.00 per interval. Have Supplier pay imbalances only. This will be heavy on the Supplier especially when the market shifts to the 5-min market.</b>	Response is same as for Item#64.
66		WESM Declaration	Art 6.4.1; page 23	<b>Recommendation: Correct typo on words "Guarantees" and "Supplier"</b>	This is a typographical error. Change in last line of the provision will be reflected.
67		Tests	Article 8, Section 8.4.2, page	The Power supplier is required to perform an annual Net Plant Heat Rate Test in conjunction with the NDC Test in order to establish the GNPHR. The GNPHR, or actual	Per Section 8.4.2, the heat rate test is conducted "in conjunction with the initial NDC Test". For clarity, however, the GNPHR table

				<p>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>Please confirm if the Net Plant Heat Rate Test is an annual test or a one-time test prior to COD conducted simultaneously with the NDC Test.</p> <p>We would propose that there is no need for Meralco to require a Net Plant Heat Rate Test as the risks associated with the GNPHR are entirely the responsibility of the Power Supplier. Any performance of the Power Supplier that is more or less efficient than the GNPHR shall be to the account of the Power Supplier.</p>	<p>based on Bid shall be binding; and for this purpose, Appendix E, Schedule 2, item 6 on Actual Net Plant Heat Rate shall be deleted.</p> <p>On a related matter, it is noted that while Section 8.4.2 provides that “xxx [t]he 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”, the relevant formula of Appendix E contains no comparison vs GNPHR for CY 11 to 20. In this regard, the relevant formula shall be revised to be consistent with this provision.</p>
68		Tests / PSA	<p>Article 8.4.2 / Page 25</p>	<p>Depending on the Nominated Power Plants that will be offered by the Bidders, the provision to conduct a Net Plant Heat Rate Test may not be applicable.</p> <p>Thus, we suggest that the clause “if applicable” be included.</p> <p><i>Revised provision to read:</i></p> <p><b>If applicable,</b> Power Supplier shall, at its own cost, conduct a heat rate test (“Net Plant Heat Rate Test”) in conjunction within the initial NDC Test in order to establish the GNPHR. xxx</p>	<p>Similar to response to SCSEI’s query on Section 3.3.2(b) above, reference to conduct of heat rate test may be deleted if not applicable for fuel source of Winning Power Supplier’s Plant.</p>
69		Tests	<p>Art. 8.4.1/ page 25</p>	<p>“...Power Supplier shall, at its own cost, thereafter conduct on an annual basis an NDC Test at a date scheduled by Meralco...XXX... The Parties shall mutually agree on the testing principles, criteria and protocols for the NCD Test.”</p> <p><b>Comments:</b></p> <p>The NDA Test is normally performed after a long shutdown which may not necessary be on a yearly basis. Schedule is dependent on the occurrence of the long shutdown and may not have to be scheduled by MERALCO.</p> <p>Testing principles, criteria and protocols shall be in accordance with the grid code standard. In this regard, it does not need to be agreed upon by Power Supplier and MERALCO</p> <p>Proposed Wordings:</p> <p>“...Power Supplier hall, at its own cost, thereafter conduct an NDC Test upon completion of its long maintenance shutdown in accordance with the PGC testing principles, criteria and protocols. Power Supplier shall notify MERALCO of the schedule of the NDC Testing.</p>	<p>The NDC testing principles, criteria and protocols are reflected in Appendix J of the PSA, including terms and conditions thereof that need to be agreed upon by the parties, so as not to cause delay in the implementation of the PSA.</p>

				MERALCO, at its option, may attend and witness the aforesaid testing by sending notification of attendance to the Power Supplier.”	
70		Tests	Art. 8.4.2/page 26	<p>The Parties shall mutually agree on the testing principles, criteria and protocols for the NDC Test and the Net Plant Heat Rate Test, ...</p> <p><b>Comments:</b></p> <p>NDC Testing principles, criteria and protocols will be in accordance with the grid code standard while the Net Plant Heat Rate Test is in accordance with international standard procedure. In this regard, it does not need to be agreed upon by Power Supplier and MERALCO. MERALCO however, may observe the testing proper if they want to.</p> <p>We suggest that the NDC and Net Plant Heat Rate testing principles, criteria and protocol no longer need to be agreed upon by the Power Supplier and MERALCO, but to be in compliance with the grid code and the international standard procedure, respectively.</p>	Response is same as for Item#70.
71		Outage Allowance	PSA, Section 9.1.1	<p>Section 9.1.1 provides:</p> <p>After Commercial Operations Date, Power Supplier shall be allowed Scheduled Outages not exceeding [thirty (30)] Full Load Equivalent Outage Days (“Full Load Equivalent Schedule Outage Allowance Days”) and Forced Outages not exceeding [fifteen (15)] 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 certification from the System Operator that a Forced Outage has occurred.</p> <p>It is unclear whether Major Maintenance Outages fall under the Scheduled Outage Allowance Days. If yes, the period of Scheduled Outage Allowance Days is too short and should be increased to accommodate Major Maintenance Outages.</p> <p>Moreover, the System Operator does not usually issue a certification that a forced outage has occurred. In any case, we may request for an acknowledgment letter from the System Operator as regards the occurrence of a forced outage.</p> <p>We propose that Section 9.1.1 read as follows:</p> <p>After Commercial Operations Date, Power Supplier shall be allowed Scheduled Outages not exceeding [thirty (30)] Full Load Equivalent Outage Days (“Full Load Equivalent Schedule Outage Allowance Days”) and Forced Outages not exceeding [fifteen (15)] Full</p>	<ol style="list-style-type: none"> <li>As relayed to the TPBAC by Meralco, when the TOR/Invitation to Bid was submitted for the DOE’s approval, the DOE only granted Scheduled OA and Forced OA, without additional Major Maintenance OA. It should be noted, however, that if the Power Supplier will follow procedure and consume the Major Maintenance Outage as part of Scheduled OA, then it may be counted towards the Scheduled OA, as long as not in excess thereof. Notably, the indicated caps for Scheduled Outage and Forced Outage are consistent with ERC Resolution No. 10, Series of 2020.</li> <li>As to proof of occurrence of Forced Outage, the proposed acknowledgment letter from System Operator, or report from the Market Operator, may suffice. Accordingly, the provision will read as:                     <p><i>“xxx 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 <b>acknowledgment letter certification</b> from the System Operator <b>or report from Market Operator</b> that a Forced Outage has occurred.”</i></p> </li> </ol>

				<p>Load Equivalent Outage Days (“Full Load Equivalent Forced Outage Allowance Days”) each Contract Year <b>without Major Maintenance Outage</b>; 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 the System Operator’s written acknowledgment <del>a copy of the certification from the System Operator</del> that a Forced Outage has occurred. <b>The Parties agree that the Power Supplier shall be entitled to increase its Outage Allowance for a Contract Year by an additional twenty (20) Full Load Equivalent Outage Days in each Contract Year during which a Major Maintenance Outage occurs, provided that the Power Supplier shall be entitled to a Major Maintenance Outage only once every three (3) years.</b></p>	
72		Major Maintenance Outage	1.1 Definitions	<p>Major Maintenance Outage and Major Maintenance Outage Days included in the Definitions Section</p> <p>We suggest retaining provisions relating to Major Maintenance Outage and allowance for Full Load Equivalent Major Maintenance Outage Days as in the previous CSP. We suggest to limit the allowance to a maximum of 15 days.</p> <p>Previous language: Power Supplier shall be entitled to Full Load Equivalent Outage Days to undertake major repair, overhaul and maintenance of the Plant (“Full Load Equivalent Major Maintenance Outage Allowance Days”); provided further that the first Major Maintenance Outage shall occur no earlier than the fourth (4<sup>th</sup>) year after Commercial Operations Date, and the Major Maintenance Outage of any of the Units shall not occur at the same time.</p> <p>Alternatively, TPBAC to confirm that a Major Maintenance Outage will be counted as a Scheduled Outage.</p>	Response is same as for Item #71.
73		Outages	Article 9, Section 9.1.1, page	<p>After Commercial Operations Date, Power Supplier shall be allowed Scheduled Outages not exceeding [thirty (30)] Full Load Equivalent Outage Days (“<b>Full Load Equivalent Outage Allowance Days</b>”) and Forced Outages not exceeding [fifteen (15)] Full Load Equivalent Outage Days (“<b>Full Load Equivalent Forced Outage Allowance Days</b>”) each Contract Year; provided ...</p> <p>We would propose that Meralco provide the Power Supplier with a total of forty five (45) Full Load Equivalent Outage Days, regardless of whether such days are the result of a Scheduled Outage or a Forced Outage. We also request that a provision be allowed so that unused outage days, capped at a maximum number of carryover days of fifteen (15), be allowed so that the Plant may carry out major maintenance activities, which will occur at varying intervals depending on whether the plant is a gas fired plant, coal fired,</p>	Response is same as for Item #71.

				<p>hydroelectric or other. Note that most gas and coal fired plants will have to carry-out major maintenance on 3 to 6 year intervals, depending on actual plant operation.</p> <p>It is normal practice in the industry to provide an additional allowance of outages during the first year of operation of a new facility. We would propose that the total number of days for the first year of operation provide an additional allowance of up to 30 days.</p> <p>We also believe the LCOE evaluation is capable of allowing Bidders to propose the number and type of outage days to be provided in the PSA and that instead of proposing a cap, the cost of the outages should be factored into the Bidders LCOE tariff evaluation.</p>	
74		Outage Allowances and Replacement Power	Art. 9.1.1; page 26	<p>After Commercial Operations Date, Power Supplier shall be allowed Scheduled Outages not exceeding [thirty (30)] Full Load Equivalent Outage Days (“Full Load Equivalent Schedule Outage Allowance Days”) and Forced Outages not exceeding [fifteen (15)] 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 certification from the System Operator that a Forced Outage has occurred.</p> <p><b>Clarification: Why is there no allowance for major maintenances, when every baseload plant needs to undergo overhaul?</b></p> <p><b>Recommendation: Propose to include allowance for major maintenances.</b></p>	Response is same as for Item #71.
75		Outages	9.1.1	<p>Aft ions Date, Power Supplier shall be allowed Scheduled er Commercial Operat Outages not exceeding [thirty (30)] Full Load Equivalent Outage Days (“<b>Full Load Equivalent Schedule Outage Allowance Days</b>”) and Forced Outages not exceeding [fifteen (15)] Full Load Equivalent Outage Days (“<b>Full Load Equivalent Forced Outage Allowance Days</b>”) 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 certification from the System Operator that a Forced Outage has occurred.</p> <p>The certification from the System Operator may not be available within the period of preparing the invoice or bill. We suggest to allow time for SO to act on outage certification and adopt the language as follows:</p> <p><u>provided that Meralco may reverse or rectify any claims related to the availment of Full Load Equivalent Forced Outage Days Allowance if Power Supplier fails to submit to Meralco, within the next three (3) Billing Periods of its claim, a certification from the System Operator that a Forced Outage has occurred.</u></p>	Response is same as for Item #71 (number 2).



76		Outages	Section 9.1.1, Page 26	<p>xxx 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 certification from the System Operator that a Forced Outage has occurred.</p> <p>Power Supplier is required to submit reports with respect to its outages. This report is acknowledged by the System Operator and should already suffice instead of requesting a separate certification.</p> <p>We propose the following revisions:</p> <p>xxx 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 certification <u>and/or any form of acknowledgement or confirmation</u> from the System Operator that a Forced Outage has occurred.</p>	Response is same as for Item #71 (number 2).
77		Outages; SO Certification	Art. 9.1.1/page 26	<p>“After Commercial Operation Date...XXX...; 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 a copy of the certification from the System Operator that a Forced Outage has occurred.</p> <p><b>Comment:</b></p> <p>The System Operator does not provide/will not provide Certification. Occurrence of Forced Outage may be validated from EIMOP regular postings of Plant Outages.</p> <p>We suggest to no longer require the Certification from SO as discussed.</p>	Response is same as for Item #71 (number 2).
78		Outages	9.1.2	<p>During Scheduled Outages within the Full Load Equivalent Scheduled Outage Allowance Days and Forced Outages within the Full Load Equivalent Forced Outage Allowance Days, Meralco shall procure Replacement Power from the WESM and shall not bill Meralco for these quantities.</p> <p>There may be instances that the Power Supplier may not use/consume all the forced and/or scheduled outage allowance days. Will Meralco pay for the capacity fee and FOM for these unconsumed outage allowance as incentive for being more reliable and available?</p>	As relayed to the TPBAC by Meralco, Meralco is not amenable to make additional Monthly Capacity Payment and Monthly Fixed O&M Payment for unconsumed outage allowance. In any case, bidders are free to offer lower Scheduled OA and/or Forced OA for this purpose.
79		Outages	9.1.3	<i>During Scheduled Outages that exceed the Full Load Equivalent Scheduled Outage Allowance Days and Forced Outages that exceed the Full Load Equivalent Forced Outage Allowance Days, Power Supplier shall purchase Replacement Power, which shall be declared as BCQ and paid by Meralco at the lower between WESM price and Price.</i>	In effect, Power Supplier is to guarantee that it shall not exceed 30 SO and 15 FO. Thus, if Power Supplier goes beyond these allowances, then Meralco should not be required to pay.

				<p>If the Power Supplier used/consumed more than the scheduled and/or forced outage allowance days, Meralco will not pay capacity fee and FOM for the consumed outage in excess of its allowance. We believe that Meralco should still pay for these fees considering that the Power Supplier still provided energy to Meralco for those days. Thus, it should be paid full contract price and not the lower of the WESM price or the contract price.</p>	<p>Meralco shall fully pay the Capacity Payments for the year. Thus, the Replacement Power purchased beyond the Outage Allowance Days shall be paid only at the lower between WESM price on one hand, and the sum of the Monthly Fuel Payment and Monthly Variable O&amp;M Payment on the other hand.</p>
80		Outages	<p>Section 9.1.3, Page 26</p>	<p>During Scheduled Outages that exceed the Full Load Equivalent Schedule Outage Allowance Days and Forced Outages that exceed the Full Load Equivalent Forced Outage Allowance Days, Power Supplier shall purchase Replacement Power, which shall be declared as BCQ and paid by Meralco at the lower between WESM price and Price.</p> <p>The Seller's obligation during event of excessive outage should only be limited to provide Meralco supply at the agreed contract Price. Furthermore, since the New MMS is not yet implemented, the reconciliation of which WESM price to use during pricing errors and market re-runs must be taken into account.</p> <p>During Scheduled Outages that exceed the Full Load Equivalent Schedule Outage Allowance Days and Forced Outages that exceed the Full Load Equivalent Forced Outage Allowance Days, Power Supplier shall purchase Replacement Power, which shall be declared as BCQ and paid by Meralco at the <del>lower between WESM price and</del> Price.</p>	<p>Response is same as for Item#79.</p>
81		Outages  PSA	<p>Article 9, Section 9.1.3, page 26</p> <p>Appendix E</p>	<p>Article 9, Section 9.1.3 states that 'During Scheduled Outages that exceed the Full Load Equivalent Scheduled Outage Allowance Days and Forced Outages that exceed the Full Load Equivalent Forced Outage Allowance Days, Power Supplier shall purchase Replacement Power which shall be declared as BCQ and paid by Meralco at the lower of the WESM price and Price under the PSA.'</p> <p>BCE has two comments and associated recommendations as follows:</p> <p>The use of the defined term 'Price' in Article 9, Section 9.1.3 seem to imply that Meralco would reduce both the capacity and energy payments to the Power Supplier under a scenario where the Power Supplier's Scheduled Outages and/or Forced Outages exceed the Full Load Equivalent Outage Allowance Days. However, our understanding of the calculations in Appendix E indicates that the fixed components of the Price (i.e. the capacity payment) will not be reduced under such a scenario, given that the AADE component of the tariff serves to add back Scheduled Outage Days or Forced Outage Days in excess of SOA and FOA. Please confirm our understanding.</p> <p>If our above understanding is correct, we believe the intention of Meralco in the PSA template is to have the option to pay Power Supplier the lower of WESM price and Monthly Variable Payment Rate (MVPR) for any Replacement Power. This implies that</p>	<p>The Capacity Payments to be paid to the Power Supplier is fully guaranteed by Meralco for the Contract Year, including all days that are <b>within</b> the outage allowance. For any instances of outage that exceeds the outage allowance days, the Power Supplier is still obligated to deliver energy to Meralco, hence any risk of the replacement power shall be borne by the Power Supplier only.</p>

				<p>all the risk is borne by the Power Supplier and all upside benefit is taken by Meralco. Bidder is of the opinion that for any Replacement Power, given that the Power Supplier has the obligation to purchase replacement power, any exceedance of the Power Supplier’s Scheduled Outages or Forced Outages, that exceed the Full Load Equivalent Outage Allowance Days or Full Load Equivalent Forced Outage Allowance Days respectively, should be reimbursed at the MVPR. The Bidder in this case will assume the risk if the replacement power cost is higher or lower than the Price. If Meralco wants the benefit of lower prices during any exceedance of the Power Supplier’s Scheduled Outages or Forced Outages, Meralco should also bear the risk of period when costs are higher.</p> <p>Assuming our understanding of Appendix E is correct, we believe that the construct of Appendix E where any Scheduled Outages or Forced Outages beyond the Full Load Equivalent Outage Allowance Days would not affect the overall capacity payment in the year is appropriate and that the language in Article 9 should be adjusted to be consistent with Appendix E. To accomplish this effect, we would recommend that the term ‘Price’ in Section 9.1.3 to be amended to say MVPR instead.</p> <p>Further, we recommend that Section 9.1.3 be changed to say that ‘During Scheduled Outages that exceed the Full Load Outage Allowance Days and Forced Outages that exceed the Full Load Equivalent Forced Outage Allowance Days, Power Supplier Load Equivalent Outage Allowance Days, and that Power Supplier shall purchase Replacement Power which shall be declared as BCQ and paid by Meralco at the MVPR under the PSA.’</p>	
82		Scheduling Outages	Section 9.2.1, Page 27	<p>9.2.1 Power Supplier shall inform and coordinate with Meralco regarding its annual Scheduled Outages and Major Maintenance Outages for the succeeding calendar year as submitted to the System Operator (“Annual Maintenance Plan”). In case of any revisions to the Annual Maintenance Plan approved or initiated by the System Operator, Power Supplier shall coordinate with and keep Meralco informed thereof immediately, and procure Meralco’s favorable endorsement thereof.</p> <p>9.2.2 In case of Scheduled Outages other than those in the Annual Maintenance Plan, Power Supplier shall (i) notify Meralco in writing prior to notifying the System Operator and (ii) comply with the requirements of the System Operator, including obtaining Meralco’s favorable endorsement.</p> <p>Given that this is purely operational and regulatory requirements in so far as scheduling of outages is concerned, prompt notification to Meralco should suffice and should not</p>	This is a standard provision in MERALCO's ERC-approved PSAs, which is important to MERALCO for planning purposes.

				<p>require Meralco’s endorsement. What will happen if Meralco’s endorsement is not secured? What will be the instances that Meralco will not grant such endorsement?</p> <p>We recommend to delete the relevant phrase as follows:</p> <p>9.2.1 Power Supplier shall inform and coordinate with Meralco regarding its annual Scheduled Outages and Major Maintenance Outages for the succeeding calendar year as submitted to the System Operator (“Annual Maintenance Plan”). In case of any revisions to the Annual Maintenance Plan approved or initiated by the System Operator, Power Supplier shall coordinate with and keep Meralco informed thereof immediately <del>and procure Meralco’s favorable endorsement thereof.</del></p> <p>9.2.2 In case of Scheduled Outages other than those in the Annual Maintenance Plan, Power Supplier shall (i) notify Meralco in writing prior to notifying the System Operator and (ii) comply with the requirements of the System Operator, <del>including obtaining Meralco’s favorable endorsement.</del></p>	
83		Outages	Art. 9.2/page 27	<p>Scheduling Outages for endorsement of MERALCO</p> <p><b>Comment on the 2<sup>nd</sup> sentence:</b>                  Outages were scheduled based on equipment cycle maintenance procedure and asset management plan. It is normally done yearly or depending on equipment requirement (inspection protocol per equipment). It is mainly preventive maintenance plus repair if found necessary. Said schedule were submitted to NGCP for their approval. Considering the necessity of said maintenance outage relative to time and the corresponding approval of NGCP, endorsement from MERALCO is no longer necessary. Power supplier will, however, provide MERALCO copy of the maintenance schedule approved by NGCP.</p> <p>We suggest to no longer require the endorsement of MERALCO as discussed.</p>	Response is same as for Item#82.
84		Scheduling Outages	Art. 9.2.1; page 27	<p>Power Supplier shall inform and coordinate with Meralco regarding its annual Scheduled Outages and Major Maintenance Outages for the succeeding calendar year as submitted to the System Operator (“Annual Maintenance Plan”). In case of any revisions to the Annual Maintenance Plan approved or initiated by the System Operator, Power Supplier shall coordinate with and keep Meralco informed thereof immediately, and procure Meralco’s favorable endorsement thereof.</p> <p>In case of Scheduled Outages other than those in the Annual Maintenance Plan, Power Supplier shall (i) notify Meralco in writing prior to notifying the System Operator and (ii) comply with the requirements of the System Operator, including obtaining Meralco’s favorable endorsement.</p>	Response is same as for Item#82.

				<p><b>Recommendation: Remove the need to obtain MERALCO’s consent on scheduling outages. This is an operational matter.</b></p>	
85		Outages	9.2.2	<p><i>In case of Scheduled Outages other than those in the Annual Maintenance Plan, Power Supplier shall (i) notify Meralco in writing prior to notifying the System Operator and comply with the requirements of the System Operator, including obtaining Meralco’s favorable endorsement</i></p> <p>We suggest adding “<u>which endorsement will not be unreasonably withheld, delayed or conditioned.</u>”</p>	This is acceptable and will be incorporated in the final PSA.
86		Transfer of Contract Capacity and Associated Energy	PSA, Section 10.1	<p>Under Section 10.1.1 of the PSA, Contract Capacity and Associated Energy that is no longer required by Meralco shall not be transferred to another, except (a) if required for project financing in the case of the Power Supplier; (b) when allowed by the ERC; or (c) when necessary to mitigate or avoid any losses or costs due to stranded contract capacity.</p> <p>Where the transfer is necessary to mitigate or avoid any losses or costs due to stranded contract capacity, Meralco shall be entitled to transfer its right and obligations to any of its business segments or wholly-owned Affiliates without the prior consent of the Power Supplier, or to any other person, subject to the consent of the Power Supplier.</p> <p>In this regard, the parameters for transfers by Meralco of Contract Capacity when necessary to mitigate or avoid any losses or costs due to stranded contract capacity are unclear. Specifically, the PSA is silent on how is stranded Contract Capacity determined; how much Contract Capacity and Associated Energy can be covered by such transfers; whether the transferee may further transfer the Contract Capacity and Associated Energy, and in what instances and under what parameters this can be done, if allowed; and whether the transferee shall be bound by the same terms and conditions under the PSA, or whether the transferee is free to negotiate with the Power Supplier and amend the terms of the PSA.</p> <p>This provision can result in the complete novation of the PSA because, as currently drafted, it does not provide a limit on how much Contract Capacity and Associated Energy can be transferred, such that it is possible that the entire Contract Capacity and Associated Energy is transferred.</p> <p>We propose that this provision be amended to: (a) require the Power Supplier’s prior consent before any such transfers are made to Meralco’s business segments or wholly-owned Affiliates, and (b) to clarify the parameters for transfers by Meralco of Contract Capacity when necessary to mitigate or avoid any losses or costs due to</p>	<p>This is a standard provision in Meralco’s ERC approved PSAs, which has consistently been recognized by the ERC as a way of not unduly burdening captive customers with stranded contract capacity/costs. In the implementation of this provision, Meralco shall be guided by the (a) regulations prevailing at the time of transfer of the Contract Capacity and Associated Energy; and (b) more importantly, its least cost mandate to consumers under the EPIRA.</p> <p>The volume that will be transferred shall be dictated by the demand requirement of Meralco’s customers.</p> <p>As to the terms of the PSA with the assignee, while modification in terms may be discussed between assignee and Power Supplier, by default, the same terms and conditions as in this PSA shall be adopted. This, after all, is the essence of an assignment.</p>

				stranded contract capacity. Specifically, the PSA should indicate: (i) that stranded contract capacity here shall be only as a result of Retail Competition and Open Access, the Renewable Energy Law and other Laws and Legal Requirements, (ii) that the transferee may only further transfer the Contract Capacity and Associated Energy with the consent of the Power Supplier, and (iii) that the terms of the PSA will at least be maintained and shall not be more burdensome to the Power Supplier.	
87		Transfer of Contract Capacity and Associated Energy	Section 10.1.1, Page 28	Can this provision be amended to state that Meralco's right to assign shall be subject to the Power Supplier's consent? It is a usual requirement in financing documents that any assignment of a project document should be with the counterparty's prior consent to ensure that such assignment would be in accordance with such counterparty's financing documents.	Response is same as for Item#86.
88		Transfer of Contract Capacity and Associated Energy	Section 10.1.2, Page 28	In respect of transfers not requiring the Power Supplier's consent, Meralco shall give five days prior written notice.  We propose a longer period in order for the Winning Supplier to have sufficient time to process the requested transfer and/or reduction.  In respect of Transfers not requiring Power Supplier's consent, Meralco shall give a written notice to Power Supplier of such Transfer at least <del>five (5)</del> <b>sixty (60)</b> Days prior to the first Day of the next Billing Period or by such date as would be sufficient for timely notice to WESM of such change.	60 days is too long a period, as the intention is to transfer the Contract Capacity and Associated Energy immediately so as not to be stranded in the meantime. Notably, this is a standard period provided in MERALCO's ERC-approved PSAs.
89		Transfer of Contract Capacity and Associated Energy	10.1	Transfer of Contract Capacity and Associated Energy  We suggest limiting on how often Meralco may do this:  <u>Meralco may not cause the transfer of Contract Capacity pursuant hereto more often than once every six (6) Billing Periods.</u>	As provided in Meralco's ERC approved PSAs, there is no limit on the frequency of transfer for as long as ground exists. Note by way of example, that given prevailing regulations, RCOA and GEOP switches may occur on a monthly basis.
90		Transfer of Contract Capacity and Associated Energy	10.1.2 Transfer of Contract Capacity	In respect of Transfers not requiring Power Supplier's consent, Meralco Shall give a written notice to Power Supplier of such Transfer at least five (5) Days prior to the first Day of the next Billing Period or by such date as would be sufficient for timely notice to WESM of such change.  What happens when Meralco informs the Power Supplier of the transfer of contract capacity 1 day prior to the first day of the next Billing Period? Will such transfer be consummated on the next Billing Period?	Yes, the transfer will be reflected in the next Billing Period.
91		Assignment of Contract Capacity and	Article 10, Sections 10.1 and	Meralco is permitted to assign the PSA to its business segments or wholly-owned affiliates without the consent of the Power Supplier. Upon any such assignment, Meralco is relieved of obligations under the PSA. This will create a payment security	Response is same as for Item#86.

		Associated Energy	10.2, page 28	<p>issue for the lenders to the project, as the affiliates of Meralco may not be credit worthy and there is no obligation to provide security to the Power Supplier.</p> <p>Meralco is entitled to reduce the Contract Capacity and Associated Energy in an amount equivalent to the reduction in the demand of its captive customers in order to avoid stranded contract capacities or costs, or by reason of the enforcement of Retail Competition and Open Access, the Renewable Energy Law and other Laws and Legal Requirements. Given that the Power Supplier must secure a firm fuel supply arrangement for a fixed term and with a complex pricing construct mandated by Meralco, any reduction in the Contract Capacity under the PSA will result in the Power Supplier incurring potentially significant additional cost if the Power Supplier must reduce or defer fuel supply. Given that this election is a unilateral right, exercisable by Meralco, if Meralco elects to exercise this right, Meralco should make the Power Supplier whole on any cost incurred by the Power Supplier under its fuel supply agreement that results from the reduction in fuel supply or provide termination payment that will mitigate this impact.</p> <p>We would propose requiring that any business segments or affiliate of Meralco that takes an assignment of the PSA must be as creditworthy as Meralco or that the affiliate provides credit support acceptable to the Power Supplier and its lenders to backstop its payment obligations under the PSA.</p> <p>We would propose that Meralco undertake an obligation to make the Power Supplier whole for any costs incurred by the Power Supplier in reducing its fuel supply to accommodate a reduction in the Contract Capacity mandated by Meralco.</p>	
92		Reduction of Contract Capacity and Associated Energy	Section 10.2.2, Page 29	<p>Would Meralco be amenable to change the five day prior written notice to sixty days to give the Power Supplier sufficient time to plan its operations as a result of the reduction?</p> <p>Meralco shall give a written notice to Power Supplier of the Reduction in Contract Capacity and Associated Energy at least <del>five (5)</del> <b>sixty (60)</b> Days prior to the first Day of the next Billing Period</p>	Response is same as for Item#88.
93		Reduction in Contract Capacity and Associated Energy	PSA, Section 10.2	<p>Under Section 10.2 of the PSA, Meralco shall be entitled to a reduction in Contract Capacity and Associated Energy equivalent to the reduction in the demand of its captive customers in order to avoid stranded contract capacities or costs, or by reason of the enforcement of Retail Competition and Open Access, the Renewable Energy Law and other Laws and Legal Requirements. Similar to the above, the parameters for the reduction by Meralco of Contract Capacity are unclear. Specifically, the PSA is silent on how stranded Contract Capacity is</p>	Response is same as for Item#86.

				<p>determined and how much Contract Capacity and Associated Energy can be covered by reduction.</p> <p>This provision can result in the complete novation of the PSA because, as currently drafted, it does not provide a limit on how much Contract Capacity and Associated Energy can be reduced, such that it is possible that the entire Contract Capacity and Associated Energy is subject of the reduction of Contract Capacity and Associated Energy.</p> <p>We propose that this provision be amended to clarify the parameters for the reduction by Meralco of Contract Capacity and Associated Energy equivalent to the reduction in the demand of its captive customers in order to avoid stranded contract capacities or costs as a result of or by reason of the enforcement of Retail Competition and Open Access, the Renewable Energy Law and other Laws and Legal Requirements. Moreover, we recommend that the reduction be consistent with Meralco's obligation under the EPIRA to supply electricity in the least cost manner to its captive market.</p>	
94		Reduction in Contract Capacity and Associated Energy	10.2	<p>Meralco shall, from time to time, be entitled to a reduction in the Contract Capacity and Associated Energy equivalent to the reduction in the demand of its captive customers in order to avoid stranded contract costs or capacities.</p> <p>What could be the reason for the reduction in the demand of the captive customers?</p>	Please see enumeration of possible reasons as contained in the same provision (e.g., Retail Competition and Open Access).
95		PSA	10.2	<p>Reduction in Contract Capacity and Associated Energy</p> <p>We suggest limiting how often Meralco may do this:</p> <p><u>Meralco shall not cause a reduction in Contract Capacity and Associated Energy pursuant hereto more often than once every three (3) Billing Periods</u></p>	Response is same as for Item#89.
96		Reduction in Contract Capacity and Associated Energy	10.2.1	<p>Is the reduction in Contract Capacity and Associated Energy that Meralco is entitled to without any limit?</p> <p>We suggest the following revisions:</p> <p>Add: "within thresholds allowed by law" and "Except for such reduction of the amount of Contract Capacity and Associated to be specified by the Buyer, including resulting reduction in Capacity Payments and Energy Payments payable, all other terms and conditions of this Agreement shall remain in full force and effect."</p>	<p>Response is same as for Item#86.</p> <p>In addition, it is observed that there is no need to add the proposed language considering that the same terms and conditions will necessarily apply and the PSA simply provides that the Contract Capacity will be revised, as clear from the definition thereof.</p>
97		Reduction in Contract	10.2.1, page 29	The entitlement of MERALCO to the reduction in Contract Capacity and Associated Energy equivalent to the reduction in the demand of its captive customers.	Response is same as for Items #86 and #89.



		Capacity and Associated Energy		<p>There must be a good rationale for this considering that this will be contradictory to the essence of the PSA which is a baseload/firm power supply agreement.</p> <p>Suggest to remove or to provide a limit as to the frequency of availing this provision on the part of MERALCO.</p>	
98		Ground for Reduction	10.2.1	<p>Power Supply Agreement Template, Section 10.2.1</p> <p>10.2.1 Subject to the provisions of Section 10.2.2 below, Meralco shall, from time to time, be entitled to a reduction in the Contract Capacity and Associated Energy (the "<b>Reduction in Contract Capacity and Associated Energy</b>") equivalent to the reduction in the demand of its captive customers in order to avoid stranded contract capacities or costs, or by reason of the enforcement of Retail Competition and Open Access, the Renewable Energy Law and other Laws and Legal Requirements.</p> <p>Please clarify specific ground for reduction other than due to reduction of demand of captive customers.</p> <p>Can we limit the frequency of the exercise by Meralco of this option?</p>	Response is same as for Items #94 and #89.
99		Reduction in Contract Capacity and Associated Energy / PSA	Section 10.2.1 / Pages 28-29	<p>We refer to Section 10.2.1 of the PSA:</p> <p>"10.2.1 Subject to the provisions of Section 10.2.2 below, Meralco shall, from time to time, be entitled to a reduction in the Contract Capacity and Associated Energy (the "<b>Reduction in Contract Capacity and Associated Energy</b>") equivalent to the reduction in the demand of its captive customers in order to avoid stranded contract capacities or costs, or by reason of the enforcement of Retail Competition and Open Access, the Renewable Energy Law and other Laws and Legal Requirements."</p> <p>Please clarify the meaning of the "demand of its captive customers in order to avoid stranded contract capacities or costs" and in which case it will lead to the reduction?</p>	Response is same as for Items #86 and #94.
100		Power Supply Agreement template "Reduction in Contract Capacity and Associated Energy"	Section 10.2.1, page 29	<p>We request that Section 10.2 (Reduction in Contract Capacity and Associated Energy) be subject to the consent of Financing Parties as in the case of Section 10.1 as this reduction in Contract Capacity and Energy is of significant concern to Financing Parties as it relates to the ability of the Power Supplier to service debt in the face of a reduction in Contracted Capacity.</p> <p>10.2.1 Subject to the provisions of Section 10.2.2 below, Meralco shall, from time to time, be entitled to a reduction in the Contract Capacity and Associated Energy ("the reduction in Contract Capacity and Associated Energy") equivalent to the reduction in demand of its captive customers in order to avoid stranded contract capacities or costs, or by reason of the enforcement of Retail Competition and Open Access, the</p>	As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded. Notably, similar provision in other PSAs of Meralco, as approved by the ERC, do not require consent of Financing Parties.

				Renewable Energy Law and other Laws and Legal Requirements <u>subject to the consent of the Financing Parties.</u>	
101		Reduction in Contract Capacity and Associated Energy	10.2.2	<p>We note that Meralco shall give a written notice to Power Supplier of the Reduction in Contract Capacity and Associated Energy at least five (5) Days prior to the first Day of the next Billing Period. Upon receipt by Power Supplier of such written notice, Meralco shall cease to have any rights and obligations under this Agreement in respect of such Reduction in Contract Capacity and Associated Energy</p> <p>Please clarify whether the reduced Contract Capacity will only apply to the next billing period, and not to succeeding billing periods</p>	As worded, Section 10.2.2 clearly states that upon exercise of this provision, "Meralco shall cease to have any rights and obligations under this Agreement in respect of such Reduction xxx". As such, any Reduction shall apply to the next and all succeeding Billing Periods.
102		Energy Imbalance Fees	Section 10.2/ Page 126	<p>Any Energy Imbalance Fees imposed by the Market Operator as a result of the Forced Outage shall be for the account of Power Supplier.</p> <p>To clarify, this should only refer to Forced Outage beyond the Full Load Equivalent Forced Outage Allowance Days.</p> <p>Any Energy Imbalance Fees imposed by the Market Operator as a result of the Forced Outage <b>beyond Full Load Equivalent Forced Outage Allowance Days</b> shall be for the account of Power Supplier.</p>	Energy Imbalance Fees are for the account of Power Supplier, regardless of whether incurred within or beyond the Full Load Equivalent Forced Outage Allowance Days.
103		Billing and Payment	Article 11.1	<p>Section 11.1 provides that "<i>Power Supplier shall render to Meralco an itemized Invoice for each Billing Period in accordance with the provisions of this Agreement and Appendix H. Meralco shall pay Invoices when due and payable in accordance with this Agreement and Appendix H.</i>"</p> <p>The current wording of this provision is too broad.</p> <p>Please consider detailing some of the protocols for invoicing in Section 11.1.</p> <p>We also propose that all references to the word "Invoice" in the PSA be changed to "Billing Statement" to be consistent with the Bureau of Internal Revenue ("<i>BIR</i>") requirements considering that the transaction subject of the PSA is construed by the BIR as a sale of service.</p>	<p>For the details of the protocols for invoicing, kindly see Appendix H which contains the "Invoicing and Payment Procedures".</p> <p>As relayed to the TPBAC by Meralco, Meralco prefers retaining the term "Invoice" for consistency across its PSAs.</p>
104		Disputing of invoices	Section 11.2.3	<p>Section 11.2.3 of the PSA on disputing invoices provides:</p> <p><i>If applicable, Meralco will endeavor to dispute, protest or question a Final Invoice within fifteen (15) Days from the date of its receipt. In such a case, the dispute, protest or question shall be resolved within thirty (30) Days from the date of filing thereof. If the dispute, protest or question is not resolved, Meralco may at any time refer such dispute, protest or question for resolution in accordance with Article 20.</i></p>	As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded, consistent with its other PSAs approved by the ERC.

				<p>We propose to lessen the days for Meralco to dispute, protest or question the Final Invoice from fifteen (15) days to ten (10) days to coincide with the payment due date and to be consistent with Appendix H (Invoicing and Payment Procedures).</p> <p>In addition, we propose that both Parties be enjoined to resolve the dispute, protest, or question within thirty (30) Days from the receipt by Meralco of the Final Invoice, and that the right to refer the dispute, protest, or question, be available to both Parties.</p> <p>We propose the following wording:</p> <p>If applicable, Meralco will endeavor to dispute, protest or question <b>in writing</b> a Final Invoice within <del>fifteen (15)</del> <b>ten (10)</b> Days from the date of its receipt. <del>In such a case, the dispute, protest or question shall be resolved within thirty (30) Days from the date of filing thereof. In any case, both Parties shall endeavor to resolve the dispute, protest, or question within thirty (30) Days from the date of receipt by Meralco of the Final Invoice.</del> If the dispute, protest or question is not resolved <b>within such period</b>, <del>Meralco</del> <b>either Party</b> may at any time refer such dispute, protest or question for resolution in accordance with Article 20.</p>	
105		Invoice	11.2.2	<p>We note that <b>if Meralco disputes all or any portion of an Invoice</b> for a reason other than a manifest error in, or the apparent invalidity or incorrect form or substance of, such Final Invoice, Meralco shall nonetheless pay the full amount of such Invoice (subject to Appendix H). Any payment by Meralco under this Section 11.2.2 is without prejudice to <b>Meralco's right at a later date within one (1) year following such payment to dispute, protest or question any amount so paid.</b></p> <p>Please clarify that disputing the payment includes disputing the invoice.</p>	Payment can either refer to all or a portion of the Invoice. Given this, if Meralco disputes a "payment", it can be all or a portion of the Invoice.
106		Set off	Section 11.3	<p>Section 11.3 of the PSA provides that <i>"[e]ach Party reserves to itself all rights of setoff, counterclaim and other remedies and/or defenses that such Party is or may be entitled to assert arising from or out of this Agreement."</i></p> <p><b>Please clarify which items are being considered for set-off.</b></p>	Items that can be subject to legal compensation can be the subject of set-off.
107		Change in Circumstance	Article 12, Section 12.2, pages, 32 and 33	<p>The PSA provides no direct relief for Power Supplier in the event of a Change in Circumstance. Any change must be agreed by the parties and approved by the ERC. If the parties cannot agree, it gives rise to termination rights for both parties.</p> <p>For any Change in Circumstance in which Meralco can seek recovery from the ERC, Meralco will take all reasonable actions to seek cost reimbursement from the ERC and if so approved by the ERC, will work with the Power Supplier to make a corresponding</p>	It appears that this is a statement and not a question. Section 12.2.2 provides that Parties shall "cooperate in good faith to secure the required approval".

				amendment to the PSA to address this Change in Circumstances so as to restore Power Supplier's commercial position prior to this Change in Circumstances.	
108		NGCP Charges	Section 12.1.3	<p>Section 12.1.3 enumerates the amounts Meralco is responsible for paying to third parties. <b>Please clarify if Meralco will also be responsible for the payment of any applicable NGCP charges (other than Connection Charges under Section 12.1.2) for the supply of Contract Capacity and Associated Energy and Replacement Power, and revise Section 12.1.3 accordingly.</b></p> <p><b>Please also clarify if Connection Charges will be included in the Supplemental Payment, subject to Section 12.1.2 of the PSA.</b></p>	Appendix E provides that Supplemental Payments shall include "applicable NGCP PDS and SO Charges for supply of Contract Capacity and Associated Energy".
109		Creditable Withholding Tax	Section 12.1.5	<p>Section 12.1.5 provides for the mechanism on how creditable withholding tax shall be paid and withheld. However, Section 12.1.5 as currently worded does not provide for the process by which Power Supplier can confirm whether the creditable withholding taxes have been withheld and paid.</p> <p>For good order, we propose the additional wording as follows:</p> <p>Meralco shall deduct and withhold from the amounts payable under a Final Invoice the applicable creditable withholding tax, and Meralco shall remit any amounts withheld for such tax to the relevant taxing authorities. <b><u>Meralco shall promptly forward to the Power Supplier a certificate of tax withheld at source (BIR Form 2307) on or before the 20th day of the succeeding calendar month showing that the full amount of any such deduction or withholding has been paid over, or will otherwise be remitted, to the relevant taxing Governmental Authority.</u></b></p> <p>If Power Supplier believes such withholding tax is not applicable to it, Power Supplier shall provide Meralco with such documents and evidence to demonstrate that payments to Power Supplier are not subject to such withholding tax, such as but not limited to the following:  Board of Investments ("BOI") Certificate of Registration indicating Power Supplier's entitlement to Income Tax Holiday ("ITH");  BOI Certificate of ITH Entitlement indicating Power Supplier's entitlement to ITH renewed annually; and  Such documents that the BIR may require to support Power Supplier's claim for exemption from creditable withholding tax.</p>	This is a standard provision in Meralco's PSAs. In any case, there is a standing protocol to confirm that creditable withholding taxes have been withheld and paid.
110		Credit memo for VAT	Section 12.1.6	Section 12.1.6 provides in part, as follows:	Because power supplier Invoices typically reflect full amount due, with inclusion of VAT on zero-rated and exempt sales, credit memo

				<p>With respect to any VAT billed to Meralco by Power Supplier pertaining to actual energy volume for Meralco's VAT zero-rated and VAT-exempt customers, Power Supplier shall issue a credit memo reversing the corresponding amount of VAT billed to Meralco.</p> <p>Under existing BIR regulations and memorandum circulars there is no requirement to issue credit memo representing the VAT component of the VAT zero-rated and exempt sales electricity of Meralco. A credit memo is a document cancelling and adjusting claims or billings of customers if there are valid changes in the tariff components (but excluding VAT).</p> <p><b>Please clarify why the Power Supplier has to issue a credit memo for the VAT zero-rated and VAT-exempt sales of Meralco.</b> If the Power Supplier agrees to this, there will be monthly issuances of credit memos to cover the VAT adjustments pertaining to Meralco.</p>	<p>[or a certification or similar document] is needed to substantiate the amounts pertaining to such sales, so that Meralco would not need to remit VAT thereon. To allow the Parties to discuss alternative proof of substantiation, the relevant portion is revised as follows:</p> <p><i>“With respect to any VAT billed to Meralco by Power Supplier pertaining to actual energy volume for Meralco's VAT zero-rated and VAT-exempt customers, Power Supplier shall issue a credit memo, <b>or alternatively a certification or similar document agreed by the Parties, to evidence reversing of</b> the corresponding amount of VAT billed to Meralco.”</i></p>
111		Charges Due to Change in Circumstances	Section 12.2.1	<p>Section 12.2.1 on Charges Due to Change in Circumstances includes <i>“any change in the proportionate allocation of ancillary service charges *** pursuant to [Department of Energy (“DOE”)] Circular DC 2019-012-0018.”</i> <b>Please clarify the relevance of DOE Circular DC 2019-012-0018.</b></p>	<p>Section 8 of DC 2019-012-0018 entitled <i>“Adopting a General Framework Governing the Provision and Utilization of Ancillary Services in the Grid”</i> provides that existing cost recovery mechanism shall continue to be adopted until a new one is recommended by AS – TWG and adopted by DOE and/or ERC. However, it should be noted that in the 7<sup>th</sup> Whereas Clauses, the DOE stated that “in 2018, the DOE laid the groundwork for establishing an equitable cost recovery mechanism for the utilization of AS through the conduct of focus group discussions and public consultations on <b>Causer Pays Mechanism (CPM)</b>” thereby alluding to the adoption of causers pay principle.</p>
112		Changes in Circumstances affecting Power Supplier	PSA, Section 12.2.2	<p>Under Section 12.2.2 of the PSA, if the Application for Price Adjustment is not approved, (a) the Power Supplier may be in a situation where the PSA is terminated and the Power Supplier will not receive any compensation for any additional cost arising from or attributable to the Change in Circumstance, and (b) even if the Application for Price Adjustment is approved, the change in price will only be effective from the date it is approved, i.e., there will be no backdating of any price adjustment.</p> <p>In these circumstances, considering that the Change in Circumstance is not due to the fault of the Supplier, we propose that Meralco should share the risk with the Power Supplier by way of agreeing to shoulder 50% of the additional cost arising from or attributable to the Change in Circumstance.</p> <p>Alternatively, we propose that upon filing of the Notice of Change in Circumstance, the Power Supplier should have the option to suspend its obligations to make available the</p>	<p>Verily, while additional costs contemplated here are not due to fault of Power Supplier, neither are these due to the fault of Meralco or its customers. More importantly, as a necessary consequence of generation cost being a pass-through cost, its imposition must be revenue neutral insofar as Meralco is concerned and customers should not be required to share the burden of additional costs unless confirmed by the ERC as reasonable and proper. This is particularly evident for Section 12.2.2, which refers to Change in Circumstances that affect Power Supplier.</p>

				<p>Contract Capacity and deliver the Associated Energy and to sell to the WESM or to any other third parties until the parties receive the required approval of the ERC or other Governmental Authorizations. We also propose that the period to reach a mutually satisfactory resolution under Section 12.2.2 be reduced from ninety (90) days to sixty (60) days.</p>	
<p>113</p>		<p>Change in Law affecting Power Supplier</p>	<p>Section 12.2.2</p>	<p>Section 12.2.2 of the PSA provides, in part: “[i]f as a result of a Change in Circumstances affecting Power Supplier, Power Supplier becomes liable to pay any New Charges or any Increased Charges or a Change in Circumstances materially and adversely affects the ability of Power Supplier to perform or materially increases the operating costs or capital expenditures associated with the Plant or materially and adversely affects its performance of its obligations under this Agreement, <u>adversely affects the sale by Power Supplier of Contract Capacity and Associated Energy in accordance with this Agreement,</u> [...] Power Supplier shall send a notice to Meralco of the occurrence of such Change in Circumstances [...]”</p> <p>It is not clear what the underlined phrase qualifies. <b>Please advise if:</b></p> <p><b>the underlined phrase qualifies both (a) a Change in Circumstances that “materially and adversely affects the ability of Power Supplier to perform or materially increases the operating costs” and (b) a Change in Circumstances that “materially increases the operating costs or capital expenditures associated with the Plant or materially and adversely affects its performance of its obligations under this Agreement”, or</b></p> <p><b>the underlined phrase qualifies “Change in Circumstance”, such that the Power Supplier shall send notice to Meralco when, among others, there is a Change in Circumstances that “adversely affects the sale by Power Supplier of Contract Capacity and Associated Energy in accordance with this Agreement.”</b></p> <p>For clarity, we propose the following wording:</p> <p><b>If as a result of a Change in Law affecting the Power Supplier:</b></p> <p><b>the Power Supplier becomes liable to pay any New Charges or any Increased Charges in connection with this Agreement;</b></p> <p><b>there is a material increase in the operating costs or capital expenditures associated with the Plant;</b></p> <p><b>there is a material and adverse effect on the Power Supplier’s cost of performing, or its ability to perform, its obligations under this Agreement, or an adverse effect on the</b></p>	<p>The provision shall be revised to delineate enumeration of the grounds for Change in Circumstances in Section 12.2.2, as follows:</p> <p>“If: <b>(a)</b> as a result of a Change in Circumstances affecting Power Supplier, Power Supplier becomes liable to pay any New Charges or any Increased Charges; <b>or</b> <b>(b)</b> a Change in Circumstances <b>(i)</b> materially and adversely affects the ability of Power Supplier to perform, or materially increases the operating costs or capital expenditures associated with the Plant, or materially and adversely affects its performance of its obligations under this Agreement, <b>or</b> <b>(ii)</b> adversely affects the sale by Power Supplier of Contract Capacity and Associated Energy in accordance with this Agreement, <b>or</b> <b>(iii)</b> makes the Power Supplier’s administration or operational aspects of such performance materially more burdensome (whether made at the direction of any Governmental Instrumentality or otherwise), or <b>(iv)</b> causes serious damage to, or materially and adversely affects the financial condition of Power Supplier; then Power Supplier shall send a notice xxx”</p>

				<p>cost or sale of Contract Capacity or the Associated Energy in accordance with this Agreement;</p> <p>the Power Supplier’s administration or the operational aspects of its performance is made materially more burdensome (whether made at the direction of any Governmental Authority or otherwise); or</p> <p>there is serious damage to, or a material and adverse effect on, the financial condition of the Power Supplier,</p> <p>the Power Supplier shall send a notice to Meralco of the occurrence of such Change in Law (“Notice of Change in Law”), together with an analysis of the cost impact of such Change in Law and the changes to the Price, which the Power Supplier reasonably considers as necessary to maintain the Power Supplier’s commercial, financial and risk position in connection with this Agreement after the Change in Law is taken into account. ***”</p>	
<p>114</p>		<p>PSA</p>	<p>Sec. 12.2.2 in relation to 18.6.6</p>	<p>If any Event of Force Majeure prevents Power Supplier from making available the Contract Capacity or delivering the Associated Energy, or Meralco from accepting or delivering to its customers Contract Capacity or Associated Energy, in each case <b>for a continuous period of more than one hundred eighty (180) Days</b>, then either Party may upon written notice, require the other Party to meet as soon as practicable to reasonably discuss any modification, change or amendment of this Agreement under such reasonable terms, to the extent necessary to resolve the issues arising from the Event of Force Majeure and maintain, to the extent feasible, the rights and obligations of the Parties under this Agreement.</p> <p>If the Parties do not reach such satisfactory solution prior to the end of such <b>one hundred eighty (180) Day period</b>, or such other time as may be agreed upon, either Party may terminate this Agreement in accordance with Section 18.6.5.</p> <p>Please clarify if the 180 day period in the first paragraph (to count continuous days in which event of force majeure subsists) is the same 180 day period in the second paragraph (period to arrive at an agreement before the parties can exercise right to terminate)</p> <p>If not, please provide when the 180 day period (in the second paragraph) commences. Is it from the receipt of written notice to meet, or from the lapse of the 180-day continuous event of force majeure found in the first paragraph?</p>	<p>It is noted that Sections 12.2.2 and 18.6.6 pertain to the provisions on Change in Circumstances. However, it is observed that the discussion of Bidder’s query is with respect to Force Majeure [hence, should be 17.5 vis-à-vis 18.6.5.]</p> <p>In any case, the 180-day periods will coincide, such that if a Party anticipates that the Event of Force Majeure may persist, then it may provide notice to discuss and resolve arising issues. If no satisfactory solution has been reached by the time the Event of Force Majeure has subsisted for a continuous period of 180 days, then then either Party may be terminate the PSA upon 60 days prior written notice to the other Party.</p>

115		PSA	12.2.2	Please clarify whether the 90 day period for parties to agree on a resolution, in cases where there is a "change in circumstance," includes the time for approval of the Application for Price Adjustment by the ERC or by the proper Government agency.	No. The 90-day period does not factor in the time for approval of the Application for Price Adjustment.
116		Changes in Circumstances – Disallowance of Pass-Through or Refund	PSA, Section 12.2.3 and Section 14.6.3	<p>The PSA provides that in case pass-through amounts are disallowed, or any portion of the Price that has been paid to Power Supplier is required to be refunded, the Parties must enter into good faith negotiations to agree on a satisfactory solution to restore Meralco to its commercial position prior to the Change in Circumstance, including an adjustment of the Price. The Power Supplier may terminate the PSA if a satisfactory outcome is not achieved through negotiation.</p> <p>Section 14.6.3 of the PSA states that "[a]ny disallowance or refund of any part of the Price that may be directed by a Governmental Instrumentality shall be for the account of Power Supplier."</p> <p>Considering that the Change in Circumstance is not due to the fault of the Power Supplier, we propose that Meralco should share the risk with the Power Supplier by way of agreeing to shoulder 50% of the disallowed pass-through amounts or the refundable amount, instead of the Power Supplier being solely responsible for any disallowance or refund of any part of the Price.</p>	Response is same as for Item#112.
117		Power Supply Agreement template "Charges Due to Change in Circumstances "	Section 12.2.3, page 33	<p>As Power Supplier is taking the risk of increase cost under Article 12.2.2, Meralco should take the similar regulatory risk under Article 12.2.3. Hence, we request that the sentence mentioning the termination of the PSA in Article 12.2.3 be deleted.</p> <p>The Parties shall enter into good faith negotiations to agree on a satisfactory solution regarding the amendment of this Agreement to restore Meralco's commercial position prior to such Change in Circumstances, including an adjustment of the Price. <del>If the Parties fail to reach a mutually satisfactory resolution within sixty (60) Days from the commencement of negotiations, the provisions of Section 18.6.6 (b) will apply.</del></p>	See also response for Item#112.
118		Change in Circumstances	2 <sup>nd</sup> to the last paragraph, page 33	<p>"xxx Parties shall enter into good faith negotiations to agree on a satisfactory solution regarding the amendment of this Agreement to restore Meralco's commercial position prior to such Change in Circumstances including the adjustment of the Price.</p> <p>There must be a credible justification for this considering that the change in Price as contemplated therein will substantially affect the pricing methodology used by the bidder in their respective bid submissions.</p> <p>Suggest to remove or to provide a range within which such amendment can be validly implemented without violating the CSP process.</p>	The justification is that Section 12.2.3 is specifically limited to Change in Circumstances pursuant to a corresponding order of the ERC or a Government Instrumentality. See also response for Item#112.



119	ERC Application	Art. 14.2.1; page 34	<p>Power Supplier shall be free to file a motion for reconsideration with the ERC. Any order on a motion for reconsideration shall be treated as an ERC Final Approval for purposes of the processes under this Section 14.3. If the ERC Final Approval requires any amendment to or modification of any provision of this Agreement that is not acceptable to either Party, acting reasonably, then the Parties shall cooperate in good faith to resolve the required amendment, including seeking a reconsideration by the ERC. <u>If the motion for reconsideration is not resolved by the ERC within one hundred twenty (120) days after its filing, or the amendment is disapproved by the ERC, or approved by the ERC but still contains any material term or condition that is not acceptable to either Party, acting reasonably, then either Party may terminate this Agreement, and the Bid Security or Performance Security shall be returned to Power Supplier.</u></p> <p>Meralco reserves the right to forfeit the Bid Security or Performance Security in the event that Power Supplier fails to comply with any order or directive of the ERC or provide any document required by the ERC, including the ECC, resulting in non-performance of its obligations under this Agreement.</p> <p>If Power Supplier does not file a motion for reconsideration with the ERC and/or notifies Meralco that it intends to terminate this Agreement, Meralco shall have the right to forfeit the Bid Security to the extent of twenty-five percent (25%) thereof.</p> <p><b>Recommendation:</b></p> <p><b>Propose to amend provision to “If the motion for reconsideration is not resolved by the ERC within one hundred twenty (120) days after its filing, or the amendment is disapproved by the ERC, or approved by the ERC but still contains any material term or condition that is not acceptable to either Party, acting reasonably, <u>the adversely affected Party</u> may terminate this Agreement, and the Bid Security or Performance Security shall be returned to Power Supplier.”</b></p> <p><b>Propose to revise the right of Meralco to forfeit the Bid Security or Performance Security in the event that Supplier fails to comply with any order or directive of the ERC. The Supplier will be forced to comply even if there are valid grounds to oppose the motion for reconsideration.</b></p>	<p>Meralco will retain the wording of the provision. It should be noted that forfeiture of Bid Security or Performance Security is not anchored on the filing of the motion for reconsideration per se, but on failure of Power Supplier to (a) comply with any order or directive by ERC, or (b) provide any document required by ERC, including ECC; and such failure results in its obligations under the PSA not being performed.</p>
120	ERC Final Approval – Power Supplier’s Non-Acceptance of the ERC Final Approval	PSA, Section 14.3.2	<p>Under Section 14.3.2(i) of the PSA, in case of Power Supplier’s non-acceptance of the ERC Final Approval, the Power Supplier shall be free to file a motion for reconsideration with the ERC. If the ERC Final Approval requires any amendment to or modification of any provision of the PSA that is not acceptable to either Party, acting reasonably, then the Parties shall cooperate in good faith to resolve the required amendment, including seeking a reconsideration by the ERC. If the motion for reconsideration is not resolved by the ERC within 120 days after its filing, or the</p>	<p>Bidder’s cited examples of filing a Motion for Reconsideration and terminating the PSA after resolution of Motion for Reconsideration are covered by (i), not (ii). See also response for Item#119.</p>

amendment is disapproved by the ERC, or approved by the ERC but still contains any material term or condition that is not acceptable to either Party, acting reasonably, then either Party may terminate the PSA, and the Bid Security or Performance Security shall be returned to Power Supplier. Meralco reserves the right to forfeit the Bid Security or Performance Security in the event that Power Supplier fails to comply with any order or directive of the ERC or provide any document required by the ERC, including the ECC, resulting in non-performance of its obligations under the PSA.

On the other hand, under Section 14.3.2(ii), if the Power Supplier does not file a motion for reconsideration with the ERC and/or notifies Meralco that it intends to terminate this Agreement, Meralco shall have the right to forfeit the Bid Security to the extent of twenty-five percent (25%) thereof. Meralco’s right to forfeit the Bid Security or Performance Security in the event that Power Supplier fails to comply with any order or directive of the ERC or provide any document required by the ERC, including the ECC, resulting in non-performance of its obligations under the PSA should be subject to the rights of the Power Supplier to move for reconsideration or to terminate the PSA in the preceding paragraph. In other words, this should not apply where the Power Supplier, acting reasonably, decides to move for reconsideration of the ERC Final Approval, or to terminate the PSA after the resolution of its motion for reconsideration where it remains dissatisfied with any material term or condition in the ERC order.

Moreover, with respect to Section 14.3.2(ii), we think that this should only be an “and” only; otherwise this would be contradictory to the rights of the Power Supplier under Section 14.3.2(i), which grants the Power Supplier the option not to accept the ERC Final Approval and to move for its reconsideration.

For the avoidance of doubt, we recommend the following changes to Section 14.3.2 of the PSA:

14.3.2 In case of Power Supplier’s non-acceptance, it has the following options:  
 (i) Power Supplier shall be free to file a motion for reconsideration with the ERC. Any order on a motion for reconsideration shall be treated as an ERC Final Approval for purposes of the processes under this Section 14.3. If the ERC Final Approval requires any amendment to or modification of any provision of this Agreement that is not acceptable to either Party, acting reasonably, then the Parties shall cooperate in good faith to resolve the required

				<p>amendment, including seeking a reconsideration by the ERC. If <b>(a)</b> the motion for reconsideration is not resolved by the ERC within one hundred twenty (120) days after its filing, or <b>(b)</b> the amendment is disapproved by the ERC, or <b>(c)</b> approved by the ERC but still contains any material term or condition that is not acceptable to either Party, acting reasonably, then either Party may terminate this Agreement, and the Bid Security or Performance Security shall be returned to Power Supplier.</p> <p><b><u>Subject to Power Supplier’s right to move for reconsideration under the preceding paragraph or to terminate this Agreement under (a), (b) and (c) of the preceding paragraph,</u></b> Meralco reserves the right to forfeit the Bid Security or Performance Security in the event that Power Supplier fails to comply with any order or directive of the</p> <p>ERC or provide any document required by the ERC, including the ECC, resulting in non- performance of its obligations under this Agreement.</p> <p>(ii) If Power Supplier does not file a motion for reconsideration with the ERC and <del>or notifies Meralco that it intends to terminate this Agreement, Meralco shall have the right to forfeit the Bid Security to the extent of twenty five percent (25 %) thereof.</del></p>	
121		Power Supply Agreement template "ERC Approval"	Section 14.3.2 (i), page 35	<p>We propose to add the wording "within a reasonable timeframe" in order to consider reasonable time for bidder to submit any documents that ERC may require.</p> <p>Meralco reserves the right to forfeit the Bid Security or Performance Security in the event that Power Supplier fails to comply with any order or directive of the ERC or provide any document required by the ERC, including ECC, <b><u>within a reasonable time frame,</u></b> resulting in non-performance of its obligations under this Agreement.</p>	The ERC gives the deadline for submission, subject to extension that may be requested by bidder and granted by ERC. That would be the timeframe for submission.
122		ERC Final Approval - Ability of Meralco to file a motion for reconsideration or appeal after the Acceptance Date	PSA, Section 14.3.3	<p>The phrase <i>“provided, in each case, that Meralco has not filed any motion for reconsideration or appeal subsequent to Power Supplier’s acceptance of such ERC Final Approval and the Longstop Date has not occurred”</i> at the end of Section 14.3.3 of the PSA appears to give Meralco the ability to move for the reconsideration of or to appeal the ERC Final Approval even after the occurrence of the Acceptance Date.</p> <p>Meralco’s filing of an appeal or motion for reconsideration after the Acceptance Date could impact on the Power Supplier’s ability to achieve Financial Close. Thus, we suggest that Meralco should not have the right to file an appeal or motion for reconsideration after the Acceptance Date.</p> <p>In this connection, please consider that, if any, the ERC Final Approval may decrease the price under the PSA, and on this basis Meralco would most likely be indifferent to the outcome of the application process.</p>	Filing of a Motion for Reconsideration is also a remedy for Meralco, not just the Power Supplier. The Power Supplier’s acceptance does not preclude the remedy of Meralco to file a Motion for Reconsideration, if necessary. In addition, that the ERC Approval may only decrease price under PSA is a speculation at this point.

123		PSA	Article 14, Section 14.2.1, page 34; Section 17.4(a), page 41; Section 17.8.3, page 43; Section 22.3.1, page 56	<p>The Power Supplier is obligated to use “best efforts” in various events under the PSA. The “best efforts” standard would require the Power Supplier to undertake any number of commercially unreasonable and/or irrational actions in order to achieve the desired result, which could include reducing the Price under the PSA or shortening the term of the PSA. Please confirm Meralco’s expectation in use of “best efforts”.</p> <p>We would propose that the “best efforts” standard be replaced with a “commercially reasonable efforts” standard.</p>	As relayed to the TPBAC by Meralco, Meralco prefers to retain the provision as currently worded, since exercise of best efforts will not necessarily be commercial in nature.
124		Fuel Requirements	14.5.2	<p><i>[Power Supplier shall ensure that at all times there is [fuel] inventory at the Site sufficient to operate the Plant in accordance with this Agreement and in accordance with Prudent Operating Practices, taking into account all relevant factors such as seasonal and/or climatic factors, which inventory shall be good for at least a continuous thirty (30) Day period based on continuous operation of the Plant at average Associated Energy for the current Billing Period and the next two (2) Billing Periods based on the year-ahead or month-ahead nominations of Meralco.]</i></p> <p>We suggest providing sufficient time for Power Supplier to conduct its procurement process and delivery to build up inventory to a higher level, if required under an updated Meralco forecast of dispatch. Note, Prompt Cargo (ie, unplanned delivery within 30 days) is expensive.</p> <p>Please see proposed revision</p> <p>...which inventory shall be good for at least a continuous thirty (30) Day period based on continuous operation of the Plant at average Associated Energy for the current Billing Period and the next two (2) Billing Periods based on the year-ahead or month-ahead nominations of Meralco <u>made available to the Power Supplier in the preceding two Billing Periods</u> .]</p>	<p>In consideration of points raised by bidders, Section 14.5.2 is revised as follows:</p> <p><i>“[Power Supplier shall ensure that at all times there is [fuel] inventory at the Site sufficient to operate the Plant in accordance with this Agreement and in accordance with Prudent Operating Practices, taking into account all relevant factors such as seasonal and/or climatic factors, which inventory shall be <del>good</del> <b>sufficient to supply energy</b> for at least a continuous thirty (30) Day period based on continuous operation of the Plant at <del>average Associated Energy for the current Billing Period and the next two (2) Billing Periods based on the year-ahead or month-ahead nominations of Meralco</del> <b>a plant capacity factor of 100% to the extent of the Contract Capacity xxx.</b>.]”</i></p>
125		PSA	Article 14, Section 14.5.2, page 35	Power Supplier must maintain a fuel inventory at the Site that is sufficient for continuous operation of the Plant for 30 days based upon average Associated Energy for the current Billing Period and the next two Billing Periods on the latest year-ahead or month-ahead nominations of Meralco. As Power Supplier is planning to utilize LNG, maximum available onsite storage will be sufficient for approximately 30 to 45 days of continuous operation at full load with orders placed for additional supply to be delivered within the operating period as space is made available in the LNG storage tank or LNG storage vessel. It is not common industry practice for LNG facilities to maintain excess	As mentioned in Section 14.5.2, Power Supplier shall ensure that there is fuel inventory, at all times, <b>at the Site</b> . This excludes fuel inventory that has been ordered and scheduled for delivery to Power Supplier.

				<p>inventories of LNG given the cost of storage and losses due to boil off gas and security of supply for LNG is sufficient to ensure there is no interruption in the fuel supply.</p> <p>We would propose that inventory amounts should consider all inventory that is available on site as well as any inventory that has been ordered and scheduled for delivery or otherwise secured by way of contract from a gas/LNG supplier.</p>	
126		Fuel Requirements	PSA, Section 14.5.2	<p>Under the PSA, the <i>“Power Supplier shall ensure that at all times there is [fuel] inventory at the Site sufficient to operate the Plant in accordance with this Agreement and in accordance with Prudent Operating Practices, taking into account all relevant factors such as seasonal and/or climatic factors, which inventory shall be good for at least a continuous thirty (30) Day period based on continuous operation of the Plant at average Associated Energy for the current Billing Period and the next two (2) Billing Periods based on the latest year-ahead or month-ahead nominations of Meralco.”</i></p> <p>In the case of gas-fired power plants, rather than storing fuel on- site, gas is continuously delivered to the power plants via pipelines, whether indigenous gas and/or regasified LNG. A requirement to store a minimum of thirty (30) days of gas inventory at the Site at all times is therefore an extremely unusual requirement to be imposed on any gas-fired power plant and it is practically impossible to satisfy such a condition. In fact, none of the existing power plants utilizing indigenous Malampaya gas maintain any gas inventory at their sites and yet have provided high availability over the years.</p> <p>While it is common for coal plants to provide coal inventory on- site, for example, for a 1,200 MW coal plant, and assuming 3 deliveries of coal per month via Panamax (if less than 3 deliveries per month, the volume would be larger), our understanding of this provision as drafted is that an average amount of coal equal to 350,000-400,000 tonnes and a minimum amount of coal equal to 310,000 tonnes would be required to be stored at the Site at all times. Is this correct?</p> <p>Please explain how the Power Supplier is supposed to arrange and manage fuel supply that is consistent with Appendix G and Section 14.5.2 given that year- and month-ahead nominations provided by Meralco are stated to be non-binding?</p> <p>What is the consequence of the breach of Section 14.5.2? Do the reasons for failure to comply with Section 14.5.2 affect the consequences? Assuming Power Supplier complies with Section 14.5.2 and as a result of dispatch</p>	<p>It is our understanding that onsite storage may be utilized to ensure that there is fuel inventory, at all times, at the Site.</p>

				instructions received from Meralco no further fuel can be received and stored by the Power Supplier, what are the consequences? What happens if the inventory level falls below the required minimum 30-day amount as a result of Meralco's increasing dispatch?	
127		Fuel Supply Inventory	14.5.2	<p><b>Power Supply Agreement Template, Section 14.5.2</b></p> <p>14.5.2 [Power Supplier shall ensure that at all times there is [fuel] inventory at the Site sufficient to operate the Plant in accordance with this Agreement and in accordance with Prudent Operating Practices, taking into account all relevant factors such as seasonal and/or climatic factors, which inventory shall be good for at least a continuous thirty (30) Day period based on continuous operation of the Plant at average Associated Energy for the current Billing Period and the next two (2) Billing Periods based on the latest year-ahead or month-ahead nominations of Meralco.]</p> <p>Can the fuel supply inventory requirement be based on industry-based practices for the specific fuel type/ technology?</p>	Response is same as for Item#124.
128		Fuel Supply / PSA	Articles 14.5.1 and 14.5.2 / Page 35	<p>Depending on the Nominated Power Plants that will be offered by the Bidders, the provisions on the preparation and implementation of a fuel plan and the ensuring of fuel inventory may not be applicable. Thus, we suggest that the clause "if applicable" be included.</p> <p><i>Revised provisions to read:</i></p> <p>14.5.1 <b>If applicable</b>, Power Supplier shall be responsible for the preparation and implementation of a plan for the safe, adequate and reliable supply and transportation of fuel to the Plant throughout the Term.</p> <p><b>If applicable</b>, Power Supplier shall ensure that at all times there is [fuel] inventory at the Site sufficient to operate the Plant in accordance with this Agreement and in accordance with Prudent Operating Practices, taking into account all relevant factors such as seasonal and/or climatic factors, which inventory shall be good for at least a continuous thirty (30) Day period based on continuous operation of the Plant at average Associated Energy for the current Billing Period and the next two (2) Billing Periods based on the latest year-ahead or month-ahead nominations of Meralco.</p>	See response to item#124. To avoid confusion, we will not include the phrase "if applicable" in the provision. However, Section 14.5.2 will be deleted in case PS' power plant is solar technology.
129		Compliance with Laws	Art. 14.6.3; page 36	<p>Any disallowance or refund of any part of the Price that may be directed by a Governmental Instrumentality shall be for the account of Power Supplier.</p> <p><b>Clarification: What if the disallowance is due to MERALCO's non-compliance? It should not be for the account of Power Supplier if such is the case.</b></p>	This is a consequence of the pass-through nature of generation costs. The disallowance imposed by the ERC shall be for the account of Power Supplier. But Power Supplier may avail of the remedies available under the law in case of MER's non-compliance.

<p>130</p>	<p>Instances of Force Majeure</p>	<p>17.2</p>	<p>Instances of Force Majeure</p> <p>Even if the list under this provision is not exclusive, please confirm that the following can be considered an event of "force majeure:"</p> <p>) System Emergency</p> <p>2) Appropriate actions taken in response to any orders, warnings or advice given by a Governmental Instrumentality or the System Operator for safety reasons to implement emergency shutdown</p> <p>i) System operator curtailment</p> <p>We suggest including the following circumstances on the list of instances of Force Majeure</p> <p>"any interruption, reduction or suspension of the Plant's output as instructed by the System Operator"</p> <p>1) System Emergency</p> <p>2) Appropriate actions taken in response to any orders, warnings or advice given by a Governmental Instrumentality or the System Operator for safety reasons to implement emergency shutdown</p> <p>i) System operator curtailment</p> <p><u>For the avoidance of doubt, (i) the breakdown or failure of equipment or machinery of the Plant or the delay or inability to procure fuel for the Plant shall not in itself be considered as an Event of Force Majeure, unless otherwise due to an Event of Force Majeure and (ii) any (x) interruption of the Plant's generating capability resulting in an unplanned reduction or suspension of the electrical output from the Plant and/or unavailability of capacity in whole or in part from the Plant; (y) automatic shutdown of any part of the Plant; and (z) other unavailability of the Plant for operation, that is due to an Event of Force Majeure, shall be treated for all purposes of this Agreement as an Event of Force Majeure and not as a Scheduled Outage or a Forced Outage.</u></p> <p><u>For reference, "Curtailment" is as defined in the OATS Rules under ERC Case No. 2006-OISRC.</u></p> <p><u>For the avoidance of doubt, Power Supplier shall not be entitled to claim any of its act or omission as Force Majeure.</u></p> <p>For deletion:</p>	<p>These are well noted and will be reflected in the PSA accordingly.</p>
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				<p><del>For clarity, Power Supplier shall not be allowed to claim Force Majeure under Article 17 in case there is supply available from the WESM or any other source.</del></p>	
131		Instances of Force Majeure	17.2.c	<p><i>Explosions, fires, earthquakes, lightning, typhoon, tsunami, flood, cyclone, volcanic eruptions, landslide or other natural disasters, acts of God, epidemic, quarantine or plague</i></p> <p>We suggest including "pandemic"</p> <p>Explosions, fires, earthquakes, lightning, typhoon, tsunami, flood, cyclone, volcanic eruptions, landslide or other natural disasters, acts of God, epidemic, <u>pandemic</u>, quarantine or plague</p>	There is no need to include "pandemic" as this can already be covered by the example of "epidemic".
132		Instances of Force Majeure	17.2 (f)	<p><i>Any Transmission Failure that prevents delivery by Power Supplier, or acceptance by Meralco, of Contract Capacity and Associated Energy. In case of disagreement as to the existence of a Transmission Failure, the Parties shall secure the necessary certification from ERC, which certification shall bind both Parties.</i></p> <p>We suggest including "System Emergency."</p> <p>Any Transmission Failure or <u>System Emergency</u> that prevents delivery by Power Supplier, or acceptance by Meralco, of Contract Capacity and Associated Energy. In case of disagreement as to the existence of a Transmission Failure, the Parties shall secure the necessary certification from ERC, which certification shall bind both Parties.</p> <p>For reference, "System Emergency" refers to any unforeseeable condition affecting the System (as defined in the Grid Code), which may cause (i) the disconnection of the Plant from the Luzon Grid or any disruption in the supply of electric energy from the Plant for reasons other than a Forced Outage, or (ii) suspension of electric energy offtake from Power Supplier in order to prevent or avoid significant disruption of service to Meralco or danger to life or property.</p>	Response is same as for Item#130.
133		Force Majeure	Section 17.2	<p>Section 17.2 lists the Instances of Force Majeure. However, the list does not specifically include a situation where the Power Supplier is unable to obtain the necessary fuel, materials, equipment, or services required for the Plant, which is an event that can take place without the fault of the Power Supplier.</p> <p>For the avoidance of doubt, we propose that the event below be specifically included as an event of Force Majeure:</p> <p><b><u>(g) with respect to the Power Supplier only, any inability to obtain any necessary Fuel, materials, equipment or services required for the operation or maintenance of, or for</u></b></p>	It is incumbent upon Power Supplier to ensure fuel supply – this is also why there is an inventory requirement. Hence, proposal will not be considered as Force Majeure.



				<p><b>consumption in, the Plant (including as a result of any failure or delay in transportation of any Fuel or any breach of a Fuel Sale and Purchase Agreement) that is not the fault of the Power Supplier);</b></p>	
134		Instance of Force Majeure	Article 17, pages 39 to 43	<p>Under the PSA, the defined instances of Force Majeure do not include certain events that would ordinarily be specified, such as (i) unavailability of power from the System, (ii) curtailment of Plant output by the Market Operator or System Operator, (iii) System Emergencies, unless covered in Transmission Failure and (iv) Emergency shutdown in response to any orders from System Operator or other Govt. authorities for safety reasons.</p> <p>The PSA does not permit the Power Supplier to claim the occurrence of an Event of Force Majeure if supply is available from the WESM or any other source. This restriction undercuts the entire concept of force majeure for the Power Supplier. The Power Supplier will only be eligible for Force Majeure relief for an Event of Force Majeure if the Event of Force Majeure affects all of the WESM.</p> <p>The PSA contemplates that Events of Force Majeure that continue for more than 180 continuous days will give rise to a termination right by either Party, if the parties are unable to agree to a longer period.</p> <p>We would propose that the Events of Force Majeure should include (i) unavailability of power from the System, (ii) curtailment of Plant output by the Market Operator or System Operator, (iii) System Emergencies, unless covered in Transmission Failure and (iv) Emergency shutdown in response to any orders from System Operator or other Govt. authorities for safety reasons.</p> <p>We would propose that the limitation regarding Power Supplier’s inability to claim Force Majeure relief in the event the WESM is operating be removed and this limitation should be revised to solely apply to Meralco’s claim for Force Majeure relief.</p> <p>We propose the 180 day period be increased to 365 continuous days.</p>	<ol style="list-style-type: none"> <li>1. Closing paragraph of Section 17.2 will be deleted.</li> <li>2. The 180-day period is a standard period in Meralco’s ERC-approved PSAs. In addition, a period of 1 year is too long to expose Meralco’s customers to volatile WESM prices, especially if the Contract Capacity is substantial.</li> </ol>
135		Effects of Extended Force Majeure	Sections 17.5 and 17.6	<p>Under Sections 17.5 and 17.6 of the PSA, an extended force majeure of more than one hundred eighty (180) days may, unless the parties agree on a longer period, lead to the termination of the PSA by either party upon 60 days’ notice pursuant to Section 18.6.5.</p> <p>In this regard, the termination of the PSA after an extended force majeure of only more than one hundred eighty (180) days and only upon 60 days’ notice is disadvantageous to both parties. We believe that longer periods are to the best interest of the Power Supplier and Meralco considering the long-term nature of the PSA.</p>	Response is same as for Item #134 (number 2).

				<p>We propose that the period of Extended Force Majeure be extended to twelve (12) months and the notice period be extended to ninety (90) days.</p>	
<p>136</p>		<p>Instance of Force Majeure-Availability of Supply in the WESM</p>	<p>PSA, Sections 17.1 and 17.2 in relation to Section 9.1.4</p>	<p>Under Section 17.2 of the PSA it is stated that “[f]or clarity, Power Supplier shall not be allowed to claim Force Majeure under Article 17 in case there is supply available from the WESM or any other source.”</p> <p>This means that even if the Power Supplier is prevented, by reason of a Force Majeure event from supplying Contract Capacity and Associated Energy to Meralco, the Power Supplier shall not be allowed to claim Force Majeure if there is supply available from the WESM or any other source. This seems to be unfair on the part of the Power Supplier and should be deleted, because of the additional burden that is placed on the Power Supplier in circumstances where it must obtain Replacement Power (through the WESM).</p> <p>Further, the obligation of the Power Supplier to obtain Replacement Power from the WESM does not arise in all instances, and should not arise in instances when it is unable to provide Contract Capacity and Associated Energy through no fault of its own, including in the event of an Event of Force Majeure. To be sure, the Power Supplier may still be prevented from performing its obligations under the PSA even if the WESM is operational and even if supply is available in any other source. Moreover, this is not consistent with Section 9.1.4 of the PSA, which states that “[d]uring any period in which an Event of Force Majeure affects Power Supplier or Meralco, Meralco shall procure Replacement Power from the WESM to the extent supply or offtake is so affected.”</p> <p>We propose that the sentence “[f]or clarity, Power Supplier shall not be allowed to claim Force Majeure under Article 17 in case there is supply available from the WESM or any other source” be deleted.</p>	<p>Response is same as for Item #134.</p>
<p>137</p>		<p>Instances of Force Majeure</p>	<p>Section 17.2, Page 40</p>	<p>Power Supplier shall not be allowed to claim Force Majeure in case there is supply available from the WESM or any other source.</p> <p>Would Meralco be amenable to deleting this provision as it essentially removes the right of Power Supplier to claim Force Majeure under the PSA?</p> <p>This language goes against the principle of a Force Majeure.</p> <p>Should Meralco insist in this provision, a parallel provision should also apply in any event of Meralco’s Force Majeure.</p>	<p>Response is same as for Item #134.</p>

138		Instances of Force Majeure	17.2	<p>Power Supplier shall not be allowed to claim Force Majeure under Article 17 in case there is supply available from the WESM or any other source.</p> <p>Suggest to delete because in case of Force Majeure, the Parties are excused from the performance of their respective obligations under the PSA.</p> <p>Even in case of guaranteed supply of power, Power Supplier is not obliged to supply power during Force Majeure Events.</p>	Response is same as for Item #134.
139		Force Majeure	Last par.,page 40	<p>“For clarity, Power Supplier shall not be allowed to claim Force Majeure under Article 17 in case there is supply available from WESM or any other source”.</p> <p>There must be a sufficient justification for this provision. In effect this obliterate all the Instances of Force Majeure which will excuse the Power Supplier from delivering power to MERALCO.</p> <p>Suggest to remove.</p>	Response is same as for Item #134.
140		Power Supply Agreement template "Force Majeure"	Section 17.2, page 40	<p>Power Supplier should not be solely exposed to the risk of incurring losses when sourcing power from WESM/alternative and passing through the same to Meralco at a fixed price if such Force Majeure is caused by uncontrollable events. Hence, we request that the last sentence be deleted.</p> <p><del>For clarity, Power Supplier shall not be allowed to claim Force Majeure under Article 17 in case there is supply available from the WESM or any other source.</del></p>	Response is same as for Item #134.
141		Instances of Force Majeure	Art. 17.2; page 40	<p>For clarity, Power Supplier shall not be allowed to claim Force Majeure under Article 17 in case there is supply available from the WESM or any other source.</p> <p><b>Recommendation: Propose to remove this provision. This removes the right of Supplier to claim Force Majeure even during FM events.</b></p>	Response is same as Item #134.
142		Effect of Event of Force Majeure	17.3.1	<p>In case of an Event of Force Majeure, Meralco shall have the option to require Power Supplier to make available the Contract Capacity and deliver the Associated Energy from WESM and/or any other source, and pay Power Supplier at the Price.</p> <p>This should be subject to approval/acceptance by the Power Supplier because during FME, Power Supplier is not obliged to deliver power to Meralco.</p>	Section 17.3.1 will be clarified to read as “xxx In case of an Event of Force Majeure, the Parties may agree that Power Supplier shall make available xxx”
143		Force Majeure	17.3.1	<p>Section 17.3.1</p> <p>Event of Force Majeure. In case of an Event of Force Majeure, Meralco shall have the option to require Power Supplier to make available the Contract Capacity and deliver the Associated Energy from WESM and/or any other source, and pay Power Supplier at the Price. For the avoidance of doubt and notwithstanding any other provision of this</p>	Response is same as for Item#142.

				<p>17.3.2 If an Event of Force Majeure prevents Power Supplier from delivering capacity and/or energy to Meralco, the applicable provisions of Article 9 shall apply. If any Event of Force Majeure prevents Meralco from taking or delivering to its customers capacity and</p> <p>Cited provisions in Sections 17.2 and 17.3.1 should be deleted because during Events of Force Majeure (especially those affecting the Nominated Power Plant), Power Supplier should not be required to supply Contract Capacity. This PSA is not guaranteed supply and supply herein is specifically secured from the Nominated Power Plant.</p>	
144		Power Supply Agreement template "Effect of Event of Force Majeure"	Section 17.3.1, Page 40	<p>We request TPBAC to clarify Section 17.3.1 since the 1st sentence and the 2nd sentence appear to be contradictory. In addition, we propose that the 2nd sentence shall be deleted.</p> <p><del>In case of an Event of Force Majeure, Meralco shall have the option to require Power Supplier to make available the Contract Capacity and deliver the Associated Energy from WESM and/or any other source, and pay Power Supplier at the Price.</del></p>	Response is same as for Item#142.
145		Effect of Event of Force Majeure affecting Power Supplier	PSA, Sections 17.3.1 in relation to Sections 9, 17.3.2, and 17.5	<p>Under Section 17.3.1, in case of an Event of Force Majeure, Meralco shall have the option to require Power Supplier to make available the Contract Capacity and deliver the Associated Energy from WESM and/or any other source, and pay Power Supplier at the Price.</p> <p>If Meralco decides not to require the Power Supplier to make available the Contract Capacity and deliver the Associated Energy from WESM and/or any other source while the Event of Force Majeure is subsisting, Meralco shall not be required to make any Capacity Payment and Fixed O&amp;M Payment in respect of any Contract Capacity and Associated Energy that is unavailable due to an Event of Force Majeure.</p> <p>If an Event of Force Majeure prevents Power Supplier from delivering capacity and/or energy to Meralco, the applicable provisions of Section 9 shall apply. Under Section 9.1.4, during any period in which an Event of Force Majeure affects Power Supplier, Meralco shall procure Replacement Power from the WESM to the extent supply or offtake is so affected.</p> <p>If any Event of Force Majeure prevents Power Supplier from making available the Contract Capacity or delivering the Associated Energy for a continuous period of more than one hundred eighty (180) Days, then either Party may upon written notice, require the other Party to meet as soon as practicable to reasonably discuss any modification, change or amendment of this Agreement under such reasonable terms, to the extent necessary to resolve the issues arising from the Event of Force Majeure and maintain, to the extent feasible, the rights and obligations of the Parties under</p>	<p>Response is same as for Item#142.</p> <p>As relayed to the TPBAC by Meralco, as to the consequence of an Event of Force Majeure, Meralco cannot agree to payment of capacity and/or energy that is not available or cannot be received or delivered to its customers, as this will be too burdensome and detrimental to them.</p>

this Agreement. If the Parties do not reach such satisfactory solution prior to the end of such one hundred eighty (180) Day period, or such other time as may be agreed upon, then upon lapse of such period, Meralco may terminate the agreement upon sixty (60) Days' notice to the Power Supplier.

The option of Meralco to require Power Supplier to make available the Contract Capacity and deliver the Associated Energy from WESM and/or any other source, and pay Power Supplier at the Price would be disadvantageous to the Power Supplier in case WESM prices are greater than the Price. In such instance, Power Supplier is made to bear the burden of an Event of Force Majeure that is supposed to excuse it from performance of its obligations. Further, this option seems to contradict Meralco's obligation under Section 9.1.4 to procure Replacement Power from the WESM to the extent supply or offtake is so affected in case the Power Supplier is prevented by an Event of Force Majeure from delivering capacity and/or energy to Meralco. It is also unclear what would be the consequences if Meralco shall procure Replacement Power from the WESM during the subsistence of an Event of Force Majeure that prevents the Power Supplier from delivering capacity and/or energy to Meralco. This also seems to be inconsistent with the last paragraph of Section 17.2, which states that the *\*\*\* Power Supplier shall not be allowed to claim Force Majeure under Article 17 in case there is supply available from the WESM or any other source.*"

We request that Section 17.3.1 be revised to read as follows: Except as provided in Section 17.7, the affected Party shall be excused from performance to the extent affected by, and shall not be considered to be in default in respect of, any obligation under this Agreement (including any obligation of Meralco to pay the Price) for so long as failure to perform such obligation shall be due to an Event of Force Majeure. ~~In case of an Event of Force Majeure, Meralco shall have the option to require Power Supplier to make available the Contract Capacity and deliver the Associated Energy from WESM and/or any other source, and pay Power Supplier at the Price. For the avoidance of doubt and notwithstanding any other provision of this Agreement, should Meralco decide not to exercise such option, Meralco shall not be required to make any Capacity Payment and Fixed O&M Payment in respect of (i) any Contract Capacity and Associated Energy that is unavailable due to an Event of Force Majeure or (ii) any Contract Capacity and Associated Energy that Meralco cannot receive or deliver to its customers due to an Event of Force Majeure. In respect of (ii) in the foregoing sentence, Power Supplier shall not be required to supply to~~

				Meralco and may freely sell the Contract Capacity or the affected portion thereof to interested parties, including the WESM.	
146		Event not Excused	17.7	Event not Excused  in relation to Section 17.7, please confirm if the lack or unavailability of coal supply may be invoked by the Power Supplier as an Event of Force Majeure.	Section 17.7 will be deleted, along with reference to such provision in Section 17.3.1, as follows: <del>“Except as provided in Section 17.7, xxx”</del>
147		Effect of Event of Force Majeure affecting Power Supplier	17.3.2	Section 17.3.2 provides that the Power Supplier is allowed to sell power to third parties if an Event of Force Majeure prevents MERALCO from taking or delivering to its customers capacity and energy from Power Supplier.  Please confirm if MERALCO is allowed to invoke a force majeure event affecting its customers as an Event of Force Majeure under this provision.	Sections 17.3.1 and 17.3.2 clearly include instances when “Meralco cannot receive or deliver to its customers due to an Event of Force Majeure” or “any Event of Force Majeure prevents Meralco from taking or delivering to its customers capacity and energy”.
148		Effect of Event of Force Majeure	17.3.2	If an Event of Force Majeure prevents Power Supplier from delivering capacity and/or energy to Meralco, the applicable provisions of Article 9 shall apply. Article 9 is about Outages and Replacement Power. Said Article should not be applied in case of an event of Force Majeure since as stated above, Power Supplier is not obliged to supply Replacement Power to Meralco. The supply during FME should be at Power Supplier’s option.	Section 9.1.4 is applicable in cases of Force Majeure.
149		Force Majeure	17.3.2, page 41	“If an Event of Force Majeure prevents Power Supplier from delivering capacity and/or energy to MERALCO, the applicable provisions of Article 9 shall apply”. In order to make this provision enforceable the words “from the Nominated Plant” must be added/inserted therein. The suggested edited version should read as - - - <i>“If an Event of Force Majeure prevents Power Supplier from delivering capacity and/or energy to MERALCO from the Nominated Power Plant, the applicable provisions of Article 9 shall apply”</i> .	This is well noted and the provision will be qualified to refer to capacity and/or energy “from the Plant”.
150		Effect of Event of Force Majeure affecting Meralco	PSA, Section 17.3.1 in relation to Sections 17.5 and 18.6.6	Under Section 17.3.1, <i>“*** the affected Party shall be excused from performance to the extent affected by, and shall not be considered to be in default in respect of, any obligation under this Agreement (including any obligation of Meralco to pay the Price) for so long as failure to perform such obligation shall be due to an Event of Force Majeure ***”</i> .  Based on the foregoing, we understand Meralco would only be excused from paying the Price if it is able to establish that its failure to pay the Price is due to an Event of Force Majeure (i.e., it would have to show that the Event of Force Majeure actually prevents Meralco from paying). In this regard, we would like to clarify what situations are contemplated under the provision that excuses Meralco from its obligation to pay the Price.	An example of this is a wire transfer that does not push through because the bank suddenly goes offline or for some reason is unable to post Meralco’s payment.

151		Effect of Event of Force Majeure affecting Power Supplier	17.3.3	<p>Sec. 16.3.2 and 16.3.3 referred to in this provision do not exist. This is a possible typographical error. Please confirm if such is the case and correct reference as follows:</p> <p>However, the option of Power Supplier to sell the Contract Capacity and Associated Energy or a portion thereof to third parties under Section <b>17.3.2</b> hereof and the Term Extension under this Section <b>17.3.3</b> are mutually exclusive remedies.</p>	This is typographical error. Reference should be to Sections 17.3.2 and 17.3.3.
152		Effect of Event of Force Majeure	17.3.3	<p>However, the option of Power Supplier to sell the Contract Capacity and Associated Energy or a portion thereof to third parties under Section 16.3.2 hereof and the Term Extension under this Section 16.3.3 are mutually exclusive remedies.</p> <p>There are no Sections 16.3.2 and 16.3.3 in the PSA template.</p>	Response is same as for Item #151.
153		Effects of Event of Force Majeure	Art. 17.3.3; page 41	<b>Recommendation: Wrong reference. Change reference from Section 16.3.2 &amp; 16.3.3 to Section 17.3.2 &amp; 17.3.3</b>	Response is same as for Item #151.
154		Effect of Event of Force Majeure	Art. 17.3.2, & 17.3.3; pages 40-41	<p>If an Event of Force Majeure prevents Power Supplier from delivering capacity and/or energy to Meralco, the applicable provisions of Article 9 shall apply. If any Event of Force Majeure prevents Meralco from taking or delivering to its customers capacity and energy from Power Supplier, <u>Power Supplier may sell such capacity and energy to third parties</u>, on terms that permit Power Supplier to recommence sales to Meralco following the discontinuance of such Event of Force Majeure affecting Meralco upon twenty-four (24) hours' prior written notice to Power Supplier.</p> <p>Any Event of Force Majeure, whether single or in aggregate, <u>within the original Term of the Agreement shall result in the automatic extension of the Term for the same period that any Event of Force Majeure, whether single or in aggregate, subsists, provided that such automatic extension shall not exceed one hundred eighty (180) Days (the "Term Extension")</u>. Any extension of the Term in addition to the Term Extension by reason of Event of Force Majeure occurring during the Term or the Term Extension shall be subject to the mutual agreement of the Parties. However, the <u>option of Power Supplier to sell the Contract Capacity and Associated Energy or a portion thereof to third parties under Section 16.3.2 hereof and the Term Extension under this Section 16.3.3 are mutually exclusive remedies</u>.</p> <p><b>Clarification: Since selling to third parties and the Term Extension are mutually exclusive remedies, is selling to the WESM, due to the must-offer rule, considered as selling to third parties?</b></p>	Yes, selling to the WESM, due to the must-offer rule, shall be considered as selling to third parties.
155		Force Majeure Prior to Commercial	17.6	<p>Force Majeure Prior to Commercial Operations Date</p> <p>Please clarify if the first 180 day period (to count continuous days in which event of force majeure subsists) is the same as the second 180 day period (period to arrive at</p>	Response is same as for Item#114.

		Operations Date		<p>an agreement before the parties can exercise right to terminate)</p> <p>If not, please provide when the second 180 day period commences. Is it from the receipt of written notice to meet, or from the lapse of the 180-day continuous event of force majeure?</p>	
156		Notice of Force Majeure; Procedure	17.8.1	<p>xxx, provided that such notice must be sent (a) by Power Supplier to Meralco <u>immediately</u> and in any event within 24 hours after Power Supplier becomes aware of such Event of Force Majeure and (b) by Meralco to Power Supplier <u>as soon as reasonably possible</u> and in any event within 24 hours after Meralco becomes aware of such Event of Force Majeure.</p> <p>Suggested revision:</p> <p>xxx, provided that such notice must be sent (a) by Power Supplier to Meralco <u>as soon as reasonably possible</u> and in any event within 24 hours after Power Supplier becomes aware of such Event of Force Majeure and (b) by Meralco to Power Supplier <u>as soon as reasonably possible</u> and in any event within 24 hours after Meralco becomes aware of such Event of Force Majeure.</p>	As relayed to the TPBAC by Meralco, Meralco prefers to retain the provision as currently worded. Notably, immediate notice may be through informal means.
157		Power Supplier Event of Default	PSA, Section 18.1	<p>Under Section 18.1, the events described in that section shall constitute a “Power Supplier Event of Default”, provided that such event (with the exception of Section 18.1 (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 18.1 (i.e., on the annual Full Load Equivalent Days of Availability), taken together with the introductory wording of Section 18.1 (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 9.1.5, 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>Each of the events described below shall constitute a “Power Supplier Event of Default”, provided that such event (with the exception of Section 18.1 <del>(b) and (f)</del>) results in or is accompanied by an actual failure by Power Supplier to make available the Contract Capacity</p>	<p>As relayed to the TPBAC by Meralco:</p> <p>As to (b), Meralco is interested in reliability as its customers are also exposed to WESM when Plant is perennially unavailable.</p> <p>As to (f), Meralco does not want to be deemed a party to the illegality.</p>



				and/or deliver the Associated Energy <del>(where such failure exceeds the applicable Outage Allowance) and (in each case) an actual failure to provide Replacement Power</del> to Meralco in accordance with this Agreement:	
158		Power Supplier Event of Default	Article 18, Section 18.1, page 43 and 44	<p>A Power Supplier Event of Default occurs if the Plant’s annual Full Load Equivalent Days of Availability is less than 273 days for at least 2 consecutive Contract Years and the Plant fails to improve its Full Load Equivalent Days of Availability above 273 days during the cure period.</p> <p>This provision should be deleted as the PSA provides for the Power Supplier to purchase Replacement Power for excess outages and as such, as long as the WESM is able to supply Replacement Power and the Power Supplier can settle the purchase of such Replacement Power, there is no reason for a default or termination.</p>	Response is same as for Item#157.
159		Meralco Events of Default	PSA, Sections 18.2, 18.3.2,	<p>The effect of the introductory wording in Section 18.2 is that each of the events listed will only be a Meralco Event of Default if it causes an actual failure by Meralco to receive <i>and</i> pay for the Contract Capacity and Associated Energy.</p> <p>This means that it will not be a Meralco Event of Default where Meralco is receiving the Contract Capacity and Associated Energy but is not paying the Power Supplier for these. This cannot be the intention of this clause, as Meralco’s payments are the principal consideration for the Power Supplier’s undertaking to make available the Contract Capacity and/or deliver the Associated Energy.</p> <p><b>We request that “and” be replaced with “or”. This is also consistent with Section 18.3.2 which provides: “During the Curing Period with respect to a Meralco Event of Default, Power Supplier shall, from the time of Meralco’s failure to <u>accept or pay for the Contract Capacity and Associated Energy, be entitled to sell the Contract Capacity and Associated Energy to the WESM.”</u></b></p> <p>We therefore request that Section 18.2 be modified as follows: Each of the events described below shall constitute a “<b>Meralco Event of Default</b>”, provided that such event (with the exception of Section 18.2(e)) results in or is accompanied by an actual failure by Meralco to receive <del>and or pay for the Contract Capacity and Associated Energy in accordance with this Agreement:</del></p>	This is well noted. For consistency with parallel provision in Section 18.1, opening paragraph of Section 18.2 shall refer to “ <i>actual failure by Meralco to receive and/or pay for the Contract Capacity and Associated Energy xxx</i> ”.
160		Instances of Force Majeure	17.2	<p>Instances of Force Majeure</p> <p>MERALCO to please clarify if the non-renewal of its franchise is an Event of Force Majeure as defined in Section 17.2 of the PSA.</p>	In relation to Section 18.2, non-renewal of Franchise shall be deemed a Force Majeure

				Please also confirm the scale of “strikes, lockouts, collective or industrial action” contemplated in Section 17.2. Can the provision be triggered if these industrial actions are specific to MER or the Power Supplier?	
161		Meralco’s Event of Default	Section 18.2.2, Page 46	<p>For the avoidance of doubt, it is understood and agreed that, subject to Meralco exerting best efforts to procure the extension or renewal of its Franchise, the expiration and/or non-renewal of the Franchise shall not be considered a Meralco Event of Default.</p> <p>We understand that MERALCO’s franchise will expire in 2028. Given this, can we include a provision here that in case of non-renewal of franchise, MERALCO’s successor shall automatically assume the rights and obligations under the PSA?</p>	Response is same as for Item#160. Considering that the terms of the subsequent franchise are beyond Meralco’s control, neither can Meralco commit to its successor (if any) automatically assuming the rights and obligations under the PSA.
162		PSA	General Comments	<p>We understand that the MERALCO’s franchise life will expire by the year 2028 and this may pose a significant threat or risk as far as funding the project.</p> <p>Is there an assurance as far as the renewal/extension of MERALCO franchise?</p> <p>In the worst scenario that the franchise will not be renewed/extended, what will happen to the PSAs, which is the subject of this CSP? Will there be an automatic assignment to the new franchisee?</p> <p>If the PSAs will not be assigned to the new franchisee, the plant which was built specifically for the PSA will suddenly become merchant and with no assurance that investments for such project can be recouped. This will make the cashflow of the project unpredictable which is worrisome on the part of the financial institutions that will provide funding for the project. This may be a deterrent on the part of the prospective financial institution as far as the funding of the project or the same may lead to additional covenants, additional security for the funding, which automatically increases the cost of borrowing. Banks will place a caveat should the Meralco franchise is not renewed.</p> <p>With the risk that the franchise of MERALCO will not be renewed, it is recommended that the existing power plants that have been in operation even prior to January 2020 be allowed to participate and/or come in in lieu of the bidder’s nominated plant.</p>	Response is same as for Items #160 and 29.
163		Meralco’s Event of Default	Art. 18.2; page 46	<p>For the avoidance of doubt, it is understood and agreed that, subject to Meralco exerting best efforts to procure the extension or renewal of its Franchise, the expiration and/or non-renewal of the Franchise shall not be considered a Meralco Event of Default.</p> <p><b>Recommendation: Propose to include a provision stating that in case of non-renewal, the obligations under this PSA shall be transferred to MERALCO’s successor. And in</b></p>	Response is same as for Item#161.

				case MERALCO renews a portion of its franchise, MERALCO and Power Supplier shall continue the PSA but amend the CC to reflect the prorated reduction.	
164		Meralco Event of Default	18.2 (a)	<p>Each of the events described below shall constitute a “Meralco Event of Default”, provided that such event (with the exception of Section 18.2(e)) results in or is accompanied by an actual failure by Meralco to receive and pay for the Contract Capacity and Associated Energy in accordance with this Agreement:</p> <p>(a) Meralco fails to perform any material obligation under this Agreement, excluding the making of any payment which is due, which failure has not been remedied within sixty (60) Days <b>after receipt from Meralco of a written notice of Meralco Event Default;</b></p> <p>The part in bold is a possible typographical error. If such is the case, please confirm is this is correct. “after receipt from <b>Power Supplier</b> of a written notice of Meralco Event Default;”</p>	This appears to be a typographical error, “receipt from Meralco” should be receipt from “Power Supplier”.
165		PSA	Article 18, Section 18.3, pages 46, 47 and 48	<p>The PSA contains a step-in right, pursuant to which Meralco can force the Power Supplier to sell the Plant to Meralco if a Power Supplier Event of Default continues after the Cure Period and the Power Supplier fails to make available Contract Capacity or Associated Energy. The Power Supplier will have incurred the costs of developing, financing and constructing the Plant, will be subjected to forfeiture of its Performance Security, will be at risk of replacement power costs and, in the end, be expected to transfer its assets at a discount to the cost. Meralco has the ability to mitigate the risks of non-supply by any generator/counterparty with pass through mechanisms for energy purchases, a large captive customer base, the ability to purchase from the WESM and will have already received monetary compensation in the form of forgone capacity payments, encashment of performance bonds/securities and collection of costs for replacement power. Moreover, the PSA may be for less than the full nameplate capacity of the Plant, in which case, the exercise of the step-in right would unevenly harm the Power Supplier and provide a benefit to Meralco.</p> <p>We would propose that the step-in right be removed from the PSA.</p>	As relayed to the TPBAC by Meralco, Meralco prefers to retain this provision. Please note that in the contemplated scenario, Power Supplier’s Event of Default continues to be unremedied and Power Supplier fails to make Available the Contract Capacity or deliver the Associated Energy to Meralco, hence, unnecessarily exposing Meralco customers to WESM for the period of default. It could be the case that this remedy would be best recourse to ensure that needed energy is delivered to Meralco’s customers. Nevertheless, the “step-in” right 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).
166		Meralco Event of Default	18.2 (f)	<p>Please confirm whether Meralco will be in default upon failure to pay within 30 days after due date of the final invoice, without the necessity of a demand.</p> <p>If yes, please see proposed revision below</p> <p>Meralco fails to make any payment of a Final Invoice when such invoice becomes due and payable in accordance with Article 11 of this Agreement and such payment is not made within thirty (30) Days after the due date of the relevant Final Invoice, <b>without</b></p>	Similar to all other grounds for Event of Default, notice would be required from other Party as this would be the trigger for the Curing Period to run. Default arises only after lapse of the Curing Period without remedy.

167		Meralco Event of Default	Article 18, Section 18.2, page 44, 45 and 46	<p><b>need of a demand.</b></p> <p>Under the PSA, the failure of Meralco to make required payment within 30 days after the due date results in a Meralco Event of Default. After the occurrence of a Meralco Event of Default, Meralco is provided a 180-day cure period, which is excessively long for a payment default and will be unacceptable to project lenders.</p> <p>The PSA stipulates that the loss of the Meralco Franchise is not a Meralco Event of Default. This shifts the risk of Meralco’s loss of the Franchise to the Power Supplier. In the event Meralco loses its Franchise, Meralco should undertake all efforts to make the Power Supplier whole for any losses, including working with the Power Supplier to assign the PSA to a new distribution utility or obtain a new PSA from the distribution utility that takes over Meralco’s Franchise.</p> <p>We would propose that a Meralco Event of Default will occur if Meralco has failed to make a payment within 15 days of the due date for such payment. All payment and settlement obligations between the parties should correspond with settlement periods provided in the WESM and in no instance should Power Supplier be expected to advance credit to Meralco to offset settlements in the WESM. For a Meralco Event of Default, we propose that Meralco would have a 30 day cure period for any such payment default with any such late payments subject to interest costs charged at 0.033% per day.</p> <p>We would propose that PSA include provisions to address the loss of Meralco’s Franchise and the remedies available to the Power Supplier in such a circumstance, which would include making the Power Supplier whole for any and all losses resulting from the loss of Meralco’s Franchise as these losses can be mitigated or eliminated through Meralco’s proactive work to allocate the PSA to the new owner of the franchise.</p>	The Curing Periods for the grounds enumerated is mutual. Also, based on Sections 11.2 and 18.3, there are other remedies available to the parties (e.g., interest for late payment).
168		Remedies in case of Event of Default	18.3.2	<p>During the Curing Period with respect to a Meralco Event of Default, Power Supplier shall, from the time of Meralco’s failure to accept or pay for the Contract Capacity and Associated Energy, be entitled to sell the Contract Capacity and Associated Energy to the <u>WESM</u>.</p> <p>Suggested revision:</p> <p>During the Curing Period with respect to a Meralco Event of Default, Power Supplier shall, from the time of Meralco’s failure to accept or pay for the Contract Capacity and Associated Energy, be entitled to sell the Contract Capacity and Associated Energy to the <u>WESM or interested parties</u>. (similar to 17.3.1)</p>	<p>Meralco is amenable to Power Supplier selling the Contract Capacity and Associated Energy to interested parties other than WESM during the Curing Period, provided that Meralco shall not be liable to Power Supplier for any difference between sale price to a third party [other than WESM] and the Price under Section 18.3.2 of the PSA. This is because the sale under an offtake agreement is something within reasonable control of Power Supplier, as compared to WESM. In addition, Power Supplier should be able to resume delivery as required upon remedy of the ground for Event of Default. As such, a revision of the first sentence of Section 18.3.2 to allow sale to “<b>interested parties, including</b> the WESM”, shall be accompanied by a revision of the rest of the provision to:</p> <p><i>“In <del>such</del> case <b>of sale to the WESM</b>, and provided that Meralco is able to cure the Meralco Event of Default prior to the exercise by Power Supplier of its rights under Section</i></p>

					<p>18.3.4, Meralco shall be liable to pay Power Supplier the difference between the amount Power Supplier actually received from such sale to the WESM and the Price. <b><u>For clarity, Power Supplier's exercise of its option to sell to interested parties pursuant to this provision shall be under such terms and conditions as to allow it to resume availability of the Contract Capacity and delivery of the Associated Energy to Meralco, upon remedy of the Meralco Event of Default.</u></b></p>
169		Remedies in case of Event of Default	Article 18, Section 18.3.4, page 48	<p>Under the PSA, if a Meralco Event of Default continues after the Cure Period and Meralco fails to receive and pay for Contract Capacity and Associated Energy, Power Supplier can require Meralco to pay liquidated damages, in lieu of all other damages to which it may be entitled, in the amount equivalent to the product of the Capital Recovery Fee and the Contract Capacity for five (5) years.</p> <p>The Capital Recovery Fee has not been defined in the PSA. Note, we believe the proposed liquidated damages is significantly deficient given the cost incurred in developing, financing, constructing and operating the Plant and would propose that Meralco reassess the proposed amount of liquidated damages.</p> <p>Please define the calculation and components included in the Capital Recovery Fee.</p>	<p>This is a typographical error. Capital Recovery Fee should be revised to "Capacity Payment", which under the PSA consists of MCP, MIFP and MFOM.</p>
170		Remedies in case of Event of Default	Art. 18.3.3 & 18.3.4; pages 46-48	<p><u>Meralco's Remedies</u>  <u>payment by Power Supplier of liquidated damages</u>, which shall be in lieu of all other damages to which Meralco may be entitled, in the amount equivalent to the product of the <u>Price (at the time of the occurrence of the Power Supplier Event of Default) and the Contract Capacity for five (5) years</u>, provided that, in the event that Meralco elects this option, <u>Meralco shall have the right (but not the obligation) to terminate this Agreement</u>, by written notice to Power Supplier</p> <p><u>Supplier's Remedies</u>  require Meralco to pay liquidated damages, in lieu of all other damages to which it may be entitled, in the amount equivalent to the product of the <u>Capital Recovery Fee and the Contract Capacity for five (5) years</u>;</p> <p><b>Recommendation: Propose to make remedies on Liquidated Damages mutual. We also propose to extend 5 years to remaining contract life.</b></p> <p><b>LD proposal for both Parties: Contract Price x CC x remaining contract term</b></p>	<p>The calculation of liquidated damages is based on exposure of each Party, in case of Event of Default (EOD). On one hand, Power Supplier interest is to be able to recover its investment. Since it will not necessarily incur variable costs, the calculation of liquidated damages for a Meralco EOD is based on Capacity Payments. After all, if it does incur variable costs, then the reasonable assumption is that generated energy is purchased at WESM or by an offtaker from whom such costs may be recovered. On the other hand, Meralco's customers are exposed to full cost of energy that will need to be purchased elsewhere; hence, the calculation of liquidated damages for a PS EOD based on Price.</p> <p>As to the period indicated in the calculation, it is Meralco's considered opinion that a period of five years may be sufficient for Power Supplier to secure a replacement offtake agreement, or for Meralco to secure a replacement PSA.</p>

171		Remedies in case of Event of Default	18.3.4	<p>The definition of the term “Equity Transfer Procedures” (“ETP”) seems to contemplate an involuntary sale or purchase of equity interests in the Power Supplier while Section 18.3.4 refers to mandatory sale or purchase of the Plant by either the Power Supplier or by MER depending on the party invoking an Event of Default under the PSA.</p> <p>MERALCO to please clarify intention.</p>	The intention is to address an Event of Default and give Meralco the right to buy out the share of other shareholder/s of the Plant in such case.
172		Remedies in case of Event of Default	18.3.4	<p>Remedies in case of Event of Default</p> <p>Please confirm whether the term of the Equity Transfer Procedures (“ETP”) will include provisions that would ensure that the Obligations to Finance Parties will be paid if the plant is acquired by MERALCO or sold by the Power Supplier.</p> <p>Please also confirm if the ETP will include provisions that would ensure that the priority of any lien created by the Finance Parties under the financing documents would not be impaired upon exercise by the parties of this provision as long as Power Supplier’s obligations under the financing documents to the finance parties have not been satisfied.</p>	Response is same as for Item#171. Response is same as for Item#171.
173		Restriction on other sales	PSA, Section 18.3.2	<p>Section 6.1.2 provides that “[u]nless otherwise expressly permitted by this Agreement, Power Supplier shall not, without Meralco’s prior written consent: *** (b) sell, divert, grant, transfer, dedicate, reserve or assign all or any portion of the Contract Capacity and Associated Energy to any Person other than Meralco[.]”</p> <p>Section 18.2(f) states that failure of Meralco “to make any payment of a Final Invoice when such invoice becomes due and payable in accordance with Article 11 of this Agreement and such payment is not made within thirty (30) Days after the due date of the relevant Final Invoice.”</p> <p>Section 18.3.2 states: “During the Curing Period with respect to a Meralco Event of Default, Power Supplier shall, from the time of Meralco’s failure to accept or pay for the Contract Capacity and Associated Energy, be entitled to sell the Contract Capacity and Associated Energy to the WESM. In such case, and provided that Meralco is able to cure the Meralco Event of Default prior to the exercise by Power Supplier of its rights under Section 18.3.4, Meralco shall be liable to pay Power Supplier the difference between the amount Power Supplier actually received from such sale to the WESM and the Price.”</p> <p>We believe that when there is Meralco Event of Default such as when Meralco is unable to pay on time, the Power Supplier should be allowed to sell the Contract Capacity and Associated Energy to third parties and not just to WESM. It should have the flexibility to sell to any third party.</p>	Response is same as for Item#168.

				<b>Please confirm that the Power Supplier may sell the Contract Capacity and Associated Energy to any third party during Curing Period in respect of Meralco Event of Default</b>	
174		PSA	18.3.3. and 18.3.4	<p>Please clarify the nature of the options under 18.3.3 and 18.3.4. Are these options in the alternative? Will the exercise of one bar the exercise of another?</p> <p>We note that only 18.3.3. (b) and 18.3.4 (b) states that its availment will in effect be a waiver of all other remedies of 18.3.3 and 18.3.4.</p>	Given the use of “or” in the enumerations, these are clearly alternatives. As such, it is confirmed that successful availment of one remedy will be to the exclusion of the other options/alternatives.
175		Capital Recovery Fee / PSA	Section 18.3.4(a) / Page 48	<p>We refer to Section 18.3.4(a) of the PSA:</p> <p>“(a) require Meralco to pay liquidated damages, in lieu of all other damages to which it may be entitled, in the amount equivalent to the product of the <u>Capital Recovery Fee</u> and the Contract Capacity for five (5) years; or”</p> <p>Please clarify the meaning of “Capital Recovery Fee”.</p> <p>For clarity, we suggest inclusion of “Capital Recovery Fee” in Section 1.1 Definitions.</p>	Response is same as for Item#169.
176		Termination on Expiry	Section 18.6.3	Section 18.6.3 of the PSA provides that “[t]his Agreement shall terminate on the last Day of the Term unless otherwise extended by the application of <b>Section 2.2.2</b> , Section 17.3.3 or upon the mutual agreement of the Parties.” Please note that there is no Section 2.2.2 in the PSA. <b>In this regard, kindly clarify if Section 2.2.2 should instead refer to Section 2.2 (Term of Agreement).</b>	Yes, this is a typographical error. Section 2.2.2 should refer to 2.2 [Extension of 1 year].
177		Arbitration	Section 20.2.1	<p>Under Section 20.2.1 of the PSA, any Dispute that is not resolved under Section 20.1 and that does not fall under the jurisdiction of the ERC shall be finally resolved by arbitration under the UNCITRAL Arbitration Rules and the place and seat of the arbitration shall be Pasig City.</p> <p>Stipulating for arbitration under the UNCITRAL Arbitration Rules will mean that the arbitration will be considered an ad hoc arbitration that will not be administered by any arbitral institution. Also, an ad hoc arbitration is more prone to delay and can even become more expensive than an institutional arbitration because the lack of an administering institution will require more work on the part of the arbitrators.</p> <p>We request that Meralco revise Section 20.2.1 to indicate that any such Dispute shall be finally resolved by binding arbitration under the ICC Rules of Arbitration (or the arbitration rules of another reputable international arbitration institution) and that the seat of arbitration shall be Singapore.</p>	<p>For clarity, Section 20.2.1 shall be revised as follows:</p> <p><i>“Otherwise, the Dispute shall be <del>finally resolved by binding arbitration under the UNCITRAL</del> <b>settled by arbitration in accordance with the Philippine Dispute Resolution Center Inc. (PDRCI) Arbitration Rules (the “Arbitration Rules”) in force on the date of commencement of the arbitration, which Rules are deemed to be incorporated by reference into this provision (save as otherwise provided for in this Article 20) by three (3) arbitrators (the “Tribunal”) appointed under the Rules. The dispute shall be settled by three (3) arbitrators (the “Tribunal”), two (2) of them to be appointed separately by the Parties and the third (3rd) arbitrator to be appointed by the President of PDRCI. The place and seat of the arbitration shall be in Pasig City.”</b></i></p>

178	ERC Proceedings/ Arbitration	20.2.1	<p>The place and seat of the arbitration shall be in <u>Pasig City</u>.</p> <p>Suggested revision:</p> <p>The place and seat of the arbitration shall be in Pasig City <u>or the principal place of business of Power Supplier, at the option of the complaining party.</u></p>	As relayed to the TPBAC by Meralco, Meralco prefers to retain the provision as currently worded.
179	Assignment	Section 21.1(b)	<p>Section 21.1 enumerates the instances when assignment may be made subject to indicated parameters.</p> <p>We note that under paragraph (b), the Power Supplier may transfer the Agreement to an Affiliate (and such other persons enumerated therein) with “<i>prior written consent</i>” of Meralco.</p> <p>We propose that instead of “<i>prior written consent</i>”, only “<i>prior written notice</i>” be required from Meralco similar to Meralco’s right to transfer Contract Capacity and Associated Energy to Affiliates under Section 10.1.1.</p> <p>We propose that Section 22.1(b) be amended as follows:</p> <p>Power Supplier may, with prior written consent of Meralco (which consent shall not be unreasonably withheld or delayed), transfer or assign this Agreement, and its rights and interests hereunder to <del>(a) an Affiliate with creditworthiness equal to or higher than that of Power Supplier and (b) any Person succeeding to all or substantially all of Power Supplier’s assets with credit worthiness equal to or higher than that of Power Supplier.</del> <b><u>Power Supplier may also, with prior written notice to Meralco, transfer or assign this Agreement, and its rights and interests hereunder to an Affiliate with creditworthiness equal to or higher than that of Power Supplier. In both cases,</u></b> Power Supplier shall issue a written notice of such assignment within fifteen (15) days therefrom;</p>	As relayed to the TPBAC by Meralco, Meralco prefers to retain the provision as currently worded.
180	Warranty Against Corruption	Section 22.12, Page 58	<p>Warranty Against Corruption provision pertains to the Anti-Graft and Corrupt Practices Act only and does not include FCPA.</p> <p>We propose to consider including Foreign Corrupt Practices Act (FCPA) to include compliance for foreigners.</p>	Please note that the mention of R.A. No. 3019 is merely by way of example. In any case, the FCPA may be reflected in the final PSA, if applicable.
181	Independent Engineers	Section 22.16	<p>Section 22.16 of the PSA provides a list of “<i>independent firms of engineers (or their successors or Affiliates)</i>” from which the Power Supplier can choose an Independent Engineer. Moreover, “<i>[i]f in Power Supplier’s or the requisite majority of Finance Parties’ opinion, the firm acting as Independent Engineer should be replaced, Power Supplier shall be free to appoint as the replacement Engineer any firm from the above list. Meralco shall not object to the Finance Parties’ use of the same Independent Engineer.</i>”</p>	The list is made up of reputable and internationally recognized Independent Engineers. Power Supplier may propose to add name/s to the list, subject to Meralco confirmation thereof per second to last paragraph of this provision.



				<p>Please provide the qualifications of the listed Independent Engineers, why they have been chosen, and if they have done work for Meralco and/or its affiliates.</p> <p>Please also confirm that this list is not exhaustive and that the Power Supplier may add to this list provided that those added meet the qualifications.</p> <p>Moreover, please note that PB Power is now WSP; please replace PB Power with WSP.</p>	The updated name of the concerned Independent Engineer (i.e., PB Power to WSP) will be reflected in the final PSA.
182		Independent Engineer	22.16	<p>Independent Engineer</p> <p>In relation to Section 22.16, MERALCO to please confirm if the independent engineer appointed by the parties under the PSA must be the same independent engineer under the financing documents.</p>	The Independent Engineer appointed by the parties under the PSA is not necessarily the same independent engineer under the financing documents.
183		Independent Engineers	Section 22.16	<p>Section 22.16 states that the Independent Engineer must act in an <i>"independent fashion"</i> but does not define what is meant by <i>"independent fashion"</i>.</p> <p>We suggest the following amendment to Section 22.16 as follows:</p> <p>The Parties agree that there shall be an independent firm of engineers of international reputation (the "Independent Engineer") that shall act in an independent fashion to witness and evaluate testing and make other certifications based on its evaluations for purposes of establishing compliance with requirements under this Agreement. <b><u>The Independent Engineer shall be impartial in the provision of professional advice, judgment or decision. It shall inform the Power Supplier and Meralco in case of any potential conflict of interest that might arise in the performance of its services, and shall not accept remuneration other than as provided under this Agreement and which prejudices its independent judgment. ***</u></b></p>	As relayed to the TPBAC by Meralco, Meralco shall retain the provision.
184		Independent Engineer	PSA, Section 22.16	<p>Section 22.16 of the PSA provides a list of <i>"independent firms of engineers (or their successors or Affiliates)"</i> from which the Power Supplier can choose an Independent Engineer. Moreover, <i>"[i]f in Power Supplier's or the requisite majority of Finance Parties' opinion, the firm acting as Independent Engineer should be replaced, Power Supplier shall be free to appoint as the replacement Engineer any firm from the above list. Meralco shall not object to the Finance Parties' use of the same Independent Engineer."</i></p> <p>Further to our previous query requesting confirmation that this list is not exhaustive and that the Power Supplier may add to this list provided that the added entities meet the qualifications, please consider adding the following reputable entities, who are</p>	Response is same as for Item#181.

recognized in the industry for their expertise and professionalism: (a) Jacobs, (b) Wood, (c) Tractebel, (d) Fluor, (e) WorlyParsons Ltd., (f) Arcadis NV, (g) Arup, (h) JGC, (i) Tecnicas Reunidas, and (j) RWE.

Also, as previously mentioned, we note that PB Power is now WSP.

We propose that Section 22.16 be revised as follows:

The Parties agree that there shall be an independent firm of engineers of international reputation (the "Independent Engineer") that shall act in an independent fashion to witness and evaluate testing and make other certifications based on its evaluations for purposes of establishing compliance with requirements under this Agreement. The Parties agree that the following firms of engineers (or their successors or Affiliates) qualify as capable engineers:

Poyry Energy  
 Aecom  
 Mott MacDonald  
 SAIC Energy, Environment & Infrastructure LLC  
~~PB Power~~ WSP  
 Sargent & Lundy  
 Stone & Webster  
 Black & Veatch  
 Burns and Roe  
 Connell Wagner  
 GHD Pty Ltd.  
 Fichtner GmbH  
 Sinclair Knight Merz

Jacobs

Wood

Tractebel

Fluor

WorlyParsons Ltd.

Arcadis NV

Arup

JGC

Tecnicas Reunidas

RWE

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185	Independent Engineers	Section 22.16	<p>In the second paragraph of Section 22.16 of the PSA, Meralco is given the option to “[object] to the appointment of any or all the short-listed Independent Engineers with a statement of the reason for such objection on grounds of conflict of interest stating the nature of the conflict.”</p> <p><b>Given that Meralco came up with the list of Independent Engineers, on what basis can a conflict of interest arise on the part of Meralco?</b></p> <p><b>How is a situation of an ongoing or repeated rejection of Independent Engineers appointed by the Power Supplier addressed in the PSA? Who would determine the validity of an objection by Meralco?</b></p> <p>We believe that Meralco should not be able to object to the Power Supplier’s choice of Independent Engineer from the short-listed Independent Engineers especially considering that this list was provided by Meralco. If Meralco does not wish for the Power Supplier to use any one or a number of these firms, then those firms should be removed from the list.</p> <p>We suggest that the following amendment to Section 22.16 as follows:</p> <p style="text-align: center;">***</p> <p>Power Supplier shall appoint one or more of the above listed engineering firms to act in the capacity of Independent Engineer prior to the date of Financial Close. Prior to the appointment of the Independent Engineer, Power Supplier shall send a written notice to Meralco indicating a short-list of the Independent Engineers it intends to appoint. <del>Within ten (10) days from receipt of such notice, Meralco shall send a written reply (i) confirming that any of the short listed Independent Engineers are acceptable to Meralco, or (ii) objecting to the appointment of any or all the short listed Independent Engineers with a statement of the reason for such objection on grounds of conflict of interest stating the nature of the conflict. In the event of a valid objection under item (ii) above, Power Supplier shall provide for Meralco’s consideration, a substitute short list of Independent Engineers.</del></p>	<p>Conflict of interest is not necessarily as regards Meralco, as in case of an Independent Engineer affiliated with [or simultaneously/consistently engaged/retained by] Power Supplier. In any case, the provision requires Meralco to state the nature of any conflict. Taken together with discussion above, the list is made up of reputable and internationally recognized Independent Engineers, who are generally acceptable unless a conflict of interest arises.</p>
186	Confidentiality	22.3.1	<p>Section 22.3.1 defines what is considered “Confidential Information” and outlines the responsibilities of the Parties. For information to be confidential, Section 22.3.1 requires that it be “designated in writing as confidential”.</p> <p>We propose that information be considered as confidential even without such designation.</p> <p>We propose that Section 22.3.1 be amended as follows:</p>	<p>As relayed to the TPBAC by Meralco, Meralco shall retain the phrase “and designated in writing as confidential” as removing it would mean any and all information, documentation, data or know-how disclosed to it by the other Party even those that are not material.</p>

				<p>Each Party agrees that it will, and will ensure that its employees, officers and directors will, and will use best efforts to ensure that its agents will, hold in confidence this Agreement and all information, documentation, data or know-how disclosed to it by the other Party <del>and designated in writing as confidential</del> (the "Confidential Information"), and will not disclose to any third party or use Confidential Information or any part thereof without the other Party's prior written approval, ***.</p>	
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MATRIX OF COMMENTS 3 – **PSA TEMPLATE’S APPENDICES**-RELATED QUERIES/COMMENTS

ITEM #		TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION RECOMMENDATIONS / PROPOSED WORDING	RESPONSE
1		Incremental Energy	Section 6.3.4 of the PSA, Section 5.3 of Appendix G, Appendix E	<p>Under Section 6.3.4 of the PSA, Meralco shall <i>“have the option to increase or decrease its day-ahead nominations, subject to the Technical Limits, Operating Procedures and Grid Code”</i>. In addition, under Section 5.3 of the Appendix G, Meralco shall have the “option to increase or decrease its day-ahead energy nomination schedule on an intra-day basis” and “option to increase its day-ahead energy nomination schedule on a day-after basis.”</p> <p>Considering that the Incremental Energy is within the Contract Capacity and its Associated Energy, we wish to clarify why this is being treated differently and Meralco has to pay lower than the Price, i.e., at the lower of the WESM price and the sum of VOM+Fuel. This is very disadvantageous for the Power Supplier especially in the low WESM price regime moreso that it doesn’t have the equivalent gains in the high WESM price regime. This can be abused by the DU by nominating a lower, or zero, day- ahead values, increase it up to Contract Capacity intra-day or day-after and only pays lower than the Price.</p> <p>Because this Incremental Energy is within the Contract Capacity and the Associated Energy, the Incremental Energy should be paid by Meralco at the Price.</p>	<p>The power supplier was expected to bid accordingly based on Meralco’s day-ahead nomination. If Meralco nominates lower day-ahead energy nomination, Power Supplier shall base its bid with this nomination. Meralco will not have any Incremental Energy to purchase.</p>
2		Incremental Energy	PSA, Section 1.1, “Incremental Energy”  PSA, Appendix G, Section 5.3	<p>Under Appendix G of the PSA, Meralco has the option to increase its day-ahead energy nomination schedule on a day-after basis up to the actual Metered Quantity and shall be declared by the Power Supplier in its day-after declaration to the WESM as BCQs for Meralco. Such revised nomination in excess of the day-ahead energy nomination schedule up to the Contract Capacity shall be the Incremental Energy for that interval.</p>	<p>This is well noted. The formula for fuel and VOM will be revised such that the Incremental Energy and Excess Energy shall be paid based on the Contract Price and remove the qualifier of paying between the lower of the WESM and the Monthly Variable Payment Rate.</p> <p>Fuel Payment Formula will reflect various changes to capture (a) Heat Rate being subjected to cap throughout the Term and</p>

			<p>PSA, Appendix E, Component D</p> <p>For such Incremental Energy, the Power Supplier shall be paid the lower of (a) WESM Price at Plant’s Delivery Point for the relevant Trading Interval and (b) the Monthly Variable Payment Rate.</p> <p>Considering that the Incremental Energy is within the Contract Capacity and its Associated Energy, we previously sought clarification why the Incremental Energy is being treated differently and Meralco has to pay lower than the Price, i.e., at the lower of the WESM price and the sum of VOM+Fuel. This is very disadvantageous for the Power Supplier especially in the low WESM price regime more so that it does not have the equivalent gains in the high WESM price regime. This can be abused by the DU by nominating a lower, or zero, day-ahead values, increase it up to Contract Capacity intra-day or day-after, and only pay lower than the Price.</p> <p><b>In addition to the foregoing, please explain the rationale why the Incremental Energy is priced lower than the Associated Energy.</b></p> <p><b>Please also advise how energy imbalances (e.g., energy generated due to ambient conditions) in excess of Meralco’s nomination shall be treated considering that such imbalances are not due to the fault of the Power Supplier.</b></p> <p>Please delete terms in the formula of VOM and Fuel referring to Incremental Energy and Excess Energy (<math>IE_h</math>, <math>\sum IE_h</math> and <math>EE_h</math>, <math>\sum EE_h</math>).</p> <p>1. In the formula for Monthly Fuel Payment Cap (MFPcap):</p> $MFPcap = \sum [(FPcap,m) * (BCQh - RPh - IEh - EEh) * GNPHRh/1,000,000] * FX$ <p>In the formula for Monthly Fuel Payment actual (MFPact):</p> $MFPact = [(FPact) * (\sum BCQh - \sum RPh - \sum IEh - \sum EEh) * HRact/1,000,000] * FX$ <p>2. Exclude IE and EE in MRIEP, its definition and formula.</p>	<p>(b) Incremental Energy and Excess Energy will be priced at variable costs (instead of lower between variable &amp; WESM).</p>
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				<p>MR<del>IEP</del> defined as the Monthly Replacement Power, <b>Incremental Energy</b> and Excess Energy Payment.</p> $MRIEP = \Sigma((RPh + IEh + EEh) * IER)$ <p>3.In Monthly Variable Payment Rate (MVPR)</p> <p><u>For Contract Year 1-10</u>  <math>MVPR = (\text{minimum (MFPcap, MFPact)} + MVOM) / \Sigma(BCQh - RPh - <del>IEh + EEh</del>)</math></p> <p><u>For Contract Year 11-20</u>  <math>MVPR = (MFPact + MVOM) / \Sigma(BCQh - RPh - <del>IEh + EEh</del>)</math></p> <p>4.In the formula of Monthly Variable O&amp;M Payment (MVOM)</p> $MVOM = [ (MVOMUSD,Non-Esc + MVOMUSD,Esc) + (MVOMPhP,Non-Esc + MVOMPhP,Esc) ] * \Sigma(BCQh - RPh - IEh + EEh)$	
3		Monthly Power Bill Prior to Commercial Operations Date	Section C of the Appendix E	<p>Commissioning Energy Payment and Power Replacement Payment do not include any Capacity Payment (i.e., Capacity Payment, Interconnection Facilities Payment and Fixed O&amp;M). We note that capacity payments are present in other PSAs like that of San Buenaventura Power Ltd. Co. We propose that Commissioning Energy Payment and Power Replacement Payment should also include Capacity Payments.</p>	ERC approved rates exclude Capacity Payments for Commissioning Energy & Replacement Power.
4		Agreements for Submission	Appendix C Part 3	<p><b>Power Supply Agreement Template, Appendix C Part 3</b></p> <p>d. Details on the <b>procurement process</b> of fuel including requests for proposals, proposals received, and marking of proposal terms, etc.</p> <p>1. <b>Copy of agreements related to the construction, development, operation, and maintenance of the Plant</b> (i.e. Transmission Service Agreement, Interconnection Agreement, Fuel Supply Agreement, etc., if available and, in any case, with commercially sensitive information redacted or omitted).</p> <p>Please limit the agreements only those being required by the ERC for pre-filing purposes.</p>	These are part of the required documents submitted for ERC filing.

5	ASCRP	Appendices , page 31	<p>Also, for the fuel procurement process, can we limit this to the Fuel Supply Plan?</p> <p><b>PSA TEMPLATE</b></p> <p><i>A. Component H – Ancillary Services Cost Recovery Payment (ASCRP)</i></p> <p>In view of the DOE Circular No. DC2019-012-0018, the Ancillary Services Cost Recovery Payment shall cover the cost recovery of the ancillary services charges based on a proportionate allocation of ancillary services charges among the affected power industry participants and a treatment of such ancillary services charges as pass-through costs under prevailing regulations. The ancillary services charges contemplated under this Component H shall be the lower between the Ancillary Services Cost Recovery cap or the actual ancillary services charges incurred by the Power Supplier for the relevant Billing Period.</p> $ASCRP = \text{minimum}(ASCR_{actual}, [ASCR_{cap} * (EBCQ_c - ERP_y)])$ <p>Where:</p> <p><math>ASCR_{actual}</math> = actual ancillary services charges imposed and billed to the Power Supplier based on the approved implementing rules and guidelines of DOE Circular No. DC2019-012-0018, in PIP, provided that if the Power Supplier's Plant is not fully contracted under this Agreement, the Parties shall agree on the methodology to allocate the actual ancillary services charges relative to the Contract Capacity and/or Associated Energy, as applicable. Power Supplier can not impose or charge Component H to Meralco unless Parties have agreed on an allocation methodology.</p> <p><math>ASCR_{cap}</math> = the Annual Ancillary Service Cost Recovery Cap for Contract Year <math>u</math>, in PIP/RWh, as set forth at Schedule 1 of this Appendix E.</p> <p><math>EBCQ_c</math> = as previously defined</p> <p><math>ERP_y</math> = as previously defined</p> <p>On ASCRP, what is the evaluation process for the capping?</p>	<p>Kindly refer to response for Item on Ancillary Services Cost Recovery Payment in Matrix 2 Bid Docs Queries.</p>
6	Reimbursable Costs	Appendices, page 31	<p><b>PSA TEMPLATE</b></p> <p><i>6. Component F – Reimbursable Cost Payment (RCP)</i></p> <p>Component F is the Reimbursable Cost Payment for each Billing Period which shall be based on the following formula:</p> $RCP = RPTP + SDSU + SP$ <p><i>6.1 Real Property Tax Payment (RPTP)</i></p> <p>Meralco shall reimburse and pass through the Real Property Tax (in the proportion the Contract Capacity bears to the Net Dependable Capacity) as assessed and paid during the relevant Billing Period for real property</p>	<p>1. Yes. Any assumptions on excise tax should be included in the fuel cost.</p> <p>2. Reimbursable costs are not included in the LCOE evaluation.</p>



				<p>owned, leased, or used by or the primary benefit of which is enjoyed by Power Supplier.</p> <p><b>6.2 Shutdown and Startup Payment (SDSU)</b></p> <p>The Startup and Shutdown Payment (SDSU) shall be the actual fuel costs incurred by Power Supplier in connection with any start-up and shut-down of the Plant for reasons requested by Meralco.</p> <p><b>6.3 Supplemental Payments (SP)</b></p> <p>Supplemental payments shall include the following:</p> <ul style="list-style-type: none"> <li>(a) Energy and Environmental Tax, if applicable;</li> <li>(b) any applicable NGCP PDS and SO Charges for the supply of Contract Capacity and Associated Energy to Meralco;</li> <li>(c) any applicable "Compensation for Must Run Unit" pursuant to any order of the ERC should any be charged in connection with the supply of Contract Capacity and Associated Energy to Meralco;</li> <li>(d) Benefits to host community charges under ER 1-94; (in the proportion of the BCQ to the total MQ declared by the plant) fees charged by the Market Operator; and</li> <li>(f) local business taxes.</li> </ul> <p>1. Are excise taxes a reimbursable cost or should this be included as part of fuel costs/VOM?</p> <p>2. On Reimbursable Costs, what is the evaluation process for the reimbursement?</p>	
7		Appendix A PLANT DESCRIPTION and SITE LOCATION	1	<p>"The Project has agreed on a connection methodology with the NGCP, with the final route of transmission line consisting wholly of private lands, i.e. no indigenous, public, or protected areas. The approved transmission interconnection of Power Supplier shall be through a new [ ]-km [ ] kV transmission line ("Power Supplier TL"). The Power Supplier TL ..."</p> <p>Suggest to provide exemption specifically on indigenous land if Power Supplier has secured Free and Informed Prior Consent.</p>	PSA provisions are not subject to change, except to reflect specifics of offer of Winning Power Supplier.
8		PSA Appendix	Calculation of actual Monthly Fuel Payment	<p>5. Calculation of actual Monthly Fuel Payment</p> $MFP_{act} = [(EP_{act}) * (\sum BCQ_t - \sum RP_t - \sum IE_t - \sum EE_t) * HR_{act} / 1,000,000]] * FX$ <p>(based on actual fuel cost computation of Bidder)</p> $= [(3.1923) * (941,550,000.00) * 9,090.00 / 1,000,000]] * 51.25$ $= \text{Php } 1,400,247,605.16$	All assumed values in the sample calculation are assumed. For PSA implementation, supporting documents shall be submitted by the Power Supplier for actual values.

				Please indicate all assumed values used in computation in the table for assumed values; or please show mathematically how these values were achieved.	
9		PSA Appendix	Definition of FPactual	<p>We suggest inserting the term “<u>First-In-First-Out basis</u>” for clarity in what inventory valuation method to use</p> <p>We also suggest adding the phrase “<u>fuel delivered during the previous Billing Period</u>”.</p> <p>Because the PSA requires Supplier to keep an average 30 days inventory, such beginning inventory at the start of the Billing Period is presumably accumulated from the deliveries in the previous Billing Period; hence its relevance in reflecting the true cost of generation during the Billing Period</p>	The suggested First-In-First-Out basis is most suited for fully contracted arrangement with a Power Supplier, while the weighted average methodology can be both applied to fully and partially contracted plants. Suggestion unacceptable.
10		PSA Appendix	6.3 Supplemental Payments	<p>We suggest adding:</p> <p><u>“any applicable cost recovery allocation for ancillary services in the Reserve Market assessed to generators if any is made pursuant to an ERC order;”</u></p>	As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded.
11		PSA Appendix	8. Ancillary Services Cost Recovery Payment (ASCRP)	<p>We suggest adding:</p> <p>Actual ancillary services charges imposed and billed to the Power Supplier based on the approved implementing rules and guidelines of DOE Circular No. DC2019-012-0018 “<u>and pursuant to an ERC order on Ancillary Services Cost Recovery Mechanism for NGCP</u>”</p>	Kindly refer to response for Item on Ancillary Services Cost Recovery Payment in Matrix 2 Bid Docs Queries.
12		PSA Appendix	ASCR Cap	Suggest that the ASCR Cap be stated only for the first 10 years under the same concept that bidder takes only a 10-year risk in its fuel by the ratio of Fo/Fa being applicable only for 10 years	As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded.
13		PSA Appendix	Day Ahead Capacity Availability and Energy Nomination Schedule	<p>We suggest adding “<u>provided that Power Supplier is under no obligation to offer and/or sell to Meralco any Incremental Energy.</u>”</p> <p>We want to keep the option to sell Incremental Energy to WESM because under the PSA Meralco pays the lower of its marginal cost or WESM; we want to be able to keep the margin if WESM &gt; marginal cost</p>	As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded, Power Supplier shall have the obligation to deliver up to the Contract Capacity.
14		PSA Appendix	PH CPI	<p>Why is it that the PH CPI escalation was based on the last 3 calendar months?</p> <p>We suggest using the month when the billing period starts.</p>	This is based on ERC-approved provisions for PH CPI. As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded.
15		PSA Appendix	US CPI	<p>Why is it that the US CPI escalation was based on the last 3 calendar months?</p> <p>We suggest using the month when the billing period starts.</p>	This is based on ERC-approved provisions for US CPI. As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded.

<p>16</p>	<p>PSA Appendix E</p>		<p>Why is MRIEP is the Monthly Replacement Power, Incremental Energy and Excess Energy Payment for the Billing Period calculated as follows:</p> $\text{MRIEP} = \sum((\text{RPh} + \text{IEh} + \text{EEh}) * \text{IER})$ <p>Where:</p> <p>MRIEP = the payment for the Replacement Power and/or Incremental Energy and/or Excess Energy for the Billing Period, in PhP.</p> <p>RPh = as previously defined</p> <p>IEh = as previously defined</p> <p>EEh = as previously defined</p> <p>IER = the lower between WEP during the relevant Trading Interval h and the Monthly Variable Payment Rate (MVPR) IER = minimum (WEP, MVPR)</p> <p>Where:</p> <p>WEP = as previously defined <u>For Contract Year 1 to 10</u></p> $\text{MVPR} = (\text{minimum}(\text{MFPcap}, \text{MFPact}) + \text{MVOM}) / \sum(\text{BCQh} - \text{RPh} - \text{IEh} - \text{EEh})$ <p><u>For Contract Year 11 to 20</u></p> $\text{MVPR} = (\text{MFPact} + \text{MVOM}) / \sum(\text{BCQh} - \text{RPh} - \text{IEh} - \text{EEh})$ <p>Where:</p> <p>MFPcap = as previously defined</p> <p>MFPact = as previously defined</p> <p>MVOM = as defined in</p> <p>Component</p> <p>BCQh = E below as previously defined</p> <p>RPh = as previously defined</p> <p>IEh = as previously defined</p> <p>EEh = as previously defined</p> <p>We suggest that Incremental Energy should be billed based on MFPact (not on Minimum of WEP or contract energy price) since it is still within the Contract Capacity and Power Supplier should be paid based on the Contract Price.</p>	<p>Kindly refer to response for Item#2.</p>
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				<p>On Excess Energy</p> <ul style="list-style-type: none"> <li>- Excess Energy (when MQ &gt; Contract Capacity) will only be known on a day-after basis when metering data are made available by the MSP to the Power Supplier</li> </ul> <p>When there is Excess Energy, Power Supplier may offer to sell such energy to Meralco at the Contract Price with CRF calculated at 50% and such offer will be made when, pursuant to Section 6.2 of Appendix G of the PSA, Power Supplier provides Meralco its actual Metered Quantity and indicating therein the Excess Energy which Power Supplier wishes to offer to Meralco. The offer to sell the Excess Energy is deemed declined by Meralco if Meralco does not confirm its acceptance thereof within three (3) hours of receiving the offer and Power Supplier may sell such Excess Energy to the WESM.</p>	
17		Plant Description / PSA Appendices	Appendix A / Page 63	<p>Since the Power Supplier is allowed to supply from a portfolio of plants, we suggest that, for purposes of clarity, the Power Supplier shall include the Plant Description and Site Locations of all its Nominated Power Plants that it identified during the CSP.</p> <p><i>Revised heading and note to read:</i></p> <p style="text-align: center;">Appendix A PLANT DESCRIPTION AND SITE LOCATIONS</p> <p>[NOTE: Power Supplier to include <del>the</del> <u>the</u> Plant Description and Site Locations of <del>2<sup>nd</sup> Plant</del> <u>all its Plants</u> if applicable]</p>	Power Supplier can include all of the Plant Description and Site Locations of all its Plants.
18		Plant Description / PSA Appendices	Appendix A, No. 1 / Page 63	<p>Related to the request that Bidder be allowed to supply from its Nominated Power Plant, portfolio of plants, or from the WESM, we suggest that instead of describing the baseload characteristics of the Nominated Power Plant, the appendix should instead show the capability of the Power Supplier to provide the required Contract Capacity and the Associated Energy to Meralco on a 24/7 basis.</p> <p><i>Revised statement to read:</i></p> <p>xxx The Plant will be designed <del>to operate as a baseload</del> <u>to provide the capacity requirements of Meralco</u>, and will use proven [_____] technology and contract with highly respected construction contractors and equipment</p>	The intention of the CSP is to encourage construction and operation of efficient and reliable baseload plants. The proposal will contradict this purpose. As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded.

				manufacturers. Given the size of the Project, the Plant will be designed to utilize [_____(insert here fuel procurement details)____]. xxx	
19		Energy Payments for Contract Year 11 to 20 / PSA Appendices	Appendix E, No. 4 Component D / Pages 86 - 88	<p>To provide the lowest possible cost of power to Meralco’s consumers, we suggest that Bidders be given the option to cap the volatility in fuel price beyond Contract Years 1 to 10 into Contract Years 11 to 20.</p> <p><i>Revised provision to read:</i></p> <p>For Contract Year 11 to 20</p> <p><b>MFP = <u>minimum (MFP<sub>cap</sub>, MFP<sub>act</sub>)</u> + MRIEP</b></p>	Kindly refer to response for Item#2.
20		Competitive Selection Process for the Plant Fuel	Appendix G, No. 11 / Page 127	<p>Depending on the Nominated Power Plants that will be offered by the Bidders, the provision for a competitive selection for Plant Fuel may not be applicable. Thus, we suggest that the clause “if applicable” be included.</p> <p><i>Revised provision to read:</i></p> <p>11. 1 <b>if applicable, a A</b> 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 days (180) Days before the onset of provision of Commissioning Energy.</p>	As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded.
21		Final Invoice	PSA, Article 11 in relation to Appendix H, Section 3	<p>Section 3 of Appendix H provides that “[o]n the fifteenth (15th) day of the immediately succeeding month after the end of the Billing Period, Power Supplier shall provide Meralco with a Final Invoice for such Billing Period, in the same format as the Provisional Invoice (the “Final Invoice”); provided that the Final Invoice shall reflect any corrections or adjustments agreed to by the Parties.”</p> <p>We note that the above provision does not clearly state when the corrections or adjustments will be reflected and when the payments arising therefrom shall be made.</p> <p>We propose the following additional paragraph:</p> <p><b>“Any amount due to Power Supplier as a result of any amended, revised or modified Final Invoice arising from Section 11.2.2 and mutually agreed</b></p>	This can be covered through a protocol between the Parties.

				<p>upon by the Parties, shall be reflected in the succeeding Final Invoice, and shall be due and payable on the corresponding Payment Date(s) thereof.”</p>	
<p>22</p>		<p>Reference Rates</p>	<p>PSA, Section 1.1, London Interbank Offered Rate (“LIBOR”) and PhP BVAL Reference Rate; Article 11 in relation to Appendix H, Section 4</p>	<p>Article 11 and Appendix H use Bloomberg Valuation Service (“BVAL”) and LIBOR as reference rates for the computation of interest. However, we understand that LIBOR may cease to be published. Under Section 1.1, in this instance, the parties shall agree on the applicable alternate rate. We propose to add further details on the applicable alternate rate.</p> <p>We also propose that a similar approach be adopted for BVAL in case BVAL also ceases to be published.</p> <p>We propose the following revisions to the definition of LIBOR as follows:</p> <p>LIBOR means the London Interbank Offered Rate for a term equivalent to 90 days posted at approximately 1100H (London time) on the day in which the sum was due and payable on the LIBOR page of Bloomberg (or such successor page or electronic service provider) or if there is no equivalent term, the next longest term will be used. If the rate referred to above is not available on the relevant date, the applicable rate shall be the last rate posted or displayed on such page before the rate became unavailable. In the event that such page or website ceases to be available, the applicable rate shall be that rate posted or displayed on such page, website or other relevant service to be agreed upon by the Parties. <b><u>In the event that LIBOR is discontinued, eliminated or replaced, the Parties shall use the prevailing market convention in determining the benchmark rate for loans if there is no known replacement for LIBOR at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement, as may be applicable.</u></b></p>	<p>In the event LIBOR is discontinued or cease to be available, Parties shall agree on an alternative reference rate.</p>

				<p>PhP BVAL Reference Rate means the PhP BVAL Reference Rate for a term equivalent to three (3) months, or if there is no equivalent term, the next longest term closest to three (3) months, as posted or displayed at 1700H (Manila time) on the relevant page of the website of the Philippine Dealing and Exchange Corp., calculated by Bloomberg, as Benchmark Calculation Agent engaged by the Bankers Association of the Philippines, the Benchmark Administrator, using BVAL Evaluated Pricing Services; provided, that if the rate, page or website is not available on the relevant date, the applicable rate shall be the last rate posted or displayed on such page before the rate, page or website became unavailable; provided further, that if the page or website ceases to be available, the applicable rate shall be that rate posted or displayed on such page, website or other relevant service to be agreed upon by the Parties. <b><u>In the event that PhP BVAL is discontinued, eliminated or replaced, the Parties shall use the prevailing market convention in determining the benchmark rate for loans if there is no known replacement for PhP BVAL at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement, as may be applicable.</u></b></p>	
23		Method of Payment	Article 11 in relation to Appendix H, Section 5	<p>Section 5 of Appendix H provides that “[a]ll payments by Meralco pursuant to this Appendix shall be made by check, or wire transfer of cleared funds to such account/s as Power Supplier may notify in writing.”</p> <p>We note that payments made by check will still be subject to clearing and will thus take time before the amount covered by the check will be made available to the Power Supplier.</p> <p>We propose the following amendment:</p> <p>All payments by Meralco pursuant to this Appendix shall be made by <del>check,</del> <del>or</del> wire transfer of cleared <b>immediately available</b> funds to such <b>bank</b> account/s as Power Supplier may <del>notify</del> <b>specify in writing from time to time.</b></p>	As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded. Retain check as one of the payment modes.

24		Receipt	Article 11 in relation to Appendix H, Section 6	<p>Section 6 of Appendix H provides that the <i>“Power Supplier shall issue a value-added tax-qualified official receipt to Meralco acknowledging receipt of any payment hereunder on the date of such payment.”</i></p> <p>The Power Supplier will need to get the Value-Added Tax (<i>“VAT”</i>) certification from Meralco first for it to properly indicate the VAT zero-rated and VAT-exempt sales of Meralco on the official receipt.</p> <p>We propose the following wording for Section 6 of Appendix H:</p> <p style="padding-left: 40px;">Power Supplier shall issue a value-added tax-qualified official receipt to Meralco acknowledging receipt of any payment <del>hereunder on the date of such payment</del> <b><u>made by Meralco under this Agreement within seven (7) Business Days from receipt from Meralco of the monthly certification of VAT remittances and zero-rated and VAT-exempt sales of Meralco provided under Appendix H (Invoicing and Payment Procedures).</u></b></p>	Meralco provides an advance copy of the VAT certification to Power Supplier. May we seek further clarification on the requested period within which to provide VAT OR?
25		Option to Pay in US Dollars	Article 11 in relation to Appendix H, Section 7	<p>Section 7 of Appendix H provides that <i>“Meralco has the option to pay in Philippine Peso or US Dollars, the USD-denominated portions of the Monthly Power Bill, provided, if Meralco opts to pay in US Dollars, it shall send written notice to the Power Supplier within 10 days after the receipt of the Provisional Invoice.”</i></p> <p><b>Please confirm that the Monthly Power Bill and Provisional Invoice referred to above actually refers to the Final Invoice which Meralco shall pay.</b></p> <p>In addition, we propose that Meralco pay in USD the USD denominated portion of the Final Invoice.</p> <p>For consistency, we propose the following wording:</p> <p style="padding-left: 40px;"><del>“7 Option to Pay in US Dollars</del> <b>Payment in US Dollars</b></p> <p><del>Meralco has the option to pay in Philippine Peso or shall pay in US Dollars, the USD-denominated portions of the Monthly Power Bill</del> <b>Final Invoice</b>, provided, if Meralco opts to pay in US Dollars, it shall send written notice</p>	<p>They are one and the same (Monthly Power Bill and Provisional invoice) but may vary in amount. Monthly Power bill will ultimately mean final bill after all agreed adjustments are reflected in the preliminary bill (FYG, preliminary bill will initially be used for early review of each bill component calculation).</p> <p>As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded (i.e. retain the option to pay in Philippine Peso)</p>



				to the Power Supplier within 10 5 days after the receipt of the Provisional Final Invoice.”	
26		Replacement Power	Appendix E, MPB Component D	<p>The formula for computing the Monthly Replacement Power, Incremental Energy and Excess Energy Payment (“<i>MRIEP</i>”) includes the IER which is the lower between the WEP during the relevant Trading Interval and the Monthly Variable Payment Rate (“<i>MVPR</i>”). In this regard, WEP means the WESM Price at Plant’s Delivery Point for the relevant Trading Interval.</p> <p><b>Please confirm that WESM Price referred to here is the ex-ante price.</b></p>	Until the commencement of the NMMS, WESM Price here refers to Ex-Ante Price.
27		Ancillary Services	Appendix E, MPB Component H	<p>The formula for the MPB includes the Ancillary Services Cost Recovery Payment (“<i>ASCRP</i>”).</p> <ol style="list-style-type: none"> <li><b>1. Please clarify in what instances the Power Supplier can incur ancillary services charges. How is the ASCRP different from the ancillary services fees paid to NGCP?</b></li> <li><b>2. Does <i>ASCR<sub>actual</sub></i> refer to actual ancillary service charges that NGCP may impose upon and bill to the Power Supplier, and exclude any ancillary service charges that NGCP may charge and bill to Meralco?</b></li> <li><b>3. We have earlier commented that a cap for ASCRP is very hard to anticipate or estimate. In any event, we propose that the ASCRP be transferred to under the supplemental payment.</b></li> <li><b>4. In relation to item 2, (a) does the cap for ASCRP pertain to the maximum amount the Power Supplier can bill (or recover) from the Meralco; and (b) will only be the actual ancillary service charges imposed upon and billed to the Power Supplier by NGCP (and not any ancillary service charges that NGCP may charge and bill to Meralco) be counted against the cap?</b></li> </ol>	<ol style="list-style-type: none"> <li>1. Kindly refer to response for Item on Ancillary Services Cost Recovery Payment in Matrix 2 Bid Docs Queries.</li> <li>2. Yes.</li> <li>3. No, the ASCR cannot be transferred under the supplemental payment.</li> <li>4. a. Yes, it is the maximum amount that can be recovered. b. Yes</li> </ol>
28		Tests	Appendix J	Appendix J on Tests provides a note that “[t]ests provided below are applicable to coal power plant. If different Plant technology, Power Supplier to provide corresponding test procedure approved by an Independent Engineer”.	For clarity, it shall be submitted upon PSA implementation.

				Kindly clarify when the corresponding test procedure approved by an Independent Engineer shall be submitted to Meralco.	
29		Excise Tax and Real Property Tax	Appendix E	<p>There appears to be no mechanism for recovering any potential excise taxes on fuel source and real property taxes.</p> <p><b>We propose that any excise or other tax to be imposed on the fuel source and real property taxes to be pass-through charges under Annex E as Other Payment – Reimbursable Cost Payment – Supplemental Payment (similar to Energy and Environmental Tax).</b></p>	All incidentals for commodity cost shall be included in the Fo component or FOM/VOM.
30		Fuel Price Index	Component D of Appendix E  Financial Evaluation Workbook	<p>Under Appendix E, P<sub>0</sub> is based on simple average of actual quarterly fuel prices.</p> <p><b>Please clarify if this is based on the nominated fuel price index.</b></p>	Yes, this shall be based on the nominated fuel price index by the Bidder.
31		Fuel Price Index	Component D of Appendix E  Financial Evaluation Workbook	<p>Under Section 3.2(f) of the IPB in relation to Appendix E, the Bidder can only nominate fuel prices based on the relevant indices published by the World Bank's Commodity Markets Outlook (i.e. (i) Coal, Australia; (ii) Natural Gas, US; (iii) Natural Gas LNG, Japan), CoalSpot.com for other coal ranks, or any other index that is easily accessible by Meralco and the electric power industry participants.</p> <p><b>1. Will the Bidder simply provide access to information on the index, that is, provide Meralco access to the page, or downloaded files or screenshot containing prices of the index, as may be practicable?</b></p> <p><b>2. Please confirm that if the indices do not have a quarterly index, the Bidder can compute and use the daily average for the quarter.</b></p>	<ol style="list-style-type: none"> <li>For publicly available indices, Meralco will have access to the indices. Otherwise, Bidder shall provide Meralco the necessary subscription and/or terminals to download the actual indices for the relevant Billing Period.</li> <li>For clarity, the Bidder can compute the quarterly index for the calendar quarter.</li> </ol>

32		Competitive Selection Process for Fuel	Appendix G, Section 11	<p>Section 11 of the Appendix G states:</p> <p>11.1. A detailed protocol for conducting an international competitive selection process for the fuel supply and its freight for the Plant shall be submitted by Power Supplier for confirmation by the Operating Committee not later than one hundred eighty (180) Days before the onset of provision of Commissioning Energy.</p> <p>11.2. Any material deviation from the specifications set out in Section 11.1 shall be subject to the prior written approval of the Operating Committee.</p> <p><b>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.</b></p> <p><b>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.</b></p>	<p>In our existing baseload PSAs, Power Supplier is directed to undergo a least cost fuel procurement process, in which Meralco should participate to ensure the selection of the fuel supplier with the most reasonable cost.</p> <p>For clarity, the Operating Committee is the same people as the Coordinating Committee.</p>
33		PSA	Appendix E-B / Section 1 / Page 81	<p>Capacity Payments Section 1. Component A – Monthly Capacity Payment for Excess Energy <b>MCPEE Formula</b> <b>Question:</b></p> <ul style="list-style-type: none"> <li>- What is the rationale for the 0.5 multiplier? Should be based on the whole capacity fee proportionate to the relevant trading interval</li> <li>- Excess Energy shall only be applicable if the available capacity is offered by the Power Supplier and taken by MERALCO. (see comments on Appendix G)</li> </ul> <p><b>Comment:</b> The Power Supplier has no obligation to supply MERALCO beyond the Contract Capacity, thus, the option of MERALCO to take the excess</p>	<p>The multiplier is based on existing baseload PSA.</p> <p>As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded, the Excess Energy will be charged at 50% discount for its Capacity Payment.</p>

				<p>energy is not possible, unless it is approved by the ERC and offered by the Power Supplier to MERALCO.</p> <p>We suggest that Excess Energy shall only be applicable if allowed by ERC, and the available capacity is offered by the Power Supplier and taken by MERALCO. If applicable, multiplier should be 1.</p>	
34		PSA	Appendix E-B / Section 2 / Page 82	<p>Capacity Payments Section 2. Component B – Monthly Interconnection Facilities Payment (MIFP) Recovery of Fixed O and M cost for the Interconnection Facilities is based on the Contract Capacity only, and does not include the corresponding additional capacity for the Excess Energy taken by MERALCO.</p> <p>If there is Excess Energy, we propose to include in the MIFP the corresponding capacity for the Excess Energy taken by MERALCO.</p>	As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded.
35		PSA	Appendix E-B / Section 4 / Page 87	<p>Energy Payments Section 4. Component D – Monthly Fuel Payment <b>IE Definition</b> <b>Question:</b> - What is the rationale for the different treatment of the Incremental Energy? Since this increase in energy falls under Incremental Energy, Meralco will be charged the lower of the WEP and the MVPR, at the risk of Power Supplier. Meralco should have binding Day-Ahead Nominations, except during MERALCO's partial force majeure situation where they will be allowed twice a day intra-day nomination (once during peak and once during off peak). Pls see comment for Section 5.3 of Appendix G.</p> <p>We suggest to charge the Incremental Energy the applied Fuel and Variable O&amp;M Fees.</p>	Kindly refer to response for Item#2.
36		PSA	Appendix E-B / Section 4 / Page 89	<p>Energy Payments Section 4. Component D – Monthly Fuel Payment <b>IER Definition &amp; Formula</b> Power Supplier is allowed to source its replacement power (RP) either</p>	As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded, the delivery of the Replacement Power is solely the fault of the Power Supplier. Hence, all risks should only be taken by the Power Supplier.

			<p>from other generators or from WESM. They will be exposed to the rates of the other generators or the varying prices of the WESM. In the end, they will be taking all the risk. In this regard, replacement power shall also be charged to MERALCO based on the applicable Fuel and Variable O and M Fee.</p> <p>We suggest to charge the RP the Fuel and Variable O&amp;M Fees under the same principle as the regular supply of power.</p>	
37		PSA	<p>Appendix E-B / Section 6.2 / Page 92</p> <p>“The Startup and Shutdown Payment (SDSU) shall be the actual costs incurred by Power Supplier in connection with any start-up and shutdown of the Plant for reasons requested by MERALCO.”</p> <p><b>Comment:</b> When MERALCO nominates zero or below Pmin, it may be uneconomical for the Plant to continue running, and thus, may have to be shutdown. In this situation, The Plant may incur additional cost during the shutdown and start-up and shall also be allowed to reimburse its cost from MERALCO. In addition, with consideration on the outage allowance, SDSU within the outage allowance shall also be reimbursed.</p> <p>Proposed Wordings:</p> <p>“The Startup and Shutdown Payment (SDSU) shall be the actual costs incurred by Power Supplier in connection with any start-up and shutdown of the Plant for any of the following reasons:</p> <ul style="list-style-type: none"> <li>a) Shutdown is requested by MERALCO,</li> <li>b) when the Plant is forced to shutdown because of MERALCO’s nomination below PMin, and</li> <li>c) when shutdown is within outage allowance</li> </ul>	As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded. The Startup and Shutdown costs incurred by Power Supplier outside the request of Meralco shall be borne by the Power Supplier only.
38		PSA	<p>Appendix E-B / Section 8 / Page 93</p> <p>“ASCR actual = actual ancillary services charges imposed ...XXX...as applicable. Power Supplier can not impose or charge Component H to MERALCO unless Parties have agreed on an allocation methodology.”</p> <p><b>Comment:</b></p>	This can be covered through a protocol between the Parties.

				<p>If the Power Plant is not fully contracted to MERALCO, Power Supplier should charge MERALCO of the ASCR proportionately based on the Contract Capacity vs the Plant Capacity.</p> <p>If ASCR if the Power Plant is not fully contracted to MERALCO, Power Supplier should charge MERALCO of the ASCR proportionately based on the Contract Capacity vs the Plant Capacity</p>	
39		PSA	Appendix G / Section 5.3 / Page 124	<p>“MERALCO shall, in all Trading Intervals....XXX..., nominate any value from zero up to Contract Capacity in any interval ....”</p> <p><b>Comment:</b> The Plant is required to run at least at Pmin for stable operation, thus, it is recommended that MERALCO nominate from PMin if the whole plant/unit is contracted to MERALCO, or at Proportionate Pmin if only portion of the Plant/unit is contracted.</p> <p>We suggest that MERALCO should nominate at least at Pmin or at the equivalent proportionate PMin.</p>	As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded, Meralco could nominate any value from zero up to Contract Capacity.
40		PSA	Appendix G / Section 5.3 / Page 124	<p>“MERALCO shall, in all Trading Intervals....XXX... deemed the nominated schedule for the day. Notwithstanding the foregoing, MERALCO shall have the option to increase or decrease its day-ahead nomination schedule on an <b>intra-day basis, ....”</b></p> <p><b>Comment:</b> Intra-day nomination will expose the Power Supplier to the volatility of the WESM prices. Day-ahead nomination shall be binding except in the event of MERALCO’s partial Force Majeure where MERALCO’s intra-day nomination shall be limited to 2 times a day, once during off peak and once during peak.</p> <p>MERALCO day ahead nomination is binding except during MERALCO’s event of Partial Force Majeure where they will be allowed to do intra-day nomination twice a day, once during off peak and once during peak period.</p>	As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded, the intra-day basis option to change the day-ahead nomination schedule shall be based on WESM rules and can be covered through a protocol between the Parties.

41		PSA	Appendix G / Section 5.3 / Page 124	<p>“MERALCO shall, in all Trading Intervals....XXX...WESM Rules. In addition, MERALCO shall have the option to increase its day ahead energy nomination schedule on a day-after basis up to actual Metered Quantity and shall be declared by the Power Supplier in its day-after declaration to the WESM....”</p> <p><b>Comment:</b> Considering that WESM prices for the day is already known, we believe that the day-after nomination would be unfair for the Power Supplier as this can be subject to biases.</p> <p>We suggest to delete this provision.</p>	As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded. The actual Metered Quantity will be the basis for the option to take Incremental Energy and Excess Energy.
42		PSA	Appendix G / Section 5.3 / Page 124	<p>“MERALCO shall, in all Trading Intervals....XXX... that interval. In case that Metered Quantity exceeds the Contract Capacity, MERALCO has the option to take the Excess Energy, ....”</p> <p><b>Comment:</b> The Power Supplier has no obligation to supply MERALCO beyond the Contract Capacity, thus, the option of MERALCO to take the excess energy is not possible, unless it is offered by the Power Supplier and approved by the ERC.</p> <p>We suggest to delete this provision.</p> <p>A separate provision maybe added to indicate that if allowed by ERC, Power Supplier may offer the excess capacity to MERALCO and MERALCO may take the offered capacity in whole or in part.</p>	Kindly refer to response for Item 56 in Matrix 3 PSA Template Queries_Main Body
43		Form of Direct Agreement	Appendix I, Page	Similar to above comments, we propose to consider the approved form by the Bidder’s lenders under the financing documents.	Not amenable. As relayed to the TPBAC by Meralco, Meralco shall retain the current form of the Direct Agreement.
44		Monthly Capacity for Excess Energy	Appendix E, Page 81	Aside from our initial comment on Meralco’s option for Excess Energy, the payment for Excess Energy should be the same as the payment for Contract Capacity, i.e. full Capacity Payments and Fixed Operation and Maintenance Fees as well as Energy Payments.	The capacity payment for Excess Energy shall be for the MCPEE only.

<p>45</p>	<p>Day Ahead Capacity Availability and Energy</p>	<p>Appendix G Section 5.3/ Page 123</p>	<p>5.3 xxx 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 up to the actual Metered Quantity and shall be declared by the Power Supplier in its day-after declaration to the WESM as BCQs for Meralco. Such revised nomination in excess of the day-ahead energy nomination schedule up to the Contract Capacity shall be the Incremental Energy for that interval. In case the Metered Quantity exceeds the Contract Capacity, Meralco has the option to take the Excess Energy, subject to the component of Monthly Capacity Payment for Excess Energy, as computed in Section 1 (Component A) of Appendix E. In addition, the Incremental Energy and Excess Energy shall be subject to Monthly Replacement Power, Incremental Energy and Excess Energy Payment, as computed in Section 4 (Component D) of Appendix E.</p> <p>Given that Meralco Contract Capacity can only be a portion of the Supplier’s Plant Output, Meralco’s option to increase its day-ahead nomination whether within or beyond Contract Capacity should always be subject to Supplier’s available capacity and approval as it should consider that the portion of capacity not contracted by Meralco is contracted with other Buyers. Furthermore, there is a need to qualify and justify such circumstances that will allow Meralco to increase on a day-after basis.</p> <p>With this, we propose the following language:</p> <p>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 <b><u>and available capacity and approval of the Power Supplier in consideration of its other contractual obligations.</u></b> In addition, Meralco shall have the option to increase its day-ahead energy nomination schedule on a day-after basis up to the actual Metered Quantity, and shall be declared by the Power Supplier in its day-after declaration to the WESM as BCQs for Meralco. Such revised nomination in excess of the day-ahead energy nomination schedule up to the Contract Capacity shall be the Incremental Energy for that interval. In case the Metered Quantity exceeds the Contract Capacity <b><u>and subject to available capacity and approval of the Power Supplier in</u></b></p>	<p>Kindly refer to response for Item 56 in Matrix 3 PSA Template Queries_Main Body.</p>
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				<p><u>consideration of its other contractual obligations</u>, Meralco has the option to take the Excess Energy, xxx</p>	
<p>46</p>		<p>Day-After BCQ Declaration with Market Operator</p>	<p>Appendix G Section 6.2/ Page 124</p>	<p>6.2 On a daily basis, Power Supplier shall furnish Meralco its actual Metered Quantity and a copy of its day-after BCQ declaration prior to submission with the Market Operator. It shall contain both the Associated Energy and Replacement Power to be declared as BCQ. Meralco shall have the right, but not the obligation, to review such reports and upon its review, shall inform Power Supplier of any discrepancies or exceptions it may find.</p> <p>For clarity, this should be limited to Metered Quantity with respect to Meralco’s nomination and Contract Capacity only.</p> <p>Also, will Meralco allow for weekly reconciliation or adjustment?</p> <p>We propose the insertion below for clarity:</p> <p>6.2 On a daily basis, Power Supplier shall furnish Meralco its actual Metered Quantity <u>with respect to Meralco’s nomination and Contract Capacity</u> and a copy of its day-after BCQ declaration prior to submission with the Market Operator. It shall contain both the Associated Energy and Replacement Power to be declared as BCQ. Meralco shall have the right, but not the obligation, to review such reports and upon its review, shall inform Power Supplier of any discrepancies or exceptions it may find.</p>	<p>Kindly refer to response for Item 56 in Matrix 3 PSA Template Queries_Main Body for the revised definition of Metered Quantity.</p>
<p>47</p>		<p>Competitive Selection Process for the Plant Fuel</p>	<p>Appendix G Section 11 / Page 127</p>	<p>What details need to be stated in the protocol? Who are the members of the Operating Committee? Is the Power Supplier not allowed to conduct a competitive tender earlier? Considering that the Power Supplier needs to commit to a fuel price cap upon bid submission, can’t the Power Supplier be allowed to finalize its fuel supply agreement beforehand?</p> <p>Also, as mentioned the timing for this requirement is inconsistent with Sections 3.1.1 and 14.2.2 of the PSA.</p> <p>We propose to consider above recommendation where the Power Supplier conducts the tender for fuel supply ahead and then provides the summary of terms and a write up about the competitive selection process to Meralco.</p>	<p>Kindly refer to response for Item#32.</p>

48		Statement of Purpose	Appendix G, Section 2	<p>Appendix G, Section 2 states its purpose is <i>“to prescribe the procedures for coordinating (a) the nomination and WESM declaration of BCQs, and (b) monitoring of Scheduled and Forced Outages.***”</i></p> <p>For completeness, we propose that the foregoing be amended to add that among the purposes of Appendix G is to prescribe procedure for operating the Plant.</p> <p>We propose that Section 2 be revised as follows:</p> <p>The purpose of this Appendix is to prescribe the procedures for <b>(a) operating the Plant, (b)</b> coordinating <del>(a)</del> the nomination and WESM declaration of BCQs, and <del>(b)</del> <b>(c)</b> monitoring of Scheduled and Forced Outages. Nothing in this Agreement (including in this Appendix) shall be construed, by virtue of the absence of a specific reference, as relieving either Party of the responsibility for communicating with the other Party in a manner that will allow both Parties to operate their respective facilities in a safe manner consistent with Dispatch Instructions, Prudent Operating Practices and Relevant Operating Regulations.</p>	As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded.
49		Duties of the Coordinating Committee	Appendix G, Section 3.2	<p>Appendix G, Section 3.2 lists the duties of the Coordinating Committee. The enumeration does not specifically include oversight of all matters relating to the interconnection between the Plant and the Transmission Facilities. For completeness, we propose that this be added as a general catch-all duty of the Coordinating Committee.</p> <p>We propose that Annex G, Section 3.2 be revised as follows:</p> <p><b>3.2 Duties of the Coordinating Committee</b></p> <p>The duties of the Coordinating Committee shall include the following:</p> <p>3.2.1 In case of discrepancies on the Provisional Invoice, reconciliation of nomination and delivery of BCQs prior to issuance of a Final Invoice and payment;</p> <p>3.2.2 Coordination of maintenance schedules;</p> <p>3.2.3 Coordination of short range and long range forecasts of load and capabilities; and</p>	As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded, all Plant matters can be covered by Section 3.2.4

				<p>3.2.4 Consideration of such other Plant operational matters as may be referred to the Coordinating Committee by the mutual agreement of Power Supplier and Meralco.</p> <p>3.2.5 Creation of an operating protocol, which shall be completed and agreed upon by the Parties no later than sixty (60) days prior to Commercial Operations Date.</p> <p><b><u>3.2.6 Oversight of all matters relating to the interconnection between the Plant and the Transmission Facilities.</u></b></p>	
50		Decisions of the Coordinating Committee	Appendix G, Section 3.3	<p>Annex G, Section 3.3.1 states that decisions of the Coordinating Committee must be unanimous. Section 3.3.2 further states that when the Coordinating Committee is unable to reach a unanimous decision on a matter within seven (7) days after it is raised, the matter shall be referred to the senior management of both the Power Supplier and Meralco which will then try to reach a mutual agreement. Failure to reach such an agreement will trigger the application of Section 20.1 of the PSA on amicable settlement.</p> <p>However, it fails to mention the application of Section 20.2 on ERC proceedings / arbitration, as well as what actions the Power Supplier can make while the matter remains unresolved.</p> <p>We propose that Annex G, Section 3.3.2 be revised as follows:</p> <p style="text-align: center;">***</p> <p>3.3.2 If the Coordinating Committee is unable to reach a unanimous decision on any matter within seven (7) Business Days after the matter is first raised to the Coordinating Committee, such disputed matter shall, at the request of a Party, be referred to the senior management of Power Supplier and the senior management of Meralco for immediate review. If Power Supplier and Meralco do not reach a mutual agreement concerning the disputed matter within fifteen (15) Days after it has been referred to the review by senior management, the <u>Dispute</u> shall be resolved in accordance with Section 20.1 <b><u>and Section 20.2</u></b> of the Agreement; <b><u>provided however, that the Power Supplier may take such actions as it deems reasonable and necessary during the pendency of such Dispute in accordance with this Agreement subject to later resolution by the arbitrators.</u></b></p>	As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded.

51		Communi- cations, Communi- cation Channels	Appendix G, Section 3.4	<p>Annex G, Section 3.4 requires the Power Supplier to maintain multi-communication systems between its and Meralco’s Trading Offices, including facsimile.</p> <p>Please remove the requirement to maintain a facsimile which has become an outmoded means of communication that is rarely, if ever, used.</p> <p>We propose that Annex G, Section 3.4 be revised as follows:</p> <p><b>3.4 Communications</b></p> <p>Power Supplier shall maintain multi-communication systems between Power Supplier’s Trading Office and appropriate communication systems of the Meralco’s Trading Office, which shall consist of, but not be limited to, (a) telephone, <del>(b) facsimile,</del> <del>(c)</del> <b>(b)</b> email or other agreed electronic communication and <del>(d)</del> <b>(c)</b> cellular phone. Each Party shall notify the other Party in writing of its point of contact fifteen (15) Days after the Execution Date and prior to changing any previously established point(s) of contact. The Parties shall maintain communications in accordance with Prudent Operating Practices and, as necessary, shall (without prejudice to the other provisions of this Agreement) inform the other Party with respect to the operating conditions and requirements of their respective facilities that may affect the other Party’s operating requirements.</p> <p style="text-align: center;"><b>Communication Channels</b></p> <table border="1" data-bbox="909 1117 1455 1365"> <tr> <td><b>Power Supplier</b></td> <td></td> </tr> <tr> <td>Contact Person:</td> <td></td> </tr> <tr> <td>Designation:</td> <td></td> </tr> <tr> <td>Address:</td> <td></td> </tr> <tr> <td>Telephone:</td> <td></td> </tr> <tr> <td>Facsimile:</td> <td></td> </tr> </table>	<b>Power Supplier</b>		Contact Person:		Designation:		Address:		Telephone:		Facsimile:		This shall be reflected in the PSA.
<b>Power Supplier</b>																	
Contact Person:																	
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52		Year-Ahead Capacity Availability and Energy Nominations Schedule	Appendix G, Section 4.1	<p>Under Appendix G, Section 4.1, Meralco requires the Power Supplier to “<i>indicate the hourly estimate of capacity availability (in kW) of the Plant ***</i>” in the year-ahead capacity availability schedule. On the other hand, Meralco is required only to “<i>provide monthly estimate of energy nomination to Power Supplier for each month of the contract year</i>” in the year-ahead energy nomination schedule.</p> <p>To align the requirements from both parties, it is proposed that Meralco also provide an estimate of hourly nomination in the year-ahead energy nomination schedule it submits to the Power Supplier.</p> <p>We propose that Annex G, Section 4.1(a) be revised as follows:</p> <p><b>4.1 Year-Ahead Capacity Availability and Energy Nomination Schedules</b></p> <p>When establishing the year-ahead schedules, the Parties shall observe the following:</p> <p>(a) Power Supplier shall furnish Meralco the year-ahead capacity availability schedule of the Plant for a relevant Contract Year at least one hundred and twenty (120) Days prior to the start of the next Contract Year. Meralco shall furnish Power Supplier with the year-ahead energy nomination schedule at least ninety (90) Days prior to the start of the next Contract Year. The year-ahead capacity availability schedule shall indicate the hourly estimate of capacity availability (in kW) of the Plant in accordance with the contracted capacity of the Contract Year (i.e., 8,760 hours for non-leap years, 8,784 hours for leap years) and the schedule of planned maintenance outages calendared for the Contract Year as approved by the System Operator. When establishing the year-ahead energy nomination schedule, Meralco shall provide <del>monthly</del> <b>hourly</b> estimate of energy nomination to Power Supplier for each month of the Contract Year. The year-ahead energy nomination schedule shall be based upon Meralco’s good faith estimates of it requirements to serve its customers’ aggregate demand, as such estimates may be revised during the course of the Contract Year (as shown in the month-ahead and day-ahead nominations) to reflect the actual variation in customer demand.</p>	<p>As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded. Power supplier should make available their energy on an hourly basis, while Meralco is not responsible to take the energy on an hourly basis, hence the monthly estimate would suffice the requirements.</p>
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<p>53</p>		<p>3-Year and Annual Scheduled Maintenance Outages</p>	<p>Appendix G, Section 8.1 in relation to Sections 9.2.1 and 9.2.2</p>	<p>Appendix G, Section 8.1 requires the Power Supplier to furnish Meralco the following before submitting these to the System Operator: (a) an Annual Maintenance Plan in accordance with Section 9.2 of the PSA, and (b) its proposed 3-year provisional maintenance plan.</p> <p><b>Please clarify why the Power Supplier must submit these prior to submitting them to the System Operator.</b></p> <p>Appendix G, Section 8.1 is also not consistent with Section 9.2 of the PSA, which in turn does not require the Power Supplier to submit such maintenance plans to Meralco before submitting them to the System Operator.</p> <p>In this connection, Section 9.2.1 and 9.2.2 require Meralco’s favorable endorsement for (a) <i>“revisions to the Annual Maintenance Plan approved or initiated by the System Operator”</i>, and (b) <i>“[i]n case of Scheduled Outages other than the Annual Maintenance Plan”</i>.</p> <p>We note that in practice, the Power Supplier notifies Meralco of amendments to the Annual Maintenance Plan and of Scheduled Outages, but Meralco does not issue, and Power Supplier does not secure, any endorsement from Meralco.</p> <p><b>Please also clarify why the Power Supplier has to obtain favorable endorsement of Meralco in case of any revisions to the Annual Maintenance Plan, and in case of Scheduled Outages other than those in the Annual Maintenance Plan.</b></p> <p>We propose that Annex G, Section 8.1 be revised as follows:</p> <p>8.1 In accordance with Section 9.2 of this Agreement, Power Supplier shall furnish Meralco of its Annual Maintenance Plan. Likewise, Power Supplier shall furnish Meralco its proposed 3-year provisional maintenance plan. Power Supplier shall submit to Meralco said maintenance plans <u>as submitted</u> <del>prior to submitting such plan</del> to the</p>	<p>We clarify that the purpose of Power Supplier is allowing Meralco to give its input in the submission of the Annual Maintenance Plan. This will allow Meralco to mitigate any instances that its Power Supplier’s SO will be simultaneous, causing shortage in the grid.</p>

				<p>System Operator in compliance with the Grid Code. Such maintenance plans shall indicate the dates and duration of each proposed Scheduled Outages and/or Major Maintenance Outages for the relevant calendar years.</p> <p>8.2 Power Supplier shall furnish Meralco a copy of the 3-year maintenance plan and Annual Maintenance Plan approved by the System Operator.</p> <p>Please also delete the requirement for Meralco’s endorsement under Sections 9.2.1 and 9.2.2.</p>	
54		Forced Outages	Appendix G, Section 10.1.	<p>Annex G, Section 10 provides that if a Forced Outage occurs, the Power Supplier is required to <i>“immediately inform Meralco of such outage occurrence, nature and expected duration of the Forced Outage, informally at first (such as by telephone, cellular phone, email, or text message).”</i> The Power Supplier is also required to <i>“furnish Meralco a copy of any incident report that Power Supplier is required to submit to the DOE.”</i></p> <p>Given that the Power Supplier is already required to inform Meralco of the Forced Outage occurrence and provide it with other information (e.g. nature and expected duration) under the Operating Procedures, Meralco would already have all relevant information it needs in respect of the Force Outage. It would have no need for a copy of any incident report required to be submitted to the DOE. Thus, we propose to delete this requirement for being redundant and unnecessary.</p> <p>We propose that Annex G, Section 10.1 be revised as follows:</p> <p><b>10 Forced Outages</b></p> <p>If in the course of operation of the Plant, a Forced Outage occurs, the following procedures shall be followed:</p> <p>10.1 Power Supplier shall immediately inform Meralco of such outage occurrence, nature and expected duration of the Forced Outage, informally at first (such as by telephone, cellular phone, email, or</p>	As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded.

				text message). <del>Power Supplier shall furnish Meralco a copy of any incident report that Power Supplier is required to submit to the DOE.</del>	
55		Line Rental Adjustment Payment / PSA	Appendix E / Page 92	In connection with Component G - The Line Rental Adjustment Payment ("LRAP") of Appendix E, please clarify if LRAP is directly paid as deduction from the Monthly Power Bill ("MPB") or will it paid to NGCP and the LRAP will be added to the MPB?	Contracted Line Rental Payment is being billed to Meralco by IEMOP. Any excess from the cap will be deducted to Meralco's Monthly Power Bill.
56		Line Rental Adjustment Payment / PSA	Appendix E / Page 92; Initial Version – Financial Evaluation Workbook	Please clarify the mechanism of the LRAP. We understand that the LRAP, which should be the amount of actual payment in excess of the cap, is deducted from the MPB. However, according to the financial evaluation workbook, the Line Rental Cap should be added to the Headline Rate.	The Line Rental Payment is part of the evaluation. Meralco will only pay up to the cap, any excess amount from the cap will be covered by the Power Supplier
57		PSA	Appendix E, Calculation of AADU, page 81	<p>Based on our interpretation of the tariff, we believe that the intent of the calculation of TEDA and <math>EDA_M</math> is to ensure that the overall <math>EDA_M</math> for a full Contract Year is equivalent to the TEDA, whereby TEDA is equivalent to the number of days in the Contract Year less the Scheduled Outage Allowance Days and Forced Outage Allowance Days. For example, in a leap year where the total number of days in the year is 366 days, and Bidder has asked for total Outage Allowance Days of 45 days, total of <math>EDA_M</math> in the year will always be equal to 321 days regardless of the actual Outage Days taken.</p> <p>However, based on our calculation of AADU, there seems to some circumstances in which the application of the AADU formula in the last month of the Contract Year would result in a total <math>EDA_M</math> in the year higher than TEDA. An example of such scenario would be if there is zero FOA in the year, <math>SOT_M</math> in the last month of the year of 30 days, and <math>SOT_A</math> in the last month of the year of 60 days.</p> <p>Please check the formula and confirm if any adjustments are required.</p>	Formula is consistent. No need for adjustments, total Capacity Payment will be covered for the Contract Year.



58		PSA	Appendix E, Monthly Fuel Payment, pages 86 and 87	<p>The proposed calculation for the Monthly Fuel Payment is comprised of a ratio of the actual quarterly fuel price over the actual quarterly fuel price beginning in the 3<sup>rd</sup> quarter of 2022 and multiplied by the average of the average of the forecast quarterly fuel price for the four quarters beginning in the third quarter of 2022. During the first 10 years of the PSA, this provision will always subject the Bidder to the lower of the actual fuel price realized during the term of the PSA, or the forecast fuel price in the event the forecast fuel price is lower than the actual fuel price. This creates an impossible situation for the Bidder to hedge its fuel exposure and could subject the Bidder to significant losses. Meralco has the ability to pass the cost of energy onto its customers.</p> <p>We would propose that the fuel price be based on the actual realized price and not on a quarterly price cap mechanism. This has been the standard market practice throughout the WESM and in other PSAs awarded by Meralco. There is no other way for the Bidder to recover the fuel costs, whereas Meralco has the ability to pass energy costs onto end users through its tariff.</p>	As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded. The fuel price cap mechanism will be followed, as this was the approved fuel cost in the terms of reference.
59		PSA	Appendix E, Monthly Fuel Payment, pages 86 and 87	Please confirm if the fuel payments stated in the document include the relevant fuel excise taxes and/or import tariffs which will be imposed by the Bureau of Customs. In addition, if the fuel payments do not include the relevant fuel excise taxes and/or import tariffs, where should such amounts be allocated in the tariff.	Excise taxes should be included in the forecast to be given by Bidders.
60		PSA	Appendix E, 6.1 Real Property Tax Payment (RPTP), page 91	<p>The tariff calculation provides that the RPTP shall be a pass through in the PSA template. In addition, it appears that RPTP does not impact the Bidders assessed LCOE.</p> <p>Why is RPTP excluded from the LCOE?</p> <p>Exclusion of the LCOE will not take into account the cost benefits of Bidders who have a lower RPTP. This is contrary to prior practice of contracts executed in the WESM.</p> <p>Please confirm that RPTP shall be a complete pass through under the PSA and also clarify why RPTP is to be excluded from the LCOE.</p>	Reimbursable Costs Payment which includes RPTP is pass-through cost.

61		PSA	Appendix E, 6.1 Real Property Tax Payment (RPTP), page 91	<p>The tariff calculation provides that the RPTP shall be a pass through in the PSA template.</p> <p>Please confirm that the pass through of RPTP also includes pass through of levy for <b>Special Education Fund</b> or whether the Special Education Fund will be addressed under Appendix E, Section 6.3 Supplemental Payments.</p>	See response for Item#60.
62		PSA	Appendix E, Schedule 2, 6., page 100	<p>Item 6 of schedule 2 states that <i>“Upon the completion of the Net Plant Heat Rate Test pursuant to Section 8.5.2 of the Agreement, the Power Supplier shall use the results to establish a table similar to the above to state the “year 1” values under the same format. Accordingly, the Power Supplier shall also prepare a lifetime heat rate table up to Year 20 using the same heat rate degradation and recovery corresponding to the same years in the Guaranteed Net Plant Heat Rate (GNPHR) table at the high heating value (HHV) as specified in the Bid.”</i></p> <p>Please note, we do not believe there should be any adjustment to the GNPHR after COD and there is no need for Meralco to require the Net Plant Heat Rate Test as the Bidder is guaranteeing the heat rates provided in the GPNHR table for the full term of the PSA. The Bidder is accepting the financial risk related to heat rate performance for the term of the PSA. As proposed by the draft PSA, in addition to accepting the risk of heat rate performance for the term of the PSA, the Bidder will also be subjected to the worst case scenario for heat rate performance, so any margin that a Bidder would normally use to offset risks associated with their performance guarantee risks are not available under the terms of the PSA. The Bidder shall always bear downside risk in the event the actual Plant performance is better or worse than guaranteed.</p> <p>We would recommend that the Net Plant Heat Rate Test be removed as a requirement for the Bidder and that the only schedule to be used for determining payments for monthly fuel payment (MFP) be the GNPHR table and any associated correction factors provided with the Bid.</p> <p>Please note that the reference to Section 8.5.2 of the Agreement, should be Section 8.4.2.</p>	Kindly refer to response for Item 67 in Matrix 3 PSA Template Queries_Main Body for the revisions on the Net Plant Heat Rate Test.

63		PSA	Appendix E, Schedule 2, 6., page 100	<p>The GPNHR table does not include any common adjustments that are typically used throughout the industry, these include adjustments for ambient air temperature, cooling water temperature, barometric pressure, humidity and other similar factors that can affect heat rate performance.</p> <p>We would recommend that Bidders be allowed to provide corresponding correction factors for NDC and GPNHR based on common industry practice, notably for ambient air temperature, cooling water temperature, humidity and barometric pressure.</p>	<p>Submitted GPNHR during bidding will be guaranteed and binding.</p> <p>Kindly refer to response for Item 67 in Matrix 3 PSA Template Queries_Main Body for the revisions on the Net Plant Heat Rate Test.</p>
64		PSA	Appendix G, Section 5.3	<p>Section 5.3 of Appendix G indicates that in cases where the Metered Quantity of the Plant exceeds the Contract Capacity, Meralco has the option to take the Excess Energy, subject to the component of Monthly Capacity Payment for Excess Energy as computed in Section 1 (Component A) of Appendix E. In addition, the Excess Energy shall be subject to the Excess Energy Payment as computed in Section 4 (Component D) of Appendix E.</p> <p>This seems to imply that if the Plant generates an amount beyond the day-ahead nomination and exceeding the Contract Capacity, that Meralco has the option to purchase that Excess Energy at a rate of 50% of DCP plus IER.</p> <p>Any provision to sell Excess Energy to Meralco should be at the sole discretion of the Power Supplier and not an obligation under the PSA. Furthermore, any sale of Excess Energy under the PSA should be at a price mutually agreed between the parties or alternatively the Power Supplier must have the right to sell all such Excess Energy in the WESM or to other customers connected to the WESM.</p> <p>We would note that in the case the Power Supplier is the Marginal Bidder or has excess capacity above the Contract Capacity, this provision punitive to the Power Supplier.</p>	<p>Kindly refer to response for Item 56 in Matrix 3 PSA Template Queries_Main Body.</p>
65		PSA	Appendix H Section 2	<p>Provisional Invoice</p> <p>2.1 Any Invoice rendered by Power Supplier to Meralco pursuant to Article 11 of this Agreement shall be rendered in the first instance in the form of a provisional invoice (the "Provisional Invoice"). Power Supplier shall deliver the Provisional Invoice to Meralco no later than the last Day of the calendar month of the Billing Period provided that both Parties discuss and validate the billing amounts prior to the issuance of the Provisional Invoice.</p>	<p>As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded. This is a standard provision for Provisional Invoice.</p>

				<p>2.2 Within ten (10) Days after receipt of the Provisional Invoice, Meralco shall notify Power Supplier in writing of any questions or exceptions it may have with respect to the Provisional Invoice. Meralco and Power Supplier shall confer within three (3) Days thereafter to discuss and seek to resolve any discrepancies or disputes in the Provisional Invoice prior to the issuance of the Final Invoice.</p> <p>MERALCO to consider including additional provision:  2.3 Not later than ten (10) days after receipt of the Provisional invoice , Meralco shall furnish the Power Supplier Meralco’s WESM billing showing the line rental charged to Meralco with respect to the bilateral contract quantities declared by the Power Supplier to Meralco in the WESM. This amount shall be the basis of the calculation of Line Rental Adjustment Payment.</p>	
66		Component A: Monthly Capacity Payments - Monthly Capacity Payment for Excess Energy	Appendix E; page 81	<p>- Formula: <math>MCPEE = \sum EEh * 0.5 * (DCP / k)</math>  Related to Section 5.3 of Appendix G, where, if the output of the plant is higher than Contract Capacity, MERALCO shall have the option to take Excess Energy charged at MCPEE</p> <p><b>Recommendation: Propose to charge at 100% DCP. Also, this will impact BCQ, especially if MERALCO does not contract full capacity of the plant.</b></p>	As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded, in fact in our existing baseload PSA, the ERC has revised the discount for Excess Energy Capacity Payment from 50% to 100%.
67		Component C: Monthly Fixed O&M Payment	Appendix E; pages 83-84	<ul style="list-style-type: none"> <li>Formula does not account for FOM payment in excess of CC</li> </ul> <p><b>Recommendation: Propose to impose FOM payment on Contract Capacity and Associated Energy in excess of CC.</b></p>	As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded.
68		Day-Ahead Capacity Availability	Appendix G, Section 5.3; page 124	<ul style="list-style-type: none"> <li>In case the Metered Quantity exceeds the Contract Capacity, Meralco has the option to take the Excess Energy, subject to the component of Monthly Capacity Payment for Excess Energy, as computed in Section 1 (Component A) of Appendix E.</li> </ul>	Kindly refer to response for Item 56 in Matrix 3 PSA Template Queries_Main Body.

		ty and Energy Nominati on Schedules		<p><b>Recommendation: Propose to remove the option of MERALCO to take Excess Energy based on the Metered Quantity. This should be subject to Supplier’s available capacity. This will affect BCQ of the plant especially when MERALCO does not contract the full capacity of the plant.</b></p>	
69		Competitive Selection Process for the Plant Fuel	Appendix G, Section 11.1 & 11.2; page 127	<ul style="list-style-type: none"> <li>- 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 before the onset of provision of Commissioning Energy.</li> <li>- Any material deviation from the specifications set out in Section 11.1 shall be subject to the prior written approval of the Operating Committee.</li> </ul> <p><b>Clarification:</b></p> <ol style="list-style-type: none"> <li>1. Who will the committee be composed of?</li> <li>2. What is the purpose, responsibility, and the extent of control of this committee?</li> </ol> <p><b>This may pose an issue if the Bidder finalizes coal supply as required under this bid prior to submission.</b></p>	<p>Kindly refer to response for Item #32.</p> <p>Provided that the competitive selection process observed by the Power Supplier for its fuel procurement process is aligned with Meralco’s standard, and the detailed protocol that will be implemented is the same as the one to be submitted to the ERC, Power Supplier can submit the protocol to Meralco and be used for implementation.</p>