



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

BID BULLETIN NO. 5

To all Interested Bidders:

1. **Due to venue availability and logistical considerations, the Bid Submission Deadline originally set on 25 January 2021 will be moved to 27 January 2021.** The hour/time deadline originally provided remains unchanged.

All reference to 25 January 2021 for the Bid Submission Deadline in the TOR/Invitation to Bid (published on 1 and 8 October 2020) and Instructions to Prospective Bidders (dated 1 October 2020) (IPB) are hereby amended.

2. A matrix showing additional amendments to the (i) Bid Requirements (posted on 1 October 2020) and (ii) IPB is set out in **ANNEX A**;
3. A matrix containing a set of additional queries that have been received and the response of Meralco's Third Party Bids and Awards Committee ("TPBAC") is set out in **ANNEX B**;
4. Accordingly, the following amended IPB annexes or forms are set out in **ANNEX C** as the following attachments:

Attachment	FORM
1	Annex A of Annex QD-4 (List of the Bidder's counterpart(ies)/financial lenders), IPB
2	Annex QD-4-A (Counterparty's Certification of Absence of Unsatisfactory Performance Record, Outstanding Dispute or Due and Demandable Financial Obligation/s), IPB
3	Annex QD-7 (Statement on Project Cost and Financing Plan), IPB
4	Annex QD-7B (Testimonial), IPB
5	Annex TP-1 (Technical Proposal (Nominated Power Plant)), 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 and underscoring for emphasis.

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.

Issued on 14 January 2021.

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	Technical Proposal (Envelope 2), p. 8	<p>[...]</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 technology of the Nominated Power Plant (e.g., boiler, turbine and generator) is of proven design and technology, which means that a generating facility elements of similar design <u>unit of the same technology, with at least 150 MW installed capacity,</u> 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 Comparable Plant 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>[...]</p>

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

Item	Reference / Subject Matter of Amendment	Amendments
1	Section 3.2 (c)	<p>[...]</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 technology of the Nominated Power Plant (e.g., boiler, turbine and generator) is of proven design and technology, which means that a generating facility elements of similar design unit of the same technology, with at least 150 MW installed capacity, must have been engaged in reliable commercial operation for at least one (1) year in a 60 Hertz system ("Comparable Plant"). 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 Comparable Plant 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>[...]</p>
2	Annex TP-1	See ANNEX C, Bid Bulletin No. 5.

MATRIX OF COMMENTS 1 - FORMATTING/PROCEDURAL RELATED QUERIES/COMMENTS

	TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION	RESPONSE
			RECOMMENDATIONS / PROPOSED WORDING	
	Amendments		<p>Will MERALCO provide a complete amended version of the Bid Documents (Bid Requirements, Instructions to Prospective Bidders, PSA Template), especially the <u>word versions of the templates of the documents to be submitted on Bid Submission Deadline</u>?</p> <p>Please provide for ease of reference.</p>	The Word versions of the amended templates were provided/released already through Bid Bulletin No. 3.
	PSA Template	Bid Bulletin No. 3, Annex B, Page 26	<p>In Bid Bulletin No. 3, the TPBAC approved various changes to the PSA template and its appendices. It also advised that <i>“the modifications will [be] made ready to be reflected on the PSA template to be executed by the Winning Power Supplier.”</i> Some of these modifications have been approved by the TPBAC in principle only and have not yet been drafted or have proposed wording.</p> <p>So that the Bidders can fully study the PSA, please provide a copy of the revised PSA template and its appendices with all approved modification soonest, and in any event no later than two weeks before the Bid Submission Deadline.</p>	The TPBAC’s approved/accepted changes are those already provided in the released Bid Bulletins, which shall be binding upon execution and implementation of the PSA. In any case, as previously answered, the approved/accepted changes will be reflected on the PSA template to be executed by the Winning Power Supplier.
	IPB	2.2 Summary of Bidding	<p>We understand that 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>If the Bidder with the Best Bid that is stacked first as having the lowest LCOE had an Offered Contract Capacity of only 600 MW (net), it is required to make available such capacity starting December 2024, and cannot opt to instead make available such capacity starting May 2025.</p> <p>Related to this, we are requesting TPBAC to consider allowing time- based bidding wherein the bidder can signify what capacity it will bid for the</p>	Not amenable. The TPBAC maintains the original method of stacking the LCOE results.

			<p>December 2024 and May 2025 CODs.</p> <p>If TPBAC will allow time-based bidding, we also request TPBAC to consider the awarding of capacity as follows:</p> <p>After the stacking of the Offered Capacities , from lowest to highest until the required Contract Capacity (i.e. 1,800 MW [net]) is filled up, TPBAC to allow the Bidder with the lowest LCOE to choose when to make available its offered capacity. For example, assuming Bidder offered 600MW capacity consisting of 2x300MW units, Bidder can choose to make available the first 300MW unit on December 2024 and the next 300MW on May 2025 to accommodate possible phased unit CODs of the Bidder's plant, which is standard in plants with multiple units. Since said Bidder has the lowest LCOE, Meralco's consumers can still benefit from the least cost electricity of the first unit, while not unnecessarily exposing the Bidder to replacement power cost obligations since its 2nd unit may not achieve the same COD as the 1st unit.</p> <p>In line with the same concept, the Bidder with the 2nd lowest LCOE can also be given the option to choose when to make available its Offered Capacity if there is still available capacities in both CODs.</p> <p>If the TPBAC considers this suggestion, this setup further incentivizes Bidders to offer the lowest LCOE possible.</p>	
	Instructions to Prospective Bidders and Bid Bulletin 3's Annex B	Section 2.2(f), page 10 page 3	<p>Section 2.2(f) provides that On or Before 9:00 AM of 25 January 2021, the Bidders shall submit to the TPBAC their Document Submissions by uploading to the cloud-based online repository/folder. On page 3 of Bid Bulletin 3's Annex B, TPBAC advised that, 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).</p> <p>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> <p>We request TPBAC to confirm that (i) a Bidder may, prior 25 January</p>	<p>The Bidder may upload, starting 20 January 2021, in whatever timeframe, order or method it chooses for as long as all Envelopes 1, 2 and 3 are complete by 9:00 AM of 27 January 2021.</p> <p>The soft copy .zip files of the said envelopes are password-protected by the Bidder anyway and the TPBAC will not be able to open it until the Opening of Document Submissions and/or Opening of Bid Prices when the TPBAC will ask the bidder to email the password for a particular envelope to the TPBAC Secretariat.</p>

			2021, upload to the cloud-based folder only Envelopes 1 and 2, and (ii) that the Bidder may upload Envelope 3 separately on 25 January 2021.	
	Password of Zip Files / IPB	Section 3.4.2 (a) (ii), 3.4.3 (a) (ii), 3.4.4 (a) (ii)/ Pages 33-34	<p>Under the IPB, the electronic/scanned PDF copies of the documents contained in ENVELOPE-1-QD-ORIGINAL, ENVELOPE-2-TP-ORIGINAL, ENVELOPE-3-BID-ORIGINAL will be placed in their respective password- protected zip folders and submitted in the cloud-based repository.</p> <p>For purposes of uniformity, we suggest that the password to be used by each Bidder for the three (3) separate zip folders should all be the same.</p>	<p>We leave it up to the discretion of the Bidders what passwords to use, whether it be uniform or not, as long as the TPBAC is ensured to have access to the password when it requires it.</p> <p>Please note that the soft copy .zip files uploaded to the cloud-based folder are password-protected by the Bidder and the TPBAC will not be able to open it until the Opening of Document Submissions and/or Opening of Bid Prices when the TPBAC will ask the bidder to email the password for a particular envelope to the TPBAC Secretariat.</p>
	Electronic Copies of Documentary Submissions /IPB	Section 3.4.2 (a) (i), 3.4.3 (a) (i), 3.4.4 (a) (i) / Pages 33-34	<p>Under the IPB, the electronic copies of all documents that will be submitted together with the ORIGINAL hardcopy have to be saved also in zip, password protected file.</p> <p>For purposes of uniformity, we suggest that the password to be used in the electronic copy to be submitted together with the ORIGINAL hard copy should be the same as the password used by the Bidder in the electronic copies uploaded in the cloud-based repository.</p>	Agree with this suggestion, this is logical for ease of monitoring and reference.
	COC / IPB	Section 3.1.4 (c) / Page 22 -23	<p>Like all other documents to be submitted, we suggest that the assistant corporate secretary be allowed to certify the copy of the Certificate of Compliance ("COC").</p> <p><i>Suggested revision to read:</i></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 <u>assistant corporate secretary</u>, in which case it must be under oath and notarized. If the COC is not available as of Bid Submission Deadline, the Bidder must submit an application for a COC pending before the ERC or any other official document coming from the ERC confirming the Reference Plant's authority to operate at least 150 MW. If the Reference Plant is located outside of the Philippines, it must</p>	<p>Answered in Bid Bulletin No. 3, Annex B, p. 23</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, may be accomplished by the Assistant Corporate Secretary also, especially if authorized under the company's by- laws."</p>

			have the license or permit equivalent to the ERC's COC, or the alternative documents;"	
	MPA / IPB	Section 3.1.4 (d) / Page 23	<p>Like all other documents to be submitted, we suggest that the assistant corporate secretary be allowed to certify the copy of the Market Participation Agreement ("MPA").</p> <p><i>Suggested revision to read:</i></p> <p>"(d) In respect of a Reference Plant located in Luzon or Visayas, it must be registered as a direct member of the WESM and submit a copy of its Market Participation Agreement for the Reference Power Plant, which shall be certified as a true copy by (i) the Philippine Electricity Market Corporation and/or Independent Electricity Market Operator of the Philippines; or (ii) the corporate secretary/<u>assistant corporate secretary</u>, in which case it must be under oath and notarized. If the Reference Plant is located outside of the Philippines, it must have the equivalent market participation agreement with the WESM, or the alternative documents;"</p>	-same answer-
	Bidding as Partnership or Consortium / IPB	Section 2.2 (c) / Page 9	<p>In bidding as partnership or consortium, each bidder must separately submit Qualification Documents (Envelope 1) and Technical Proposal (Envelope 2), but shall submit (as one) only one Bid Price, including the Bid Security (Envelope 3).</p> <p>How and where shall the common Envelope 3 be located since Envelope 1, 2 and 3 for each bidder shall be placed together in one sealed container or box?</p> <p>We suggest that for Bidders who will submit as a partnership or consortium, the Partnership/Consortium should submit only one outermost sealed box or container. This box should already contain Envelopes 1 and 2 of both Bidders. Also inserted in this common box or container would be Envelope 3 of the Partnership/Consortium.</p> <p>In addition, the sealed box or container shall be marked as follows:</p> <p style="text-align: center;">MANILA ELECTRIC COMPANY 1,800 MW CSP</p> <p style="text-align: center;">ORIGINAL COPY</p> <p style="text-align: center;">[STATE NAMES, ADDRESSES AND EMAIL ADDRESSES OF THE BIDDERS UNDER THE PARTNERSHIP/CONSORTIUM]</p>	Agree with this suggestion, this is logical for ease of monitoring and reference.

			For the electronic copies submitted or uploaded to the cloud-based online repository/folder, the scanned copies (PDF format) of the original set shall be placed in a password protected zip folder in <u>any of the online repositories of the members of the Partnership/Consortium.</u>	
	Bid Submission Deadline / IPB	Page 5	<p>DOE DC No. 2018-02-003 provides that “each CSP shall be completed within five (5) months from the time of publication of invitation to bid until submission of the PSA to the ERC.” Under this timeline, Meralco will be constrained to award the Winning Bidder(s) within the next few weeks in order to ensure that post-qualification and pre-filing requirements are completed in time for ERC submission on 1 March 2021.</p> <p>However, we also recognize that, unless the DOE is given an opportunity and ample time to clarify its policies and approvals to Meralco with respect to the clarifications requested, potential Bidders will be excluded from the 2020 CSP. Specifically, we refer to the following points of clarification which require guidance from the DOE:</p> <p>(a) Whether its policy of encouraging the development of new capacities is intended to exclude power suppliers whose business models require them to have flexible supply sourcing approaches;</p> <p>(b) Whether its recommended fuel adjustment formula prohibits power suppliers from taking on additional risk and fixing fuel costs or prohibits power suppliers from relying on a mix of renewable and thermal technologies; and</p> <p>Whether the 150MW unit size (and not the minimum Offered Contract Capacity) is a mandatory requirement even if it may narrow the field of competitive bidders</p> <p>We respectfully request: (a) that the TPBAC formally put forth clarifications to the DOE on the additional points raised by the Bidders, (b) that the DOE be afforded an opportunity to respond accordingly in the spirit of inclusion rather than exclusion, and (c) that the Bid Submission Date be moved forward by at least four weeks from the time the TPBAC releases a clarificatory Bid Bulletin on additional points raised by the Bidders.</p>	<p>Not amenable. To reiterate from our response in Bid Bulletin No. 3, 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>In addition, while this 1,800 MW greenfield baseload CSP with COD in 2024-2025 is being considered a new CSP, this is essentially a continuation of the similar (in terms of following the DU's PSPP with regard to the contract capacity and COD requirement) greenfield baseload requirement which a CSP was conducted last July-September 2019, albeit this bidding was updated to reflect the increased required contract capacity after the DU prepared its 2020 DDP and PSPP while the DOE has not yet concluded its review of the TOR for the supposed second round of the 2019 CSP. After a lengthy back and forth review of the TOR by the DOE, the current TOR of this bidding resulted to a significantly revised version compared to the 2019 CSP's 1,200 MW greenfield baseload CSP, in order to expand it to more bidders participating, while introducing the DOE-recommended fuel cost adjustment formula for the benefit of the consumers. As relayed to the TPBAC by the DU, the PSPP has been posted in the DOE's CSP Portal since July 2019 where at least 1,200MW baseload capacity is planned for procurement and start at year 2024 (i.e. greenfield), thus, this is an already much delayed CSP for the large greenfield baseload capacity requirement of the DU starting year 2024.</p>
	Extension of Deadline for Submission		Given the number of non-working holidays this December and the belated issuance of the responses to the bidders' questions, we believe there is a need to extend the bid submission deadline to give the bidders ample time to prepare the bid requirements and conduct the relevant studies to determine the most effective and least cost bid to Meralco.	-same answer above-

			<p>While we understand that the maximum period of five months to conduct the CSP came from DOE, we believe Meralco may request for an extension of this period. This is to ensure that the CSP would be as inclusive of all potential and capable bidders as possible to enable it to obtain the least cost power for its consumers.</p>	
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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 RECOMMENDATIONS / PROPOSED WORDING	RESPONSE
	Bidder’s Counterparties/ Financial Lenders with Existing Projects or Contracts with Bidder or its Affiliates	IPB, Annex A of Annex QD- 4	<p>Annex A of Annex QD-4 requires that the Bidder submit a list “<i>containing all the Counterpart(ies)/financial lenders who have 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 by the Bidder.</i>”</p> <p>Please confirm that the “Affiliates engaged in power generation” to be specified in this Annex are limited to the Bidder’s Affiliates which actually own and operate a powerplant and/or are actual parties to a power generation, supply, or offtake agreement as the generator of electricity, and does not include Affiliates which merely own shares in these types of entities.</p>	<p>See also revision released in Bid Bulletin No. 4, “any projects or contracts” as relating only to power supply or off take agreements.</p> <p>Also, as answered in Bid Bulletin No. 3, Annex B, p.12, in response to a query if a bidder’s affiliate engaged in power generation is non-operational, we responded that this will not be allowed, otherwise, 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>
	Bid Bulletin No 3, Annex B Annex QD-4	Page 16	<div><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 (using Annex A 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></div> <p>(1) Please clarify if financial lenders only of the Bidder and any of its Affiliates (engaged in power generation) who have contracts with MERALCO (and MERALCO Affiliates) are required to be listed.</p>	<p>See also revision released in Bid Bulletin No. 4, “any projects or contracts” as relating only to power supply or off take agreements.</p> <p>1. Yes, only the financial lenders of the Bidder/its Affiliates engaged in power generation and must be only in relation to the power supply or off take agreement with MERALCO/MERALCO Affiliates.</p>

			<p>(2) Please define “financial lenders”. Will this include vendors who have granted vendor financing or is this term limited only to financial institutions?</p>	<p>2. In relation to the definition of Unsatisfactory Performance, “financial lenders” is limited only to financial institutions.</p>
	<p>Bidder’s Counterparties/ Financial Lenders with Existing Projects or Contracts with Bidder or its Affiliates</p>	<p>IPB, Annex A of Annex QD- 4</p>	<p>In relation to the requirement above, Annex A of Annex QD-4 provides, in part, that the <i>“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.”</i></p> <p>The requirement appears too broad as, on its face, it would seem to include each and every contract that the Bidder or its Affiliate engaged in power generation has entered into during the mentioned period, including, for example, employment contracts, office lease contracts, water utilities contracts, etc., even if these do not appear to be material or relevant to the purpose of the disclosure, that is, to <i>“inquire into and check with its Counterpart(ies)/financial lenders as to the veracity of the Certification of Absence of Unsatisfactory Performance Record, Outstanding Dispute, or Due and Demandable Financial Obligation/s”</i>.</p> <p>We propose that Annex A of Annex QD-4 be revised as follows:</p> <p>In compliance with the requirement under Section 3.1.3 (b), <i>(insert name of Bidder)</i> submits the list below containing all the Counterpart(ies)/financial lenders who have 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</p> <p>(5) years prior to the Bid Submission Deadline by the Bidder. 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 <u>as well as contracts and documents that are akin to these.</u></p>	<p>See revision released in Bid Bulletin No. 4, “any projects or contracts” as relating only to power supply or off take agreements.</p>
	<p>Affiliates</p> <p>Instructions to Prospective Bidders</p>	<p>Page 21, Section 3.1.3 / Annex QD-</p>	<p>We understand that QD-4A covers “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 only those “with Meralco and/or its Affiliates engaged power generation, distribution, and supply”.</p> <p>We want to clarify what agreements falls under “any project and contract”.</p> <p>We would like to clarify what agreements falls under “any project and contract”.</p>	<p>See revision released in Bid Bulletin No. 4, “any projects or contracts” as relating only to power supply or off take agreements.</p>

		4 /Annex QD-4-A	Does “any project and contract” with Meralco and/or its Affiliates engaged power generation, distribution, and supply also include Partnership/Shareholding/Investment/Subscription Agreements with Meralco and/or its Affiliates engaged in power generation, distribution, and supply or is limited only to power supply agreements	
	Bid Bulletin No. 3 – AnnexA	Legal Qualification Requirements •Unsatisfactory Performance Outstanding Dispute pp. 3-5	1. Legal Qualification Requirements [...] (c) The Bidder and any of its Affiliates engaged in power generation must have no record of Unsatisfactory Performance. For this purpose, “ Unsatisfactory Performance ” means any of the following: (a) In relation to any project or contract with Meralco and/or its Affiliates engaged in power generation, distribution, and supply (the list of Meralco’s Affiliates are provided in the IPB) 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 – (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. The Bidder shall submit notarized certifications issued by Meralco and/or its Affiliates engaged power generation, distribution, and supply 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, Counterpart(ies) may include Meralco (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	

			<p>Recommendation: Since the notarized certification of Unsatisfactory Performance will come from MERALCO and its affiliates, would it be possible for MERALCO to vet on its own? So we can remove this added requirement?</p> <p>As for the lenders, is it possible to limit this submission to only the Bidder's financial lenders for projects or contracts with MERALCO and its affiliates? We believe it is not necessary to include the lenders of the Bidder's affiliates.</p>	<p>The TPBAC cannot vet on MERALCO and its Affiliates, hence, the need for the certifications.</p> <p>See revision released in Bid Bulletin No. 4, "any projects or contracts" as relating only to power supply or off take agreements.</p>
	Certification regarding Technical Qualification (Reference Plant)	<p>IPB, Paragraph 3.1.4(a)</p> <p>IPB, Annex QD-5</p>	<p>Paragraph 3.1.4(a) of the IPB and the first bullet point of Annex QD-5 require the submission as an attachment to the Certification subject of Annex QD-5 of "[p]roof that the Bidder or any of its direct shareholders with Controlling interest, Affiliate or Ultimate Parent has satisfactorily undertaken the development, construction, and/or operation or maintenance of a Reference Plant, whether in the Philippines or elsewhere."</p> <p>Please confirm that the proof referred to are the documents mentioned in paragraphs 3.1.4(b) to (e) of the IPB and the second to the fifth bullet points of Annex QD- 5.</p>	<p>The understanding is correct, the second to the fifth bullet point of Annex QD-5 are preferred to be as a form of attachment to the sworn Certification regarding Technical Qualification (Reference Plant).</p>
	Technical Proposal	IPB, Annex TP-1	<p>Item 1 of the required attachments to the Technical Proposal for the Nominated Power Plant is "[p]roof 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>These are matters that are already certified to under Annex QD-1A. Please confirm that the execution of Annex QD-1A meets this requirement under Item 1 of Annex TP- 1.</p>	<p>Yes, but please re-attach in Annex TP-1 for ease of reference by the TPBAC.</p>
	Marginal Bid	IPB, Section 3.3.2	<p>Under the IPB, the Bidder with the Marginal Bid Offer who "refuses to accept the reduction of its Offered Contract Capacity up to the extent of the required Contract Capacity and at its Proposed Price" shall forfeit the bid security in its entirety. FGEPs requested that there should be no forfeiture.</p> <p>During the Pre-Bid Conference, the TPBAC stated that the bid security would still be forfeited albeit in proportion to the rate the required reduced amount bears to the Offered Contract Capacity.</p> <p>Please confirm this.</p> <p>In any event, we respectfully note that the forfeiture of the bid security at any</p>	<p>Yes, it is confirmed and part of Bid Bulletin No. 3.</p>

			<p>amount for refusal to accept the reduction of the Offered Contract Capacity seems to punish the Bidder for happening to be the Bidder with the Marginal Bid Offer - a situation which could end up grossly disadvantageous to such Bidder and the economics of its bid.</p> <p>The required reduction of the Offered Contract Capacity at the Proposed Price creates a very uncertain environment which directly conflicts with the requirement for the plant to be run at 87.67% plant capacity factor. It creates uncertainty as to the optimal utilization of the plant to be able offer its best price because the plant may end up with an entirely different utilization which cannot be determined before bid submission. The intent of this provision also seems to directly conflict with what the CSP aims to achieve. Worse, the Bidder must not only take on the uncertainty but is also further punished by forfeiting a portion of its bid security.</p> <p>In this light, it is urgently requested that TPBAC reconsider and provide that the refusal to accept the reduction of the Offered Contract Capacity shall not cause the forfeiture of the bid security at any amount.</p>	<p>Not amenable. The proportional forfeiture of the Bid Security of the Marginal Bid Offer in case it refuses to accept the reduction of its Offered Contract Capacity is already a significant relaxation to the original version and it was determined by taking into consideration the concerns of the Bidders while balancing the need to protect the integrity of this CSP. It was never meant as a penalty to the bidder having the Marginal Bid Offer. By putting the possibility of forfeiting a part of its Bid Security in case it becomes the Marginal Bid Offer, the Bidders are put on notice that they should give their best possible price in order not to be the Marginal Bid Offer and prevents them from colluding in submitting their price offers. In doing so, it will benefit the consumers by making sure that the winners of this CSP have indeed submitted their lowest possible price.</p>
	IPB	Page 12	<p>Definition of “Marginal Bid Offer”.</p> <p>Formatting/Procedure p. 36 states:</p> <p>“Selling to third parties or WESM</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, the Contract Capacity of the Plant.”</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>If Meralco insists on keeping the provision for a Marginal Bid Offer, we recommend that Meralco allow Qualified Bidders an opportunity to accept an award as the</p>	<p>Not amenable. -same answer above-</p>

			<p>Marginal Bid Offer or withdraw their offer in full with no penalty. We do not believe it is practical or fair for a Bidder to be bound to accept an award for a Marginal Bid Offer that results in a reduction of their Offered Contract Capacity and have their bid bond at risk. Among the many issues this may create for a Qualified Bidder, one is the obligation of meeting the COD provided by Meralco but having a significant reduction in the Offered Contract Capacity such that project financing will not be available, thereby jeopardizing the entire viability of the project.</p> <p>Furthermore, Meralco has the ability to mitigate this impact by adding any shortfall in required total Contract Capacity (i.e., 1,800 MW [net]) to the next scheduled CSP. Furthermore, the entire construct of the PSA that includes rights associated with a physical contract, including provisions for step-in rights or buyout of the project, are not practical with the concept of a Marginal Bidder. It will be impractical and likely impossible for a Bidder declared the Marginal Bidder Offer to provide Meralco step in rights, buy-out rights or any of the other similar rights provided in the form PSA.</p>	
	Reference Plant	IPB, Section 3.1.4(b) and Annex QD-5	<p>Section 3.1.4(b) of the IPB states:</p> <p>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;</p> <p>During the Pre-Bid Conference, the TPBAC clarified that the Reference Plant must have operated at monthly average of at least 85% PCF over a 3-month period in the last 24 months.</p> <p>Respectfully, the 24-month period is simply too short. Indeed, PCF measures not only plant availability but also dispatchability, which is largely outside the control of the generation company and is dependent on the distribution utility/customer. The distribution utilities decide which of their contracted plants are to be dispatched for particular intervals. Thus, a plant may be available and ready for dispatch but may not achieve a high PCF because the distribution utility simply did not select it for dispatch.</p> <p>To compensate for this, we request that period within which a plant can show</p>	<p>Not amenable. The TPBAC must evaluate the latest dispatch of the</p>

			<p>that it has operated at monthly average of at least 85% PCF over a three-month period be extended to sixty (60) months or five years.</p> <p>We propose that Section 3.1.4(b) be revised as follows:</p> <p>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 in the last sixty months, 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>Reference Plant if it is indeed a baseload plant. (i.e. by being able to run at least 85% PCF over a 3-month period in the most recent last 24 months)</p>
	Comparable Plant	IPB, Section 3.2(c) and Annex TP-1	<p>Section 3.2(c) of the IPB requires a bidder to show <i>“convincing proof that the key components of the Nominated Power Plant (e.g., boiler, turbine and generator) is of <u>proven design and technology</u>.”</i> It then states that this means <i>“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”</i>.</p> <p>During the Pre-Bid Conference, the TPBAC mentioned that the one-year requirement is necessary to show that the Nominated Plant can operate reliably.</p> <p>We submit that “proven design and technology” and reliability can also be demonstrated using other parameters (other than length of operability) such as insurability. Insurance companies would likely not insure plants that are not grid-connected and not deemed reliable.</p> <p>Moreover, there are many new plants operating on newer, improved, and more efficient technologies (that are insured and producing electricity) that have yet to complete a year of operations. These technologies are automatically restricted by the one-year requirement. On the other hand, it would not be prudent for generation companies to ignore these newer, improved and more efficient technologies for their greenfield plants simply so that these plants may be used for this Bid considering that these plants are built and intended to operate for several years.</p> <p>Thus, it is requested that the one-year requirement for Comparable Plant be deleted.</p>	<p>Not amenable. The one-year requirement of the Comparable Plant was made for the TPBAC to sufficiently evaluate the Nominated Plant’s technology. Removing said requirement of the Comparable Plant will make the TPBAC reliant to the “guarantees” and “insurability” of the manufacturers of said new technology. Although there are new plants operating on newer and improved technologies now, as long as they have not been in commercial operation for at least one-year, the TPBAC deems it too risky for a 20-year contract to trust said new technologies without quantitative proof.</p>

			<p>In this relation, item 4 of Annex TP-1 requires the Bidder to submit, among others, “<i>Proof of location of Comparable Plant</i>” and “<i>Proof of Reliable Commercial Operation for at least one (1) year operating at 60 Hertz</i>” of the Comparable Plant’s boiler, turbine, and generator.</p> <p>We request that this be amended to remove the one-year requirement.</p> <p>Please advise what constitutes proof of location. Please also confirm that proof of insurability shall constitute proof of reliable operation of the Comparable Plant.</p>	<p>For the proof of location, any data or information that will enable the TPBAC or its Independent Engineer to properly locate in any part of the world in order to obtain verifiable information to evaluate the Comparable Plant.</p>
	Comparable Plant	<p>Bid Bulletin No. 3, Annex B, Pages 44 – 45; 47</p> <p>IPB, Section 3.2 (c), in relation to Annex TP- 1, Section 4</p>	<p>Section 3.2(c) of the IPB requires a bidder to show “<i>convincing proof that the key components of the Nominated Power Plant (e.g., boiler, turbine and generator) is of proven design and technology.</i>” It then states that this means “<i>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</i>”. In Bid Bulletin No. 3, the TPBAC observed that the Comparable Plant must be have been operating for “<i>at least one (1) year in a 60 Hertz system</i>”.</p> <p>We submit that “proven design and technology” and reliability can be demonstrated using other parameters (other than length of operability) such as insurability. Insurance companies would likely not insure plants that are not grid-connected and not deemed reliable as any failure to operate by the plants (which are built and intended to operate for at least 20 years) would result in liability on the part of the insurers.</p> <p>There are new plants operating on newer, improved, and more efficient technologies (that are insured and producing electricity) that have yet to complete a year of operations. These technologies are automatically but unnecessarily made unavailable because of the one-year requirement.</p> <p>Thus, we reiterate our request that the one-year requirement for Comparable Plant be deleted.</p> <p>Furthermore, in Bid Bulletin No. 3, the TPBAC also clarified that the key components of the plant (<i>e.g., boiler, turbine and generator</i>) all be contained in one Comparable Plant. This further limits the technologies that a Bidder can use for its Nominated Plant.</p> <p>Bidders should be able to select the key components of the plant from the different Comparable Plants to ensure <i>optimal combination that enhances output and efficiency</i>. Thus, we also request the TPBAC reconsider this and instead provide that the key components can be found in various Comparable Plants.</p>	<p>Not amenable. <i>See answer above.</i></p> <p>(see revision discussed immediately below in the next succeeding rows, which will eliminate the need for the Bidder to get/submit key components from different Comparable Plants. The Bidder just need to specify that the overall plant technology of both the Comparable Plant and Nominated Plant are the same)</p>

	<p>TECHNICAL PROPOSAL,</p> <p>Proof of Reliable Commercial Operation of Comparable Plant</p>	<p>Section 3.2 (c) / Page 24</p>	<p>Based on the response provided by TPBAC, 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>We respectfully submit that the focus of the assessment should primarily be on whether the power plant would produce greater efficiency and greater reliability at lesser cost instead of forcing the bidders to come-up with other plant(s) that has all the Nominated Plant’s key components - which would likely be from different manufacturers.</p> <p>Given that Meralco has already imposed several convincing proof from prospective bidders of their ability to develop and build a power plant, particularly through the evidence and existence of the Nominated Power Plant such as permits, financing, and a feasibility study, the requirement of providing a “Comparable Plant” should not be mandatory and should only serve as additional reference for the TPBAC.</p> <p>Such requirement should not effectively restrict or limit technical and financially capable and qualified bidders from participating simply because it is unreasonable specific. Not only is this contrary to the objective of the Electric Power and Industry Reform Act of 2001 which is to “enhance the inflow of private capital and broaden the ownership base of the power generation”, it also goes against the DOE’s policy of “promoting competitiveness by extending equal opportunity to eligible and qualified generation companies”. As mentioned above, by increasing the pool of prospective bidders in this CSP, Meralco will have a greater opportunity of obtaining the least cost power for its consumers.</p> <p>Enclosed is AAA’s Position Paper regarding the Certifications required for Key Components of a Comparable Plant.</p>	<p>After taking another look at the concerns raised the bidder’s queries, we would like to clarify that the Comparable Plant shall be evaluated in its entirety. The Bidder just need to specify that the overall plant technology of both the Comparable Plant and Nominated Plant are the same.</p> <p>As such, the Manufacturer and/or Make/Type/Model of each key components (i.e. Boiler, Plant Turbine, and Generator) in the Comparable Plant can be different from the Manufacturer and/or Make/Type/Model of each key components (i.e. Boiler, Plant Turbine, and Generator) in the Nominated Plant as long as the Comparable Plant in its entirety has been in commercial operation for at least one year in a 60Hz system.</p> <p>Page 8 of the Bid Requirements; Sec. 3.2 (c) and Annex TP-1 (item 4.) of the IPB shall be revised to reflect this clarification.</p>
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	IPB	Annex TP-1	<table><tr><td colspan="2">Table [1]. Nominated Power Plant Requirement</td></tr><tr><td>a. Nominated Power Plant Boiler</td><td></td></tr><tr><td>Manufacturer</td><td></td></tr><tr><td>Make/Type/Model</td><td></td></tr><tr><td>Proof of location of Comparable Plant</td><td></td></tr><tr><td>Proof of Reliable Commercial Operation for at least one (1) year operating at 60 Hertz of Comparable Plant's Boiler.</td><td></td></tr><tr><td>b. Nominated Power Plant Turbine</td><td></td></tr><tr><td>Manufacturer</td><td></td></tr><tr><td>Make/Type/Model</td><td></td></tr><tr><td>Proof of location of Comparable Plant</td><td></td></tr><tr><td>Proof of Reliable Commercial Operation for at least one (1) year operating at 60 Hertz of Comparable Plant's Turbine.</td><td></td></tr><tr><td>c. Nominated Power Plant Generator</td><td></td></tr><tr><td>Manufacturer</td><td></td></tr><tr><td>Make/Type/Model</td><td></td></tr><tr><td>Proof of location of Comparable Plant</td><td></td></tr><tr><td>Proof of Reliable Commercial Operation for at least one (1) year operating at 60 Hertz of Comparable Plant's Generator.</td><td></td></tr></table> <p>Please confirm if we should indicate the Manufacturer and the Make/Type/Model of the key components of the <u>Comparable Plant or the Nominated Power Plant</u> in this table.</p>	Table [1]. Nominated Power Plant Requirement		a. Nominated Power Plant Boiler		Manufacturer		Make/Type/Model		Proof of location of Comparable Plant		Proof of Reliable Commercial Operation for at least one (1) year operating at 60 Hertz of Comparable Plant's Boiler.		b. Nominated Power Plant Turbine		Manufacturer		Make/Type/Model		Proof of location of Comparable Plant		Proof of Reliable Commercial Operation for at least one (1) year operating at 60 Hertz of Comparable Plant's Turbine.		c. Nominated Power Plant Generator		Manufacturer		Make/Type/Model		Proof of location of Comparable Plant		Proof of Reliable Commercial Operation for at least one (1) year operating at 60 Hertz of Comparable Plant's Generator.		<p>We took note of the concerns raised by the bidders' queries and suggested revisions on this Technical Proposal Annex TP-1 template, thus, the TPBAC will revise Annex TP-1 to include a row for the Make/Type/Model of the Comparable Plant and also to include a row for the Type of Technology for each key component.</p> <p>With this revision, the basis of the "must be in commercial operation for at least one (1) year" requirement is now for the whole Comparable Plant as a whole and not per Key Component.</p> <p>Considering this relaxation of the requirement and that the pertinent provision in the IPB did not provide for a 150 MW minimum size of the Comparable Plant, unlike the Reference Plant and the TOR's minimum offered contract capacity and unit size, a 150 MW minimum size is hereby introduced and the Comparable Plant's definition in p. 8 of the Bid Requirements; in Sec. 3.2 (c) and Annex TP-1 (item 4.) of the IPB, are hereby amended and revised to read as:</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 <u>technology</u> of the Nominated Power Plant (e.g., boiler, turbine and generator) is of proven design and technology, which means that a generating facility elements of similar design <u>unit of the same technology, with at least 150 MW installed capacity</u>, 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 <u>Comparable Plant</u> 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>
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				A Bid Bulletin amending the pertinent provisions of the Bid Requirements, IPB and Annex TP-1 of the IPB will reflect this change.
	IPB / Annex TP-1 Comparable Plant	Section 3.2, Page 24	<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>Can a bidder submit a single power plant as its Comparable Plant with the following components:</p> <ol style="list-style-type: none"> 1. Turbine of similar design, technology, brand and model as the Nominated Power Plant, and <p>Generator and Boiler of similar design and technology as the Nominated Power Plant, but with different brand and model?</p>	Yes. The revised Annex TP-1 (<i>see answer immediately above</i>) will allow this, wherein the requirement of "similar design and technology" does not necessarily mean the same brand and model.
	TPBAC ruling regarding the 60-hertz system		<p>Our technical partner is Harbin Electric International Co., Ltd. (HEI). Harbin Electric International Co., Ltd. (HEI), an important member of HE Group, which provides comprehensive services on power development, from supply of complete set of equipment, Engineering, Procurement and Construction (EPC), Operation and Maintenance (O& M) to after-sale services to power plants. Its thirty (30) years of vast experience coupled with its excellent performance in more than 20 countries, with total installed capacity of nearly 30000MW.</p> <p>Kingstone thru HEI has a reference plant and comparable plant in a 50-hertz utility frequency system, given that the grid code in their countries use the 50-hertz as its utility frequency system similarly with our neighboring ASEAN countries (Myanmar, Cambodia, Thailand Singapore, Laos, Vietnam, Malaysia and Brunei).</p> <p>It would be of great advantage to Meralco, its customers and stakeholders, to liberally treat the issue on the 60-hertz utility frequency system, since it will</p>	<p>To clarify, the Reference Plant can be operating at either 50Hz or 60Hz system as long as 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 said Reference Plant.</p> <p>As for the Comparable Plant, the 60Hz requirement was made in order to make sure that the same technology that will be used in the Nominated Plant shall indeed work in the Philippine grid system (i.e. 60 Hz system). To clarify, the Comparable Plant can be any plant located anywhere in the world and owned by another company as long as it has the same technology as the Nominated Plant and has operated for at least one-year commercially in a 60Hz system.</p>

			<p>encourage serious and technically capable and competent bidders to help the Philippine energy industry. Consequently, it will definitely prepare the country to the proposed ASEAN Power Grid (APG), an initiative to construct a regional power interconnection to connect the region, first on cross-border bilateral terms, and then gradually expand to sub-regional basis and subsequently leading to a total integrated South East Asia power grid system.</p> <p>With the aforesaid grounds coupled with the following reasons, we respectfully request that the issue regarding 60-hertz utility frequency system be treated liberally:</p> <p>1.The 50HZ and 60HZ power plants are the same from point of view of construction, operation and maintenance provided all components used certifications complies with standards and specific for 50Hz or 60Hz as the case may be. The Bid must ensure equipment are designed, manufactured and tested for 60Hz according to international standards. Certifications from recognized international certifying bodies are normally required evidence;</p> <p>2. The DOE, as we understand based on its guidance in response to inquiries in other DUs CSP, consider the experience of the people involved in construction, operation and maintenance more critical than the "company". The company must organize experts and experience people to ensure that the power plant will be constructed, operated and maintained in accordance with international standards. What is being proposed is more important than what happened in the past and;</p> <p>3. Experts opined that there is no big difference between 50 Hz and 60 Hz, nothing is bad or good basically. For independent power equipment, any frequency can be designed based on suitability.</p> <p>Premising the unquestionable and exceptional track record, capability and competence of HEI as an EPC and O & M contractor, we assure you that Kingstone can satisfactorily construct, operate and maintain our nominated 1200MW coal-fired power plant in a 60-hertz utility frequency system.</p>	
	Partnership	Annex QD1- A page 54	<p>Underlined word in the template does not apply to partnerships.</p> <p>xxx</p> <p>4. At a <i>(regular/special)</i> meeting of the board of directors of the Company, held on <i>(date)</i> at <i>(place)</i>, in which meeting a quorum was present and acting throughout, the following resolutions were passed and approved:</p>	Amenable for the bidder to reflect this change in Annex QD-1, in order to apply for partnerships.
	Instruction to Prospective Bidders			

			<p>xxx</p> <p>Please see suggested proposed revisions:</p> <p>4. At a <i>(regular/special)</i> meeting of the <u>[partners]</u> board of directors of the Company, held on <i>(date)</i> at <i>(place)</i>, in which meeting a quorum was present and acting throughout, the following resolutions were passed and approved:</p>	
	Partnership Instruction to Prospective Bidders	Section 3.1.2 (a) page 21 and ANNEX QD-2 page 56	<p>(a) copy of SEC Certificate of Incorporation, which shall be certified as a true copy by (i) the SEC; or (ii) the corporate secretary, or assistant corporate secretary, in which case, it must be under oath and notarized;</p> <p>MPPCL cannot provide a Securities and Exchange Commission ("SEC") Certificate of Incorporation because the SEC has not issued in favor of MPPCL a Certificate of Registration when it was established in 2007. The SEC only issued a certificate on MPPCL's original Articles of Partnership dated 25 June 2007 (the date the partnership was established). Thus, in lieu of said requirement, MPPCL request that it be allowed to submit a copy of the certificate issued by the SEC approving the original Articles of Incorporation instead.</p>	We are amenable to the request, the bidder requesting this will be allowed.
	Partnership Instruction to Prospective Bidders	ANNEX QD-2, page 56	<p>(b) copy of latest General Information Sheet, stamped "received" by the SEC, which shall be certified as a true copy by (i) the SEC; or (ii) the corporate secretary, or assistant corporate secretary, in which case, it must be under oath and notarized;</p> <p>Partnerships are not required to submit a General Information Statement ("GIS") as only SEC-registered domestic corporations, both stock and non-stock are obligated to file a GIS. We request to exempt partnerships from this requirement.</p> <p>If this is no longer required, should the bidder submit a write-up on the reasons for non-submission?</p>	We are amenable to this request and understand that partnerships are not required to file GIS but if it made amendments to its Articles of Partnership, an Amended Articles of Partnership will be filed. Thus, in lieu of the GIS, the bidder should ensure that it is submitting the latest Articles of Partnership (in lieu of GIS) for the TPBAC to see/know the current partners of the bidder.

	Partnership Instruction to Prospective Bidders	Section 3.1.6 page 23	<p>Details of the Project Cost and the proposed financing plan, specifically indicating the portion of the Project Cost to be financed by equity and by debt, using the form in Annex QD-7, with the following attachments:</p> <p>(a) Commitment Letter from the relevant shareholders of the Bidder confirming their respective equity commitment for the amount of the Project Cost that will be funded through shareholders' equity using the form in Annex QD-7A, and signed by the Chief Financial Officer, Treasurer or equivalent officer of the relevant shareholders of the Bidder; and</p> <p>A partnership does not have shareholders but partners.</p> <p>If the partners have not entered into any shareholder's agreement, pooling agreement, voting trust agreement or equivalent document other than the Articles of Partnership, will Annex QD-7A suffice for this requirement?</p>	Yes, Annex QD-7A, for a partnership (as revised in the responses in various Bid Bulletins) is already acceptable for this purpose.
	Partnership Instruction to Prospective Bidders	Annex QD-7A, page 74	<p>Underlined words in the template does not apply to partnerships.</p> <p>xxx</p> <p>We own (insert number of <u>shares</u>); representing approximately (insert percentage) of the <u>issued and outstanding capital stock</u> of the Company. We 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.</p> <p>xxx</p> <p>Please see proposed revisions:</p> <p>We own (insert number of <u>partnership interest</u>); representing approximately (insert percentage) of the <u>partnership interest</u> of the Company. We 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.</p>	<p>Amenable for the bidder to reflect this change in Annex QD-7A, for this particular bidder, in order to apply for partnerships, however, the following counter-revision must be adopted by the bidder:</p> <p>"We own (insert number of partnership interest); representing approximately (insert percentage) of the partnership interest of the Company. We undertake to provide to the Company the amount of at least (insert amount), in the form of <u>partner's contributions or loans</u> equity or shareholder loans, for the implementation of the Project."</p>
	Partnership Instruction to Prospective Bidders	Section 3.1.4 page 22, Annex QD-5, page 65	<p>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 is not available as of Bid Submission Deadline, the Bidder must submit an application for a COC pending before the ERC or any other official document coming from the ERC confirming the Reference Plant's authority to operate at least 150 MW. If the Reference Plant is located</p>	<p>It is preferable that the duly authorized custodian of the Reference Plant's COC be the one to sign.</p> <p>However, given the COVID-19 pandemic, the corporate secretary/assistant corporate secretary of the Bidder may sign.</p>

			<p>outside of the Philippines, it must have the license or permit equivalent to the ERC's COC, or-the alternative documents;</p> <p><i>Is this to be signed by the corporate secretary of Bidder or the corporate secretary of Affiliate which owns the Reference Plant?</i></p>	
	<p>Reference Plant</p> <p>Instruction to Prospective Bidders</p>	<p>Section 3.1.4 page 22, Annex QD-5, page 65</p>	<p>In respect of a Reference Plant located in Luzon or Visayas, a copy of the Market Participation Agreement with the WESM for the Reference Plant, which shall be certified as a true copy by (i) the Philippine Electricity Market Corporation and/or Independent Electricity Market Operator of the Philippines; or (ii) the corporate secretary/assistant corporate secretary (or its equivalent thereof if in a foreign country) in which case, it must be under oath and notarized. If the Reference Plants located outside of the Philippines, it must have the equivalent market participation agreement with the WESM, or the alternative documents;</p> <p><i>Is this to be signed by the corporate secretary of Bidder or the corporate secretary of Affiliate which owns the Reference Plant?</i></p>	-same answer-
	<p>Reference Plant</p> <p>Instruction to Prospective Bidders</p>	<p>Section 3.1.4 page 22, Annex QD-5, page 65</p>	<p>Proof that the Reference Plant, if located in the Philippines, must be covered by a valid Transmission Service Agreement and Fuel Supply Plan or Agreement, or the equivalent of these documents if in a foreign country, which shall be certified as a true copy by (i) the National Grid Corporation of the Philippines (NGCP); or (ii) the corporate secretary/assistant corporate secretary.</p> <p><i>Is this to be signed by the corporate secretary of Bidder or the corporate secretary of Affiliate which owns the Reference Plant?</i></p>	-same answer-
	<p>Bid Bulletin No. 3</p>	<p>Page 40</p>	<div> <div> <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>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.</p> </div> <div> <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 Assistant Corporate Secretary, especially if authorized under the company's by-laws to issue such certifications.</p> </div> </div> <p>Can the corporate secretary or assistant corporate secretary of the owner of the Reference Plant (and not the Bidder) issue the required certification and certify all documents for the Reference Plant, including Annex QD-5?</p>	-same answer-

<p>Plant Capacity Factor Reference Plant</p> <p>Instruction to Prospective Bidders</p>	<p>Section 3.1.4 page 22, Annex QD-5, page 65, Section 9.61</p>	<p>9.61. "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, Affiliates or Ultimate Parent.</p> <p>Technical Qualification Requirements</p> <p>(a) 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 or</p> <p>MW 5</p> <hr/> <p>maintained by the Bidder, its direct shareholders representing Controlling interest, Affiliates or Ultimate Parent.</p> <p>Is the required 150 MW installed capacity gross or net? Additionally, is the plant capacity factor (85%) mentioned based on gross or net capacity of the Reference Plant?</p>	<p>150 MW is gross capacity. 85% PCF is calculated based on (i) in case of a Reference Plant located in the Philippines, must be supported by an official document [GCMR] of the Bidder's Reference Power Plant as submitted by the Bidder to the ERC, showing that it attained a simple monthly average of at least 85% PCF over a 3-month consecutive period of operations within the most recent twenty-four (24) month 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>Bid Requirements as amended by Bid Bulletin No. 3</p> <p>PEMC and IEMOP Energy Settlement Amounts</p>	<p>pp. 3-5</p>	<p>generation, including <u>The Bidder and any of its Affiliates engaged in power generation must also not have</u> 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 and/or its Affiliates engaged power generation, distribution, and supply, 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 <u>with Meralco and/or its Affiliates engaged power generation, distribution, and supply</u> are excluded from this definition:</p> <p>Kindly confirm that no counterparty consent will be required from PEMC and/or IEMOP notwithstanding this clause.</p>	<p>Yes, the TPBAC will just check the IEMOP's website to check for unpaid energy settlement amounts as of the week of 25 January 2021.</p>

	Instructions to Prospective Bidders as amended by Bid Bulletin No. 3	Section 3.1.2	<table><tr><td>11</td><td>Section 3.1.2</td><td>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 engaged in the power industry 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; [...]</td></tr></table> <table><tr><td>Corporate Structure</td><td></td><td>What should be included in the corporate structure of Bidder? Can we only include Affiliates engaged in power generation? diagram of corporate structure with an indication of which entity has Controlling interest over, or the Affiliate (engaged in power generation) 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;</td><td>For purposes of submitting diagram of the corporate structure, we will agree to limit the diagram to Affiliates <u>engaged in the power industry</u>. 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. 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. A Bid Bulletin to reflect this change and the necessary amendment to the provisions of the Bid Requirements and IPB shall be issued.</td></tr></table> <p>What does “engaged in the power industry” mean? Does it include a holding company owning shares in a corporation engaged in power generation? Does it include an O&M contractor providing services to a power generator? Does it include a landholding company leasing land to a power generator? Should we also include entities engaged in Distribution Utilities?</p>	11	Section 3.1.2	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 engaged in the power industry 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; [...]	Corporate Structure		What should be included in the corporate structure of Bidder? Can we only include Affiliates engaged in power generation? diagram of corporate structure with an indication of which entity has Controlling interest over, or the Affiliate (engaged in power generation) 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;	For purposes of submitting diagram of the corporate structure, we will agree to limit the diagram to Affiliates <u>engaged in the power industry</u> . 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. 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. A Bid Bulletin to reflect this change and the necessary amendment to the provisions of the Bid Requirements and IPB shall be issued.	
11	Section 3.1.2	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 engaged in the power industry 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; [...]									
Corporate Structure		What should be included in the corporate structure of Bidder? Can we only include Affiliates engaged in power generation? diagram of corporate structure with an indication of which entity has Controlling interest over, or the Affiliate (engaged in power generation) 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;	For purposes of submitting diagram of the corporate structure, we will agree to limit the diagram to Affiliates <u>engaged in the power industry</u> . 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. 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. A Bid Bulletin to reflect this change and the necessary amendment to the provisions of the Bid Requirements and IPB shall be issued.								
	Affiliates Engaged in Power Industry	Article 1(d), pg. 4	<p>The response of TPAC was - - “If already resolved with finality then that will not be considered a dispute anymore since there is already a final resolution on the matter”. But the problem is without the qualification of - - “<u>by a final and executory judgment</u>”, mere pending frivolous suit may or can be a ground to disqualify a prospective bidder or to deny its participation in the latest MERALCO CSP.</p> <p>Please reconsider the insertion of the qualifier.</p>	<p>Does it include a holding company owning shares in a corporation engaged in power generation? - YES Does it include an O&M contractor providing services to a power generator? - YES Does it include a landholding company leasing land to a power generator? - NO Should we also include entities engaged in Distribution Utilities? - YES</p> <p>Not amenable. As a result of the limitations to the coverage introduced in Bid Bulletin No. 3, whereby the Bidder/its Affiliate engaged in power generation is required not to have Outstanding Disputes only against Meralco and/or its Affiliates engaged power generation, distribution, and supply, it becomes more important for the DU that the possible PSA counterparty it will enter into as a result of this CSP should have a good relationship with the DU, and not with a history of Outstanding Dispute with it/its Affiliates.</p>							

	Bid Bulletin No. 3, Annex B	Page 5	<p>How many authorized representatives per bidder are allowed?</p> <p>QD 1-A template presupposes only 1 rep per bidder.</p> <p>RESOLVED FURTHER, that (<i>name of representative</i>) is hereby appointed as the authorized representative of the Company during the Bidding, authorized to execute, sign, submit and receive documents for, and</p>	A total of three (3) authorized representatives. QD1-A can reflect this, if the Bidder wishes.
	Bid Bulletin No. 3, Annex B	Page 25	<p>Upon execution of the PSA and the Winning Power Supplier, all the parameters of the Bidding, the Winning Power Supplier's representation and warranties, issued certifications, 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 <u>in case of conflict, the bid bulletins, bid parameters won by the Winning Power Supplier will prevail.</u></p> <p>During the Bidding process, however, the provisions of the PSA template will prevail over the Bidding Documents in case of discrepancy.</p> <p>Please reconsider the underlined statement. The PSA, upon execution, should govern and therefore prevail over the other documents. Besides, for purposes of approving the PSA, the terms and conditions embodied therein as stipulated are the ones to be scrutinized by the ERC.</p> <p>We suggest for MERALCO to issue a revised PSA template containing amendments pursuant to agreed changes as referred to in the Bid Bulletins.</p>	The TPBAC's approved/accepted changes are those already provided in the released Bid Bulletins, which shall be binding upon execution and implementation of the PSA. In any case, as previously answered, the approved/accepted changes will be reflected on the PSA template to be executed by the Winning Power Supplier.
	Bid Bulletin No. 3, Annex B, TOR Table: Supply Type	Page 98	<p>Annex TP-2. The Bidder with a fuel source will be other than coal or nat. gas can submit its own technical parameters, it just had to ensure that it complies with the requirements of the TOR Table and information prescribed in Annex TP-1 of the IPB, fuel forecast and nominated fuel price index for evaluation with the TPBAC.</p> <p>While Meralco claims that the CSP is "technology-neutral" (i.e., bidder may use a plant other than coal or nat. gas), its technical parameters are still subject to the</p>	Noted.

			TOR.	
	Bid Bulletin No. 3, Annex B,	Page 56	<p>Question:</p> <p>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.</p> <p>Reply:</p> <p>Bidder cannot modify fields. Bidder should fill out relevant fields and insert notation /attach FS.</p> <p>Please clarify response in Bid Bulletin No. 3.</p> <p>Will TPBAC accept Annex QD-6 if the information stated therein is aligned with its latest AFS? This is relevant considering that TPBAC does not allow bidder to modify fields in the template and certain equity-related fields in the template do not apply to partnerships.</p>	<p>We note the concern of the bidder, thus, we are now amenable to the suggested modification, but the bidder is requested to send to the TPBAC the suggested fields for the partnership structure, for the review and approval by TPBAC.</p>
	IPB / Annex TP-1 Comparable Plant	Section 3.2, Page 24	<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>It is our understanding that the intention in specifying the Comparable Plant is for the TPBAC to assess the Nominated Power Plant's technical feasibility and performance based on proven design and technology. The Comparable Plant need not have the same exact size and brand as the Nominated Power Plant. As long as the Comparable Plant is of the same technology and design (at least the key components) and which capacity is greater than that of the Nominated Power Plant (which is sized to supply the offered contract capacity), performance and availability are in equivalence.</p>	<p>Yes, the understanding is correct.</p>

	GNPH GNPHR Instructions to Prospective Bidders	Section 3 / Page No. 27	The measurement of the heating value requirement should be aligned with industry practice. Gas thermal efficiency, for instance, is typically quoted by EPC contractors and gas turbine manufacturers based on LHV. Moreover, the LHV of a fuel determines the fuel flow rate required. Providers guarantee heat rates at LHV and generally do not guarantee at HHV. Thus, for gas plants, GNPHR should be based on LHV.	Not amenable. Using GNPHR at LHV for gas while using GNPHR at HHV for coal will result to non-uniform assumption during the evaluation. GNPHR values at LHV would result to lower values as compared to GNPHR values at HHV. The Bidder should just convert its LHV values to HHV values prior to submission.
	LCOE Template	Nominated Fuel Price Index	Please provide an option in the dropdown called "Other" and a blank cell whereby the Bidder can specify their preferred index.	If the Bidder chooses "Other" as its Fuel Type, the Bidder will need to type its preferred fuel price index in the Nominated Fuel Price Index box. If it uses Coal or Natural Gas as its Fuel Type and decides to use another fuel price index that is different from the dropdown options for each respective Fuel Type, the Bidder can type its preferred fuel price index directly in the Nominated Fuel Price Index box.
	Bid Bulletin No 3, Annex B Inclusion of fuel freight costs in FOM and VOM	page 79	<p>The fuel handling and freight costs should be included in Bidder's proposed Variable and/or Fixed O&M expense;</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>Pass-through of fuel costs, as a matter of convention and in regulatory parlance, is typically based on landed cost (all-in cost). From Y11 to Y20, freight and fuel related costs should be included as part of Fuel Fee to be consistent with the fuel pass thru concept contemplated under the TOR during such supply years.</p>	For CY 11 to 20, the fuel cost pass thru concept shall be based on as-billed documents/receipts (excluding fuel handling and freight costs) that the Power Supplier shall submit every Billing Period to Meralco to substantiate its actual incurred fuel costs in producing the energy associated to its contract capacity.
	Bid Bulletin No 3, Annex B	Page 37	<p>"Technical Parameters</p> <p>No capacity and electrical output, to the extent of Contract Capacity, of the Plant shall be contracted under an agreement apart from the Power Supply Agreement ("PSA") resulting from this Bidding"</p> <p>Can the Power Supplier build the Nominated Power Plant with an installed capacity that is different from the installed capacity stated in the bidding documents (submitted by the bidder), but with an installed capacity that is sufficient to supply the Offered Capacity to MERALCO?</p>	

			<p>Ex: Installed Capacity stated in the Bid = 1000MW</p> <p>Offered Capacity = 500MW</p> <p>Actual Installed Capacity of the Plant at COD = 800MW</p> <p>If yes, please confirm that all required tests to achieve COD under the PSA will be based on such actual installed capacity of the Nominated Power Plant and not on the installed capacity originally stated in the bidding submissions.</p>	<p>Yes, this will be allowed provided that:</p> <ul style="list-style-type: none"> (i) as long as the actual installed capacity of the Nominated Power Plant is still greater than the Offered Contract Capacity; (ii) the actual installed capacity should use the same technical specifications submitted for the Nominated Power Plant and meet its Performance Guarantees as submitted in the bid submissions; and (iii) subject to certain types of technology, where the TPBAC's evaluation of the indicated installed capacity at the time of the bidding must remain binding upon the bidder, since per evaluation during the bidding the required capacity by the DU (which was offered by the bidder) is anchored on a certain configuration of the installed capacity of the Nominated Power Plant. For example, but not limited to, the TPBAC and its Independent Engineer's evaluation that a certain installation configuration of a certain power plant must be maintained in order for the DU's required capacity and energy to be met, then this particular installation capacity configuration stated in the bid submissions will be made binding upon the bidder.
	Nominated Plant	<p>Bid Bulletin No. 3, Annex B, Page 49</p> <p>IPB, Section 3.2 (d), in relation to Annex TP-1</p>	<p>In Bid Bulletin No. 3, the TPBAC clarified that the details about the Nominated Plant to be indicated in Annex TP-1 cannot be indicative because this <i>"will not allow the TPBAC to comprehensively conduct its due diligence and evaluation of the Bidder's Nominated Plant."</i></p> <p>We request that this be reconsidered. The Bidder already undertakes to <i>meet performance guarantees</i> that will ensure that the Plant will operate safely, efficiently, and reliably. It should not be necessary that the Nominated Plant be of the exact same specifications as indicated in Annex TP-1 for as long as the Bidder undertakes and satisfies the performance guarantees at the Proposed Price.</p>	<p>Not amenable. This request is completely different from the one immediately above. It is the technical specification being made indicative, not the installed capacity.</p> <p>The technical specifications submitted for the Nominated Power Plant (and which will be evaluated by the TPBAC in order for the Bidder to be deemed qualified) cannot only be indicative as its Nominated Power Plant was evaluated by the TPBAC and its Independent Engineer based on the submitted technical specifications, which we're compared back to back to a submitted Comparable Plant having a similar and proven design and technology and proven reliability factor.</p> <p>As such, all technical specifications submissions that were basis of the TPBAC's evaluation of the Nominated Power Plant and which results to a bidder being subsequently awarded as a Winning Power Supplier should be binding upon the said Winning Power Supplier.</p>

	<p>Bid Bulletin No 3, Annex B</p> <p>Annex QD-7</p>	<p>Page 44</p>	<div><div><p>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".</p><p>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)".</p><p>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> [...]."</p><p>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.</p><p>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.</p></div><div><p>Bidder can submit any amount of equity and financing structure as long as Project Cost is fully funded</p></div></div>	<p>1. Bidder may change financing structure of the project cost</p> <p>2. Yes , as Project Costs provided are based on reasonable estimates and are subject to change.</p>
	<p>Bid Bulletin No. 3, Annex B</p> <p>QD-7: Statement of Project Cost and Financing Plan</p>	<p>Page 59</p>	<div><div><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 Annex QD-7B, 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.</p><p>This should include partners/stockholders.</p></div><div><p>Not applicable to Bidder (equity funded).</p></div></div> <p>Annex QD-7 requires that the Bidder also indicate the amount of Project Cost that is funded through debt extended to its direct shareholders. Please consider deletion of this portion because Bid Bulletin No. 3 considered that if the debt is extended to shareholders the same will form part of Project Cost Funded by Equity.</p> <div><p>Project Cost to be Funded through Debt extended to any of the Bidder's direct shareholders representing Controlling interest, Affiliates or Ultimate Parent:</p><p>a) Project Financing;</p><p>b) Debt-capital markets financing;</p><p>c) Vendor financing; or</p><p>d) Other forms of financing</p></div>	<p>Amenable to delete the section on project cost through debt extended to Bidder's shareholders in the Statement on Project cost and financing plan.</p> <p>To reflect this change, the Testimonial letter (Annex QD-7B) will also be changed by deleting the "shareholder or Ultimate Parent</p> <p>A bid bulletin will be issued revising the Annex QD-7 template and the Testimonial (Annex QD-7B).</p>

	Bid Bulletin No 3, Annex B, page 21	Article 3, Section 3.3.1	<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>After the execution of the PSA, as well as filed and approved by the ERC, please clarify which document(s) will prevail if there are still inconsistencies between the PSA and the bidding documents (IPB, TOR, Bid Bulletins, etc). Please cite a provision under the PSA template that provides for this.</p>	After the execution of the PSA, in case of conflicting provisions, the hierarchy of statutory interpretation shall follow the following order: the Bidder's Document Submissions during the CSP, the PSA (including all its refinements issued per various Bid Bulletins of the CSP), and finally, the other bidding documents.
	Bid Bulletin No 3, Annex B, page 25	Discl Disclaimer Instructions to Prospective Bidders	<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 below</i>)"</p>	-see answer above-
	Bid Bulletin No 3, Annex B, page 34-35	Page 26, 28 and 29, Section 3.3 and 3.3.1	<p>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.</p> <p>"xxx... 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 <u>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.</u></p> <p>"... 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. <u>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>"</p>	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 from the DU's experience of a PSA that it entered into with a power supplier last April 2016, where after the PSA was filed with the ERC for approval, the ERC held in abeyance indefinitely a PSA's application for approval until the submission of the ECC by the power supplier.

			<p>Bid Opening – January 25, 2021</p> <p>Best Bid/Declaration of Winning Bidder – 7 days</p> <p>Filing with ERC – 14 days (well within Feb2021)</p> <p>Target COD – December 26, 2024</p> <p>Can MERALCO provide a calculation of what would be MERALCO customers’ significant financial risk (supply deficiency and exposure to volatile WESM prices) between the period February 2021 to December 26, 2024 that would require a top-up of the Bid Security every 6 months from ERC filing?</p> <p>Please consider possible events of FM that could prevent the Power Supplier from securing and submitting the ECC. This existing “pandemic situation” which has been in existence for almost a year already, is a perfect example of an event of FM that could become a reason for possible delay in the PSA approval or the plant not attaining commercial operations by the COD date.</p>	
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	<p>Bid Bulletin No 3, Annex B, page 34-35</p>	<p>Page 26, 28 and 29, Section 3.3 and 3.3.1</p>	<p>Thus, Sec. 3.3.1 will be revised to read as:</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 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, <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></p> <p>Section 3.2(j) of the IPB:</p> <p>(j) The Environmental Compliance Certificate (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),</p> <p>a certified true copy of the ECC issued by the DENR must be submitted as required by the ERC;</p> <p>Please clarify the need to increase the bid security if the ECC is a requirement of the ERC. This is mentioned in Section 3.2(j) of the IPB.</p> <p>We suggest that the increase in the bid security be only required when all of the following conditions are present: (1) the ERC specifically required for the submission of the ECC in order to proceed with the PSA application, (2) the Power Supplier has</p>	<p>-same answer above-</p>
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			<p>failed to submit the same and (3) the pending PSA application is delayed or suspended as a result of such failure.</p> <p>Further, forfeiture of the Bid Security and/or termination of the PSA should only be considered when the failure of the Power Supplier to submit the ECC resulted in the suspension or delay of the ERC approval of the PSA.</p>	
	<p>Bid Bulletin No 3, Annex B, page 51</p>	<p>Ancillary Services Cost Recovery Payment</p>	<p>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. <u>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.</u> 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>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 Php 0.2800 /kWh 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.</p> <p>AS Costs are authorized pass-through charges by the ERC. The NGCP application is still pending and there is no assurance of the final decision/outcome of the case. Further, the issue is the subject of a pending case filed by IEMOP with the ERC on pricing determination methodology. The AS Cost Recovery should not be based on an event that is not yet in existence since there is still no final decision of the ERC. We request that the AS Cost Recovery cap be removed for being premature and due to the absence of legal basis and has no direct consideration in the Generation Price setting/structure.</p> <p>Please also provide specific parameters/variables considered in the establishment of the Php0.28/kWh floor value of the AS Cost Recovery Cap? How was this AS cap of Php0.28/kWh derived?</p>	<p>As relayed to the TPBAC by the Meralco, Meralco based it on its actual AS cost payments from its current power suppliers.</p>

			Can MERALCO provide a precedence on such a requirement?																	
	Bid Bulletin No 3, Annex B, page 60-61	Reserved Prices for the Headline Rate and LCOE Instructions to Prospective Bidders	<p>QUESTION: “6. Is Headline Rate based on prices at Fo (3Q 2022-2Q 2023), or at Y1 of the PSA?”</p> <p>REPLY: “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> <p>(1) Kindly clarify the answer provided as it did not seem to address the determination of the Headline Rate?</p> <p>(2) If the Headline Rate is to be established based on the “available actual values of each assumptions (i.e. FX, US CPI, PH CPI) closest to the Bid Submission Deadline”, MERALCO should provide said levels for consistent use of all Bidders in the calculation of their Headline Rate.</p>	<p>1. Headline Rate is based on the F0 (1Q – 4Q 2021) and available actual values of each assumptions (i.e. FX, US CPI, PH CPI) closest to the Bid Submission Deadline at 87.67% PCF</p> <p>2. The available actual values of each assumptions (i.e. FX, US CPI, PH CPI) shall be indicated in the Final and Official Version of the Financial Evaluation Workbook that will be used in determining the LCOE evaluation ranking</p>																
	Annex QD-2	<p>(f) if the Bidder formed a partnership or consortium for the purpose of this bidding, copy of an agreement showing that the liability in this Bidding and the resulting Power Supply Agreement is solidary for the parties thereto. It should be certified as a true copy by the duly authorized officer of said joint venture/partners/consortium members, in which case, it must be under oath and notarized.</p> <table><tr><td>1. Name of Entity</td><td>Mariveles Power Generation Corporation</td></tr><tr><td>2. Type of entity</td><td>Corporation</td></tr><tr><td>3. Year of Incorporation or Registration</td><td></td></tr><tr><td>4. Principal Purposes or Businesses</td><td></td></tr></table> <p>For entities listed on the Philippine Stock Exchange (“PSE”), the Bidder must submit the listed entity’s latest Public Ownership Report and List of Top 100 Stockholders, as submitted to the PSE. The information in such Report and List must be as of a date no earlier than 31 December 2019. Shares held by PCD Nominee may be lumped together in the List of Top 100 Stockholders.</p> <p>6. If applicable, information on Beneficial Owners who own more than 5% Beneficial Interest</p> <table><tr><th>Name of Beneficial Owner</th><th>Nationality</th><th>Percentage Total of Beneficial Ownership</th></tr><tr><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td></tr></table> <p>Does no. 6 on beneficial ownership apply only if the Bidder formed a partnership or consortium for the purpose of this bidding?</p>	1. Name of Entity	Mariveles Power Generation Corporation	2. Type of entity	Corporation	3. Year of Incorporation or Registration		4. Principal Purposes or Businesses		Name of Beneficial Owner	Nationality	Percentage Total of Beneficial Ownership							No. Item 6 on Beneficial Ownership, this is a Securities and Exchange Commission (SEC) requirement on Beneficial Ownership and Beneficial Interest on what is to be disclosed in the Philippine Stock Exchange (PSE), if applicable.
1. Name of Entity	Mariveles Power Generation Corporation																			
2. Type of entity	Corporation																			
3. Year of Incorporation or Registration																				
4. Principal Purposes or Businesses																				
Name of Beneficial Owner	Nationality	Percentage Total of Beneficial Ownership																		

	Most Recent Quarterly Financial Statements / IPB	Section 3.1.5(b) / Page 23; Required Attachment for Annex QD-6 / Page 68	<p>The entity executing Annex QD-6 will only be able to provide its mid-year financial statements (i.e. ending on June 30, 2020) to comply with TPBAC's requirement for submission of most recent quarterly financial requirements.</p> <p>Based on applicable law governing the issuing entity, the entity cannot disclose yet the unaudited quarterly financial statements to the public. The Bidder will submit the quarterly financial statements once it is available.</p>	Not amenable. The Bidder should submit the (even if unaudited) September 30, 2020 quarterly FS as this should be available at this time. As relayed to the TPBAC by Meralco, Meralco will assure the bidder that the submitted FS will be kept confidential and will not be disclosed to other parties, pursuant to the Confidentiality provisions in this bidding.
	Marginal Bid and Forfeiture of Bid Security	<p>Bid Bulletin No. 3, Annex A Table 2, Items 2 & 3</p> <p>Bid Bulletin No. 3, Annex B, Pages 29 – 34</p> <p>IPB, Section 2.2(f)</p> <p>Invitation to Bid, Page 1</p> <p>Bid Requirements, Page 2</p>	<p>In Bid Bulletin No. 3, the TPBAC responded that refusal to accept the reduction of the Offered Contract Capacity shall cause the partial forfeiture of the bid security in proportion to the rate the required reduced amount bears to the Offered Contract Capacity.</p> <p>It is respectfully submitted that this still effectively punishes the Bidder for happening to be the Bidder with the Marginal Bid Offer. The required bid security of ₱3 million for every MW of Offered Contract Capacity is no small amount. Using the TPBAC's example, a Marginal Capacity Offer of 200 MW out of an Offered Contract Capacity of 1,000 MW shall result in a forfeiture 20% of the bid security or ₱600 million, which is a very significant amount of money to gamble. Moreover, as discussed before, acceptance of the reduction of the Offered Contract Capacity at the Proposed Price can be grossly disadvantageous to the Bidder which formulated its bid on the basis of 100% of its Offered Contract Capacity at an indicated PCF of 87.67% and sets its economics out of whack.</p> <p>Thus, we strongly reiterate our request that refusal to accept the reduction of the Offered Contract Capacity shall not cause the forfeiture of any portion of the bid security.</p>	Not amenable. The proportional forfeiture of the Bid Security of the Marginal Bid Offer is already a significant relaxation of this rule. The proportional forfeiture, in case the bidder refuses to accept the reduction of its Offered Contract Capacity, was determined by taking into consideration the concerns of the bidders and protecting the integrity of this CSP. It was not meant to punish the Marginal Bid Offer. By putting the possibility of forfeiting a part of its Bid Security in case it becomes the Marginal Bid Offer, the Bidders are put on notice that they should give their best possible price in order not to be the Marginal Bid Offer and prevents them from colluding in submitting their price offers. In doing so, it will benefit the consumers by making sure that the winners of this CSP have indeed submitted their lowest possible price.
	Ancillary Cost Recovery Cap	Bid Bulletin No. 3, Annex A,	In Bid Bulletin No. 3, the TPBAC stated that ASCRP will be included in the Headline Rate and the LCOE evaluation. It also set a floor value for the ASCRP at P0.2800/kWh.	

		Table 2, Item 7 Bid Bulletin No. 3, Annex B, Pages 51 – 53; 176, 178, 185 IPB, Section 3.3(f) PSA, Appendix E	<p>We do not think that the ASCRP should be a factor in determining the LCOE because the imposition of Ancillary Service charges on generation companies, much less the amount of such charges, is still uncertain. The ERC has yet to pass rules on this. Absent these rules, Bidders do not have a guide on how to reasonably forecast ASCRP. Bidders can make very random forecasts and it would be unfortunate if this CSP is decided on the basis of ASCRP, an uncertain (and possibly inapplicable) component of the LCOE.</p> <p>Thus, we reiterate our request that ASCRP be instead excluded as among the factors for determining LCOE and instead be made to form part of the Supplemental Payments under Annex E of the PSA.</p>	Not amenable. Including the ASCRP in the LCOE evaluation is for the sole benefit of the DU's customers as it shall protect the consumers from possible pass-through charges of AS Cost.
	Ancillary Services ("AS") Cost Recovery Cap (" <u>ASCRP</u> ")	IPB, Section 3.3(f), Power Supply Agreement (" <u>PSA</u> "), Appendix E	<p>Under the IPB, among the factors for determining the LCOE is ASCRP. The Bidder is required to forecast a cap for ASCRP on a yearly basis starting Contract Year 1, in PhP/kWh.</p> <p>We do not think that the ASCRP should be a factor in determining the LCOE because (a) the imposition of AS charges on generation companies is uncertain, and (b) the amount of such AS charges, if any, is also uncertain. The ERC has yet to pass rules on this. Absent these rules, Bidders do not have a guide on how to reasonably forecast ASCRP. Bidders can make very random forecasts and it would be unfortunate if the CSP is decided on the basis of ASCRP, which is an uncertain component of the LCOE.</p> <p>We reiterate our request that ASCRP be instead excluded as among the factors for determining LCOE and instead form part of the Supplemental Payments under Annex E of the PSA.</p>	Not amenable. Including the ASCRP in the LCOE evaluation will benefit and protect the consumers from possible additional pass-through charges.
	BID PRICE AND BID SECURITY	Section 3.3 (f) / Page 27	<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>During the pre-bid conference, the TPBAC acknowledged that line rental and Ancillary Service charges are passed-through costs. The nature and behavior of these charges are largely affected by demand and supply situation, market conditions and other factors that are out of a generators' control making it difficult and arbitrary to quantify associated costs. With this, the generators shall be forced</p>	Not amenable. Not including the AS Cost recovery cap in the LCOE evaluation will expose Meralco's consumers to possible pass-through charges in the future.

			to hedge its risk and impose unnecessary premium in order to cover such exposure. Since these were allowed by the Energy Regulatory Commission (“ERC”) and the DOE to be treated as passed-on costs, we reiterate our comment that Meralco should maintain such treatment until such time that the ERC and DOE rule otherwise.	
	Instructions to Prospective Bidders	Section 3.13, page 22; and Annex QD-4	<p>Bidders are required to submit a Notarized Certification using the form of Annex QD-4, which includes information on Due and Demandable Financial Obligation/s.</p> <p>Does “Due or Demandable Financial Obligation/s” also cover a payment obligation that has been invoiced by a counterparty to the Bidder/Affiliate in the ordinary course of business, but the deadline to pay has not yet passed?</p>	No. Due and demandable means the deadline to pay has already lapsed.
	IPB / Bid Bulletin No. 3	Annex QD-7A	<p>We want to clarify TPBAC’s response on the question which shareholders are considered “relevant shareholders of the Bidder who shall execute a Commitment Letter using the form in Annex QD- 7A” in which TPBAC responded “Shareholders of the entity proving financial capability”.</p> <p>We want to clarify if acceptable for the direct Shareholder of the Bidder to execute the Commitment Letter (Annex QD-7A) while it will be its Ultimate Parent who will execute the Notarized Statement of Financial Capability (Annex QD-6).</p> <p>TPBAC to confirm that it is acceptable for the direct Shareholder of the Bidder to execute the Commitment Letter (Annex QD-7A) while it will be its Ultimate Parent who will execute the Notarized Statement of Financial Capability (Annex QD-6).</p>	Yes, this is acceptable.
	IPB	Sec. 3.3 (b.)	Can the Bid Security and the PSA Performance Security be in the form of Surety Bonds in case SBLC or Bank Guarantee cannot be secured?	As relayed to the TPBAC by Meralco, Meralco is not amenable with the proposal of providing a Surety Bond in lieu of a Standby Letter of Credit or Bank Guarantee as Performance Security.
	IPB	Annex QD-7B	<p>Proposed revisions by one lender to the form</p> <p><i>Insertion of:</i> Attention: [Name] & [Position] <i>Revision to:</i> Subject: <u>Bank</u> Testimonial Letter</p> <p><u>Insertions underlined</u> and deletions in red</p> <p>We write on behalf of (insert name of Bidder, shareholder or Ultimate Parent) (the “Company”) in relation to the <u>Company’s</u> (insert name of Bidder)’s application for prequalification to make available the Contract Capacity and</p>	Amenable to the proposed revision. Bidder may proceed to reflect the revision.

			<p>supply the associated energy to Meralco Manila Electric Company 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 ("Project").</p> <p>This is to confirm that (insert name(s) of Debt Provider/Arranger(s)) (the ["Debt Provider/Arranger"] ["Debt Providers/Arrangers"]) [has/have] indicated its/their [commitment/consideration/interest to arrange debt financing], subject to mutually agreeable terms, to finance the project should the Bidder be declared as the Winning Power Supplier for the implementation of the Project in the aggregate amount of up to (insert amount).</p>	
	IPB	Annex QD-7B	<p>We note that "Bidder" is not a defined term in the Letter Testimonial to be issued by lenders</p> <p>We request TPBAC to consider revision to replace the term "Bidder" with the company name of the Bidder:</p> <p>This is to confirm that (insert name(s) of Debt Provider/Arranger(s)) (the ["Debt Provider/Arranger"] ["Debt Providers/Arrangers"]) [has/have] indicated its/their [commitment/consideration/interest to arrange debt financing] to finance the project should the [insert name of Bidder] be declared as the Winning Power Supplier for the implementation of the Project in the aggregate amount of up to (insert amount).</p>	Amenable to the proposed revision. Bidder may proceed to reflect the revision.
	Instructions to Prospective Bidders and Bid Bulletin 3's Annex B	Annex TP-1, page 77 page 50	<p>Annex TP-1 provides that The Bidder shall provide convincing proof that the key components of the Nominated Power Plant are of proven design and technology as a Comparable Plant.</p> <p>On page 50 of Bid Bulletin 3's Annex B, TPBAC advised that the certification should not be a self-declaration or self- certification.</p> <p>We request TPBAC to confirm that a certification letter by an EPC contractor, on the design and technology of a Comparable Plant (with the information in the Table under paragraph 4 of Annex TP-1) is sufficient and is not a self-declaration or a self-certification.</p>	<p>Yes, this is correct.</p> <p>Please see also revision to Annex TP-1 (discussed above).</p>
	IPB	Annex TP-1 Requirement no. 6	<p>For the TP-1 document submission, Bidder shall state a nominated fuel price index.</p> <p>We seek your confirmation of our understanding of an explanation during the pre-bid that a bidder may specify fuel indices other than those published in the</p>	Yes, the understanding is correct.

			<p>WB Pink Sheets or coalspot.com provided the Supplier bears the cost of the subscription.</p> <p>Accordingly, are Bidders allowed to use commercially available fuel indices such as those published by Platts, IHS Markit or globalCOAL, subject to their payment of subscription fees therefor?</p>	
	Technical Proposal – Nominate d Plant	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>We understand that NGCP can only provide a certified true copy of the NGCP Letter to Proponent regarding the Final Review Report of the Third Party SIS. Kindly confirm if this is sufficient for the requirement in Section 3.2(k). If sufficient, is there a need to submit the actual System Impact Study conducted by the Third Party which will not be certified by the NGCP.</p>	<p>1. A certified true copy of the NGCP Letter to Proponent regarding the Final Review Report of the Third Party SIS is sufficient for purposes of this requirement.</p> <p>2. Yes, still need to submit the actual System Impact Study conducted by the Third Party but which will not be certified by the NGCP.</p>
	IPB	Bid Security	<p>In the case of a marginal bid, TPBAC has agreed to revise the rule by 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 to the Bidder’s Offered Contract Capacity.</p> <p>We would like to request TPBAC to consider presenting this as a formula instead:</p> <p>Forfeited Bid Security = Bid Security x Marginal Capacity / Total Bid Capacity Offered</p>	Yes, the understanding is correct.
	IPB / Bid Bulletin No. 3	Bid Security	<p>In Bid Bulletin No. 3, we note that TPBAC allowed for the Bid Security may be in USD. Exchange rate to be used is the December 31, 2020 PDS closing rate (“reference rate”).</p> <p>Related to this, we want to clarify if the reference rate is the Exchange Rate on December 29, 2020 published by the Bangko Sentral ng Pilipinas (BSP) in their REFERENCE EXCHANGE RATE BULLETIN which is Php/USD 48.0360.</p>	Use PDS Closing rate (29 Dec 2020) – Php48.023

			<p>We would like TPBAC to confirm that the reference rate is Php/USD 48.0360 per BSP REFERENCE EXCHANGE RATE BULLETIN on December 29, 2020.</p>	
	Bid Security		<p>We note in page 65 of the Annex B of Bid Bulletin No. 3 that the foreign exchange rate to be used for a Bid Security that is denominated in US Dollars should be PDS Rate as at 31 December 2020. BCE has communicated this to its bid security issuer but has been advised that the last closing rate of PDS for 2020 was as at 28 December 2020, that being the last day of the year, and was at PHP 48.023 : USD 1.00.</p> <p>Please could we clarify whether we should then use the closing rate as at 28 December 2020 or as at 4 January 2021, the first banking day of the year?</p>	<p>We will use the closing rate as at 29 December 2020 at PHP 48.023 : USD 1.00.</p>
	ITB	Page 27, Section 3.3(d)3.	<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>Formatting/Procedure p. 95 states:</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>With reference to TPBAC's responses (b) and (c), please confirm that the heat rate to be used for the calculation of Fuel Cost shall be the lower of the as bid GNPHR</p>	<p>To reiterate, as what was relayed to the TPBAC by the DU, based on ERC rulings, any losses due to inefficiencies in the plant operation should be to the account of the Power Supplier and any savings due to efficient plant operation should be passed-through to the consumers.</p> <p>Heat rate to be used from CY 1 to 20 shall be the lower between the submitted GNPHR and the actual computed heat rate for the relevant Billing Period.</p>

			provided by the Power Supplier with their bid and the actual tested heat rate measured during the initial NDC Test.	
	Initial Financial Evaluation Workbook IPB	Annex TP-1, Page 77 and 79	<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>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>Formatting/Procedure p. 95 states:</p>	<p>Nominated fuel price index shall be used for purposes of computing the fuel cost recovery cap and shall be binding during CY 1 to 10.</p> <p>As relayed to the TPBAC by Meralco, Meralco has no preferred nominated fuel price index for LNG as long as it is easily accessible by Meralco and the electric power industry participants.</p> <p>Nominated fuel price index shall not impact the LCOE evaluation in the Financial Evaluation Workbook. The intention of Meralco in asking the Bidder’s Nominated Fuel Price Index in the Financial Evaluation Workbook is so that the Bidder’s preferred fuel price index shall be officially be submitted and be binding if it wins.</p> <p>Not amenable. Setting a fixed price for the fuel cost 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>

			<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>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&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> <p>In case of fuel arrangement for an LNG based power plant, can Meralco accept a pricing construct or formula which uses two or more indices?</p>	<p>No, the DOE-recommended fuel cost adjustment formula assumes only one fuel index being used.</p>
	Supply Type / Terms of Reference (“TOR”) Table	Technical Parameters (TOR Table) / Page 2	<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>To allay the fears of Meralco’s TPBAC and the DOE, we would like to assure both the TPBAC and the DOE that the Contract Capacity nominated by Bidders will not be coming solely from the WESM. The request is to give each Bidder the flexibility to strategize its sourcing on a real-time per-hour basis depending on what makes the most economic sense at the time. This can be realized by building additional plants to meet the baseload Contract Capacity requirements of Meralco, sourcing from a Bidder’s existing supply sources or the WESM, and making available to the grid the excess electricity output produced by its greenfield Nominated Power Plants. At all times, Meralco would be guaranteed the contract Price regardless of a Bidder’s real-time sourcing strategy.</p> <p>Further, current industry practice as evidenced by ERC- approved PSAs already allows power suppliers to source from their power plants, other sources, or the</p>	<p>Not amenable. As relayed to the TPBAC by Meralco, this CSP was envisioned to be for a physical contract from a greenfield Nominated Power Plant. Allowing Bidders, by default, to buy energy from the WESM and sell it to Meralco [even if there is remaining Outage Allowance] would defeat the requirement for a baseload (firm and dispatchable) plant that can supply power from its own physical plant and not from the WESM. Worse, allowing this would likewise affect WESM prices, especially given the high volume of capacity covered by this CSP of 1,800 MW; thereby, inevitably and directly impacting the cost of Meralco’s WESM purchases. Meralco, as the DU, is in a better position to offer its customers the lowest possible cost of power by optimizing its power supply sources, which includes taking advantage of low WESM prices and sourcing from it directly instead of letting a power supplier do the same in a manner that may prove detrimental to its customers.</p> <p>Finally, we would like to emphasize that the requirements of this greenfield baseload CSP is completely different from last year’s brownfield baseload CSP. As previously discussed, the type of contract</p>

		<p>WESM to supply the required contract requirements of their customers depending on what makes most economic sense.</p> <p>Reasons for why a power supplier may from time to time opt to supply from sources other than its own power plants are varied such as availing of market costs lower than a power supplier's variable fuel costs or sourcing from short-term bilateral contracts for replacement power instead of utilizing an outage allowance. Needless to say, the consumers pursuant to such contract are not exposed to the volatilities of market prices since power suppliers must still guarantee the contract prices under their respective PSAs.</p> <p>By providing this latitude of flexible sourcing, power suppliers under current market practices are allowed and granted the opportunity to manage and control their costs to ensure that they will be able to provide compelling, competitive, and advantageous offers to consumers. Why can't that same opportunity be provided in this current 2020 CSP?</p> <p><i>Revised provision to read:</i></p> <p>☐ Baseload (firm and dispatchable)</p> <p>☐ <u>To supply the capacity requirement of Meralco. Bidders may source supply from:</u></p> <ul style="list-style-type: none">○ 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; <u>and</u> <p><u>the WESM</u></p>	<p>for this bidding is a physical contract, as opposed to purely financial contract. Apart from the previously mentioned response that this is to be in line with the DOE's policy to spur the development of new generating capacities in the country, thus, being the reason why the requirements are more stringent on the Technical Requirements (i.e. Reference Plant, Comparable Plant, Nominated Plant) since the main source of supply is the physical plant, the key distinction is that the required contract capacity for the 2019 CSP was immediate (within 3.5 months after the CSP concluded), while the current bidding is still for a COD on 2024-2025. Hence, it was crucial to adopt a financial type of contract for the 2019 CSP, where sourcing from WESM or any other source is allowed, because of the immediate requirement of supply delivery.</p> <p>Another reason why the 2019 CSP was for a financial type of contract, was that the availability requirement was at 100% (i.e. no outage allowance for the Power Supplier), so that the Power Supplier has the option to buy from WESM if its plant is out and therefore carried the fuel risk for the 10-year duration of the contract. This is not so for the current bidding. Moreover, the financial structure of the 2019 CSP was acceptable to the DU since it is only for a 10-year Term. Allowing a similar arrangement for this bidding (for a 20-year term) would have put too much risk for the power suppliers and might result to a failed bidding. As relayed to the TPBAC by the DU, to balance the risk of the power suppliers and the welfare of the consumers and since this CSP is for a physical contract, the DU coordinated with the DOE on how to implement a fuel cost recovery mechanism that would be sound and fair to both consumers and power suppliers, which eventually resulted to the DOE-recommended fuel cost recovery formula being implemented in this bidding.</p>	
	Plant Type / IPB	Annex TP-1 / Page 76	<p>We recognize that most market risks are shifted to the Power Supplier in this CSP, which include but are not limited to the following: (a) Bidders are asked to provide a cap for line rental charges; (b) Bidders are asked to provide a cap for ancillary services cost recovery charges; (c) Bidders are asked to forecast and guarantee fuel costs, four (4) years before the actual start of supply, for the first ten (10) years of the Term; (d) LCOE evaluation is inclusive of Value-Added Tax, which gives renewable sources a guaranteed advantage over non-renewable sources; (e) Bidders are given a better chance to win through an LCOE reduction if they</p>	Not amenable. -same answer above-

		<p>guarantee a lower outage allowance than the maximum outage allowances stated in the TOR; and (f)while the CSP is for twenty (20) years, there is uncertaintyon what will happen to the PSA in the event that the franchise of MERALCO is not renewed on the third year ofthe Term (i.e. 2028).</p> <p>Given these attendant Power Supplier risks under the PSA and to still be aligned with the DOE’s policy to encourage building of new capacities, we believe that there is a need to adopt a hybrid of a physical and financial contracting inthis CSP, where Bidders are required to build and make available to the grid greenfield power plants correspondingto their nominated Contract Capacities and where Bidders are given the flexibility to source from the most economicalsources on a real-time basis, whether from their greenfieldNominated Power Plants, their portfolio of other supply sources, or from the WESM, depending on which makes the most economic sense for any particular hour.</p> <p>To allay the fears of Meralco’s TPBAC and the DOE, we would like to assure both the TPBAC and the DOE that theContract Capacity nominated by Bidders will not be coming solely from the WESM. The request is to give eachBidder the flexibility to strategize its sourcing on a real-time per-hour basis depending on what makes the most economic sense at the time. At all times, Meralco would beguaranteed the Contract Price regardless of a Bidder’s real-time sourcing strategy.</p> <p>Further, current industry practice as evidenced by ERC- approved PSAs already allows power suppliers to source from their power plants, other sources, or the WESM to supply the required contract requirements of their customers depending on what makes most economic sense.</p> <p>Reasons for why a power supplier may from time to time opt to supply from sources other than its own power plantsare varied such as availing of market costs lower than a power supplier’s variable fuel costs or sourcing from short-term bilateral contracts for replacement power instead of utilizing an outage allowance. Needless to say, the consumers pursuant to such contract are not exposed to the volatilities of market prices since power suppliers must stillguarantee the contract prices under their respective PSAs.</p> <p>By providing this latitude of flexible sourcing, power suppliers under current market practices are allowed and granted the opportunity to manage and control their costs toensure that they will be able to provide compelling, competitive, and advantageous offers to consumers. Why can’t that same opportunity be provided in this current 2020CSP?</p>	
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		<p>number of units. Furthermore, allowing Bidders to offer multiple smaller-sized units to meet the minimum Offered Contract Capacity would makethe CSP more inclusive and non-discriminatory as it wouldallow for various technology solutions to be considered. Tobe candid, the requirement for a minimum 150MW unit size appears to favor coal and large-scale gas facilities that are normally built with units of this scale.</p> <p>Second, we respectfully disagree with the TPBAC’s note on Page 73 of Annex B of Bid Bulletin No. 3 that allowingsmaller-sized units to meet the minimum Offered ContractCapacity of 150MW will disadvantage large-scale power suppliers. On the contrary, economies of scale would dictate that large-scale production should result in lower costs so, in that regard, smaller-scaled power suppliers should actually be the ones at a disadvantage.</p> <p>Third, if the reference to the Pay-as-Bid mechanism indicated by the TPBAC on Page 73 of Annex B of Bid Bulletin No. 3 intends to highlight the stacking of bids which may result in smaller capacities with smaller unit sizes being awarded within the 1800MW requirement, we would actually think that this would be to the advantage ofMeralco and its end-users as such smaller capacities wouldclearly have provided more competitive offers and reducedthe cost of power. In that sense, why exclude a Bidder if it offers the minimum 150MW Offered Contract Capacity using smaller-sized plant units if it can submit a Bid Price lower than Bidders with larger Offered Contract Capacities? Would that not be anathema to the objective ofDOE to ensure that each distribution utility meets the demand of its captive market in the least cost manner?</p> <p>Lastly, on the same Page 73 of Annex B of Bid Bulletin No.3, the TPBAC says that allowing more units would make the monitoring of fuel consumption and efficiency more difficult in the implementation of pass-through fuel charges. However, taken in conjunction with our succeeding comments, if Bidders are allowed to offer fixedfuel costs for the duration of the 20-year Term, then evaluating the LCOE and operationalizing the PSA shouldnot be a problem for Meralco and the TPBAC. Accepting our proposal with respect to allowing Bidders to absorb fuelrisk on behalf of Meralco and its end-users would thereforebe the best way to simplify the administrative burden of monitoring fuel consumption. Even granting, however, thatfuel risk is passed on to Meralco and multiple units had to be monitored, we would think that, if this redounded to thebenefit of Meralco’s end-users by reducing their cost of power, then the inconvenience of monitoring multiple fuelsources would be justified.</p> <p><i>We suggest to remove bullet #2 under Technical Parameters:</i></p>	<p>This request will either result in shooing away large-scale generation companies from submitting a bid in this Bidding, increasing the possibility of a failure of bidding, or such request will be deemed unreasonable and unfair by other bidders, resulting to higher bid offers in order factor this risk.</p> <p>Not amenable to Bidders being allowed to offer fixed fuel costs since it will run counter to 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>
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			If multiple units, minimum of 150 MW per unit, which all units shall have the same fuel type and Guaranteed Net Plant Heat Rate.	
	Plant Type / IPB	Annex TP-1 / Page 76	<p>Related to our advanced query on the concern on unit size for the Nominated Power Plant and to encourage more participation from different power suppliers, we suggest that the unit size requirement for the Nominated Power Plant be removed.</p> <p>Further, Bidders will also be encouraged to optimize their supply portfolio if they are allowed to blend technologies in order to provide competitive offers for the benefit of Meralco’s consumers. Hence, we suggest that the requirement for the same fuel type and Guaranteed Net Plant Heat Rate be removed.</p> <p>First, it is not clear to us why <i>smaller-sized units</i> have been equated by the TPBAC to <i>small-scale generation companies</i>. Our understanding is that, for as long as the minimum Offered Contract Capacity is 150MW, then there should be no preferential distinction between small-scale and large-scale generation companies. In other words, if a Bidder is able to guarantee and offer the 150MW minimum Offered Contract Capacity by combining multiple units of smaller sizes, then we believe that Meralco should allow this since the Offered Contract Capacity will still be fully met, regardless of the number of units. Furthermore, allowing Bidders to offer multiple smaller-sized units to meet this minimum Offered Contract Capacity would make the 2020 CSP more inclusive and non-discriminatory as it would allow for various technology solutions to be considered. To be candid, the requirement for a minimum 150MW unit size appears to favor coal and large-scale gas facilities that are normally built at this scale.</p> <p>Second, we respectfully disagree with the TPBAC’s note on Page 73 of Bid Bulletin No. 3 Annex B that allowing smaller-sized units to meet the minimum Offered Contract Capacity of 150MW will disadvantage large-scale power suppliers. On the contrary, economies of scale would dictate that large-scale production should result in lower costs so, in that regard, smaller-scaled power suppliers should actually be the ones at a disadvantage.</p> <p>Third, if the reference to the Pay-as-Bid mechanism indicated by the TPBAC on Page 73 of Annex B Bid Bulletin No. 3 intends to highlight the stacking of bids which may result in smaller capacities with smaller unit sizes being awarded within the 1800MW requirement, we would actually think that this would be to the advantage of Meralco and its end-users as such smaller capacities would clearly have provided more competitive offers and reduced the cost of power. In that sense, why exclude a Bidder if it offers the minimum 150MW Offered Contract Capacity using smaller-</p>	-same answer-

			<p>sized plant units if it can submit a Bid Price lower than Bidders with larger Offered Contract Capacities? Would that not be anathema to the objective ofDOE to ensure that each distribution utility meets the demand of its captive market in the least cost manner?</p> <p>Lastly, on Page 73 of Bid Bulletin No. 3 Annex B, the TPBAC says that allowing more units would make the monitoring of fuel consumption and efficiency more difficult in the implementation of pass-through fuel charges. However, taken in conjunction with our othercomments, if Bidders are allowed to offer long-term cappedor fixed fuel costs for the duration of the 20-year Term, thenevaluating the LCOE and operationalizing the PSA shouldnot be a problem for Meralco and the TPBAC. Accepting our proposal with respect to allowing Bidders to absorb fuelrisk on behalf of Meralco and its end-users would thereforebe the best way to simplify the administrative burden of monitoring fuel consumption. Even granting, however, thatfuel risk is passed on to Meralco and multiple units had to be monitored, we would think that, if this redounded to the</p> <p>benefit of Meralco’s end-users by reducing their cost of power, then the inconvenience of monitoring multiple fuelsources would be justified.</p> <p><i>Suggested revision to read:</i></p> <table><tr><th></th><th>Requirement</th><th>Bidder’s Submission</th></tr><tr><td>Technical Parameters</td><td><ul style="list-style-type: none">• xxx• If multiple units, minimum of 150 MW per unit, which shall have the same fuel type and Guaranteed Net Plant Heat Rate (GNPHR)</td><td>xxx [Bidder to indicate fuel type, no. of units (and size) of the Nominated Power Plant]</td></tr></table>		Requirement	Bidder’s Submission	Technical Parameters	<ul style="list-style-type: none">• xxx• If multiple units, minimum of 150 MW per unit, which shall have the same fuel type and Guaranteed Net Plant Heat Rate (GNPHR)	xxx [Bidder to indicate fuel type, no. of units (and size) of the Nominated Power Plant]	
	Requirement	Bidder’s Submission								
Technical Parameters	<ul style="list-style-type: none">• xxx• If multiple units, minimum of 150 MW per unit, which shall have the same fuel type and Guaranteed Net Plant Heat Rate (GNPHR)	xxx [Bidder to indicate fuel type, no. of units (and size) of the Nominated Power Plant]								
	Description of	Annex TP-1 Certification	Related to our earlier query on the concern on unit size forthe Nominated Power Plant and to encourage more participation from different power suppliers, we suggest that the unit size requirement for the Nominated Power Plant be removed.	-same answer-						

	Nominated Power Plant / IPB	Page / Page 81	<p>First, it is not clear to us why <i>smaller-sized units</i> have been equated by the TPBAC to <i>small-scale generation companies</i>. Our understanding is that, for as long as the minimum Offered Contract Capacity is 150MW, then there should be no preferential distinction between small-scale and large-scale generation companies. In other words, if a Bidder is able to guarantee and offer the 150MW minimum Offered Contract Capacity by combining multiple units of smaller sizes, then we believe that Meralco should allow this since the Offered Contract Capacity will still be fully met, regardless of the number of units. Furthermore, allowing Bidders to offer multiple smaller-sized units to meet this minimum Offered Contract Capacity would make the 2020 CSP more inclusive and non-discriminatory as it would allow for various technology solutions to be considered. To be candid, the requirement for a minimum 150MW unit size appears to favor coal and large-scale gas facilities that are normally built at this scale.</p> <p>Second, we respectfully disagree with the TPBAC's response on Page 73 of Annex B of Bid Bulletin No. 3 that allowing smaller-sized units for the minimum Offered Contract Capacity of 150MW will disadvantage large-scale power suppliers. On the contrary, economies of scale would dictate that large-scale production should result in lower costs so, in that regard, smaller-scaled power suppliers should actually be the ones at a disadvantage.</p> <p>Third, if the reference to the Pay-as-Bid mechanism indicated by the TPBAC on Page 73 of Annex B of Bid Bulletin No. intends to highlight the stacking of bids which may result in smaller capacities with smaller unit sizes being awarded within the 1800MW requirement, we would actually think that this would be to the advantage of MERALCO and its end-users as such smaller capacities would clearly have provided more competitive offers and reduced the cost of power. In that sense, why exclude a Bidder if it offers the minimum 150MW Offered Contract Capacity using smaller-sized plant units if it can submit a Bid Price lower than Bidders with larger Offered Contract Capacities? Would that not be anathema to the objective of DOE to ensure that each distribution utility meets the demand of its captive market in the least cost manner?</p> <p>Lastly, on Page 73 of Annex B of Bid Bulletin No. 3, the TPBAC says that allowing more units would make the monitoring of fuel consumption and efficiency more difficult in the implementation of pass-through fuel charges. However, taken in conjunction with our other comments, if Bidders are allowed to offer long-term capped or fixed fuel costs for the duration of the 20-year Term, then evaluating the LCOE and operationalizing the PSA should not be a problem for Meralco and the</p>	
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			<p>TPBAC. Accepting our proposal with respect to allowing Bidders to absorb fuel risk on behalf of Meralco and its end-users would therefore be the best way to simplify the administrative burden of monitoring fuel consumption. Even granting, however, that fuel risk is passed on to Meralco and multiple units had to be monitored, we would think that, if this redounded to the benefit of Meralco’s end-users by reducing their cost of power, then the inconvenience of monitoring multiple fuel sources would be justified.</p> <p><i>Suggested revision to read:</i></p> <table><tr><td>Power Supplier Name</td><td></td></tr><tr><td>Offered Contract Capacity, MW</td><td></td></tr><tr><td>Name of Nominated Power Plant</td><td></td></tr><tr><td>Location of Nominated Power Plant</td><td></td></tr><tr><td>Description of Nominated Power Plant</td><td></td></tr><tr><td><ul style="list-style-type: none">- Fuel source- Plant technology- Number of Units- Gross capacity per unit, MW- Net capacity per unit, MW- Proposed Delivery Point</td><td></td></tr><tr><td>xxx</td><td></td></tr></table>	Power Supplier Name		Offered Contract Capacity, MW		Name of Nominated Power Plant		Location of Nominated Power Plant		Description of Nominated Power Plant		<ul style="list-style-type: none">- Fuel source- Plant technology- Number of Units- Gross capacity per unit, MW- Net capacity per unit, MW- Proposed Delivery Point		xxx		
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xxx																		
	Fuel Cost for Contract Years 11 to 20 / TOR Table	<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, or to submit an entirely fixed fuel price for the 20-year duration of the Term.</p> <p>Our understanding is that the DOE-recommended fuel cost adjustment formula allows for adjustments every quarter which should redound to the benefit of the consumers whenever fuel prices fall but will be fair to power suppliers whenever fuel prices increase. However, we believe that superior to this is a competitive Bid Price, which fixes fuel cost so as to guarantee that there will be no fuel-based Bid Price increase for the entire 20-year Term of the Contract. The TPBAC’s response on Page 60 of Annex B of Bid Bulletin 3 may have overlooked the fact that, fixing the fuel cost does not violate the take-or-pay provision in the TOR since, similar to other variable costs, it will be charged only when the Contract Capacity is dispatched by Meralco. It goes without saying that a fixed fuel cost is advantageous to Meralco and its end-users as it shields consumers from fuel and foreign</p>	<p>1. We are amenable to the proposal of the Bidder to extend the use of the cap as against the actual methodology beyond CY 10 as long as the Bidder acknowledges that, by doing so, electing such option shall not affect its LCOE evaluation (i.e. no resulting advantage to the said Bidder during LCOE evaluation).</p> <p>For any bidder who wishes or would like to extend the cap for the benefit of the consumers, the TPBAC encourages such bidder to do so, provided it acknowledges that that such extension of the cap shall not affect its LCOE evaluation (i.e. no resulting advantage to the said Bidder during LCOE evaluation)</p> <p>2. Not amenable to suggestion of submitting a fixed fuel price. Even if said fixed fuel price shall only be charged only when the contract capacity is dispatched and the consumers are indeed protected from fuel-based Bid Price increase in the future, the same is also true when</p>															

			<p>currency volatilities in the global markets and shifts these risks to the Power Supplier. Respectfully, if there are Bidders who are willing and able to take on greater risks for Meralco and its end-users, they should be allowed to do so and not be excluded from the CSP.</p> <p>Needless to say, the CSP should not result in consumers of Meralco bearing the volatilities of variable costs associated with fuel prices for the 20-year duration of the PSA when these risks may be passed on to willing and innovative power suppliers who can calibrate and adopt creative pricing strategies to manage risks and provide a more customer-centric offer to Meralco.</p> <p><i>Revised provision to read:</i></p> <p>For Contract Years 11 to 20, <u>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, to impose the fuel cost shall be as a passed-through cost, or to submit a fixed fuel cost for the duration of the Term.</u></p>	<p>there is a fuel-based Bid Price decrease in the future. If Meralco allows a fixed fuel price, the said decrease in fuel cost cannot be passed on to the consumers. Worse, the Power Supplier can gain from this decrease in fuel price to the detriment of Meralco's consumers.</p> <p>To reiterate, allowing to offer fixed fuel costs since it will run counter to 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."</p>
	Fuel Cost for Contract Years 11 to 20 / Bid Requirements	Second to the Last paragraph / Page 11	<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, or to submit an entirely fixed fuel price for the 20-year duration of the Term.</p> <p>Our understanding is that the DOE-recommended fuel cost adjustment formula allows for adjustments every quarter which should redound to the benefit of the consumers whenever fuel prices fall but will be fair to power suppliers whenever fuel prices increase. However, we believe that superior to this is a competitive Bid Price, which fixes fuel cost so as to guarantee that there will be no fuel-based Bid Price increase for the entire 20-year Term of the Contract. The TPBAC's response on Page 60 of Annex 3 of Bid Bulletin 3 may have overlooked the fact that fixing the fuel cost does not violate the take-or-pay provision in the TOR since, similar to other variable costs, it will be charged only when the Contract Capacity is dispatched by Meralco. It goes without saying that a fixed fuel cost is advantageous to Meralco and its end-users as it shields consumers from fuel and foreign currency volatilities in the global markets and shifts these risks to the Power Supplier. Respectfully, if there are Bidders who are willing and able to take on greater risks for Meralco and its end-users, they should be allowed to do so and not be excluded from the CSP.</p> <p>Needless to say, the CSP should not result in consumers of Meralco bearing the volatilities of variable costs associated with fuel prices for the 20-year duration of the PSA when these risks may be passed on to willing and innovative power</p>	-same answer-

			<p>suppliers who can calibrate and adopt creative pricing strategies to manage risks and provide a more customer-centric offer to Meralco.</p> <p><i>Revised provision to read:</i></p> <p>For Contract Years 11 to 20, <u>the Bidders shall be allowed to extend the cap in the fuel cost similar to the pricing methodology used in Contract Years1 to 10, to impose</u> the fuel cost shall be as a passed-through cost,<u>or to submit a fixed fuel cost for the duration of the Term.</u></p>	
	Fuel Cost for Contract Years11 to 20 / IPB	Section 3.3 Item No.2 / Page 27	<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, or to submit an entirely fixed fuel price for the 20-year duration of the Term.</p> <p>Our understanding is that the DOE-recommended fuel costadjustment formula allows for adjustments every quarter which should redound to the benefit of the consumerswhenever fuel prices fall but will be fair to power supplierswhenever fuel prices increase. However, we believe that superior to this is a competitive Bid Price, which fixes fuelcost so as to guarantee that there will be no fuel-based BidPrice increase for the entire 20-year Term of the Contract. The TPBAC’s response on Page 60 of Annex B of Bid Bulletin 3 may have overlooked the fact that fixing the fuelcost does not violate the take-or-pay provision in the TOR since, similar to other variable costs, it will be charged onlywhen the Contract Capacity is dispatched by Meralco. It goes without saying that a fixed fuel cost is advantageous to Meralco and its end-users as it shields consumers from fuel and foreign currency volatilities in the global markets and shifts these risks to the Power Supplier. Respectfully, if there are Bidders who are willing and able to take on greater risks for Meralco and its end-users, they should be allowed to do so and not be excluded from the CSP.</p> <p>Needless to say, the CSP should not result in consumers ofMeralco bearing the volatilities of variable costs associatedwith fuel prices for the 20-year duration of the PSA when these risks may be passed on to willing and innovative power suppliers who can calibrate and adopt creative pricing strategies to manage risks and provide a morecustomer-centric offer to Meralco.</p> <p><i>Revised provision to read:</i></p> <p>xxx For Contract Years 11 to 20, <u>the Bidders shall be allowed to extend the cap in</u></p>	-same answer -

			<u>the fuel cost similar to the pricing methodology used in Contract Years 1 to 10, to impose the fuel cost shall be as a passed-through cost, or to submit a fixed fuel cost for the duration of the Term.</u> Xxx	
	Nominated Plant / ITB	Page 6	<p>The ITB indicates that the prospective Bidders have until 18 January 2021 to increase their indicated Offered Contract Capacity; however, the option to change or include additional Nominated Power Plant(s) was not provided.</p> <p>To ensure flexibility and provide the Bidders with an option to increase the Offered Contract Capacity as well as revise or include additional Nominated Power Plant(s), we suggest that Bidders also be explicitly given until 18 January 2021 to change, modify, or add Nominated Plant(s).</p> <p><i>Suggested revision to read:</i></p> <p>“After the Expression of Interest Deadline, Interested Bidders shall no longer be allowed to reduce their indicated Offered Capacity for the rest of the Bidding process, but may increase their indicated Offered Contract Capacity <u>and/or revise its Nominated Plant or include additional Nominated Plant(s) or revise the information of the Nominated Plant</u> on or before 4:00PM of 18 January 2021 xxx”</p>	Yes, as already responded to in Bid Bulletin No. 3, Annex B, p.10, the Bidder may change the details of the Nominated Power Plant until 18 January 2021 (the Deadline to Increase the Offered Contract Capacity), by submitting a new Expression of Interest reflecting the change.
	Nominated Plant / IPB	Section 2.2 I Summary of Bidding / Page 10	<p>The IPB indicates that the prospective Bidders have until 18 January 2021 to increase their indicated Offered Contract Capacity; however, the option to change the Nominated Power Plant(s) was not provided.</p> <p>To ensure flexibility and provide the Bidders with an option to increase the Offered Contract Capacity as well as revise or include additional Nominated Power Plant(s), we suggest that Bidders also be explicitly given until 18 January 2021 to change, modify, or add Nominated Plant(s).</p> <p><i>Suggested revision to read:</i></p> <p>“After the Expression of Interest Deadline, Interested Bidders shall no longer be allowed to reduce their indicated Offered Capacity for the rest of the Bidding process, but may increase their indicated Offered Contract Capacity <u>and/or revise its Nominated Plant or include additional Nominated Plant(s) or revise the information of the Nominated Plant</u> on or before 4:00PM of 18 January 2021 xxx”</p>	-same answer -

	Proximate and Ultimate Analysis / IPB	Section 3.2 (h) / Page 25	<p>These tests are done for coal-based plants to determine the quality of coal (moisture, ash, sulfur, calorific value, hydrogen, carbon, nitrogen, etc.). For Bidders using technologies other than coal or natural gas, we suggest that an equivalent document which checks quality parameters of fuel be submitted instead. Also, if a Bidder chooses to elect a renewable energy plant as part of its Nominated Power Plants, we suggest that it be allowed to submit a write-up for the TPBAC's evaluation on why this item is not applicable to it.</p> <p><i>Suggested revision to read:</i></p> <p>“(h) Bidder shall also provide the specifications of the Performance Fuel by way of a Proximate Analysis and Ultimate Analysis. The Performance Fuel shall be used for the conduct of the Net Dependable Capacity (NDC) Test and the Heat Rate Test (HRT) in accordance with the PSA. <u>For Bidders submitting a Nominated Plant other than coal and where applicable, an equivalent fuel quality test or its equivalent be submitted</u>”</p>	We are amenable to the suggested write-up for the TPBAC and its Independent Engineer's evaluation on why the requirement is not applicable to the bidder.
	Bid Security / IPB	Section 3.3. / Page 26	<p>Similar to the previous CSPs of Meralco, we suggest that a parent company or an affiliate be allowed to issue the bid security on behalf of the Bidder. To accommodate this, we suggest to revise Annex Bid-2.</p> <p><i>Suggested revision on Annex Bid-2 to read:</i></p> <p>xxx</p> <p>We, [●], a corporation organized and existing under the laws of the (insert place of incorporation/registration) (the “Issuer”), hereby establish our Irrevocable Standby Letter of Credit No. [●] (the “Letter of Credit”) in your favor relating to the obligations of [insert name of Bidder/<u>Affiliate</u>] (the “Bidder”/<u>for the account of the “Bidder”</u>) under the IPB for the supply of the Contract Capacity and associated energy for the Required Contract Period beginning on the Scheduled Commercial Operations Date to Manila Electric Company (“Meralco”) (the “Project”), which shall be valid and effective until [date that is sixty (60) days after Bid Submission Date].</p>	<p>The parent company or an Affiliate can secure the bid security on behalf of the bidder, as long as it follows the requirements and format of the BID SECURITY in Annex BID-2.</p> <p>Thus, the requested revisions (that in effect result to a transfer of obligations from the Bidder to Affiliate) cannot be allowed, as the “obligations” being referred to here are the obligations of the PSA, which the bidder will be the party to if declared as the Winning Power Supplier – not the Affiliate.</p>
	Fuel Prices / IPB	Section 3.3 (d) 2 / Page 27	<p>Should a Bidder nominate a plant other than coal or natural gas, we suggest that the Bidder be allowed to submit its own quarterly fuel prices for the periods covering four quarters beginning third quarter of 2022 with the corresponding unit of measurement applicable to such fuel type. Also, if a Bidder chooses to elect a renewable energy plant as part of its Nominated Power Plants or chooses to submit</p>	Not amenable to proposed wording (i.e. deletion of USD/MMBtu unit) and submission of fixed fuel cost.

			<p>a fixed fuel cost, we suggest that it be allowed to submit a write-up for the TPBAC's evaluation on why this item is not applicable to it.</p> <p><i>Suggestion revision to read:</i></p> <p>2. The Bidder shall provide a quarterly fuel price forecast for the third quarter of 2022 until second quarter of 2023, in USD/MMBtu corresponding to the unit of measurement applicable to such fuel type. The simple average of this quarterly fuel price forecast shall be used as the reference price (Fo). Xxx</p>	<p>Amenable to suggestion that if Nominated Plant is renewable energy technology, Bidder shall submit a write-up to the TPBAC explaining the basis of its fuel cost.</p>
	Heat Rate / IPB	Section 3.3 (d) 3 / Page 28	<p>Should a Bidder nominate a plant other than coal or natural gas, we suggest that the Bidder be allowed to submit its equivalent measure of plant efficiency. Also, if a Bidder chooses to elect a renewable energy plant as part of its Nominated Power Plants or chooses to submit a fixed fuel cost, we suggest that it be allowed to submit a write-up for the TPBAC's evaluation on why this item is not applicable to it.</p> <p><i>Suggestion revision to read:</i></p> <p>3. 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 40% to 100% Load Factor and in increments of 1% Load Factor for Contract Year 1. 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. Such GNPHR shall be from 50% to 100% Load Factor and in increments of 1% Load Factor for Contract Year 1. In addition to this, the Bidder shall also indicate the Cumulative Degradation Factor of the GNPHR from Contract Year 1 on a yearly basis starting Contract Year 2. 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;</p> <p><u>For all other types of technologies, the Bidder shall submit its equivalent measure of plant efficiency, where applicable.</u></p>	<p>Should a Bidder nominate a plant other than coal or natural gas, we are amenable to the proposed submission of the equivalent measure of plant efficiency.</p> <p>Not amenable to submission of fixed fuel cost (<i>see previous answer above</i>)</p>
	LCOE Evaluation / IPB	Section 4.5.2 / Page 39	<p>Instead of using an 87.67% plant capacity factor in the evaluation of the LCOE, may we suggest that the evaluation be based on the calculated effective plant capacity factor of each Bidder, taking into account its nominated outage allowance days in the Financial Evaluation Workbook. For example, if a Bidder nominates only a total of 30 days of Scheduled Outage Allowance and 10 days of Forced Outage Allowance, then the evaluation of its LCOE should be based on its effective capacity factor of 89.04%, not 87.67%. A lower PCF (in this case, 87.67%) inadvertently</p>	<p>Not amenable.</p> <p>The reason for having a uniform 87.67% PCF in the evaluation of the Headline Rate and LCOE for all Bidders is so that the resulting evaluation can be comparable for every Bidder. Also, the CSP uses a Pay As Bid mechanism wherein the Offered Contract Capacities are stacked depending on their LCOE evaluation using a uniform PCF. Using different PCFs in the LCOE evaluation will make the Pay As Bid mechanism</p>

		<p>increases the LCOE calculation of Bidders which is not fair if they choose to guarantee a lesser number of outage allowance days.</p> <p>This is to incentivize Bidders more to minimize their nominated number of outage allowance days since this will impact the overall LCOE significantly. Further, we note that in the sample calculations in Schedule 3 of the PSA template, all costs are based on the nominated outage allowance days of the Winning Bidder and not on the 87.67% capacity factor. Therefore, if Bidders choose to elect a lower number of outage days in its Bid, taking this into consideration in the LCOE evaluation would be more representative of how charges to Meralco will be computed once the PSA has already started.</p> <p>We also recognize that there is already a proposed reduction in LCOE of PhP0.002/kWh per day of outage reduction in the bid documents to try to incentivize Bidders to reduce their outage allowance; however, respectfully, this may not be enough of an incentive to minimize the said outage allowance.</p> <p>We recognize as well that this may entail additional administrative effort to the TPBAC's evaluation of the submitted Bid Prices versus the sealed Reserve Prices which have been presumably computed at 87.67% PCF. We believe this could be solved by converting the Reserve Prices at each Bidder's plant capacity factor (based on its submitted outage allowances) and evaluating from there. We recognize this additional step adds burden to the TPBAC but, respectfully, if this additional step incentivizes Bidders to fully waive their outage allowances and guarantee 100% supply availability to Meralco's consumers for the full 20-year duration of the PSA, this effort would be very much justified.</p> <p><i>Suggested revision to read:</i></p> <p>"The TPBAC shall then proceed to evaluate the resulting Headline Rate and LCOE of the Qualified Bidders as computed by the Financial Evaluation Workbook. The Financial Evaluation Workbook shall take into account the Qualified Bidder's proposed tariff components, proposed GNPHR, proposed line rental cap, proposed ancillary services (AS) cost recovery cap, and any proposed reduction in outage allowance days. The Financial Evaluation Workbook shall compute the Headline Rate and LCOE by using the latest macroeconomic assumptions, applicable price escalation assumptions over the 20-year term of the PSA, and <u>87.67% at the equivalent plant capacity factor of the Bidder, taking into account its nominated outage allowance days for both Scheduled and Forced Outages in the Financial Evaluation Workbook.</u>"</p>	<p>inaccurate since the resulting price bids will no longer be comparable with each other.</p> <p>As relayed to the TPBAC by Meralco, the reduction in LCOE and Headline Rate of PhP0.002/kWh per day of outage reduction was determined by Meralco as the right incentive for Bidders to reduce their Outage Allowance. In addition, as relayed to the TPBAC by the DU, the Reserve Price was computed at 87.67% PCF, hence the TPBAC should maintain the 87.67% PCF assumption for a more fair and transparent evaluation.</p>
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	Technical Parameters and Performance Guarantees / IPB	Annex TP-1 and TP-2 / Page 83	<p>We note that Annex TP-1 of the IPB calls for a guarantee that a Bidder will utilize only one type of fuel for plants with multiple units, and that a Bidder will submit its nominated fuel price index. Moreover, Annex TP-2 (Performance Guarantees) also requires that Bidders fill out plant parameters including start-up times and dispatch ramp rates, which may not necessarily be applicable to variable renewable energy technologies. A Bidder who will utilize variable renewable technologies (provided it offers a solution for dispatchability) will not be able to provide a nominated fuel price index or fill out dispatch ramp rates.</p> <p>To avoid the risk of excluding variable renewable energy technologies from the 2020 CSP, we suggest that Bidders be allowed to submit write-ups for the TPBAC's evaluation on why some parameters (e.g. nominated fuel price index, dispatch ramp rates) are not applicable to them. For example, solar technologies will not be able to nominate a fuel price index given that the source is sunlight, which has no index.</p>	Amenable to suggestion that if Nominated Plant is renewable energy technology, Bidder shall submit a write-up explanation to the TPBAC.
	CONDITIONS PRECEDENT / ERC APPLICATION	Section 3.1.1 (page 15) / Section 14.2.2 (page 34) / Appendix C Part Three (page 69)	<p>There is no clarity on the timing contradiction comment. Appendix G requires a detailed protocol for conducting a competitive bid for fuel and freight procurement for confirmation of the Operating Committee 180 days prior to the onset of provision of Commissioning Energy. On the contrary, the bidder is required to provide a redacted copy of the fuel supply agreement/s prior to signing of the PSA.</p> <p>However, if we rely on one response from Meralco in BB#3 Annex B v2 page 94, if the winning bidder already conducted a fuel CSP, it can just provide a documentation of its compliance with the CSP provisions and probably a redacted copy of the CSA. In addition, Meralco's response to item #69 states that "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> <p>What are Meralco's standards?</p>	The main considerations will be that the procurement process is competitive and the technical specifications of the fuel per the document submissions by the bidder are complied with.

BID PRICE AND BID SECURITY	Section 3.3 (d.1) / Page 26	<p>Based on Meralco's response in page 79 of Bid Bulletin No. 3, which states that <i>"...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 DOE's fuel cost adjustment formula incentivizes the power suppliers to provide their best forecast of the fuel 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."</i></p> <p>We wish to emphasize that power suppliers are already essentially required to ensure procurement of least cost fuel by conducting a transparent competitive selection process for its fuel requirements. Furthermore, once a fuel supply contract is entered into by a generator with a fuel provider, it already bears significant risks in complying with the terms under the fuel supply agreement such as, but not limited to, minimum quantity and payment obligations which it will need to advance prior to receiving any payments from its customers. Thus, while we acknowledge that fuel adjustment cost formula <i>"is sound and valid in principle as it allows for adjustment every quarter"</i>, it should reflect the actual fuel price costs, including any adjustments and/or discounts obtained by the generator following a successful fuel procurement process, <i>"which redounds to the benefit of the consumers, while at the same time being fair to the generation companies."</i></p> <p>The same should be applied to fuel handling and freight costs which are usually included as part of the fuel rate. For freight, this is usually treated the same as fuel cost which is subject to movement of bunker or diesel index. It is worth mentioning that these are industry practices that are widely accepted internationally.</p>	<p>For CY 1 to 10, the fuel cost pass thru concept shall be the lower between the DOE fuel cost adjustment formula and the actual fuel cost based on as-billed documents/receipts (excluding fuel handling and freight costs) that the Power Supplier shall submit every Billing Period to Meralco to substantiate its actual incurred fuel costs in producing the energy associated to its contract capacity.</p> <p>For CY 11 to 20, the full fuel cost pass thru concept shall be based on as-billed documents/receipts (excluding fuel handling and freight costs) that the Power Supplier shall submit every Billing Period to Meralco to substantiate its actual incurred fuel costs in producing the energy associated to its contract capacity.</p>
COMMITMENT LETTER	Annex QD- 7A, Page 74	<p>The draft assumes that the Bidder is a corporation. Some changes are proposed to more accurately reflect partnership ownership structure.</p> <p>We write on behalf of <i>(insert name of Bidder)</i> (the "Company") 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 ("Project").</p>	<p>Not amenable with the suggested revision.</p> <p>There is an Unrestricted Net Worth Requirement of 30% of the Project Cost, so using the proposed/defined Contingent Equity will be difficult in evaluating the Unrestricted Net Worth Requirement.</p>

			<p>We own (insert dollar value of interests) of Class (insert Class and whether LP/GP) interests, representing approximately (insert percentage) of the capital contributions of the Company. We have undertaken to provide to the Company the amount of up to (insert amount including Contingent Equity commitment), in the form of equity or shareholder loans, for the implementation of the Project.</p> <p>Contingent Equity is equity intended to be funded for costs unforeseen at the time of financial closing. It is to be emphasized that the Contingent Equity is part of the total amount that has already been committed.</p>	
	Invitation to Bid	TOR Table – Tariff Structure; pages 2-3	<ul style="list-style-type: none">- 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 (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. <p>Recommendation: Propose to bring the base year as close to the year of the bid. If possible, 2020 fuel prices.</p> <p>Since bidders will submit projections which will be used to evaluate LCOE, this may result in an under-recovery of fuel for the Bidders.</p> <p><u>Mer’s Response:</u></p> <p>Retain</p> <p>MER disclosed 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.</p> <p>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 cost, and it does not allow the</p>	<p>See also revision released in Bid Bulletin No. 4, where the TPBAC and MERALCO received a letter from the Department of Energy (DOE) dated 23 December 2020 which enjoins MERALCO to amend the “Tariff Structure” provision of the Terms of Reference (TOR) of the on-going competitive selection process (CSP) for 1,800 MW (net) COD 2024-2025, particularly to change the reference year on the fuel price forecasts to 2021 instead of the average of 2022 to 2023.</p> <p>To reflect this change, see Annex A of Bid Bulletin No. 4.</p>

		<p>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.</p> <p>Thus, with the DOE- recommended formula, the power suppliers will have to bear some risk too.</p> <p>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.</p> <p>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, <u>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.</u> 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> <p>Even with the Change in Circumstance provision on the PSA, Power Supplier does not have any guarantees that it will recover losses if fuel risk becomes too high, since changes in the Price is still subject to ERC approval. We understand that 2020 is not possible since it is not reflective of normal fuel prices due to the pandemic.</p> <p>Proposal: Bring base year (Fo) as close to the year of the bid. Having Bidders provide a quarterly price forecast for 3Q of 2022 until 2Q of 2023 is a significant risk, considering that this is a 20-year contract.</p>	
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<div>Section 9.71, IPB</div> <div>Annex QD-4;</div> <div>Annex QD-4-A:</div> <div>Bid Bulletin No. 4</div>	<div>Under Section 9.71 of the IPB which was later amended by Bid Bulletin No. 4, it requires that the Bidder shall submit notarized certifications issued by Meralco and/or its affiliates engaged in power generation, distribution and supply 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.</div> <div>We note that Annex A of Annex QD-4 and Annex QD 4A applies only to those with existing contract (s) and project (s) with Meralco and/or its affiliates as stated in the form. Is it correct that if the contract (s) or project have been terminated and/or expired although commenced within the last five (5) years there is no need for such certifications.</div>	<div>The intention is to cover or include expired power supply or off take agreements as long as it is a PSA entered into within the last five (5) years – this is exhibited by the use of the phrase “commenced or in the process of implementation within the last five (5) years...” in defining Unsatisfactory Performance.</div> <div>A similar query was posed and addressed in Bid Bulletin No. 3, where the TPBAC answered that: “[e]ven 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.”</div> <div>For this purpose, the TPBAC hereby instructs all Bidders that item 1. of the IPB’s Annex QD-4-A should be changed by the Bidders to reflect as such:</div> <div>“1. The COMPANY has <u>past or an</u> existing project(s) or contract(s) with the <i>(insert name of Bidder / its Affiliate engaged in power generation, as applicable);</i>”</div> <div>In addition, the first paragraph of Annex A of the IPB’s Annex QD-4 should be changed by the Bidders to reflect as such:</div> <div>“In compliance with the requirement under Section 3.1.3, <i>(insert name of Bidder) submits the list below containing all the counterpart(ies)</i> (i.e. Meralco and/or its Affiliates engaged power generation, distribution, and supply)/financial lenders who have an <u>past or</u> existing project(s) or contract(s)....”</div> <div>Moreover, pursuant to the revision released in Bid Bulletin No. 4, any reference to “any projects or contracts” in Annex QD-4 and QD-4-A relating to the definition of Unsatisfactory Performance shall only mean or refer to “power supply or off take agreements.”</div> <div>The TPBAC further announces that according to the DU, six (6) PSAs entered into with Meralco on April 2016 were not implemented by reason of Supreme Court’s ABP Decision, hence, there is no need to secure a certification for those PSAs. It is also the same (i.e. certification not required) for PSAs that were not implemented because its</div>
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				application for approval with the ERC was never acted upon by ERC until its Term expired.
	Annex QD-1A		We note that certain bid submission documents specifically require that the Corporate Secretary and the Chief Finance Officer of the Bidder sign documents. In this regard, we wish to clarify that these individuals (officers of the Bidder) need not specifically be authorized under Annex QD-1A or the authority to participate in the bidding and designation of authorized representatives as the form itself already indicates the officer of the Bidder (position) who is required to sign the documents.	Yes, the understanding is correct.
	FINANCIAL WORKSHEET, Degradation Factor	Section 3.3.3 (page 27)	The degradation factor in the excel file does not allow figures less than 1. Please note that the conduct of major maintenance outage is expected to improve the efficiency of the power plant leading to improvement in heat rates for the latter contract years. The limitation to provide figures equal to greater 1 will mean that such improvement is not translated to Meralco's benefit.	Allow figure that is less than 1 in Degradation Factor in the Financial Worksheet. Amenable to change as long as the resulting GNPHR Table that the Bidder shall submit shall be binding for the duration of the Term. To reiterate, the annual degradation factor to be inputted in the Financial Evaluation Workbook should be Cumulative as against to Year on Year, meaning the resulting annual heat rate table (GNPHR Table) that shall be submitted by the Bidder considers the annual cumulative degradation factor and is based on the CY 1 heat rate.
	Performance Guarantees (Nominated Power Plant)	ANNEX TP2 (page 83)	With regard to the Performance Fuel Specification, the values are usually provided as a range to provide for a minimum to a maximum specifications. Please confirm that the "Value" required in Table 3, Performance Fuel Specifications can be a range of values.	For clarity, range of values can be provided in the Performance Fuel Specifications that the Independent Engineer will evaluate.
	Annex QD-6 (Statement of Financial Capability)		We would like to seek your confirmation that the Statement of Financial Capability form may be accomplished by the parent company of the bidder indicating therein the financial capability of the parent company to be executed and signed by the parent company's CFO or Treasurer.	Yes, the understanding is correct. As the Bid Requirements state, for the Financial Requirements: "This requirement may be complied with by the Bidder directly or through any of its direct shareholders representing Controlling interest, Affiliates or Ultimate Parent . As evidence thereof, the Bidder or any of its direct shareholders representing Controlling interest, Affiliates or Ultimate Parent , or in case of an unincorporated joint venture or a partnership, each entity or party thereto..." (Emphasis supplied)

MATRIX OF COMMENTS 3 – **PSA TEMPLATE’s** -RELATED QUERIES/COMMENTS

		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 combines 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>PSA Item 1 states: 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. The relevant provisions of the PSA-template are as follows: Sec. 1.1. defines Contract Capacity as capacity that should be “sourced from the Plant,” while Sec. 6.1.2 states: <i>“6.1.2 Unless otherwise expressly permitted by this Agreement, Power Supplier shall not, without Meralco’s prior written consent:</i> <i>(a) xxx</i></p>	<p>This comment has already been addressed in Item#1, Annex B of Bid Bulletin No. 3 (p.103) released by the TPBAC. In particular:</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 “sourced from the Plant,” 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 from any source other than the Plant; xxx”</p>

				<p><i>(b) provide Meralco with capacity and/or electrical energy from any source other than the Plant; xxx”</i></p> <p>As provided in our previous comments, Bidder recommends that the PSA be restructured into a financial contract in line with the functioning of the WESM. As noted above, the provisions of the form PSA do not align with the operation of the WESM and in the case of the Marginal Bid Offer, are unnecessarily burdensome on any Qualified Bidder awarded the Marginal Bid Offer. For example, the provisions of the PSA that offer Meralco significant security interest through step-in rights or buyout rights over an asset that is forced to find other contracts and buyers of its capacity in the WESM (either through WESM sales or bilateral contracts secured from other potential customers connected to the WESM).</p> <p>Note that the need ensure certainty of supply for the end use customers of the WESM can be accomplished by requiring the Qualified Bidder or Power Supplier to construct and achieve COD for a new facility, provisions that are already included in the PSA.</p>	
2.		PSA	1.1 Definitions	<p>Under Bid Bulletin No. 3 Annex B Item No. 17, TBPAC Responded that:</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>“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.”</p> <p>We note that Sec. 18.5.2 states that Meralco shall not be obligated to make Capacity Payments and Energy Payments if such interruptions occur.</p> <p>Please find below screenshot for reference:</p>	<p>This comment has already been addressed in Item#17, Annex B of Bid Bulletin No. 3 (p.108) released by the TPBAC. In particular:</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: ‘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.’”</p> <p>In other words, there is no need to incorporate this under the FM provision as it is already included as an exculpatory instance under Section 18.5.1. Please note that under this Section, Power Supplier’s failure to make available the Contract Capacity and supply the</p>

				<p>18.5 Exculpatory Provisions</p> <p>18.5.1 Notwithstanding anything contained in this Agreement to the contrary, Meralco's failure to accept any amounts of nominated quantities of Contract Capacity and Associated Energy shall not be considered a Meralco Event of Default and Power Supplier's failure to make available Contract Capacity or supply Associated Energy shall not be considered a Power Supplier Event of Default if each such failure was a direct result of:</p> <ul style="list-style-type: none"> (a) Outages that occur within the Full Load Equivalent Outage Allowance; (b) any act or omission of the System Operator (other than acts or omissions of the System Operator resulting from acts or omissions of a Party that is not otherwise excused under this Agreement); and (c) maintenance or repair of the Luzon Grid that materially affects the generation and transmission of electricity, where such maintenance or repair is conducted to ensure system stability and for safety reasons, in accordance with applicable Legal Requirements. <p>18.5.2 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 the occurrence of any of the events described in Section 18.5.1.</p> <p>Hence, we reiterate our request to consider 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>Associated shall not be considered as a Power Supplier Event of Default if failure is due to, among other things, "any act or omission of the System Operator (other than acts or omissions of the System Operator resulting from acts or omissions of a Party that is not otherwise excused under [the PSA])."</p>
3.		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>Consistent with our recommendation to adopt a hybrid of a physical and financial contract, where Bidders are required to build and make available to the grid greenfield power plants corresponding to their nominated Contract Capacities and where Bidders are given the flexibility to source from the most economical sources on a real-time basis, we suggest that the term Associated Energy be redefined so as not to limit the source of energy only to energy generated by the Plant.</p> <p><i>Revised definition to read:</i></p> <p>Associated Energy means the energy generated by the Plant and declared by Power Supplier to the WESM as BCQ for Meralco, in accordance with Appendix G. <u>means the BCQ nominated by Meralco to Power Supplier, and declared by Power Supplier to the WESM.</u></p> <p><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</u></p>	<p>Response is same as for Item#1.</p> <p>In addition, please note that under this CSP, Power Supplier is allowed to supply from a Nominated Power Plant or portfolio of plants. To this end, the description of "Plant" under Appendix A of the PSA will include the Nominated Power Plant or portfolio of plants, depending on the indicated offer of the Winning Power Supplier. Hence, any reference to "Plant" will refer to Winning Power Supplier's Nominated Power Plant or portfolio of plants, as applicable.</p>

				<u>sources, and sold by the Power Supplier to Meralco during a WESM Trading Interval at the Delivery Point.</u>	
4.		Forced Outage /PSA	Article 1 Definitions and Interpretation / Page 7	<p>Consistent with our recommendation to adopt a hybrid of a physical and financial contract, where Bidders are required to build and make available to the grid greenfield power plants corresponding to their nominated Contract Capacities and where Bidders are given the flexibility to source from the most economical sources on a real-time basis, we suggest that the Bidder be provided with the flexibility 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 <u>unintended</u> 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. 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><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></p>	Response is same as for Item#1.
5.		Reference Rates	Bid Bulletin No. 3, Annex B, Page 182 to 183 PSA,	<p>In Bid Bulletin No. 3, the TPBAC advised that <i>"in the event LIBOR is discontinued or cease to be available, Parties shall agree on an alternative reference rate."</i> Bid Bulletin No. 3, however, did not provide the precise wording for this to be included in the PSA or its appendices.</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</p>	<p>As relayed to the TPBAC by Meralco, Meralco maintains its position that parties shall agree on an alternative reference rate, as currently provided in the definition of LIBOR under Section 1, 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</p>

			<p>Section 1.1, London Interbank Offered Rate (“LIBOR”) and PhP BVAL Reference Rate; Article 11 in relation to Appendix H, Section 4</p>	<p>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 longestterm 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. <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></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. <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></p> <p>Alternatively, please consider adding language to the definitions of LIBOR and BVAL that in the event they are discontinued or cease to be available, the Parties shall agree on a new reference rate.</p>	<p>LIBOR page of Bloomberg (or such successor page or electronic service provider) or if there is no equivalent term, the next longestterm 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.”</p>
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6.		Interpretation	1.2, page 2	<p>This portion does not provide for a rule as to which will prevail in the event of variance between the Bid Documents, PSA and the attachment.</p> <ul style="list-style-type: none"> • 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. • It is likewise suggested that the provisions of 22.8.3, page 58 of the PSA must be integrated in this portion of the PSA. • It is hereby suggested that the pertinent provisions of the PSA for this purpose be revised to read as - - “After the award/execution of the PSA, the same must prevail over all other documents used during the CPS”. • This suggestion is anchored on the fact that in the evaluation of the PSA by the ERC, the terms and conditions embodied therein as stipulated are the ones to be scrutinized prior to the approval thereof. 	<p>The provisions of the Bidding Documents shall be incorporated in the PSA, together with specifics of the concerned bidder’s Document Submissions (as applicable). Such PSA shall be the one executed with the Winning Power Supplier and subsequently filed with the ERC for approval.</p> <p>For clarity, however, the following provision will be incorporated in the PSA as Section 1.2.17:</p> <p>“The provisions of this Agreement shall be read in light of Meralco’s bidding documents, including relevant bid bulletins, and Power Supplier’s envelopes 1, 2 and 3 bid document submissions. In case of any conflict between this Agreement, on one hand, and Meralco’s bidding documents, including relevant bid bulletins, and Power Supplier’s envelopes 1, 2 and 3 bid document submissions, on the other hand, the latter shall prevail.”</p>
7.		PSA	Definition of COD	<p>Under Bid Bulletin No.3 Annex B Item No. 41, TPBAC responded that “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.”</p> <p>We would like to clarify the Price paid to the Winning Power Supplier if a bidder nominates a contracted capacity which covers multiple units with different CODs.</p> <p>As an example, suppose a Bidder with a 2x600MW configuration bids for 900MW.</p> <p>Scenario 1 - Bidder wins full 900MW for delivery in December 2024. Please confirm our understanding that, in this case where the bidder is not the marginal bidder, when the bidder is able to achieve COD for the 600 MW only on or before December 2024, the bidder will be paid full Contract Price for the first 600MW and Commissioning Energy for the next 300MW until Unit 2 achieves COD</p> <p>Scenario 2: Bidder wins 600MW for delivery in December 2024 and 300MW for delivery in May 2025. Please confirm our understanding that Meralco should pay the Contract Price for the first 600 MW in December 2024 and 300 MW for May</p>	<p>Under the IPB, in relation to the Scheduled COD, 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 the Scheduled COD by December 2024. Given this:</p> <p>In Scenario 1, if the Power Supplier that won the full 900 MW for delivery in December 2024 is not the marginal bidder, it is required to make available the entire 900 MW by December 2024. If, by December 2024, only 600 MW can be made available by the Power Supplier, then the “Plant” has not yet achieved commercial operations. In such case, Power Supplier shall be required to provide Commissioning Energy and Replacement Power to Meralco (Section 5.3, PSA)</p> <p>Meralco confirms Bidder’s understanding of the scenario presented in Scenario 2.</p>

				<p>2025.</p> <p>Scenario 3: Bidder wins 300MW for delivery in December 2024 and 600MW for delivery in May 2025. Please confirm our understanding that, when the bidder achieves COD for first 600 MW unit in December 2024, such bidder will be paid its Contract Price for the 300 MW for the unit achieving COD in December 2024 as required,</p> <p>a. The excess 300 MW of the first unit can be sold to third parties and/or WESM since it is uncontracted.</p> <p>b. The next 600MW (2nd Unit) in May 2025 will be paid the Contract Price and will provide Commissioning Energy prior to COD.</p> <p>In sum, we request clarification from Meralco on applicable CODs and Contract Capacity in situations when a bidder’s Contract Capacity offer may be delivered from multiple units.</p>	<p>For Scenario 3, under Section 5.1 of the PSA, vis-à-vis item 52, Annex B of Bid Bulletin 3, p. 119, for Plants that have achieved commercial operations, Power Supplier is required to provide Commissioning Energy for the maximum period for Commissioning allowed in relevant regulations which shall not exceed 6 months. On the other hand, as explained in item 51 of Annex B of Bid Bulletin 3 (p.118), “xxx 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.” Hence, for (a.), if COD for the 600 MW unit will be achieved by December 2024, it should be noted that Power Supplier will still be required to provide Commissioning Energy for the 300 MW for a period of 6 months, although may freely sell to 3rd parties energy not taken by Meralco. For (b.), the next 600 MW will still be required to provide Commissioning Energy following Section 5.1 of the PSA vis-à-vis item 52, Annex B of Bid Bulletin 3, p. 119.</p> <p>In light of this query, please note that for clarity, Meralco reserves the right to declare Early COD per unit of the Plant, depending on its demand requirements. For this purpose, Section 3.4.2 of the PSA shall be refined as follows:</p> <p>“ 3.4.1 In the event that Power Supplier anticipates that [a unit of] the Plant shall achieve Commercial Operations Date prior to the Scheduled Commercial Operations Date (“Early Commercial Operations Date”), Power Supplier shall promptly deliver a written notice to Meralco of such anticipated Early Commercial Operations Date indicating the anticipated date thereof (the “Early COD Notice”), at least three (3) months prior to the then anticipated date of the Early Commercial Operations Date. For clarity, in no case shall Early COD occur earlier than 26 [November 2023/April 2024].</p>
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					<p>3.4.2 Upon receipt of such Early COD Notice, Meralco shall by written notice to Power Supplier, determine whether or not to consider that the Scheduled Commercial Operations Date shall occur on the Early Commercial Operations Date or on such other date as the Parties may agree. [Meralco reserves its right to declare Early COD per unit of the Plant.]”</p>
8.		PSA	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>PSA Item 24</p> <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> <p>If ERC does not accept the PSA approval application as the ECC is not available, will the PSA Long Stop Date continue to be extended, without Meralco’s consent, if the Bid Security is increased by the Qualified Bidder/Power Supplier?</p>	<p>This comment has already been addressed in Annex B of Bid Bulletin No. 3 (pp. 34-36) released by the TPBAC. The material portion provides:</p> <p>“[T]here 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 submit the ECC, Sec. 3.3.1 of the IPB (and Sec. 4.1 [2nd paragraph] of the PSA template) is hereby amended 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. Thus, Sec. 3.3.1 will be revised to</p>

					<p>read as:</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 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, 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.”</p> <p>On the other hand, 2nd paragraph of Section 4.1 of the PSA will be revised to read as:</p> <p>“xxx If the Power Supplier fails to secure an Environment Compliance Certificate (the “ECC”) from the Department of Environmental and Natural Resources within six (6) months from filing of the ERC Application, Power Supplier shall increase its Bid Security by one <u>hundred</u> 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</p>
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					<p>however, that in no case shall the total Bid Security exceed the total project cost of the Plant corresponding to the Contract Capacity, <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></p>
9.		PSA	Bid Bulletin No. 3, Annex B, Commence ment Date	<p>NB: "in the event that a delay in the ERC Final Approval is due to Power Supplier's failure to comply with any order or directive of the ERC or provide any document required by the ERC, including the ECC, Meralco reserves the right to forfeit 10% of the Original Bid Security amount for each month of such delay"</p> <p>Please insert:</p> <p>-xxx- delay in the ERC Final Approval is <u>proven to be</u> due to Power Supplier's failure to comply with any order or</p> <p>-xxx- Power Supplier's failure, <u>without justifiable cause</u>, to comply with any order or...xxxx</p>	<p>As relayed to the TPBAC by Meralco, the proposal is not acceptable. The Section already mentions that the delay is due or attributable to Power Supplier's failure. On the other hand, the provision does not distinguish whether Power Supplier's failure to provide such document to Meralco is with or without justifiable cause. In any case, Power Supplier may question the ERC order and if the ERC reverses the same, then this situation will not arise.</p>
10.		PSA	3.2.1	<p>Under Bid Bulletin No. 3 Annex B Item No. 22, TPBAC Responded that:</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><i><u>"xxx In the event that a delay in ERC Final Approval is due to Power Supplier's failure to comply with any order or directive of the ERC or provide any document required by the ERC, 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></i></p>	<p>As relayed to the TPBAC by Meralco, Meralco is not amenable to the proposal of lowering the percentage by which the Bid Security is forfeited. In view of the related risks attendant to the delay (i.e., Meralco customers being exposed to volatility of supply in the WESM), it finds the 10% to be reasonable.</p>

				We would like to request to reduce the forfeiture of Bid Security by <u>5%</u> for each month of delay.	
11.		PSA	Section 3.2.3(b)	<p>The provision provides that if the non-occurrence of timely Financial Close by the Required Financial Completion Date is directly due to, or a direct result of, the unreasonable refusal of Meralco to enter into the Direct Agreement or the Equity Transfer Procedures, Meralco shall return the performance security to the power supplier within 30 Days from the date of termination.</p> <p>In this regard, the term “Equity Transfer Procedures” means procedures to be agreed between holders of such interests, Meralco, and the Finance Parties on or prior to the date of Financial Close in respect of the creation, maintenance an execution of Meralco’s rights or obligations to acquire Equity Interests in Power Supplier under Section 18.3 without creating recourse obligations of such holders and while protecting the Finance Parties’ security interests in the Equity Interests of Power Supplier and the Plant. In turn, the term “Equity Interests in the Power Supplier” means, at any date, the ownership rights of shareholders of the Power Supplier.</p> <p>Section 18.3 is silent on Meralco’s rights or obligations to acquire Equity Interests in Power Supplier.</p> <p>We believe Meralco should not have any buyout rights under the PSA.</p>	As relayed to the TPBAC by Meralco, under Section 18.3.3, “buyout” is a reasonable remedy considering that the situation contemplates an Event of Default. In addition, the remedy of Power Supplier to require Meralco to buy the Plant in Section 18.3.4 is only one of the remedies available to Power Supplier in case of a Meralco Event of Default. Hence, Power Supplier may opt not to pursue this route.
12.		PSA / Pre-COD Replacement Cost	3.3.3	<p>Under Bid Bulletin No. 3 Annex B Item No. 35, TPBAC Responded that:</p> <p>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.</p> <p>We would like to request consideration that the Power Supplier be paid at the Price instead of lower of WESM and Price.</p>	As relayed to the TPBAC by Meralco, the proposal is not acceptable. The provision of Replacement Power shall be at the lower between WESM price and Price, consistent with provision in its physical PSAs (cf: answer to item #1) previously approved by the ERC.
13.		PSA / Bid Bulletin No. 3	3.3.3	In the Bid Bulletin, we understand that Meralco responded that it 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.	As relayed to the TPBAC by Meralco, Meralco maintains its response in item 46, Annex B of Bid Bulletin 3 (p.117). In particular:

				<p>Related to this, we wanted to request Meralco to notify the Power Supplier for any drawdown on the Performance Security.</p> <p>We would like to request for Meralco to notify the Power Supplier for any drawdown on the Performance Security.</p>	<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.”</p> <p>Given this, we suggest that Power Supplier coordinate with the bank on the protocol in case of any drawing to be made or made against the Performance Security.</p>
14.		ITB – Pre-bid conference questions	Page 27, Section 3.3(d)3.	<p>Bidder Question: Is it Meralco’s intention that Bidders shall be bound by the 1% increments of Load Factor from 50% to 100% Load Factor? In addition, will Bidders be required to perform any performance tests to demonstrate heat rate performance at these various loads?</p> <p>TPBAC Response: 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>We note that that the PSA requires the Parties shall mutually agree on the testing principles, criteria and protocols for the NDC Test (and the NPHR Test). In the Philippines, it is generally accepted to use the standard testing protocols of the American Society of Mechanical Engineers (ASME) and we expect the PSA parties will use ASME test protocols for the NDC Test and the NPHR Test. It is our understanding that these tests proceed from taking a required number of sample load factors to ascertain accuracy and precision of the test results but such may not be conducted in partial load steps of 1% from 40% to 100% load factor.</p> <p>The Net Plant Dependable Capacity and Net Plant Heat Rate tests will be tested and the results will be guaranteed by the EPC contractor only at 100% load factor, dubbed as the performance guarantee.</p> <p>Partial load heat rates, on the other hand, is an inherent characteristic of power plants where the load factor is the quadratic inverse of the net plant heat rate. The lower the load factor, the higher is the heat rate (or lower net plant efficiency.) Partial load heat rates are normally not guaranteed contractually. However, the contractor will be able to tune the generator set so that it can perform optimally at each load point. The contractor will normally provide a predicted heat rate curve giving a</p>	<p>This is noted. However, please note that the exact or precise parameters on the testing protocols etc. for the performance guarantees shall be developed in coordination with the Independent Engineer chosen during PSA implementation under Section 22.16 of the PSA Template.</p>

				<p>minimum of four (4) points in the heat rate curve (100%, 75%, 50%, and 40% or whatever the minimum stable load is.) The contractor may conduct the part load heat rate tests during the performance acceptance test to prove the predicted heat rates at part load.</p> <p>Partial load heat rates are also subject to degradation and recovery.</p> <p>Given the 4 points (i.e., the heat rates at 100%, 75%, 50%, and, 40% or whatever the minimum stable load is) established by the contractor thru testing, we can now calculate the 1% incremental heat rate values using a quadratic equation as provided in the heat and degradation table in the PSA.</p> <p>Accordingly, we request that partial load tests will be conducted as required in the ASME protocols for NDC Test and NPHR Test and that the required data for partial load steps of 1% from 40% to 100% be derived in accordance with the ASME protocols and procedures.</p>	
15.		PSA	3.3.2 Commercial Operations Date	<p>xxx (d) 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, including but not limited to, the certificate of compliance of Power Supplier as a generation company issued by the ERC, its registration as a member of the WESM and evidence of its execution of a Market Participation Agreement with the Philippine Electricity Market Corporation, have been obtained as certified by Power Supplier;</p> <p>Kindly specify what permits and licenses do we have to submit under this section other than the certificate of compliance of Power Supplier as a generation company issued by the ERC, its registration as a member of the WESM and evidence of its execution of a Market Participation Agreement with the Philippine Electricity Market Corporation.</p>	<p>As mentioned in the provision:</p> <p>“all permits, licenses xxx <u>needed for the operation of the Plant and the supply of electricity by Power Supplier to Meralco xxx.</u>”</p>
16.		PSA	3.3.2 Commercial Operations Date	<p><i>Provided that the 1-year period under Section 5.1 has been completed,</i> the Plant shall achieve Commercial Operations Date for [1,800 M W] upon the delivery by Power Supplier of the documents enumerated below, in form and substance satisfactory to Meralco:</p>	<p>As relayed to the TPBAC by Meralco, the submission of both ERC Certificate of Compliance and Commercial Operations Date Certificate are required. These are conditions precedent for [all] Power Supplier/s before occurrence of COD is recognized under the PSA.</p>

				<p>a. Capacity Test Certificate dated no earlier than fifteen (15) Days prior to the date of the Commercial Operations Date Certificate confirming value of the Net Dependable Capacity, which shall be at least [1,800 MW];</p> <p>b. Net Plant Heat Rate Test Certificate dated no earlier than fifteen (15) Days prior to the date of the Commercial Operations Date Certificate;</p> <p>c. Compliance Certificate issued by Independent Engineer confirming that: (i) the Plant meets Power Supplier's commitments under Appendix B of this Agreement, (ii) the Plant's fuel source is from a technology that complies with the prevailing emission standards under pertinent DENR issuances on emission and other environmental standards for power plants; and (ii) the Plant's key components (e.g., boiler, turbine and generator) are of proven design and technology, thus, confirming compliance to the technical proposal (attached hereto as Schedule I of Appendix A) submitted by Power Supplier during the competitive selection process conducted for this Agreement.</p> <p>d. 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, including but not limited to, the certificate of compliance of Power Supplier as a generation company issued by the ERC, its registration as a member of the WESM and evidence of its</p> <p>execution of a Market Participation Agreement with the Philippine Electricity Market Corporation, have been obtained as certified by Power Supplier;</p> <p>e. <u>a Commercial Operations Date Certificate</u>; and</p> <p>f. Power Supplier certification that the insurances required under this Agreement relevant for at least the first Contract Year have been obtained, as certified by Power Supplier's insurance advisor or broker.</p> <p>Instead of a Commercial Operations Date Certificate issued by the Independent Engineer, shouldn't the ERC Certificate of Compliance be required instead and shall be conclusive evidence of the attainment of the Plant's COD?</p> <p>Do these requirements only apply if Power Supplier declares Early COD?</p>	
17.		Commercial Operations Date / PSA	Section 3.3.2 / Page 17	Section 3.3.2 of the PSA reads:	It is noted that, as clarified in item 52, Annex B of Bid Bulletin 3, p.119:

				<p><i><u>Provided that the 1 year period under Section 5.1 has been completed</u>, the Plant shall achieve Commercial Operations Date for [1,800 MW] upon the delivery by Power Supplier of the documents enumerated below, in form and substance satisfactory to Meralco:</i></p> <p>Bidder requests to delete the underlined statement.</p>	<p>“(a) For Plants that have achieved commercial operations, 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.</p> <p>(b) For Plants that are still under or are to undergo Commissioning (prior to commercial operations), Power Supplier shall supply energy generated by the Plant at Commissioning Energy Charge for as long as the Plant is under Commissioning.”</p> <p>Thus, given the above response, Section 3.3.2 of the PSA shall be revised to:</p> <p>“Provided that the 1-year period <u>for provision of Commission Energy</u> under Section 5.1 has been completed, xxx”</p>
18.		Early Occurrence of COD / PSA	Section 3.3.2 / Page 20	<p>Section 3.3.2 of the PSA reads:</p> <p><i>Upon receipt of such Early COD Notice, Meralco shall, by written notice to Power Supplier, determine whether or not to consider that the Scheduled Commercial Operations Date shall occur on the Early Commercial Operations Date or on such other date as the Parties may agree.</i></p> <p>Bidder suggests to clarify whether the Power Supplier can sell energy to WESM or any third party if Meralco decides not to accept early COD.</p>	<p>Please refer to item 51, Annex B of Bid Bulletin 3, p. 118, the relevant portion of which provides:</p> <p>“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.”</p>

19.		Excused Delay Event / PSA	Section 3.3.3 / Page 19	<p>The last two (2) paragraphs of Section 3.3.3 of the PSA read:</p> <p><i>In the event that Power Supplier (or any contractor of Power Supplier) has, after the Commencement Date, experienced a delay in designing, constructing, testing or Commissioning the Plant or any part thereof, as a result or to the extent of any of the following (each an "Excused Delay Event"):</i></p> <p>Bidder requests to add "Change in Circumstances" to the list of Excused Delay Events.</p> <p>Bidder proposes to add the following paragraph at the end of Section 3.3:</p> <p>"In the event an Excused Delay Event has occurred and has resulted in increased costs of the Power Supplier:</p> <p>(a) if the Excused Delay Event occurs:</p> <p>(i) before Commercial Operations Date, the Power Supplier shall be allowed to draw on any funds under the Finance Documents to fund such increased costs;</p> <p>(ii) after the Commercial Operations Date, the Power Supplier shall use its best efforts to raise additional capital to fund such increased costs; and</p> <p>(b) Meralco shall grant the Power Supplier:</p> <p>(i) A mechanism to adjust one or more of the Capacity Payments or Energy Payments, as appropriate; and</p> <p>(ii) an extension to the Term, if such Excused Delay Event occurs during Commercial Operations Date."</p>	As relayed to the TPBAC by Meralco, Meralco is not amenable with this proposal. For one, Section 3.3.3 on Excused Delay Event is to apply to instances when the Plant has not yet achieved COD. For another, there is already a procedure involving Change in Circumstances dealing with Increased Charges of Power Supplier. To emphasize, lack of funding is not a situation contemplated under Excused Delay Event in the PSA.
20.		PSA	3.3.3	<p>If the Commercial Operations Date has not occurred by the Scheduled Commercial Operations Date, from and after the Scheduled Commercial Operations Date, Power Supplier shall, for each Day of unexcused delay, (i) procure and cause delivery to Meralco of Replacement Power of up to [1800 MW] (net), as may be applicable, subject to Article 6 and in accordance with Appendix E, to be paid for by Meralco at the lower between WESM price and the Price;</p> <p>For any deliveries of Replacement Power made pursuant to this Section 3.3.3, Meralco shall pay for such Replacement Power at the lower between the WESM price and the Price specified in Appendix E.</p>	As relayed to the TPBAC by Meralco, Meralco shall pay Replacement Power at the lower between WESM price and the Price specified in Appendix E, regardless of source of the Replacement Power. It should be noted that the choosing the "lower between" such prices redounds to the benefit of, and is actually more beneficial to, customers.

				<p>If Power Supplier can procure Replacement Power from other plants and not from the WESM, will price still be the lower between WESM price and the Price? Shouldn't the applicable rate be the Price?</p>	
21.		<p>Replacement Power</p> <p>PSA Template</p>	3.3.3	<p>If Power Supplier fails to provide Replacement Power despite availability from WESM or any other source, Meralco will be deemed to have sourced the Replacement Power, subject to reimbursement by Power Supplier of the difference between (i) WESM price and (ii) the Price, plus all relevant transaction cost and taxes.</p> <p>Please see suggested edit:</p> <p>If Power Supplier fails to provide Replacement Power despite availability from WESM or any other source, Meralco will be deemed to have sourced the Replacement Power, subject to reimbursement by Power Supplier of the difference between (i) WESM price and (ii) the Price, plus all relevant transaction cost and taxes <u>if WESM price is higher than the Price.</u></p>	<p>As relayed to the TPBAC by Meralco, Meralco is not amenable with the proposal. It should be noted that the current provision mentions "reimbursement by Power Supplier." Given this, if the resulting difference is negative, no difference shall be paid.</p>
22.		<p>Replacement Power due to delay in COD / PSA</p>	<p>Article 3.3.3 / Page 18</p>	<p>Replacement Power is primarily the responsibility of the Power Supplier, and as such, the Power Supplier should guarantee Meralco that it will be kept whole on the Contract Price at all times. Subsequently, to make this economically viable for the Power Supplier, it must also be given the flexibility to procure from sources even outside of the WESM when there is a need to provide Replacement Power (e.g. short-term bilateral contracts), as long as it will only charge Meralco the Contract Price, which has been agreed upon in the PSA.</p> <p>In line with this, we propose that the cost of procuring Replacement Power due to any delay in the COD of the plant also be charged at the Contract Price.</p> <p><i>Suggested revision to read:</i></p> <p>"If the Commercial Operations Date has not occurred by the Scheduled Commercial Operations Date, from and after the Scheduled Commercial Operations Date, the Power Supplier shall, for each Day of unexcused delay, (i) procure and cause delivery to Meralco of Replacement Power of up to [MW] (net), as may be acceptable, subject to Article 6 and in accordance with Appendix E, to be paid for by Meralco at the lower between WESM price and the Price, xxx</p>	<p>Response is same as for item#12.</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.”	
23.		PSA	Section 3.3.3 vis-à-vis Section 18.6.2(a)	<p>Where an Excused Delay Event exceeds 180 Days (i.e., the Excused Delay Limit), either party shall have the right to terminate the PSA in accordance with Section 18.6.2(a) of the PSA.</p> <p>Section 18.6.2(b) provides that if the Excused Delay Limited is reached, the parties shall negotiate on the terms of the PSA which might be continued provided that the Power Supplier procures Replacement Power or pays the fine in accordance with Section 3.3.3. If an agreement is not reached within 60 Days of reaching the Excused Delay Limit, the PSA may be terminated by Meralco.</p> <p>Based on the foregoing, there appears to be an inconsistency between Section 3.3.3 and Section 18.6.2(b) since these provisions speak of an Excused Delay Event, in which case, the Power Supplier should be relieved of its obligation to provide Replacement Power or pay the fine provided under Section 3.3.3. Further, while Section 3.3.3 provides that either party shall have the right to terminate the PSA in accordance with Section 18.6.2(b), Section 18.6.2(b) specifically provides that Meralco has the right to terminate the PSA. In relation thereto, we suggest that the right to terminate the PSA should be at the sole discretion of the Power Supplier in respect of the following Excused Delay Events considering that these are beyond the control of the Power Supplier:</p> <p>(a) any action or inaction or delay in action of the System Operator, the Market Operator or any Governmental Instrumentality; xxx (c) any breach or default by Meralco of its material obligations under the PSA or the Direct Agreement; (d) any delay in energizing the Electrical Interconnection Facilities that prevents the export of power form the Plant; or (e) unavoidably of back-feed power to synchronize or to dispatch the Plant or absence of suitable Dispatch Instructions so as to allow for the timely completion of the testing and commissioning of the Plant.</p>	<p>This has already been addressed in item 39, Annex B of Bid Bulletin 3, p. 115, which provides:</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><u>“xxx, except that only Power Supplier can terminate this Agreement if the Excused Delay Event is solely due to Section 3.3.3(c).”</u></p> <p>Consistent with this, Section 18.6.2(b) is revised as follows:</p> <p><u>“xxx this Agreement may be terminated by (i) either Party for an Excused Delay Event due to Section 3.3.3 (a), (b), (d) or (e), or (ii) by Power Supplier for an Excused Delay Event due to Section 3.3.3 (c), Meralco upon delivery of written notice of termination. In case of (i) 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.</u></p> <p>For clarity, since the other grounds cited are likewise beyond the control of Meralco, then it should also have a right to terminate.</p>
24.		COD		Annex TP-1 (TOR Table) and Power Supply Agreement Template	This has been addressed in p. 22 of Annex B of Bid Bulletin 3, in particular:

		Instructions to Prospective Bidders	Annex TP-1 (TOR Table)	<table><tr><th></th><th>Requirement</th><th>Bidder's Submission</th></tr><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></table>		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> <p>In addition, there is no need to revise the provision, as the PSA already specifies requisites prior to COD or Early COD thereunder.</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]															
		PSA Template	3.4.1	<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 (“Early Commercial Operations Date”). Power Supplier shall promptly deliver a written notice to Meralco of such anticipated Early Commercial Operations Date indicating the anticipated date thereof (the “Early COD Notice”), at least three (3) months prior to the then anticipated date of the Early Commercial Operations Date. For clarity, in no case shall Early COD occur earlier than 26 [November 2023/April 2024].</p> <p>Can the Nominated Power Plant commence Commercial Operations before 26 November 2023?</p> <p>If yes, please revise Section 3.4.1 of the PSA as follows:</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 (“Early Commercial Operations Date”). Power Supplier shall promptly deliver a written notice to Meralco of such anticipated Early Commercial Operations Date indicating the anticipated date thereof (the “Early COD Notice”), at least three (3) months prior to the then anticipated date of the Early Commercial Operations Date. For clarity, in no case shall Early COD occur earlier than 26 [November 2023/April 2024].</p>													
25.		Bid Security / PSA	Section 4.1 / Page 20; Section 18.6.2(a) / Page 50	<p>The second paragraph of Section 4.1 provides that if the Power Supplier fails to secure an Environmental Compliance Certificate (“ECC”) within 6 months from filing of the ERC Application, the Power Supplier shall increase the Bid Security by one hundred percent (100%) of the original value.</p>	<p>As relayed to the TPBAC by Meralco, Meralco is not amenable to the proposal. Power Supplier has commitments under the PSA regardless of occurrence of Acceptance Date. In fact, precisely the indicated purposes for the Bid Security under Section 3.3.1 of the IPB is to ensure Winning</p>												

				<p>On the other hand, Section 18.6.2(a) provides that if Acceptance Date did not happen on or before the Longstop Date, which refers to date falling six (6) months after date of filing the ERC application, then the Power Supplier has the right to terminate PSA.</p> <p>Bidder suggests to make it clear that if Power Supplier terminates the PSA according to Section 18.6.2(a) before getting the ECC, Meralco shall return the Bid Security.</p>	<p>Power Supplier “<u>complies with all terms of the IPB</u>, and signs, executes and <u>complies with terms and conditions of the PSA template</u>”, one undertaking of which is the submission of the ECC. Thus, Meralco should be able to call on the Bid Security if Power Supplier terminates before getting the ECC. Notably, the Bid Security represents an equivalent cost of the exposure to the volatile prices of WESM that will be suffered by Meralco customers, as well as the risk of supply deficiency or delay if another CSP is needed to be conducted to answer for the capacity lost by Meralco on account of termination by the Power Supplier of the PSA.</p>
26.		PSA	Performance Security / Article 4 / Page 20	<p>In PSA Section 4.2, Performance Security shall be an irrevocable stand-by letter of credit or bank guarantee.</p> <p>We would like to request if Meralco TPBAC can allow Power Supplier to provide a Surety Bond in lieu of a Standby Letter of Credit or Bank Guarantee as Performance Security.</p> <p>We would like to request if TPBAC can consider allowing Power Supplier to provide a Surety Bond in lieu of a Standby Letter of Credit or Bank Guarantee as Performance Security</p>	<p>As relayed to the TPBAC by Meralco, Meralco is not amenable with the proposal of providing a Surety Bond in lieu of a Standby Letter of Credit or Bank Guarantee as Performance Security.</p>
27.		PSA	Article 5 Commissioning Energy	<p>In PSA Section 5.1., Meralco shall have the option to purchase a portion or all of the Commissioning Energy.</p> <p>We want to clarify if the bidder bids only a portion of its capacity (e.g. 300MW of its 600MW plant), is the Power Supplier obligated to provide 100% of its Commissioning Energy to Meralco or just the portion contracted with Meralco?</p> <p>TPBAC to confirm that if the Bidder bids only a portion of its capacity, it is only obligated to provide the portion of the Commissioning Energy that it is contracted to Meralco.</p>	<p>This has been answered in item 51, Annex B of Bid Bulletin 3, p. 118, in particular:</p> <p>“Section 5.1 clearly provides that 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”.”</p>

28.		Commissioning Energy	Article 5.1 & 5.2; page 21	<ul style="list-style-type: none"> - 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”), 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.</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. - 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&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>Recommendation:</p> <ol style="list-style-type: none"> 1. Propose to qualify Commissioning to actual/technical commissioning of the plant. 2. 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. <p><u>MER's Response:</u></p> <p>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 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>	<p>Please refer to item 53, Annex B of Bid Bulletin 3, p. 119, the relevant portion of which provides:</p> <p>“xxx [S]ince 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&M Payment plus any value-added tax and any other applicable taxes, fees and charges”.</p> <p>As to the additional proposal, Meralco prefers to retain original language of its PSA, as qualified by its response in item 52, Annex B of Bid Bulletin 3, p. 118-119.</p>
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				<div>1. For Plants that have achieved commercial operations, 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.</div> <div>2. For Plants that are still under or are to undergo Commissioning (prior to commercial operations), PowerSupplier shall supply energy generated by the Plant at Commissioning Energy Charge for as long as the Plant is under Commissioning.</div> <div>We acknowledge MER’s decision to lessen the period that Supplieris required to supply Commissioning Energy if actual COD has been achieved. However, if Supplier is required to do so after achieving actual COD, it should be paid the actual cost of supplying said Commissioning Energy to MER, which includes Capacity Payments.</div> <div>We also propose to have the Parties agree on the quantities to besupplied during the period of Commissioning Energy on or beforean agreed deadline prior to the start of Commissioning Energy.</div> <div>Proposal:</div> <div><div>1. MER should also pay Capacity Payments and FOMfor Commissioning Energy supplied by plants thathave achieved actual COD.</div><div>For plants that have achieved actual COD, both Parties should agree, on or before the agreed deadline set by both Parties, the quantities to besupplied for Commissioning Energy</div></div>	
29.		Commissionin g Energy / PSA	Section 5.1 / Page 21	<div>Section 5.1 of the PSA reads:</div> <div><i>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</i></div>	Response is same as for Item#17.

				<p>providing Commissioning Energy under this Section only when prevented by technical constraints or an Event of Force Majeure.</p> <p>Please clarify if Power Supplier needs to make available the Commissioning Energy for one year only in case of Early COD or if the Power Supplier has to make available the Commissioning Energy for one year whether or not there is Early COD? If the Power Supplier fails to make available the Commissioning Energy by 26[Nov 2023/Apr 2024] but can achieve COD as schedules, can the Power Supplier still get the Commissioning Energy Charge after the COD?</p> <p>Bidder suggests to cancel the one (1) year fixed duration and revise Section 5.1 as follows:</p> <p><i>“During the Commissioning period between 26 [November 2023/April 2024] and the actual Commercial Operations Date for each Unit, the Power Supplier shall sell, and Meralco shall purchase, the electrical energy quantities in MWh generated by the Plant (the “Commissioning Energy”) at the times and at dispatch levels which are necessary for proper, efficient, and timely testing and commissioning of the Plant. Such purchases shall be on a take-and-pay basis.”</i></p>	
30.		<p>Scheduled COD</p> <p>Invitation to Bid</p> <p>PSA Template</p>	<p>Page 2</p> <p>5.1</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">• What does it mean? What if the supplier cannot supply at that date?• What happens when Power Supplier cannot supply power during the period before Scheduled COD? Will it be considered in default of the PSA? <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>This has been addressed in p. 22, Annex B of Bid Bulletin 3, in particular:</p> <p>“If the Winning Power Supplier’s Nominated Power Plant is not yet operational before SCOD, then, MERALCO [still] has no option to take, and the Winning Power Supplier has no obligation to deliver, energy.</p> <p>If it is operational before [S]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>Please clarify if Power Supplier is required to supply Commissioning Energy even if the Plant is not yet in the commissioning stage in December 2023.</p> <p>If not required, please revise Section 5.1 as follows:</p> <p>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 Event of Force Majeure.</p>	<p>After [S]COD and the Nominated Power Plant is still undergoing testing-commissioning, Article 5 (Commissioning Energy) of the PSA template will prevail.”</p> <p>See also response for Item#17.</p>
31.		Commissioning Energy / PSA	Article 5.1 / Page 21	<p>We recommend that Bidders be able to offer the Commissioning Energy either to Meralco or to other customers, at its option. Apart from possible technical constraints or an event of Force Majeure, we suggest that Bidders should be accorded the option to dispatch its Commissioning Energy to the WESM or to other customers who are willing to purchase the Commissioning Energy on a firm basis.</p> <p><i>Suggested revision to read:</i></p> <p>“Subject to an agreement by the Parties to declare Early COD in accordance with Section 3.4, Power Supplier shall may, 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>This has been answered in item 51, Annex B of Bid Bulletin 3, p. 118, in particular:</p> <p>“xxx As to volume of Commissioning Energy, it shall be limited to “electrical energy quantities in MWh generated by the Plant”, which shall in no case be more than corresponding to the Contract Capacity. xxx</p> <p>xxx 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.”].</p>
32.		PSA	Article 5, Section 5.1, 5.2 and	<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>As relayed to the TPBAC by Meralco, there is no concept of “unserved BCQs” during period of Commissioning.</p>

			<p>5.3, pages 21 and 22</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>PSA Item 51 states:</p> <p>Section 5.1 clearly provides that:</p> <p>1. As to volume of Commissioning Energy, it shall be limited to “electrical energy quantities in MWh generated 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”.</p> <p>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.</p>	<p>On the other hand, while Meralco shall nominate only up to the Metered Quantity, 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.</p>
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				Please confirm that Meralco shall bear all risk for unserved BCQs arising as a result of any Commissioning Energy they purchase from the Plant.	
33.		Commissioning Energy / PSA	Section 5.3 / Page 22	<p>Section 5.3 of the PSA reads:</p> <p><i>On and after the Scheduled Commercial Operations Date, if the Plant is still under Commissioning <u>or the 1 year period for providing Commissioning Energy has not yet been completed</u>, Power Supplier shall likewise provide Meralco with Replacement Power in excess of the Commissioning Energy up to the extent of the day-ahead nomination at a rate equivalent to the lower between the WESM price and Commissioning Energy Charge as computed in accordance with Article C, Section 1 (Component J) of Appendix E. ...</i></p> <p>Bidder requests to delete the underlined statement.</p>	As relayed to the TPBAC by Meralco, Meralco is not amenable with the proposal. Please note, however, that the period has been revised per item 52, Annex B of Bid Bulletin 3, p.118-119.
34.		Supply of Power / PSA	Section 6.1.1 / Page 22	<p>Section 6.1.1 of the PSA reads:</p> <p><i>From the Commercial Operations Date of the Plant until the expiration of the Term or earlier termination of this Agreement, Power Supplier shall:</i></p> <p><i>(a) make available to Meralco, and Meralco shall purchase from Power Supplier, at the Price determined in accordance with Appendix E, the Contract Capacity of the Plant; and</i></p> <p><i>(b) deliver and sell to Meralco, and Meralco shall purchase from Power Supplier, at the Price determined in accordance with Appendix E, the Associated Energy (and Replacement Power), to the extent of Meralco's relevant day-ahead nominations.</i></p> <p>Bidder proposes to clarify in the provision that this is a take-or-pay contract. Meralco shall make Capacity Payment even when it is not actually taking the energy.</p>	As relayed to the TPBAC by Meralco, it is confirmed that Capacity Payments will be made regardless of energy actually taken, except for grounds specified in the PSA (such as in case of Event of Force Majeure under Section 17.3.1).
35.		Supply of Power / PSA	Article 6.1.1 (a) / Page 22	<p>Consistent with our recommendation to adopt a hybrid of a physical and financial contract, where Bidders are required to build and make available to the grid greenfield power plants corresponding to their nominated Contract Capacities and where Bidders are given the flexibility to source from the most economical sources on a real-time basis, we suggest revising the provision.</p> <p>To allay the fears of Meralco's TPBAC and the DOE, we would like to assure both the TPBAC and the DOE that the Contract Capacity nominated by Bidders will not be coming solely from the WESM. The request is to give each Bidder the flexibility to</p>	Response is same as for Item#1. In addition, as relayed to the TPBAC by Meralco, this CSP was envisioned to be for a physical contract from a greenfield Nominated Power Plant. Allowing Bidders, by default, to buy energy from the WESM and sell it to Meralco [even if there is remaining Outage Allowance] would defeat the requirement for a baseload (firm and dispatchable) plant that can supply power from its own physical plant and not from the WESM. Worse, allowing this would likewise affect WESM prices, especially given the high volume of capacity covered by this CSP of 1800 MW; thereby, inevitably and directly impacting the cost

				<p>strategize its sourcing on a real-time per-hour basis depending on what makes the most economic sense at the time. This can be realized by building additional plants to meet the baseload Contract Capacity requirements of Meralco, sourcing from a Bidder's existing supply sources or the WESM, and making available to the grid the electricity output produced by its greenfield Nominated Power Plants. At all times, MERALCO would be guaranteed the Contract Price regardless of a Bidder's real-time sourcing strategy.</p> <p>Further, current industry practice as evidenced by ERC-approved PSAs already allows power suppliers to source from their power plants, other sources, or the WESM to supply the required contract requirements of their customers depending on what makes most economic sense.</p> <p>Reasons for why a power supplier may from time to time opt to supply from sources other than its own power plants are varied such as availing of market costs lower than a power supplier's variable fuel costs or sourcing from short-term bilateral contracts for replacement power instead of utilizing an outage allowance. Needless to say, the consumers pursuant to such contract are not exposed to the volatilities of market prices since power suppliers must still guarantee the contract prices under their respective PSAs.</p> <p>By providing this latitude of flexible sourcing, power suppliers under current market practices are allowed and granted the opportunity to manage and control their costs to ensure that they will be able to provide compelling, competitive, and advantageous offers to consumers. Why can't that same opportunity be provided in this current 2020 CSP?</p> <p><i>Suggested revision to read:</i></p> <p>"(a) Make available to Meralco, and Meralco shall purchase from Power Supplier at the Price determined in accordance with Appendix E, the Contract Capacity of the Plant, <u>the Associated Energy from the Plant, portfolio of plants, and/or the WESM;</u>"</p>	<p>of Meralco's WESM purchases. Meralco, as the DU, is in a better position to offer its customers the lowest possible cost of power by optimizing its power supply sources, which includes taking advantage of low WESM prices and sourcing from it directly instead of letting a power supplier do the same in a manner that may prove detrimental to its customers.</p>
36.		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>(b) provide Meralco with Capacity xxx from any other source other than a Plant xxx</p>	<p>As relayed to the TPBAC by Meralco, Meralco maintains its position as stated in item 5, Annex B of Bid Bulletin 3, p. 105, in particular:</p> <p>"[A]s 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>

				<p>In connection with its comment regarding Minimum Energy Offtake, we reiterate our comment that there should be exception to this and that the Supplier must be allowed to sell the “un-nominated portion of the Contracted capacity” to the WESM.</p> <p>Example, for a Contracted Capacity of 600 MW and the Nominated Quantity per interval is only 100 MW, the Supplier has to maintain its stable and efficient operation and run at least at minimum stable load (Pmin) depending on the price at the WESM.</p> <p>The restriction to the Supplier to not to offer the un-nominated portion of the Contracted Capacity to the WESM will be in violation of the Must-Offer Rule (MOR_ of the WESM.</p> <p>Furthermore, Supplier buying from WESM for any imbalances to cover Meralco’s Nomination should be allowed in relation to (b) and Supplier shall be paid at Contract Price especially that the Plant’s inability to meet Meralco’s Nomination for the relevant interval(s) is due to Meralco’s very low Nomination levels for the previous intervals.</p> <p>Example, if Meralco will nominate a very volatile 24-hour Nomination that goes up and down erratically, a baseload plant cannot cycle exactly as this will result to deration and/pr shutdown. The Supplier should be given the right to manage its dispatch to maintain efficiency and stable operation in support of the efficient and reliable grid operations.</p>	
37.		Supply Power / PSA	of 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 recommendation to adopt a hybrid of a physical and financial contract, where Bidders are required to build and make available to the grid greenfield power plants corresponding to their nominated Contract Capacities and where Bidders are given the flexibility to source from the most economical sources on a real-time basis, we suggest that the entire provision requiring consent from Meralco be removed.</p> <p><i>Remove Article 6.1.2 (b):</i></p> <p>(b) provide Meralco with capacity and/or electrical energy from any source other than the Plant; provided, however, that Power Supplier shall be allowed to deliver</p>	Response is same as for Item #1.

				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.	
38.		PSA	Power Supply Agreement Template, Section 6.4	<p>On the administrative penalty of Php 50,000.00 for its trading interval in which Power Supplier did not or mis-declared its BCQ</p> <p>– will this still be true if the trading interval is changed from one hour to five minutes?</p> <p>Or will this be changed to Php 4,166.67?</p>	As relayed to the TPBAC by Meralco, the language of the PSA mentions only “trading interval”. The intention is to make it applicable to the relevant “trading interval”, regardless of duration under existing regulations. Given this, the penalty amount of Php50,000 will remain the same even if the duration of trading interval under regulations changes. Note that given Power Supplier’s multiple opportunities to reflect correction before a BCQ declaration becomes final, the amount is in the nature of a penalty to discourage erroneous BCQ declaration that could prejudice Meralco customers if overlooked or not corrected.
39.		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>If Meralco insist on penalizing the Supplier for any error on the BCQ declaration (which may or may not be due to its fault), Meralco’s right to change its Nomination for purposes of BCQ declaration at day-after basis should be also qualified, i.e. —if Meralco changes due to its error wrong forecast, then, Meralco must also be penalized.</p> <p>Furthermore, penalty (i) shall only apply to intervals that resulted to additional costs; and, (ii) should be a fixed charge on a per Billing Period and not on a per interval basis OR a fixed percentage (%) of the additional cost incurred (in excess of paying the Price/with negative impact on Meralco) due to erroneous declaration.</p> <p>Again, as the biggest utility, we urge Meralco to set the example and responsibility</p>	Response is as same as Item#38.

				of establishing best practices for the industry and not to ignore that stable dispatch and operations of generation facilities are primarily driven by the distribution utilities' nominations and the market conditions .	
40.		Construction, Operation, Maintenance and Repair PSA Template	8.1	<p>8.1 Construction, Operation, Maintenance and Repair</p> <p>8.1.1 Power Supplier shall design, procure, supply, deliver, install, erect, test and commission the Plant in accordance with Legal Requirements and Prudent Operating Practices and shall commence work as soon as reasonably practicable after Commencement Date.</p> <p>Please clarify if Bidder can already commence work even prior to Commencement Date.</p>	There is no prohibition to commence work prior to Commencement Date. It must be understood, however, that all attendant risks will be assumed by Power Supplier alone.
41.		PSA	Article 8, Section 8.4.2, page	<p>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 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>PSA Item 67 states:</p> <p>Per Section 8.4.2, the heat rate test is conducted "in conjunction with the initial NDC Test". For clarity, however, the GNPHR table 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> <p>Please confirm our understanding that the GNPHR as bid or the actual heat rate, as tested during the initial NDC and only as tested in the initial NDC, whichever is lower, shall be factored in the computation of the Monthly power Bill. For further clarification, please also confirm that the reference to actual heat rate does not imply or obligate the Power Supplier to use the lower of the actual heat rate realized during operations and the GNPHR schedule to be included in the PSA.</p>	As relayed to the TPBAC by Meralco, during implementation of the PSA, the comparison will be between actual heat rate during operations (not simply as established during initial NDC test) and GNPHR table per bid. The lower value will be considered in the computation reflected in power supplier's invoice.

42.		Allocation of Available Capacity PSA Template	8.6	<p>Allocation of Available Capacity</p> <p>If the availability of the Plant is impaired for any reason such that Power Supplier is unable to make available all or a portion of the Contract Capacity, Power Supplier shall promptly notify Meralco in writing of such impairment. In the event that Meralco exercises its right under Article 10, notwithstanding the impairment, Power Supplier undertakes to give Meralco available capacity (and associated energy) equivalent to at least Meralco's pro-rata share in the Net Dependable Capacity.</p> <p>When is this provision applicable? Will this not conflict with the FM provisions in the PSA?</p> <p>If Contract Capacity has been transferred, please clarify this provision:</p> <p><u><i>In the event that Meralco exercises its right under Article 10, notwithstanding the impairment, Power Supplier undertakes to give Meralco available capacity (and associated energy) equivalent to at least Meralco's pro-rata share in the Net Dependable Capacity.</i></u></p>	As relayed to the TPBAC by Meralco, Meralco is not amenable with the proposal and for purposes of this provision, only the acknowledgment letter from the SO or report from MO that FO has occurred is acceptable.
43.		PSA	9.1.1	<p>Under Bid Bulletin No. 3 Annex B Item No. 75, TPBAC Responded that:</p> <p>Response is same as for Item #71 (number 2).</p> <p>2. 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> <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 acknowledgment letter certification from the System Operator or report from Market Operator that a Forced Outage has occurred."</i></p> <p>We would like to request if ERC and DOE can be included:</p>	As relayed to the TPBAC by Meralco, Meralco is not amenable with the proposal and for purposes of this provision, only the acknowledgment letter from the SO or report from MO that FO has occurred is acceptable.

				<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 <u>acknowledgment letter certification</u> from the System Operator <u>or report from Market Operator or DOE or ERC</u> that a Forced Outage has occurred.”</i></p>	
44.		Outages	PSA, Section 9.1.1	<p>The PSA does not provide a separate outage allowance for Major Maintenance Outage.</p> <p>While we understand that this was a DOE recommendation, we note that this is highly unusual for a 20-year PSA covering a baseload plant that is expected to be operating 24/7. It is industry practice for baseload plants under long-term PSAs to have major maintenance outage allowance.</p> <p>It is respectfully requested that that the Scheduled Outage Allowance be increased by 20 days for a Contract with a Major Maintenance Outage.</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 a separate allowance for Major Maintenance Outage be provided which is separate and distinct from the Scheduled Outage currently provided in Article 9 of the IPB. 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 Load Equivalent Outage Days (“Full Load Equivalent Forced Outage Allowance Days”) each Contract Year <u>without Major Maintenance Outage</u>; 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 <u>written acknowledgment</u> a copy of the certification from the System Operator that a Forced Outage has occurred. <u>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.</u></p>	<p>As relayed to the TPBAC by Meralco, Meralco is not amenable to the proposal. Please refer to item 71, Annex B of Bid Bulletin 3, p. 126, which relevant portion provides:</p> <p>“[W]hen 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.”</p>

45.		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>Clarification: Why is there no allowance for major maintenances, when every baseload plant needs to undergo overhaul?</p> <p>Recommendation: Propose to include allowance for major maintenances.</p> <p><u>MER’s Response:</u></p> <p>1. 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.</p> <p>2. 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> <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 acknowledgment letter certification from the System Operator or report from Market Operator that a Forced Outage has occurred.”</i></p> <p>The Scheduled OA is not enough for baseload plants to conduct major overhaul. Since the TOR requires physical baseload supply, Outage Allowances should also be aligned with the requirements of baseload plants without compromising its commercial and financial position.</p> <p>Proposal: Include allowance for major maintenances.</p>	Response is same as for Item #44.
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46.		Outages / PSA	Article 9.1.3	<p>Replacement Power is primarily the responsibility of the Power Supplier, and as such, the Power Supplier should guarantee Meralco that it will be kept whole on the Contract Price at all times. Subsequently, to make this economically viable for the Power Supplier, it must also be given the flexibility to procure from sources even outside of the WESM (e.g. short-term bilateral contracts) when there is a need to provide Replacement Power, as long as it will only charge Meralco the Contract Price which has been agreed upon in the PSA.</p> <p>In line with this, we propose that the cost of procuring Replacement Power shall also be charged at Contract Price.</p> <p><i>Suggested revision to read:</i></p> <p>“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.”</p>	<p>This has been addressed in item 79, Annex B of Bid Bulletin 3, p. 129-130, in particular:</p> <p>“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> <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&M Payment on the other hand.”</p>
47.		Outages / PSA	Section 9.1.2 / Page 26	<p>Section 9.1.12 of the PSA reads:</p> <p><i>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>Bidder suggests that Capacity Payment shall be paid to Power Supplier during Scheduled Outages and Force Outages as a common practice in this kind of agreement.</p>	Response is same as for Item#46.
48.		Replacement Power PSA Template	9.1.3	<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>If Power Supplier can procure Replacement Power from other plants and not from the WESM, will price still be the lower between WESM price and the Price?</p>	Response is same as for Item#20.

49.			9.1.3 page 26	<p>“xxxx Power Supplier shall purchase Replacement Power, which shall be declared as BCQ and <u>paid by MERALCO at the lower between the WESM price and Price?</u></p> <p>Considering that the Power Supplier is obligated to supply Replacement Power during outages beyond the Outage Allowances, the Power Supplier should have the right to source such Replacement Power from any other source, including the WESM, and MERALCO should pay the Contact Price.</p>	Response is same as for Item#20.
50.		Replacement Power in case of an Event of Force Majeure / PSA	Section 9.1.4 / Page 27; Section 17.3.1 / Page	<p>Sections 9.1.4 and 17.3.1 of the PSA read:</p> <p><i>9.1.4 During any period in which an Event of Force Majeure affects Power Supplier or Meralco, Meralco shall procure Replacement Power from WESM to the extent supply or offtake is so affected</i></p> <p><i>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. ...</i></p> <p>Please clarify whether Meralco is obligated to procure Replacement Power from WESM during an Event of Force Majeure.</p>	<p>Section 9.1.4 is the general rule. To qualify, please refer to item 142, Annex B of Bid Bulletin, p. 155, for revision to Section 17.3.1, as follows:</p> <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”</p>
51.		PSA	10.1	<p>Under Bid Bulletin No. 3 Annex B Item No. 89, TPBAC Responded that:</p> <p>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.</p> <p>We would like to confirm that this is only when RCOA is “voluntary” and not “mandatory”. When the RCOA threshold requires mandatory participation, then the DU knows how much of its demand will decrease; hence the DU can plan ahead how much of its contract capacity in its PSA it no longer requires. Accordingly, reduction is no longer a reaction and can be planned for ahead.</p>	Transfer is regardless whether RCOA is voluntary or mandatory. Note that in case of mandatory, while Meralco may have visibility on “potential” switchers, there is uncertainty as to the actual time of switching of these customers as there are relevant requirements and documents that need to be accomplished by these customers to be able to switch. In addition, the introduction of retail aggregation should also be considered.
52.		Transfer of Contract Capacity and	Section 10.1.1 / Page 27	<p>Section 10.1.1 of the PSA reads:</p> <p><i>Contract Capacity and Associated Energy that is no longer required by Meralco shall not be [Transferred] to another, except (i) if required for project financing in the case of the Power Supplier, as provided in Article 21; (ii) when allowed by the ERC; or (iii) when</i></p>	For as long as the circumstance does not fall under any of the exceptions, then per Section 10.1.1 of the PSA, Meralco is precluded from transferring such Contract Capacity and Associated Energy.

		Associated Energy / PSA		<p><i>necessary to mitigate or avoid any losses or costs due to stranded contract capacity; provided that any assignment or transfer to a distribution utility shall comply with applicable competitive selection process rules. ...</i></p> <p>Bidder suggests to clarify what does “Contract Capacity and Associated Energy that is no longer required by Meralco” refer to, and under what circumstances shall this provision apply.</p>	
53.		Transfer of Contract Capacity and Associated Energy / PSA	Section 10.1.1 / Page 27	<p>Section 10.1.1 of the PSA clarifies that “In the case of item (iii), Meralco shall be entitled to Transfer its rights and obligations to purchase a portion of Contract Capacity and Associated Energy that is no longer required by Meralco (a) to any of its business segments or wholly-owned Affiliates without the prior consent of Power Supplier”.</p> <p>Please clarify if Meralco’s business segments or wholly-owned Affiliates who get the rights and obligations from Meralco under Section 10.1.1 fails to pay or any default occurred, will the rights and obligations revert to Meralco?</p>	As relayed to the TPBAC by Meralco, if Meralco’s business segments or wholly-owned Affiliates who get the rights and obligations from Meralco under Section 10.1.1 fails to pay or any default occurred, the rights and obligations will not revert to Meralco considering that upon transfer of such portion of the Contract Capacity to another entity, Meralco is already freed from responsibility with respect to such portion.
54.		PSA	10.1.2	<p>Bidder Question: 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?</p> <p>TPBAC Response: Yes, the transfer will be reflected in the next Billing Period.</p> <p>Kindly clarify – Power Supplier should be informed 5 days prior to the first day of the next billing period.</p> <p>If Meralco informs Power Supplier 1 day before the next billing period, when will the transfer take effect – the next Billing Period or the Billing Period after next since information is only 1 day?</p>	In the given scenario, the transfer will take effect on the Billing Period after next (Billing Period). To illustrate, if the next Billing Period is to begin on January 26, and the transfer notice is provided on January 25, then the transfer will take effect on February 26. Had the transfer notice been given on January 20, then the transfer would have taken effect on January 26.
55.		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(s) for the reduction in the Contract Capacity and Associated Energy equivalent to the reduction in the demand of the captive customers other than RCOA, the RE Law and other Laws and other legal requirements? The same should be</p>	<p>Please refer to the answer in item 94, Annex B of Bid Bulletin 3, p. 136, in particular:</p> <p>“Please see enumeration of possible reasons as contained in the same provision (e.g., Retail Competition and Open Access).”</p>

				<p>clearly indicated in the PSA to be considered by the ERC in its review, evaluation and approval.</p> <p>If MERALCO is to be allowed to reduce Contract Capacity any time for reasons other than RCOA and/or the RE Law, then the entire supply agreement would have been “non-firm” in nature.</p> <p>The EPIRA and its IRR provide a venue for DUs to recover Stranded Contract Costs thru the filing of an appropriate rate case(s) with the ERC thus, the Contract Capacity in the PSA should be kept intact, except for reasons due to RCOA and/or the RE Law.</p>	<p>To clarify, the PSA subject of the CSP is “firm”.</p> <p>We note that the EPIRA specifically defines Stranded Contract Costs that may be recovered given the mechanism provided thereunder as limited to “contracts xxx approved by the ERB as of December 31, 2000”. In any case, the intention is to avoid unnecessarily burdening captive customers with recovery from them of stranded contract costs or capacities, and this is a standard provision appearing in Meralco’s ERC-approved PSAs.</p>
56.		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. What could be the reason for the reduction in the demand of the captive customers?</p> <p>Has Meralco determined to-date or has filed for or has obtained an approval from the ERC of any “stranded contract costs”?</p>	Response is same as Item#55.
57.		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 “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.</p> <p>Please clarify what specific ground for reduction is being referred to under Section 10.2.1 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>	<p>a) The answer with respect to the specific grounds is same as response in Item #55, 1st paragraph.</p> <p>For the frequency of transfer, this has already been addressed in item 89, Annex B of Bid Bulletin 3, p. 134, in particular:</p> <p>“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.”</p>

				<p>Given Meralco's numerous suppliers, how will each instance of reduction in Contract Capacity and Associated Energy be allocated among its suppliers? Will this process necessitate review and/or approval of the Energy Regulatory Commission (ERC)?</p> <p>Supplier should be given advance written notice of a required reduction for at least thirty (30) Days prior to intended effectivity</p>	<p>b) For the allocation, please refer to item 86, Annex B of Bid Bulletin 3, p. 133, the relevant portion of which provides:</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>c) For the proposed longer period of written notice, please refer to item 88, Annex B of Bid Bulletin, p. 134, in particular:</p> <p>“60 days [or in the case of the proposed 30 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.”</p>
58.		Invitation to Bid, Reduction in Contract Capacity	Page 4	<p>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.</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</p>	Response is same as for item b of Item#57.

		PSA	10.2	<p>"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.</p> <p>We suggest that reduction will not be equivalent to the reduction in the demand of captive customers but will be equivalent to the pro-rated share of Bidder's Contract Capacity as against the Total Contract Capacity of Meralco (which includes its contract with other suppliers).</p>	
59.		Reduction in Contract Capacity and Associated Energy / PSA	Section 10.2.1 / Pages 28-29	<p>Section 10.2.1 of the PSA reads:</p> <p><i>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 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.</i></p> <p>The Bidder suggests to delete this paragraph. Under the conditions of "Reduction in Contract Capacity and Associated Energy", the Power Supplier will bear unexpected risks and will find it difficult to get financing support from lenders.</p>	As relayed to the TPBAC by Meralco, this proposal is not acceptable. See also response for item b of Item#57.
60.		PSA	Section 11.2.2	<p>This provision allows Meralco to dispute, protest or question any amount paid under a Final Invoice within a 1 year period following such payment.</p> <p>We suggest Meralco to consider a shorter period (6 months) to dispute such payment as a 1 year period is too long and leads to uncertainty to the cash flows and financial position of the Power Supplier.</p>	As relayed to the TPBAC by Meralco, this proposal is not acceptable to Meralco.
61.		Set off	<p>Bid Bulletin No. 3, Annex B, Page 139</p> <p>PSA, Section 11.3</p>	<p>Section 11.3 of the PSA provides that "[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."</p> <p>We request the set-off shall take place only upon agreement by the parties.</p> <p>We propose that Section 11.3 of the PSA be amended as follows:</p>	<p>As mentioned in item 106, Annex B of Bid Bulletin 3, p. 139:</p> <p>"Items that can be subject to legal compensation can be the subject of set-off."</p>

				Each 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, <u>provided that no setoff shall take place except upon prior written agreement by the parties.</u>	Hence, compensation takes effect by operation of law even without the consent or knowledge of the parties concerned when all the requisites mentioned in Article 1279 of the Civil Code are present.
62.		Creditable Withholding Tax	Bid Bulletin No. 3, Annex B. Page 140 PSA, Section 12.1.2	In Bid Bulletin No 3., the TPBAC stated <i>"there is a standing protocol to confirm that creditable withholding taxes have been withheld and paid."</i> Please clarify what this standard protocol is.	In general, Meralco is an authorized withholding agent and is required to withhold taxes from its payment to Power Suppliers. Payment by Meralco is net of withholding tax unless power supplier submits documents evidencing tax exemption. For reference of Power Suppliers, the standard protocol for issuance of CWT is as follows: <ul style="list-style-type: none"> a. Meralco and the power supplier agrees whether the creditable withholding tax (CWT) certificate to be issued should be manually signed or the electronically signed CWT is acceptable. b. The CWT is issued to the power supplier through email or picked up in Meralco's premises. c. The timing of the issuance of the CWT is mutually agreed between Meralco and the power supplier.
63.			12.1.3 page 31	The following amounts that MERALCO is responsible for paying to third parties should include "all other WESM charges" other than Line Rental pertaining to the Contract Capacity and Associated Energy considering that MERALCO is a Direct WESM Member, thus payment for such cost is for its account. Please include additional item (c): (c) All other WESM charges other than Line Rental as billed by IEMOP to MERALCO	As relayed to the TPBAC by Meralco, Section 12.1.1 already specifies that all WESM fees shall be for the account of Power Supplier.
64.		Responsibility for Taxes, Fees and Costs / PSA	Section 12.1.5 / Page 31	Section 12.1.5 of the PSA reads: <i>..., Power Supplier shall provide Meralco with such documents and evidence to demonstrate that payments to Power Supplier are not subject to such withholding tax, ...:</i> <i>...</i> <i>Meralco shall no longer deduct and withhold creditable withholding tax from the amounts payable under a Final Invoice upon its reliance on the documents and evidence submitted by Power Supplier.</i>	As relayed to the TPBAC by Meralco, Meralco is not amenable to the proposed revision. Since Meralco is an authorized withholding agent, it is the responsibility of Power Supplier to inform and provide Meralco such documents to demonstrate that it is not subject to withholding tax. Absent provision of such documents to Meralco, Meralco is constrained to withhold.

				<p>Bidder proposes to insert following:</p> <p><i>"Meralco shall no longer deduct and withhold creditable withholding tax from the amounts payable under a final invoice upon its reliance on the documents and evidence submitted by Power Supplier."</i></p> <p><i>"Meralco shall give written notice to the Power supplier before deducting or withholding such tax and shall reimburse such tax after the demonstration of mentioned documents and evidence."</i></p>	
65.		Change in Circumstances PSA Template	12.2.3	<p>In the event that, as a result of a Change in Circumstances and pursuant to a corresponding order of the ERC or any other Governmental Instrumentality: Meralco is prevented from making a pass through to its customers of any charges under this Agreement as approved by the ERC in the ERC Final Approval as accepted by Power Supplier (such amounts referred to hereinafter 'Disallowed Pass-Through Amounts"); or as any portion of the Price that has been paid to Power Supplier is required to be refunded to Meralco or Meralco's customers in connection with the ERC Application or any petition, claim, case, proceeding or other action involving any of the Parties brought before any judicial, administrative or quasi-judicial body (such portion of the Price referred to hereinafter as Refundable Amounts"), 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. 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.</p> <p>It is agreed that New Charges or Increased Charges for which Power Supplier sends a Notice of Change in Circumstances in accordance with this Section 12.2 shall not include charges, fees, taxes, duties, assessments or other similar amounts relating to taxes on the income of Power Supplier.</p> <p>We suggest that any adjustment in the Price of Meralco be subject to prior ERC Approval.</p>	As relayed to the TPBAC by Meralco, Meralco is not amenable with this proposal. It should be noted that the circumstance contemplated in this provision is specifically limited to Change in Circumstances pursuant to a corresponding order of the ERC or a Government Instrumentality. In other words, there is already an order preventing such pass-through.
66.			14.2.1 page 34	<p>Within five (5) Days after receipt from the Power Supplier of the documents.....shall jointly file...xxx"</p>	As relayed to the TPBAC by Meralco, Meralco is not amenable with the proposal. 30 days is too long a period to file, particularly considering that there will be no negotiations between the parties.

			14.2.2 page 34	<p>Power supplier shall fully cooperate with MERALCO with respect to the ERC Application and shall furnishprior to the execution of this Agreement (the ERC Application)...xxx”</p> <p>Joint application might not be feasible within 5 Days from receipt of documents set forth in Appendix C, considering that the Agreement have not yet even been executed by the Parties.</p> <p>Also, there is possibility of non-working days/holidays present during that 5-day period from receipt.</p> <p>We suggest that the period be increased to thirty (30) Days.</p>	<p>In addition, Appendix C contains mere pre-filing documents which are regularly required by ERC prior to filing. As early as the IPB, bidders have been informed in Section 5.4 thereof that “Winning Power Supplier must immediately submit the following documents to the TPBAC and Meralco as conditions precedent for the execution and signing of the PSA template: xxx b. The documents and evidence set forth in the PSA template or any other document that forms part of the pre-filing requirements with the ERC for an application for approval of a power supply agreement; xxx”. Hence, bidders should have already prepared these documents.</p> <p>Moreover, Section 8.10 of DOE’s DC2018-02-0003 prescribes only a period of 5 months (from the time of publication of Invitation to Bid until submission of the PSA to ERC) within which to complete the CSP. Notably, such 5-month period has already been maximized by giving bidders longer period to prepare their document submissions.</p>
67.			14.3.2 item (i) 2 nd paragraph pare 35	<p>MERALCO reserves the right to forfeit the Bid Securityor provide any document required by the ERC...xxx”</p> <p>Not all documents that may be required by the ERC might not be made available by the Power Supplier due to some technical or legal impediments</p> <p>MERALCO reserves the right to forfeit the Bid Securityor provide, WITHOUT JUSTIFIABLE CAUSE, any document required by the ERC...xxx”</p>	Response is same as for item#9.
68.			14.3.2 item (ii) pare 35	<p>“xxx...the right to forfeit the Bid Security to the extent of twenty five percent (25%) thereof.</p> <p>(ii) 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>	As relayed to the TPBAC by Meralco, 25% is reasonable in view of the risk/exposure arising from Power Supplier’s termination of the PSA, which would inevitably expose Meralco’s customers to volatile WESM prices, which would be aggravated if coupled with supply tightness, deficiency or delay if another CSP is needed to be conducted to answer for the capacity lost by Meralco.

				What is the basis and justification for the 25% portion of Bid Security that MERALCO can forfeit in its favor?	
69.		PSA	Article 14, Section 14.5.2, page 35	<p>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 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>PSA Item 125 states:</p> <p>As mentioned in Section 14.5.2, Power Supplier shall ensure that there is fuel inventory, at all times, at the Site. This excludes fuel inventory that has been ordered and scheduled for delivery to Power Supplier.</p> <p>As the bidder is taking the risk of the Replacement Power, maintaining additional inventory should not be imposed on the Power Supplier. In requesting this requirement, Meralco is also inflating the cost of capacity and energy for the end-users by requiring more inventory than is typically used in power plants operating in a competitive market. Furthermore, the Philippines proximity to fuel suppliers, both LNG based, or coal based, make it easy for the project’s to source fuel from various sources to meet the operating requirements of the Power Supplier. This requirement will make LNG based projects too costly which will in turn burden Meralco’s consumers as well.</p> <p>We propose that either Meralco reduce this requirement to no more than 15 days for LNG based plants or inventory amounts should consider all inventory that is available on site as well as any inventory that has been ordered and scheduled for delivery</p>	As relayed to the TPBAC by Meralco, taking into consideration the points raised by bidders, prevailing regulation on fuel inventory and practice in other jurisdictions, Meralco is amenable that for Plants that use liquified natural gas as fuel, the fuel inventory shall be sufficient to supply energy for at least a continuous fifteen (15) Day period based on continuous operation of the Plant at average Associated Energy for the current Billing Period and the next two (2) Billing Periods based on the year-ahead or month-ahead nominations of Meralco at a plant capacity factor of 100% to the extent of the Contract Capacity.

				<p>It is a normal practice for LNG based power plants to schedule deliveries of fuel a year in advance, so there is adequate supply available.</p> <p>Meralco should also consider that there is no firm dispatch commitment under the PSA. So, requiring the Power Supplier to maintain 30 days fuel inventory based on full load operations is not justified. Without Meralco providing a guaranteed volume of offtake for energy, the Power Supplier will be unable to manage and schedule fuel supply.</p>	
70.		Fuel Inventory	<p>Bid Bulletin No. 3, Annex B, Pages 148 - 149</p> <p>PSA, Section 14.5.2</p>	<p>In Bid Bulletin No. 3, the TPBAC revised Section 14.5.2 on the 30-day fuel inventory requirement as follows:</p> <p>[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 sufficient to supply energy 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 a plant capacity factor of 100% to the extent of the Contract Capacity xxx.]</p> <p>We submit that Section 14.5.2, especially as revised above, is unusual, if not unreasonable.</p> <p>As mentioned, gas-fired power plants around the world (including the gas plants in the Philippines currently fueled by natural gas from Malampaya) typically do not store fuel on-site. Rather, gas is continuously delivered to the plant via pipelines, whether indigenous gas 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. 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 for several years.</p> <p>Moreover, it would be very costly to satisfy this requirement. A natural gas plant would be constrained to build very large storage facility to unnecessarily store fuel (even when such storage facility is unnecessary to ensure steady supply of fuel), significantly increasing its capital costs and ultimately, the cost of electricity to be</p>	Response is same as response for Item#69.

				<p>paid for by consumers.</p> <p>Indeed, it really is unnecessary to maintain fuel on site (much less inventory for continuous 30-day period at 100% PCF) to ensure a steady supply of fuel and continuous plant operations. A robust fuel supply plan can readily address this without the unnecessary cost to the generating company and the consumers of fuel storage facilities on site, as done by the existing gas plants in the country.</p> <p>For all of these reasons, we respectfully request that the requirement to maintain fuel inventory on Site be revised as provided in the next column.</p> <p>We request that Section 14.5.2 be amended as follows:</p> <p>[Power Supplier shall ensure that at all times there is <u>available continuous supply of</u> [fuel] inventory at the Site sufficient to operate the Plant in accordance with this Agreement and in accordance with Prudent Operating Practices, taking into account all relevant factors such as seasonal and/or climatic factors., which inventory shall be sufficient to supply energy for at least a continuous thirty (30) Day period based on continuous operation of the Plant a plant capacity factor of 100% to the extent of the Contract Capacity xxx.]</p>	
71.		PSA Template	PSA, Section 14.5.2	<p>Since the Bidding is Technology Neutral, can this section be amended to allow for a wider breadth of technologies/ power plants to participate?</p> <p>For natural gas fired plants, storage costs are high. Natural gas fired plants sourcing their fuel from natural gas pipelines tied to cannot source such fuel without additional liquefaction capacities and storage capacity. Further, plants intended to run on regasified LNG may be subjected to substantial losses due to boil-off gas from storing LNG for extended periods of time.</p> <p>For renewables, this may also be difficult. Solar plants for example cannot store without substantial investments in energy storage systems. Hydro plants are also subject to additional regulations (e.g. NWRB regulations) which will limit their ability to store their fuel</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</i></p>	<p>Response is same as response for Item#69.</p> <p>For solar plants, as mentioned in item 128, Annex B of Bid Bulletin 3, p. 150, “Section 14.5.2 will be deleted in case PS’ power plant is solar technology.”</p>

				<p><i>Operating Practices, taking into account all relevant factors such as seasonal and/or climatic factors, which inventory shall be in accordance with industry acceptable practices for the nominated power plant, Notwithstanding such industry acceptable practice, the Power Supplier must ensure sufficient inventory is available on site to meet Meralco's power requirements under this PSA.</i></p>	
72.		Insurance Policies	PSA, Section 15.1	<p>Section 15.1 of the PSA provides that the <i>"Power Supplier will endeavor to purchase the following insurance coverage described below to the extent such insurance coverages are commercially available, provided that, the coverages, deductibles, and amounts of insurance indicated below can be adjusted from time to time as market conditions dictate, or based on mutual agreement between and among Power Supplier, Meralco, and the Finance Parties[.]"</i></p> <p>The commercial availability of an insurance policy does not necessarily translate to its being commercially reasonable or affordable. The terms of an insurance policy may not be "commercially reasonable" or may not be necessarily obtained based on "commercially reasonable" pricing.</p> <p>We propose that Section 15.1 be revised as follows:</p> <p>Power Supplier will endeavor to purchase the following insurance coverage described below to the extent such insurance coverages are commercially available, <u>and can be obtained with commercially reasonable terms and price</u>, provided that, the coverages, deductibles, and amounts of insurance indicated below can be adjusted from time to time as market conditions dictate, or based on mutual agreement between and among Power Supplier, Meralco, and the Finance Parties:</p>	As relayed to the TPBAC by Meralco, Meralco is not amenable with the proposed revision. It is up to the Power Supplier to obtain insurance coverage that contains terms and price that are commercially reasonable for it.
73.		Marine Insurance	PSA, Section 15.1(a)	<p>Section 15.1(a) of the PSA provides that among the insurance policies that the Power Supplier shall endeavor to purchase is <i>"marine insurance in respect of the Plant, equipment, parts and accessories to be imported into the Republic of the Philippines, for full replacement cost of imported equipment[.]"</i></p> <p>In common parlance, the term "marine insurance" can refer to a variety of things which do not appear to be relevant to the PSA (<i>i.e.</i>, insurance of vessels, etc.). Thus, it appears that Section 15.1(a) more appropriately contemplates "marine cargo insurance" or insurance for the importation and movement <i>"of the Plant, equipment, parts and accessories."</i></p>	Marine cargo can be acceptable if Power Supplier deems it to be the more appropriate type of insurance, provided that the type and scope of policy coverage can be revised to suit the requirements of the Parties.

				<p>We propose that Section 15.1(a) be revised as follows:</p> <p>(a) marine cargo insurance in respect of the Plant, equipment, parts and accessories to be imported into the Republic of the Philippines, for full replacement cost of imported equipment;</p>	
74.		Builders' or All Risk Insurance	PSA, Section 15.1(b)	<p>Section 15.1(b) of the PSA provides that a Power Supplier shall endeavor to purchase a <i>"builders' or all risk insurance on an all risk basis ... The policy(ies) will include coverages for inland transit, expediting expense, demolition and increased cost of the construction, earthquake, and flood."</i></p> <p>The term "Builders' or All Risk Insurance" is no longer being used in the insurance market. The items which used to be covered in the Builders' or All Risk Insurance are now found in the usual coverage of a Construction All Risks ("<u>CAR</u>") or an Erection All Risk ("<u>EAR</u>") Insurance Policy.</p> <p>We propose that Section 15.1(b) be revised as follows:</p> <p>(b) builders' or construction or erection all risk insurance on an all risk basis in an amount not less than the full replacement or estimated maximum loss cost of the Plant to protect against loss or damage to, or destruction of, the Plant. ***</p>	<p>As relayed to the TPBAC by Meralco, Meralco is amenable with "construction or erection all risk" insurance. For this purpose, Section 15.1(b) of the PSA shall be amended as:</p> <p><i>"(b) builders' or construction or erection all risk insurance on an all risk basis in an amount not less than the full replacement or estimated maximum loss cost of the Plant to protect against loss or damage to, or destruction of, the Plant."</i></p>
75.		Delay in Start-up (" <u>DISU</u> ")	PSA, Section 15.1(b)	<p>Section 15.1(b) of the PSA additionally requires the Power Supplier to secure DISU as follows:</p> <p><i>The policy will also provide delay in start up insurance for an indemnity period sufficient to cover lost revenue that results from any peril covered under the policy, and extra expense coverage with customary limits. The policies will contain the following deductibles:</i></p> <p><i>Property damage – As acceptable to Finance Parties Delay in start-up – As acceptable to Finance Parties Earthquake & flood – As acceptable to Finance Parties;</i></p> <p>DISU covers loss of revenue resulting from a delay that is in turn caused by an insurable event and typically is secured for the benefit of the insurer (i.e., the Power Supplier) and the Finance Parties. The counter-party (i.e., Meralco) is not a</p>	<p>As relayed to the TPBAC by Meralco, the rationale of the DISU is to insure the potential financial obligations of the Power Supplier in the event that the Power Plant project is delayed due to damage to any part of the Project caused by perils insured under item b. The Indemnity Period should not be less than six (6) months.</p>

				<p>beneficiary, and the DISU does not concern it.</p> <p>Indeed, Meralco's interest in ensuring the completion of the Plant is addressed by the marine cargo insurance and the CAR/EAR.</p> <p>Given the foregoing, it is not clear why Meralco is requiring a DISU under the PSA. Please advise what the rationale is for requiring a DISU under the PSA.</p>	
76.		Automobile Liability Insurance	PSA, Section 15.1(d)	<p>The PSA provides that the Power Supplier must purchase an <i>"automobile liability insurance coverage for all owned, hired, and non-owned vehicles (or the equivalent Philippine coverage) with a combined single limit of liability of Five Million United States Dollars (USD5,000,000.00) (or PhP equivalent). Excess liability and/or umbrella insurance can be used to satisfy such limits[.]"</i></p> <p>The limit of the Automobile Liability Insurance appears to be excessive.</p> <p>First, this Automobile Liability Insurance is on top of: (a) the Third-Party Liability Insurance Policy which is required during the registration of a vehicle at PhP100,000.00, and (b) Comprehensive General Liability Insurance ("<u>CGL</u>") required under Section 15.1(c) of the PSA.</p> <p>Second, Automobile Liability Insurance is typically a sub-limit of the CGL and is therefore usually less than the CGL. In this case, both the CGL and the Automobile Liability Insurance are unusually equal, at USD 5 million.</p> <p>Third, Automobile Liability Insurance that is commercially available in the country is about only USD 1 million. The bidder is limited by what is commercially available.</p> <p>We propose that Section 15.1(d) be revised as follows:</p> <p>(d) automobile liability insurance coverage for all owned, hired, and non-owned vehicles (or the equivalent Philippine coverage) with a combined single limit of liability of <u>One</u> Five Million United States Dollars (USD<u>1</u>,000,000.00) (or PhP equivalent). Excess liability and/or umbrella insurance can be used to satisfy such limits;</p>	As relayed to the TPBAC by Meralco, Meralco prefers to retain the USD 5 million limit of liability, as this is the amount previously approved by the ERC for PSA involving a new power plant. In any case, Section 15.1 provides that the amount of insurance "can be adjusted from time to time as market conditions dictate, or based on mutual agreement between and among Power Supplier, Meralco and Finance Parties.
77.		Evidence of Insurance	PSA, Section 15.2	<p>Section 15.2 of the PSA provides that <i>"[o]n or before the Commencement Date and thereafter at least thirty (30) Days prior to the date set for each annual renewal thereof, Power Supplier shall provide Meralco with a certificate of insurance that reasonably describes the terms and conditions of the insurance and includes statements from its</i></p>	As relayed to the TPBAC by Meralco, the presentation of certificate of insurance is applicable to insurance policies renewed annually. Such certificate must be submitted 7 to 10 days after renewal date.

				<p><i>insurers evidencing payment of the annual premium in respect of the insurance policies from its insurance brokers or insurance advisors as to the insurance obtained by Power Supplier in connection with this Agreement following the inception or renewal of the relevant policies."</i></p> <p>We note that some of the insurance policies listed in Section 15.1 of the PSA are not renewed annually since it would cover the entirety of the project/event to which it refers (<i>i.e.</i>, CAR/EAR, Marine Cargo Insurance, etc.). Please confirm that Section 15.2 of the PSA requiring the presentation of a Certificate of Insurance will only be applicable to the insurance policies which are required to be renewed annually.</p> <p>Furthermore, we note that the PSA requires the Power Supplier to provide the certificate at least thirty(30) days prior to the date set for each annual renewal thereof. It is not commercially possible to get a certificate of insurance prior to its actual renewal because the Power Supplier and the Insurer would not know for sure thirty (30) days prior to the actual renewal whether the insurance policy would be approved for renewal. The Power Supplier may only secure such certificate after the fact of renewal. We kindly request that the Power Supplier be given 30 days from renewal to present the certificate.</p> <p>We propose that Section 15.2 be revised as follows:</p> <p>On or before the Commencement Date and thereafter at least <u>within</u> thirty (30) Days prior to the date set for each <u>after the</u> annual renewal thereof, Power Supplier shall provide Meralco with a certificate of insurance that reasonably describes the terms and conditions of the insurance and includes statements from its insurers evidencing payment of the annual premium in respect of the insurance policies from its insurance brokers or insurance advisors as to the insurance obtained by Power Supplier in connection with this Agreement following the inception or renewal of the relevant policies.</p>	
78.		Changes to Policies	PSA, Section 15.3	<p>Section 15.3 of the PSA provides that "[a]ny changes in the insurances that are not consistent with the requirements of this Agreement shall require the prior written consent of Meralco."</p>	As relayed to the TPBAC by Meralco, this proposal is acceptable. For this purpose, Section 15.3 of the PSA will be revised, as follows:

				<p>As a safeguard for the Power Supplier, there must be a provision in the PSA which states that Meralco should not withhold its consent unreasonably, especially when there are instances which would require the change in the insurance policies.</p> <p>We propose that Section 15.3 be revised as follows:</p> <p>Any changes in the insurances that are not consistent with the requirements of this Agreement shall require the prior written consent of Meralco, <u>which written consent should not be unreasonably withheld.</u></p>	<p>“Any changes in the insurances that are not consistent with the requirements of this Agreement shall require the prior written consent of Meralco, <u>which written consent should not be unreasonably withheld.</u></p>
79.		PSA	Section 15.3	<p>The provision requires the Power Supplier to secure the consent of Meralco in case of changes in the insurances that are not consistent with the requirement of the PSA.</p> <p>The consent requirement is not necessary.</p> <p>We note that the last sentence in Section 15.1 provides that insurance procured by the Power Supplier that meets the requirements of Finance Parties shall satisfy the requirements of Section 15.1. Following this concept, where an amendment to the insurance is acceptable to the Finance Parties, then further consent of Meralco should not be required.</p>	<p>As relayed by the TPBAC to Meralco, amendments to the insurance that are not consistent with the PSA shall require prior written consent of Meralco. Note that nothing prevents the Power Supplier from showing to Meralco that the amendments to the insurances are already acceptable to Finance Parties to facilitate obtaining consent of Meralco.</p>
80.		PSA	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>PSA Item 134 states:</p> <ol style="list-style-type: none"> 1. Closing paragraph of Section 17.2 will be deleted. 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. 	<p>Please refer to item 130, Annex B of Bid Bulletin, p. 151 accommodating other instances of FM, to wit: (a) any interruption, reduction or suspension of the Plant’s output as instructed by the System Operator; (b) System Emergency; (c) 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; and (d) System operator curtailment.</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.	
81.		Instances of Force Majeure / PSA	Section 17.2 / Page 40	<p>The last paragraph of Section 17.2 of the PSA reads: <i>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.</i></p> <p>Bidder proposes to delete this sentence.</p>	Please refer to item 134, Annex B of Bid Bulletin, p. 153 which states that "Closing paragraph of Section 17.2 will be deleted."
82.		PSA	17.2 Instances of Force Majeure	<p>We suggest including Suspension of Power Supplier as trading participant in the WESM to be an Event of Force Majeure.</p> <p>We request TPBAC to include the following under Section 17.2</p> <p>g) Suspension of Power Supplier as trading participant in the WESM</p>	As relayed to the TPBAC by Meralco, Meralco is not amenable with this proposal. It is the responsibility of Power Supplier to maintain its membership at the WESM. Please note that among the covenants of Power Supplier under Section 14.7.2 of the PSA, is that "Power Supplier shall, by the Scheduled Commercial Operations Date, become a bona fide direct trading member of the Luzon WESM." Also, among its representations and warranties under Section 19.1 is that it "has all requisite legal power and authority...to carry out the terms, conditions and provisions of this Agreement".
83.		PSA	17.2.c	<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> <p>TPBAC: There is no need to include "pandemic" as this can already be covered by the example of "epidemic".</p> <p>We reiterate our request to consider including "Pandemic" in the clause with explanation as follows:</p> <p>Epidemic and Pandemic may refer to the same widespread of disease, but Epidemic is occurring only at the level of a region or community while Pandemic covers</p>	As relayed to the TPBAC by Meralco, Meralco maintains its position. It should be noted that Section 17.2 only enumerates sample instances and is in no way an exhaustive list.

				<p>“worldwide” or “wider geographical area”. A disease may not be present in the country (yet) but due to Pandemic, there may be prolong delay in the fuel importation, as an example, which may have impact in the operation of the Power Plant</p> <p>Any other means of covering the concern over the difference in definition/interpretation will be appreciated.</p>	
84.		Effect of Event of Force Majeure / PSA	Section 17.3.1 / Pages 40-41	<p>Section 17.3.1 of the PSA reads:</p> <p><i>... 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. ...</i></p> <p>Bidder proposes to replace the quoted provision with the following:</p> <p><i>“If after the Commercial Operation Date, an Event of Force Majeure affects the ability of the Power Supplier to make available the Contract Capacity of the relevant power unit, Meralco shall continue to make the Capacity Payments in respect of the power capacity which should have been available should there have been no Event of Force Majeure.”</i></p>	<p>This has been addressed in item 145, Annex B of Bid Bulletin 3, p. 156, in particular:</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> <p>In addition, for consistency with Appendix E formulae for Capacity Payments, Section 17.3.1 shall be revised as follows:</p> <p><i>“xxx Meralco shall not be required to make any Capacity Payment, Interconnection Facilities 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. xxx”</i></p>
85.		Effect of Uninsured Events of	Section 17.4 / Page 41	<p>The last paragraph of Section 17.4 of the PSA reads:</p>	<p>As relayed to the TPBAC by Meralco, for clarity, Section 18.6.5 of the PSA will be revised, as follows:</p>

		Force Majeure / PSA		<p><i>If the Parties do not reach such satisfactory solution within one hundred eighty (180) Days after the end of such Event of Force Majeure, or such other time as may be agreed upon, either Party may terminate this Agreement in accordance with Section 18.6.5.</i></p> <p>Please clarify the party which has the right to terminate. The party identified under Section 17.4 (i.e., either Party) and Section 18.6.5 (i.e., Party not prevented from performing) are different.</p>	<p>“18.6.5 Termination in the Event of Certain Events of Force Majeure</p> <p>If an Event of Force Majeure occurs under the circumstances and having the consequences described in Section 17.4, Section 17.5 or Section 17.6 and the Parties have failed to agree on a solution satisfactory to each of the Parties prior to the lapse of the period of one hundred eighty (180) Days, then upon the lapse of such period, <u>either</u> Party not prevented from performing may terminate this Agreement upon sixty (60) Days’ prior written notice thereof to the other Party.”</p>
86.			17.7 page 42	<p>Event Not Excused</p> <p>Lack or unavailability of supply in itself shall not be considered an Event of Force Majeure...xxx</p> <p>If this provision is maintained by MERALCO, then reciprocally, MERALCO should not also be allowed to claim Force Majeure if its capability to receive the Contract Capacity and Associated Energy is not directly and physically affected by an Event of Force Majeure (for example: sudden reduction in electricity requirements of its captive end-consumers not owing to RCOA and/or RE Law).</p>	<p>Please refer to item 146, Annex B of Bid Bulletin, p. 158 which states that “Section 17.7 will be deleted, along with reference to such provision in Section 17.3.1, as follows: “Except as provided in Section 17.7, xxx”</p>
87.		Notice of Force Majeure; Procedure / PSA	Section 17.8.1 / Page 42	<p>Section 17.8.1 of the PSA reads:</p> <p><i>... provided that such notice must be sent (a) by Power Supplier to Meralco immediately and in any event within twenty-four (24) hours after Power Supplier becomes aware of such Event of Force Majeure and (b) by Meralco to Supplier as soon as reasonably possible and in any event within twenty-four (24) hours after Meralco becomes aware of such Event of Force Majeure.</i></p> <p>Bidder proposes to replace “twenty-four (24) hours” with “five (5) Days”.</p>	<p>Please refer to item 156, Annex B of Bid Bulletin, p. 160 which states that “As relayed to the TPBAC by Meralco, Meralco prefers to retain the provision as currently worded. Notably, immediate notice may be through informal means.”</p>

88.		Event of Default	<p>Bid Bulletin No. 3, Annex B, Pages 160 - 161</p> <p>PSA, Section 18.1</p>	<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>For consistency with Section 9.1.5, which provides that “[t]he supply by Power Supplier of quantities of Replacement Power shall be deemed fulfilment of Power Supplier’s obligation to make available the Contract Capacity and to deliver the Associated Energy during such period”, Section 18.1 should be amended to make clear that there is no Event of Default if the Power Supplier is able to provide Replacement Power.</p> <p>Moreover, 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 and the alternative obligations of the Power Supplier under the PSA.</p> <p>We request that Section 18.1 be amended as follows:</p> <p>Each of the events described below shall constitute a “<i>Power Supplier Event of Default</i>”, 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 for deliver the Associated Energy <u>(where such failure exceeds the applicable Outage Allowance) and (in each case) an actual failure to provide Replacement Power</u> to Meralco in accordance with this Agreement;</p>	<p>This has been addressed in item 157, Annex B of Bid Bulletin 3, p. 160, in particular:</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>xxx”</p> <p>See also response for Item#35.</p>
89.			<p>18.1 item (b), page 43</p>	<p>“xxx...provided that a Major Maintenance Outage year shall be excluded from the reckoning...xxx</p> <p>In the determination of the 273-day period, Full Load days affected by Events of Force Majeure should also be considered.</p>	<p>As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded. It should be considered that while the required plant capacity factor as laid down in the bid documents is 87.67% (taking into consideration the maximum outage allowance allowed), the ground cited for Power Supplier Event of Default already provides ample allowance (for reasons such as Event of Force Majeure) such that the required availability is only about 75%. In addition, this ground is triggered only after two consecutive years of breaching the threshold, and an additional year is provided as Curing Period. As pointed out, in addition to all these, a Major Maintenance Outage year is already</p>

				<p>“xxx...provided that a Major Maintenance Outage year AS WELL AS FULL LOAD DAYS AFFECTED BY EVENTS OF FORCE MAJUERE shall be excluded from the reckoning...xxx</p>	<p>excluded from the reckoning period. If a Plant is still not able to demonstrate availability for at least 273 days given these circumstances, then its reliability and ability to reach the 87.67% plant capacity factor is seriously under question, and there is basis for invoking this ground for Event of Default.</p>
90.		PSA	Article 18, Section 18.2, page 44, 45 and 46	<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>PSA Item 167 states:</p> <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).</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>Finally, the statement that Curing Periods for grounds enumerated is not relevant as the primary payments are from Meralco to the Power Supplier. Any failure of Meralco to make payments to the Power Supplier will cause significant financial losses for the Power Supplier and likely result in the business incapable of continued operations.</p> <p>In addition, Meralco will also hold significant amount of Performance Security.</p>	<p>This has been addressed in item 167, Annex B of Bid Bulletin 3, p. 164, in particular:</p> <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).”</p> <p>It should likewise be considered that per Section 18.3.2 of the PSA, Power Supplier may sell the Contract Capacity and Associated Energy elsewhere during the Curing Period.</p>

91.		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>PSA Item 165 states:</p> <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).</p> <p>We would propose that the step-in rights and any rights for buyout be removed from the PSA.</p> <p>The provisions for step-in rights and buyout rights are not practical nor feasible and are unduly punitive to the Power Supplier. Furthermore, Meralco will always have the ability to procure energy from the WESM in the event the Power Supplier fails to supply energy as requested.</p> <p>The provision for a Marginal Bid Offer, where a Power Supplier will be obligated to supply a portion of its Offered Contract Capacity, neither the provision for step-in rights</p>	Response is same as for item #11.
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				<p>nor the provision for buy-out will work as these will unduly restrict the ability of the Power Supplier to secure additional WESM customers.</p> <p>Additionally, the Power Supplier may have other power generating units in development or operation from within the same Plant complex, using common facilities, as the units being offered to Meralco, as such, it would be impractical to have a portion of the Plant under the control of two separate parties. Again, the provisions for step-in rights and the provisions for buy out should be eliminated.</p> <p>Finally, the Power Supplier must provide a Performance Security that will mitigate the damages arising from their default and as such, Meralco already has sufficient recourse for non-performance under the PSA.</p> <p>Please note that under Meralco’s draft PSA, the option for a Buy-Back is at a premium to the amount paid by Meralco to the Power Supplier. Any Buy-Out provision should be based at the minimum on the fair market value of the Plant.</p>	
92.		<p>Sale in WESM</p> <p>PSA Template</p>	<p>18.3</p> <p>Remedies in case of Event of Default</p>	<p>18.3.2 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>For clarity, please provide situation wherein Contract Capacity will not be sold in the WESM (i.e. there are no takers).</p>	<p>Further to the response in item 168, Annex B of Bid Bulletin 3, p. 164-165, in case Power Supplier offers Plant capacity at WESM but is not dispatched, then Power Supplier may still expect payment from Meralco. However, since the Plant is not dispatched, Meralco shall pay it for Capacity Payments (i.e., MCP, MFOM and MIFP) only. As such, the second sentence of Section 18.3.2 is further revised as follows:</p> <p><i>“In such case of sale to the WESM, 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; <u>provided that, if Plant capacity is offered to WESM but not dispatched, then Meralco shall only be liable to pay Power Supplier the Capacity Payment, Interconnection Facilities Payment and Fixed O&M Payment.</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</i></p>

					<i>Associated Energy to Meralco, upon remedy of the Meralco Event of Default."</i>
93.		Remedies in case of Event of Default / PSA	Section 18.3.3 / Page 46	<p>Section 18.3.3 of the PSA reads:</p> <p><i>In the event that (i) a Power Supplier Event of Default continues unremedied upon the expiration of the relevant Curing Period; and (ii) where applicable, Power Supplier fails to make Available the Contract Capacity or to deliver the Associated Energy, Meralco shall be entitled to any of the following reliefs, at the option of Meralco, to be exercised, by written notice to Power Supplier in accordance with Section 18.4:</i></p> <p>Bidder requests to amend the quoted paragraph as follows:</p> <p><i>"In the event that (i) a Power Supplier Event of Default continues unremedied upon the expiration of the relevant Curing Period; and (ii) where applicable, Power Supplier <u>willfully or inexcusably</u> fails to make Available the Contract Capacity or to deliver the Associated Energy <u>for more than two (2) consecutive Days</u>, Meralco shall be entitled to <u>terminate this Agreement in accordance with Section 18.4, and, as a consequence of such termination, Meralco shall have the right (but not the obligation), by written notice to Power Supplier, to choose among the following remedies:</u>"</i></p>	As relayed to the TPBAC by Meralco, Meralco is not amenable with this proposal. For as long the Power Supplier EOD continues to be unremedied upon the expiration of the Curing Period and Power Supplier fails to make available the Contract Capacity or to deliver the Associated Energy, then the remedies are available to Meralco. There is no need to qualify.
94.		PSA	Section 18.3.3(c)	<p>EOD remedy requiring Plant to be sold to Meralco at NBV is unprecedented and confiscatory, especially given buy-back is allowed only at NBV (cannot be lower than acquisition NBV) + Meralco payments for O&M costs + 8% p.a. interest + losses suffered by Meralco + taxes (and without deduction for operating margins enjoyed by Meralco). For any buyout provision to be considered, it must at the minimum be based on the fair market value of the Plant.</p> <p>Any buyout provision should be fully deleted from the PSA.</p>	Response is same as in item#11.
95.		Liquidated Damages	18.3.4	18.3.4 In the event that (i) a Meralco Event of Default continues unremedied upon the expiration of the relevant Curing Period; and (ii) where applicable, Meralco fails to receive, and pay for, the Contract Capacity and Associated Energy, Power Supplier	This has been addressed in item 170, Annex B of Bid Bulletin 3, p. 165, in particular:

		PSA Template		<p>shall be entitled to terminate this Agreement in accordance with Section 18.4, and, as a consequence of such termination, Power Supplier shall have the right (but not the obligation), by written notice to Meralco, to choose among the following remedies:</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 Capital Recovery Fee and the Contract Capacity for five (5) years; or</p> <p>We propose to make the computation for liquidated damages similar to Meralco's entitlement under Section 18.3.3(a) which provides:</p> <p>(a) payment by Power Supplier of liquidated damages, which shall be in lieu of all other damages to which Meralco may be entitled, in the amount equivalent to the product of the Price (at the time of the occurrence of the Power Supplier Event of Default) and the Contract Capacity for five (5) years, provided that, in</p> <p>the event that Meralco elects this option, Meralco shall have the right (but not the obligation) to terminate this Agreement, by written notice to Power Supplier; or</p> <p>Based on the foregoing we suggest that 18.3.4 (a) be revised as follows:</p> <p>"xxx shall be equivalent to (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>Price</u> and the Contract Capacity for five (5) years; or xxx"</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>In addition, for clarity on the computation of liquidated damages, the relevant portion of Section 18.3.3 (a) is hereby revised as follows:</p> <p>"(a) payment by Power Supplier of liquidated damages, which shall be in lieu of all other damages to which Meralco may be entitled, in the amount equivalent to the product of the Price (at the time of the occurrence of the Power Supplier Event of Default) and <u>the Associated Energy with respect to</u> the Contract Capacity <u>computed using an 87.67% plant capacity factor</u> for five (5) years, xxx"</p>
96.		Remedies in case of Event of Default / PSA	Section 18.3.4(c) / Page 48	<p>Section 18.3.4(c) of the PSA reads:</p> <p><i>(c) require Meralco to buy the Plant at the price equivalent to <u>Net Book Value of the Plant</u> at the time of occurrence of the Meralco Event of Default, it being understood that any tax and levies due on the acquisition of the Plant shall be paid by Meralco; or</i></p> <p>Bidder proposes to amend this paragraph as follows:</p>	<p>As relayed to the TPBAC by Meralco, Meralco is not amenable to the proposal and preference is to retain "Net Book Value of the Plant" as "reasonable price" is too vague and may be subject to various interpretations.</p>

				<p><i>“(c) require Meralco to buy the Plant at <u>reasonable price which should cover Power Supplier's liabilities under the loan agreement, distributions to its shareholders, etc.</u>”</i></p>	
97.		Exculpatory Provisions / PSA	Section 18.5.2 / Page 49	<p>Section 18.5.2 of the PSA reads:</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 the occurrence of any of the events described in Section 18.5.1.</i></p> <p>Bidder proposes to amend this paragraph as follows:</p> <p><i>“For the avoidance of doubt, <u>Meralco shall continue to make Capacity Payments during</u> interruptions in the availability of Contract Capacity and supply of Associated Energy as a result of the occurrence of any of the events described in Section 18.5.1.”</i></p>	As relayed to the TPBAC by Meralco, Meralco is not amenable with the proposal. Section 18.5 pertains to exculpatory provisions. If Power Supplier's failure to make available the Contract Capacity or supply the Associated Energy shall not be considered as a Power Supplier EOD, therefore it is relieved from the obligation, then Meralco should likewise not be required to make any Capacity Payments for energy capacities that it did not receive. See also response in Item#83.
98.		Termination Upon Non-Occurrence of Commencement Date or Commercial Operations Date / PSA	Section 18.6.2(b) / Page 50	<p>Section 18.6.2(b) of the PSA reads:</p> <p><i>(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 <u>(provided Power Supplier procures Replacement Power or pays the fine in accordance with Section 3.3.3).</u> If agreement is not reached within sixty (60) Days of reaching the Excused Delay Limit, this Agreement may be terminated by Meralco upon delivery of written notice of termination. <u>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.</u></i></p> <p>Bidder proposes to delete the underlined statements and insert the following sentence at the end of item (b):</p>	Response is same as for Item#96.

				<i>"In such instance, Power Supplier shall have the right to require Meralco to buy the Plant at reasonable price which should cover Power Supplier's liabilities under the loan agreement, distributions to its shareholders, etc."</i>	
99.		Termination in the Event of Certain Events of Force Majeure / PSA	Section 18.6.7 / Page 51	<p>Section 18.6.7 of the PSA reads:</p> <p><i>Upon any termination of this Agreement and without prejudice to Section 18.3 and Section 17.5, each Party shall cease to have any further obligations, responsibilities or liabilities hereunder, other than for such obligations or liabilities that have accrued prior to the date of termination hereof and remain undischarged as of the date of termination. In any case of termination, the invoice for the last Billing Period shall be due and payable notwithstanding.</i></p> <p>Bidder requests to insert the following sentence at the end of Section 18.6.7:</p> <p><i>"Notwithstanding the above, Power Supplier shall have the right to require Meralco to buy the Plant at reasonable price which should cover Power Supplier's liabilities under the loan agreement, distributions to its shareholders, etc."</i></p>	Response is same as for Item#96.
100.		Termination in the Event of Change in Circumstances / PSA	Section 18.6.6 / Page 51	<p>Bidder proposes to insert a new item (c) to Section 18.6.6 as follows:</p> <p><i>(c) After such termination, Power Supplier shall have the right to require Meralco to buy the Plant at reasonable price which should cover Power Supplier's liabilities under the loan agreement, distributions to its shareholders, etc.</i></p>	Response is same as for Item#96.
101.		Appendix A Plant Description and site Location	Page 177 of the BB3	<p>"PSA provisions are not subject to change, except to reflect specifics of offer of Winning Power Supplier."</p> <p>The so called "specifics of offer of Winning Power Supplier" must be defined in particular considering that in the absence thereof, the ambit of a prospective bidder's</p>	As relayed to the TPBAC by Meralco, Meralco is not amenable with the proposal. There is no need to define "specifics of offer of Winning Power Supplier". It simply means the submitted offer of Winning Power Supplier during the CSP.

				bid/offer may or will not be squarely responsive to the terms of reference to be used in the bidding process.	
102.		Plant Description /PSA Appendices	Appendix A, No. 1 / Page 63	<p>In describing the Nominated Power Plant, we suggest that the Power Supplier instead indicate the net plant capacity to indicate the capability of the Power Supplier to provide the required Contract Capacity and the Associated Energy to Meralco.</p> <p><i>Revised statement to read:</i></p> <p>xxx The Plant will be designed to operate as a baseload to provide the capacity requirements of Meralco, and will use proven [____] technology and contract with highly respected construction contractors and equipment manufacturers.</p> <p>Given the size of the Project, the Plant will be designed to utilize [____](insert here fuel procurement details)]. xxx</p>	<p>This has been addressed in item 18, Annex B of Bid Bulletin 3, p. 180, in particular:</p> <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.”</p>
103.		PSA Template/ Financial Evaluation Workbook	Outage Allowances	<p>Certain plants may have maintenance outage schedules which do not occur annually or may occur once every 3-4 years depending on start-ups and/or operating hours.</p> <p>Is it possible to specify varying levels of outage allowance days per contract year of the PSA?</p>	Response is same as for Item#44.
104.		Component A: Monthly Capacity Payments - Monthly Capacity Payment for Excess Energy	Appendix E; page 81	<ul style="list-style-type: none"> - Formula: $MCPEE = \sum EEh * 0.5 * (DCP / k)$ - 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>Recommendation: Propose to charge at 100% DCP. Also, this will impact BCQ, especially if MERALCO does not contract full capacity of the plant.</p> <p><u>Mer's Response:</u></p> <p>Retain.</p>	<p>As relayed to the TPBAC by Meralco, Meralco shall retain the provision as currently worded, i.e., the Excess Energy will be charged at 50% discount for its Capacity Payment.</p> <p>Effectively, the current formula converts the rate into PhP/kWh.</p>

				<p>In MER's existing baseload PSA, the ERC has revised the discount for Excess Energy Capacity Payment from 50% to 100%.</p> <p>Even with the agreed-upon mechanism to allocate Excess Energy, Supplier will still not be paid the full amount of the actual cost of delivering said Excess Energy to MER if MCPEE is charged at 50% of DCP.</p> <p>Proposal: Capacity Payment should be paid proportionate to the Excess Energy taken by MER (convert Capacity Payment to Php/kWh).</p>	
105.		Excess Energy / PSA Appendices	Appendix E Schedule 3 Sample Calculations Component Altern 4 / Page 102	<p>In the sample computation of the Monthly Capacity Payment, there is a sample calculation of the Monthly Capacity Payment for the Excess Energy, MCPEE. However, it was not shown how the figure of Excess Energy of 10,462,500 kWh was derived.</p> <p>For purposes of clarity, we suggest to include the basis of the ΣEE_h in the sample calculations in the final PSA template.</p>	As relayed to the TPBAC by Meralco, this is noted and the sample calculations will include the basis for the ΣEE_h .
106.		Component C: Monthly Fixed O&M Payment	Appendix E; pages 83-84	<p>- Formula does not account for FOM payment in excess of CC</p> <p>Recommendation: Propose to impose FOM payment on Contract Capacity and Associated Energy in excess of CC.</p> <p><u>Mer's Response:</u></p> <p>Retain.</p> <p>Even with the agreed-upon mechanism to allocate Excess Energy, Supplier will still not be paid the full amount of the actual cost of delivering said Excess Energy to MER with the current formula, which does not account for FOM payment.</p> <p>Proposal: FOM should be paid proportionate to the Excess Energy taken by MER (convert FOM to Php/kWh).</p>	As relayed to the TPBAC by Meralco, the capacity payment for Excess Energy shall be for the MCPEE only.

107.		Monthly Fuel Payment Cap PSA Template	Appendix E, page 86-87	<p>How are volume or calorific value discounts reflected in the computation of Fuel in LCOE? Are there cv coal discounts?</p> <p>MFP_{cap} = the monthly fuel payment calculated as the sum of fuel payments for all Trading Intervals within the relevant Billing Period (in PhP), calculated as:</p> $MFP_{cap} = \sum [(FP_{cap,m}) * (BCQ_h - RP_h - IE_h - EE_h) * GNPHR_q / 1,000,000] * FX$ <p>Where:</p> <p>$FP_{cap,m}$ = the adjusted quarterly fuel price (in USD/MMBtu) for the given Calendar Quarter m in the Contract Year, calculated as:</p> $FP_{cap,m} = F_o * P_n / P_o$ <p>Where:</p> <p>F_o = the simple average of the quarterly fuel price forecast for the four quarters beginning third quarter of 2022, in USD/MMBtu, as set forth in Schedule 1 of this Appendix E.</p> <p>P_n = the simple average of the actual quarterly fuel prices from the preceding four Calendar Quarters, in USD/MMBtu. The basis of the actual quarterly fuel prices shall be from the nominated fuel price index of the Bidder.</p> <p>P_o = the simple average of the actual quarterly fuel prices for the four quarters beginning third quarter of 2022, in USD/MMBtu .</p> <p>For clarification:</p> <p>How are volume or calorific value discounts reflected in the computation of Fuel in LCOE? Are there cv coal discounts?</p>	<p>This has been addressed in p. 101, Annex B of Bid Bulletin 3, in particular:</p> <p>“The LCOE only values the Fo that the bidder will submit. The Fo shall be <i>escalated</i> 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>
108.		PSA Appendix	Energy Payment – Compone	Notice of Po Calculation.	As relayed to the TPBAC by Meralco, the calculation of the Po to be provided depends on the nominated fuel index of the Winning Power Supplier.

			nt D / Page 86	We would like to request if Meralco can provide Power Supplier a notice and detailed calculation of Po (the simple average of the quarterly fuel prices for the four quarters beginning third quarter of 2022, in USD/MMBtu) once it has been reasonably determined.	
109.		PSA Appendix, Monthly Fuel Payment	PSA Appendices, Page 87	<p>Under Bid Bulletin No. 3 Annex B Item No. 6, TPBAC responded that “any assumptions on excise tax should be included in the fuel cost”.</p> <p>Please confirm our understanding that Fuel Cost (Fo or Pn) should only reflect Free on Board (FOB) Commodity cost and that excise tax should be included under FOM/VOM instead.</p> <p>We note that further including excise tax in the fuel forecast formula may complicate the calculation of Fo and Po, considering the intention is to have the price information easily verifiable from published sources of commodity prices and these publications do not concern themselves with taxes and duties which have only domestic applications.</p>	As relayed to the TPBAC by Meralco, incidentals (e.g. excise tax) shall be included in Fuel Cost (Fo), together with Free on Board (FOB) commodity cost. Only freight and fuel handling costs shall be included in FOM or VOM.
110.		Excise Tax	<p>Bid Bulletin No. 3, Annex B, Pages 176 and 186</p> <p>PSA, Appendix E</p>	<p>In item 6 of Annex B of Bid Bulletin No. 3 (page 176), the TPBAC stated that “<i>[a]ny assumptions on excise tax should be included in fuel cost.</i>” However, in item 29 of Annex B of Bid Bulletin No. 3 (page 186), the TPBAC stated that “<i>[a]ll incidentals for commodity cost shall be included in Fo component or FOM/VOM.</i>”</p> <p>Please reconcile item 6 and item 29 quoted above.</p> <p>Please also provide a list of what items are considered incidentals for commodity cost.</p>	Response is same as for Item#109.
111.		PSA	Appendix E, Monthly Fuel Payment, pages 86 and 87	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 rd 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.	As relayed to the TPBAC by Meralco, Meralco maintains its position as stated in item 58, Annex B of Bid Bulletin 3, p. 58. To reiterate, the fuel price cap mechanism will be followed, as this was the approved fuel cost in the terms of reference.

				<p>PSA Appendices Item 58 states:</p> <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.</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>	
112.		PSA	<p>Bid Bulletin No. 3,</p> <p>Appendix E, Component D, Page 88</p>	<p>This is a follow up question to Meralco's responses on inclusion of fuel excise tax in the tariff. Based on our understanding of the responses from Meralco in Bid Bulletin No. 3, we understand that we should include all excise tax and incidentals within fuel cost, or FOM / VOM.</p> <p>Assuming that fuel excise tax is 4%, this guidance implies that we should increase F0 by 4% in order for the payment from Meralco to cover the fuel excise tax related to the commodity price-linked component of the fuel supply formula.</p> <p>If that is the case, given that the Meralco will be paying the minimum of the fuel cap (which is calculated based on the F0) and the actual fuel price, in order for a like for like comparison of the two, we believe that it should be made clear in the definition of FPact that the actual weighted average price of fuel inventory should also include excise taxes and other incidentals.</p> <p>We propose that the definition of FPact be amended by adding the following bold and underline language:</p>	Response is same as for Item#109.

				<p>‘FPact = the actual weighted average price of the fuel inventory (in USD/MMBtu), inclusive of fuel excise tax or other incidentals imposed on the purchase of fuel, for the relevant Billing Period. For clarity, any actual fuel handling cost and actual freight cost shall be excluded I this component. ...’</p>	
113.		PSA Appendix	Definition of FPactual	<p>Under Bid Bulletin No. 3 Annex B Item No. 9, TPBAC responded that “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.”</p> <p>Relatedtohis,bidderpreviouslymadetwosuggestionsrelatedto the definition of “FP_{act}”:</p> <ol style="list-style-type: none">1. inserting the term “First-In-First-Out basis” for clarity in what inventory valuationmethodto use2. addingthephrase“fueldeliveredduringtheprevious Billing Period”. <p>Werequestreconsideration,thebasisofwhichweexpound below: Please confirm our understanding that by “actual weighted average price of the fuel inventory”, it is meant that:</p> <ol style="list-style-type: none">a. the total price of Available Coal (“AC, in Tons”) must first be computed (i.e. inventory cost at the beginning of the Billing Period plus deliveries during the BillingPeriod), say “P” stated in US\$b. the total weight of the Available Coal (beginning inventoryplusdeliveries) wouldbedetermined,say“W” stated inTonsc. ThetotalBtucontentofAvailableCoalwillbecalculated, say “H” stated in MMBtud. “FP_{Act}” would be P/H, stated in US\$/MMBtu , which would be used in the formulaforMFP_{Act}inComponentD – Monthly Energy Payment of Appendix E.e. The actual tonnage of coal used during the Billing Period (say “U”) would be deducted from Available Coal, the remainder being the ending inventory, or alternatively the beginning inventory for the next Billing Period, which would have the following:<ol style="list-style-type: none">i. Tonnage = AC – Uii. Btu content = (AC – U) x (H / AC)iii. Price = Btu Content x (P / H)	<p>To reiterate, the weighted average methodology can be both applied to fully and partially contracted plants. This is noted, and the “First-In-First-Out” basis can be discussed with the Winning Power Supplier. The current provision for FPact will remain as is.</p>

			<p>We request Meralco to consider the following points:</p> <p>If the prices and quantities are those which transpire during the BillingPeriod, then the “actual weighted average price of the fuel inventory” will only be known <i>ex-post</i> after all the new deliveries are made and the Billing Period has elapsed. Meralco will have no price benchmark to make its day-ahead BCQ dispatch to have an economic choice between buying BCQs or buying from the WESM. The price signal FP_{Act} would be too late for any meaningful dispatch decision.</p> <p>What Meralco should seek to avoid is to belatedly discover after the lapse of the Billing Period and only upon receiving the provisional invoice that it has dispatched BCQs and paid Energy Fees thereon which it could otherwise avoid by buying cheaper in the WESM. An <i>ex-post</i> weighted average fuel price known only after the end of the Billing Period would have no bearing in guiding Meralco to the correct economic decision whether it is cheaper for Meralco’s consumers to bear Energy Payments for BCQs on a day-ahead dispatch or buy from a cheaper WESM based on day-ahead price outlook.</p> <p>It is in the context of enabling Meralco to make an economic decision whether to dispatch BCQs or buy from the WESM that we suggest a method of weighted average price under a First-In- First-Out (FIFO) basis, which would proceed as follows:</p> <p>a. The beginning inventory of a Billing Period shall have a Price (P_0), Weight (W_0) and BTU content (H_0);</p> <p>b. During the course of the Billing Period, there would be additional shipment/delivery therein, say, “D1” (and presumably other deliveries D2, D3, . . . Dn would be made during the Billing Period). Say the plant has been dispatched and consumed U1 Tons of coal. All energy delivered at this period (MQ1) will be priced at P_0/H_0 (US\$/MMBtu). (<i>Note: Pursuant to an Operating Protocol, this value can be made known to Meralco for economic dispatch purposes.</i>)</p> <p>When D1 is fully delivered, a “repricing” of the coal inventory is made:</p> <p>i. Tonnage, $W_1 = W_0 - U_1 + WD_1$</p> <p>ii. Btu Content, $H_1 = (W_0 - U_1) \times (H_0/W_0) + HD_1$</p> <p>iii. Price, $P_1 = \{ P_0/H_0 \times (W_0 - U_1) + P_1/HD_1 \times (WD_1) \} / (W_0 - U_1 + WD_1)$</p>	
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				<p>d. All energy delivered from this point to the next coal shipment/delivery, MQ1, will be priced at P1.</p> <p>e. Subsequent deliveries/shipment will observe similar pricing (steps c and d)</p> <p>f. At the end of the Billing Period, a final repricing is done.</p> <p>g. $FP_{act} = \{ P_0 \times MQ_1 + P_1 \times MQ_2 + \dots + P_n / MQ_{n+1} \} / (MQ_1 + MQ_2 + \dots + MQ_{n+1})$. "FP_{act}" would still be calculated on weighted average basis</p> <p>Note that an Operating Protocol can be made such that Meralco will be notified the P values; hence, Meralco would have a real-time benchmark price whether to dispatch BCQs day-ahead or just buy in the WESM. Meralco would avoid surprises of unintended dispatch outcomes of paying for BCQs which otherwise is cheaper buying from the WESM.</p> <p>We also note that the foregoing method also has the salutary effect of achieving what a Supplier seeks to avoid - a mismatch or disconnect between its revenues and costs that arises under the earlier described weighted average because FIFO allows revenues to match costs.</p> <p>We kindly reiterate our suggestion related to the definition of "FP_{act}" to insert the term "First-In-First-Out basis" for clarity in what inventory valuation method to use</p>	
114.		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. Also, if a Bidder chooses to elect a renewable energy plant as part of its Nominated Power Plants or chooses to submit a fixed fuel cost, we suggest that this item be revised in the PSA upon finalization since it does not apply.</p> <p>Our understanding is that the DOE-recommended fuel cost adjustment formula allows for adjustments every quarter which should redound to the benefit of the consumers whenever fuel prices fall but will be fair to power suppliers whenever fuel prices increase. However, we believe that superior to this is a competitive Bid Price, which fixes fuel cost so as to guarantee that there will be no fuel-based Bid Price increase for the entire 20-year Term of the Contract. Contrary to the TPBAC's comment in Bid</p>	Please refer to answer in Matrix 2, regarding Fuel Cost for Contract Years 11 to 20.

				<p>Bulletin No.3 Annex B, fixing the fuel cost does not violate the take-or-pay provision in the TOR since, similar to othervariable costs, it will be charged only when the Contract Capacity is dispatched by Meralco. It goes without saying that a fixed fuel cost is advantageous to Meralcoand its end-users as it shields consumers from fuel and foreign currency volatilities in the global markets and shifts these risks to the Power Supplier. Respectfully, ifthere are Bidders who are willing and able to take on greater risks for Meralco and its end-users, they should be allowed to do so and not be excluded from the 2020 CSP.</p> <p>The CSP should not result in consumers of Meralco bearing the volatilities of variable costs associated withfuel prices for the 20-year duration of the PSA when these risks may be passed on to willing and innovative power suppliers who can calibrate and adopt creative pricing strategies to manage risks and provide a more customer-centric offer to Meralco.</p> <p><i>Revised provision to read:</i></p> <p>For Contract Year 11 to 20</p> <p>MFP = <u>minimum (MFPcap, MFPact)</u> + MRIEP</p>	
115.		Energy Payments / PSA Appendices	Fuel Prices of Component D of Appendix E / Page 87	<p>Should a Bidder nominate a plant other than coal or natural gas, it should be allowed to submit its own quarterly fuel prices for the periods covering four quarters beginning third quarter of 2022, with the corresponding unit of measurement applicable to such fuel type (not necessarily in USD/MMBtu). Also, if a Bidder chooses to elect a renewable energy plant as partof its Nominated Power Plants or chooses to submit a fixed fuel cost, we suggest that this item be deleted in the PSA upon finalization since it does not apply.</p> <p><i>Suggestion revision to read:</i></p> <p>FPcap,m = the adjusted quarterly fuel price (in USD/MMBtu) for the given Calendar Quarter m in the Contract Year, calculated as:</p> <p>xxx</p>	<p>As relayed to the TPBAC by Meralco, the proposal is not acceptable. The provision, as currently worded, shall be retained.</p>

				<p>Fo = the simple average of the quarterly fuel price forecast for the four quarters beginning third quarter of 2022, in USD/MMBtu, as set forth in Schedule 1 of this Appendix E.</p> <p>Pn = the simple average of the actual quarterly fuel prices from the preceding four Calendar Quarters, in USD/MMBtu. xxx</p> <p>Po = the simple average of the actual quarterly fuel prices of the four quarters beginning third quarter of 2022, in USD/MMBtu.</p>	
116.		Energy Payments / PSA Appendices	Heat Rate of Component D of Appendix E / Pages 87-88	<p>Should a Bidder nominate a plant other than coal or natural gas, it should be allowed to submit its own plant heat rate (or equivalent measure of efficiency) with the corresponding unit of measurement applicable to such fuel type (not necessarily in Btu/kWh). Also, if a Bidder chooses to elect a renewable energy plant as part of its Nominated Power Plants or chooses to submit a fixed fuel cost, we suggest that this item be deleted in the PSA upon finalization since it does not apply.</p> <p><i>Suggested revision to read:</i></p> <p>GNPHRh = <u>if applicable, this refers to</u> the net plant heat rate corresponding to the Load Factor during the relevant Trading Interval “h”, which shall be in accordance with the Guaranteed Net Plant Heat Rate Schedule 2 of this Appendix W, in Btu/kWh. xxx</p>	As relayed to the TPBAC by Meralco, the provision, as currently worded, shall be retained.
117.		Energy Payments / PSA Appendices	IER (Rate for Incremental and Excess Energy) / Page 89	<p>Replacement Power is primarily the responsibility of the Power Supplier, and as such, the Power Supplier should guarantee Meralco that it will be kept whole on the Contract Price at all times. Subsequently, to make this economically viable for the Power Supplier, it must also be given the flexibility to procure from sources even outside of the WESM (e.g short-term bilateral contracts) when there is a need to provide Replacement Power, as long as it will only charge Meralco the Contract Price which has been agreed upon in the PSA.</p> <p>In line with this, we propose that the cost of procuring Replacement Power shall also be charged at Contract Price.</p> <p><i>Suggested revision to read:</i></p> <p>IER = the lower between WEP during the relevant Trading interval h and is</p>	<p>Please refer to item 2, Annex B of Bid Bulletin 3, p. 173-174, in particular:</p> <p>“xxx 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 (b) Incremental Energy and Excess Energy will be priced</p>

				<p><u>equivalent to</u> the Monthly Variable Payment Rate (MVPR)</p> <p>IER = minimum(WEP, MVPR)</p>	at variable costs (instead of lower between variable & WESM)."
118.		PSA	Appendix E, Component G, Page 92	<p>Bidders are asked to propose a line rental cap (LR_{CAP}) on a PHP/kWh basis for each Contract Year.</p> <p>Line rental is a function of WESM price. Since WESM prices differs/changes every month with typical peak periods occurring during summer months, we believe the LR cap being bid on a flat PHP/kWh basis throughout the year will yield high risk for Power Suppliers during the periods in which WESM prices are high.</p> <p>We recommend for the LR_{CAP} to be calculated based on a percentage of the WESM-generator node (nodal factor) as opposed to on a PHP/kWh basis per year.</p>	As relayed to the TPBAC by Meralco, the proposal is not acceptable to Meralco. The provision, as currently worded, shall be retained.
119.		PSA	Appendix E, Component G, Page 92	<p>Bidders are asked to propose a line rental cap.</p> <p>There are various nodes in the WESM with Meralco's Participant ID. It has not been mentioned in the bid as to which node on the Meralco side (Buyer node) will be used to determine line rental charges. We believe it should be made clear to us as to what node we should base our LR_{CAP} bid on since the LR_{CAP} will be binding in the PSA.</p> <p>Will Meralco use the node that will yield the lowest line rental for the Power Supplier amongst the nodes of Meralco? Please specify which node will be used, so that we are able to assess and determine our LR_{CAP}.</p>	As relayed to the TPBAC by Meralco, the node will depend on the preference of the Bidder.
120.		PSA	Appendix E, Component H, Page 93	<p>Based on the Financial Evaluation Workbook, LR_{CAP} and ASCR_{CAP} does not include VAT.</p> <p>Please clarify if Meralco will reimburse to Power Supplier the full amount of VAT that Power Supplier will need to pay NGCP on the actual ancillary services cost (ASCR_{ACTUAL}),</p>	As relayed to the TPBAC by Meralco, Meralco will only reimburse to Power Supplier the amount of VAT related to ASCR _{CAP} .

				or if Meralco will only reimburse to Power Supplier the amount of VAT related to ASCR _{CAP} .	
121.		Value added tax	PSA, Appendix E, Component D Financial Evaluation Workbook	<p>In the Financial Evaluation Workbook, why can the Bidder indicate any non-negative value for VAT? Why is it not limited only to either 12% or 0%? Please cite any instance, if any, when VAT rate is between 0% and 12%.</p> <p>We also propose that VAT and sales taxes, as applicable, be a separate monthly power bill component.</p>	Any value is allowed in the workbook for the Interested Bidder to have the option to take the risk on the VAT that will be for the account of the Winning Supplier. However, any offered in the workbook will be binding.
122.		Excess Energy	<p>Bid Bulletin No. 3, Annex B, Pages 120 – 121; 187 – 188; 191, 203</p> <p>PSA, Section 1.1; Appendix G, Section 5.3; Appendix E, Component D</p>	<p>In Section 5.3 of the Appendix G states in part:</p> <p style="padding-left: 40px;">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.</p> <p>In Bid Bulletin No. 3, the TPBAC revised this to state:</p> <p style="padding-left: 40px;">xxx <u>Subject to the allocation of Metered Quantity as agreed by the Parties</u>, in case the Metered Quantity exceeds the Contract Capacity, Meralco has the option to take, <u>Parties may agree to allow</u> 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. xxx</p> <p>There seems to be a typographical error in the revision contained in Bid Bulletin No. 3. In particular, the highlighted phrase above appears to have been left in inadvertently after the insertion of the phrase immediately following it. Please see proposed revision in the next column (in double strikethrough).</p> <p>Moreover, in case of a plant that is fully contracted to Meralco under the PSA, whose only source of Excess Energy are imbalances, please confirm that Meralco shall take such Excess Energy at the regular Contract Price.</p> <p>Please revise Section 5.3 of Appendix G to address the typographical error:</p>	<p>As relayed to the TPBAC by Meralco, the portion of Section 5.3 of Appendix G cited shall be revised as follows:</p> <p style="padding-left: 40px;"><i>“xxx <u>Subject to the allocation of Metered Quantity as agreed by the Parties</u>, in case the Metered Quantity exceeds the Contract Capacity, <u>Parties may agree to allow</u> Meralco 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”</i></p>

				<p>xxx Subject to the allocation of Metered Quantity as agreed by the Parties, in case the Metered Quantity exceeds the Contract Capacity, Meralco has the option to take, <u>Parties may agree to allow</u> Meralco has the option to take the Excess Energy ***</p>	
123.		Excess Energy / PSA Appendices	Appendix G Section 5.3 / Page 124	<p>We recommend that any change in the day-ahead energynomination schedule on a day-after basis be subject to the Power Supplier’s prior approval.</p> <p>To take advantage of economies of scale and to add more capacities to the power grid in general to alleviatesupply shortages, Bidders may build Nominated Power Plant/s that have a total capacity that is greater than the Contract Capacity that a Bidder has put forward in its bid. Therefore, (1) any capacity that was not taken up by Meralco in its day-ahead nomination and (2) any energyin excess of the Contract Capacity that the Bidder has guaranteed in its bid, may have been sold already to theWESM or to the Power Supplier’s other customers.</p> <p>Utilizing the Excess Energy and Incremental Energy at the sole option of Meralco will preclude the PowerSupplier from selling its capacity that is above the Contract Capacity to the WESM or to other customers. As long as the nominated Contract Capacity of the Power Supplier has been allocated and given to Meralco based on its day-ahead nominations, we believe that thePower Supplier should be free to sell any excess energyto the WESM or to other customers.</p> <p><i>Suggested revision to read:</i></p> <p>xxx</p> <p>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, <u>subject to Power Supplier approval</u>, and shall be declared by the PowerSupplier 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 tothe 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</p>	Response is same as for Item #122.

				Power, Incremental Energy and Excess Energy Payment, as computed in Section 4 (Component D) of Appendix E.	
124.		Excess Energy / PSA Appendices	Appendix G Section 5.3 / Page 124	<p>May we confirm that a Power Supplier can opt to expand its Nominated Power Plant/s in the future, if its current size is limited to only the Contract Capacity, such that any additional energy from the Plant up to the Contract Capacity may be allocated for Meralco.</p> <p>We suggest that a Power Supplier be allowed to expand or upsize the capacity of the Nominated Power Plant/s during the course of the contract Term such that it is also allowed to provide the additional generated energy as a result of the expansion <u>up to the Contract Capacity</u> to Meralco on an hourly basis. For avoidance of doubt, only the additional energy up to the Contract Capacity will be made available to Meralco so Meralco is not constrained to purchase the energy in excess of the Contract Capacity.</p>	As relayed to the TPBAC by Meralco, Power Supplier is allowed to upsize the capacity of its Nominated Power Plant provided that energy delivered to Meralco beyond the Contract Capacity shall be subject to Excess Energy provision under the PSA.
125.		Minimum Energy Offtake		<p>Meralco's imposition for zero (0) nomination/offtake demand for a baseload requirement is not in accordance with its obligation to maintain reliable utility in support of grid stability. The non-committal to a stable nomination by Meralco will result to unstable dispatch and cycling operation of a baseload facility. It will not support an efficient operation, enhanced system security and will only hasten the degradation and life of the baseload facility that is intended to run a minimum stable operation. Further, it may result to increase in the need of ancillary requirements specially that more intermittent renewable energy resource will be introduced in the system. The impact is further worsened by Meralco's restriction to sell its un-nominated capacity to third party.</p> <p>As the biggest utility in the country, Meralco is aware that the unstable operation of any generation facility especially a baseload facility, shall affect the grid which will ultimately affect Meralco and the rest of the grid-users. It is in this regard that we urge Meralco to reconsider its position.</p>	<p>Response is same as Item#1.</p> <p>In addition, the option of zero nomination is to optimize the supply. In any case, the PSA has provisions to increase its nomination day-after.</p> <p>On the other hand, the responsibility to have a stable operation of any generation facility is on the generator and not on Meralco.</p>

126.		PSA Template	Section 10.2/ Page 126	<p>If Energy Imbalance Fees charged by the Market Operator shall be borne by the Power Supplier for certain cases, will the relevant documentation (WESM data and billing by the Market Operator to Meralco) provided to the Power Supplier?</p> <p>Please amend to provide methods for Power Supplier to validate such energy imbalance fees in the cases contemplated herein.</p>	The Energy Imbalance Fees will be directly billed by the Market Operator to the Power Supplier.
127.		Competitive Selection Process for Fuel	<p>Bid Bulletin No. 3, Annex B, Page 187</p> <p>PSA, Appendix G, Section 11</p>	<p>In response to a query on the purpose of Section 11 of Appendix G of the PSA which requires the Power Supplier to (a) submit a detail protocol for conducting an international CSP for its Plant's fuel supply and freight, and (b) seek prior written approval of the Coordinating Committee for any material deviation from the specifications of such CSP, the TPBAC replied:</p> <p style="padding-left: 40px;">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>We do not believe that Section 11 is necessary or that Meralco must participate in the Bidder's CSP for its fuel supply. There are already mechanisms in place in this present CSP for the PSA and the PSA itself (including capping the fuel price) to ensure that energy will be supplied at the least cost to Meralco's customers.</p>	As relayed to the TPBAC by Meralco, Meralco's participation in fuel procurement is an aspect of its fulfilment of its mandate under EPIRA to supply power to its captive market in the least cost manner. This has been recognized and confirmed by the ERC through decision in Meralco's PSA application. In any case, while Meralco shall participate in fuel procurement in the manner described in the PSA, at the end of the day, it is the Power Supplier that decides on the matter, with an understanding that any such fuel procurement shall be subject to ERC evaluation/approval.
128.		PSA	Appendix G OPERATING PROCEDURES, page 58	<p>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>What will be the considerations of Meralco in evaluating this protocol?</p>	<p>Response is same as for Item#127.</p> <p>In addition, the main considerations will be that the procurement process is competitive and the technical specifications of the fuel per the document submissions by the bidder are complied with.</p>
129.		Competitive Selection Process for Fuel	Appendix G, 11, page 127	With respect to the procurement process and the fuel supply agreement, what extent is Meralco's participation and what information will be subjected to Meralco's review and approval? Is Meralco expected to review and approved pertinent provisions of the CSA as well as evaluation of winning fuel supplier?	Response is same as for Item#128.

130.		Competitive Selection Process for the Plant Fuel	Appendix G, Section 11.1 & 11.2 page 127 (pg. 205 of the BB#)	<p>The response portion provides - - - “Provided that the competitive selection process observed by the Power Supplier for its fuel procurement process is aligned with <u>Meralco’s standard</u>, 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> <p>The so called Meralco’s Standard as mentioned must be specifically defined for the guidance of the prospective bidders.</p>	Response is same as for Item#128.
131.		Competitive Selection Process for the Plant Fuel	Appendix G Section 11 / Page 127	<p>Based on Meralco’s previous response, please confirm that the fuel procurement protocol will no longer apply if Supplier has already secured a fuel supply agreement before the bid submission.</p> <p>Furthermore, please confirm that the fuel price under such fuel supply agreement/s will be the “actual fuel cost” to be compared against the quarterly fuel price cap.</p>	<p>For the given scenario, provided that Power Supplier employed a competitive process for its fuel procurement, the technical specifications of the fuel per the bidder’s document submissions are complied with, and the detailed protocol that will be implemented is the same as the one to be submitted to the ERC for evaluation/approval, then Power Supplier shall simply submit the same protocol to Meralco.</p> <p>Yes, the understanding is correct.</p>
132.		Provisional Invoice / PSA	Appendix H, Section 2.1	<p>Section 2.1 of Appendix H of the PSA reads:</p> <p><i>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”). ...</i></p> <p>Please clarify the contents of the Provisional Invoice? What base rates should be reflected in the invoice?</p>	The Provisional Invoice is for validation of Meralco but essentially contains same content as that of Final Invoice.

133.		PSA	Appendix H Section 2	<p>Under Bid Bulletin No. 3 Annex B Item No. 65, Bidder Question/Comment: MERALCO to consider including additional provision:</p> <p>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> <p>TPBAC response:</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>We would like to confirm the provision by Meralco of the WESM line rental charges to Power Supplier will be part of a protocol</p>	The details requested to be documented through a written payment protocol such as <u>adjustments and corrections of payment, methods of payment, and currency of payment</u> , are already reflected/covered in Appendix H of the PSA.
134.		Payment Protocols	<p>Bid Bulletin No. 3, Annex B, Page 181</p> <p>PSA, Article 11 in relation to Appendix H, Section 3</p>	<p>In Bid Bulletin No. 3, the TPBAC advised that corrections or adjustments to payments shall be covered through a protocol between the Parties. Bid Bulletin No. 3, however, did not provide the precise wording for this to be included in the PSA or its appendices.</p> <p>We propose that the following be included in Appendix H.</p> <p><u>8 Payment Protocol</u></p> <p><u>The Parties shall jointly prepare and agree on a written protocol that shall flesh out the specific procedures, timelines, and details for invoicing and payment consistent with the PSA and this Appendix H, including but not limited to procedures, timelines, and details relating to adjustments and corrections of payment, methods of payment, and currency of payment.</u></p>	Response is same as for Item#133.
135.		Check Payment	<p>Bid Bulletin No. 3, Annex B, Page 183</p>	<p>In Bid Bulletin No. 3, the TPBAC confirmed that payments to the Power Supplier can be made by check.</p> <p>We reiterate our request that check payments be disallowed. Checks may take time to clear and funds covered thereby would not be as readily or quickly available to the Power Supplier, possibly timing issues on the Power Supplier's own payment</p>	As relayed by TPBAC to Meralco, Meralco prefers to retain check payments.

			<p>PSA, Article 11 in relation to Appendix H, Section 5</p>	<p>obligations to its own suppliers.</p> <p>Alternatively, if TPBAC deems check payments absolutely necessary, we propose that the specific procedure, timeline and details for check payments be covered in the payment protocol to be agreed upon by the parties.</p> <p>We propose the following amendments to Appendix H:</p> <p>5 Method of Payment</p> <p>All payments by Meralco pursuant to this Appendix shall be made by check, or wire transfer of cleared immediately available funds to such bank account/s as Power Supplier may notify specify in writing from time to time.</p> <p><u>8 Payment Protocol</u></p> <p><u>The Parties shall jointly prepare and agree on a written protocol that shall flesh out the specific procedures, timelines, and details for invoicing and payment consistent with the PSA and this Appendix H, including but not limited to procedures, timelines, and details relating to adjustments and corrections of payment, methods of payment, and currency of payment.</u></p>	
136.		Receipt	<p>Bid Bulletin No. 3, Annex B, Page 184</p> <p>PSA, Article 11 in relation to Appendix H, Section 6</p>	<p>We previously requested Meralco that Section 6 of Appendix H be amended as follows:</p> <p>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 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).</p> <p>In Bid Bulletin No. 3, the TPBAC advised that Meralco shall provide an advance copy of the VAT certification to the Power Supplier and sought further clarification on the requested period.</p>	<p>As relayed to the TPBAC by Meralco, this should be within 3 business days.</p>

				<p>In this regard, we clarify that it takes around seven (7) business days for the Power Supplier to verify the actual VAT payments.</p> <p>In view of this, we reiterate our request that Section 6 be amended as provided above and in the last column.</p> <p>We propose that Section 6 of Appendix H be amended as follows:</p> <p>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 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).</p>	
137.		Option to Pay in US Dollars	<p>Bid Bulletin No. 3, Annex B, Page 184</p> <p>PSA, Article 11 in relation to Appendix H, Section 7</p>	<p>In Bid Bulletin No, 3, the TPBAC denied our request that payment of the USD-denominated components of the Final Invoice be required to be paid in USD and retained Meralco’s option to pay either in PHP or in USD.</p> <p>In view of this, we request that the specific procedure, timeline and details for payments of the USD components to be made in PHP (e.g., notice to the Power Supplier that payment shall be made in PHP, agreement on reference exchange rate) be covered in the payment protocol to be agreed upon by the parties.</p> <p>In Bid Bulletin No. 3, the TPBAC also clarified that the Monthly Power Bill and the Provisional Invoice are the same. We request the consistent terms for the Final and Provisional Invoice be used throughout the PSA and its appendices.</p> <p>We propose that the following be included in Appendix H:</p> <p><u>8 Payment Protocol</u></p> <p><u>The Parties shall jointly prepare and agree on a written protocol that shall flesh out the specific procedures, timelines, and details for invoicing and payment consistent with the PSA and this Appendix H, including but not limited to procedures, timelines, and details relating to adjustments and corrections of payment, methods of payment, and currency of payment.</u></p>	<p>As relayed to the TPBAC by Meralco, the details requested to be documented through a written payment protocol such as <u>adjustments and corrections of payment, methods of payment, and currency of payment,</u> are already reflected/covered in Appendix H of the PSA.</p>

138.		Option to Pay in US Dollars / PSA	Appendix H, Section 7	<p>Section 7 of Appendix H of the PSA reads:</p> <p><i>Meralco has the option to pay in Philippine Peso or US Dollars, the USD-denominated portions of the Monthly Power Bill,</i></p> <p>The calculation formula of USD-denominated portions of the Monthly Power Bill contains a factor of “FX”, which means the closing rate for USD to PhP. Bidder suggests to clarify whether part of the Monthly Power Bill can be in USD.</p>	As relayed to the TPBAC by Meralco, yes, there are components of the monthly power bill in USD in the financial workbook.
139.		PSA TEMPLATE	Article 11 in relation to Appendix H, Section 7	<p>For the proposed Meralco option to pay in Philippine Peso, this should be converted based on a mutually acceptable FX rate.</p> <p>Kindly specify or make reference to an acceptable FX rate posting for the review of the Power Supplier.</p>	As relayed to the TPBAC by Meralco, the peso to dollar exchange rate to be used to convert the dollar portion of the monthly power bill shall be the PDS closing rate for US dollars published on the BSP official website (https://www.bsp.gov.ph/SitePages/Statistics/ExchangeRate.aspx) three (3) Business Days immediately preceding the Payment Date. The calculation shall be in accordance with the formula provided in the PSA.
140.		Form of Direct Agreement / PSA	Appendix I	<p>There are only two notices in Appendix I, which are not acceptable to the lenders. The Bidder requests Meralco to provide the form of the Direct Agreement of Counterparty.</p> <p>Please provide the Form of Direct Agreement of Counterparty.</p>	As relayed to the TPBAC by Meralco, Clause 5 (ii) of the Notice attached as part of Appendix I defines Direct Agreement as consisting of the said Notice together with acknowledgement and consent [i.e., Attachment B].
141.		PPSA Template Appendices, Form of Direct Agreement	Appendix I, page 130	<p>After determination of the winning bidder and assuming GNPD wins, would Meralco consider the following changes to the form of Direct Agreement as these are proposed revisions from GNPD’s lenders:</p> <p>1. On the form of Direct Agreement - can we change the governing law from PH Law to NY Law in line with the governing law applicable for the bidder’s financing documents?</p> <p>2. On paragraph 5 of the Direct Agreement, can the obligation to provide notices of breach be extended to a wider range of events as set out in the bidder’s form of direct agreement as prescribed in GNPD’s financing documents, particularly:</p>	<p>This has been addressed in item 43, Annex B of Bid Bulletin 3, p. 191, in particular:</p> <p>“xxx As relayed to the TPBAC by Meralco, Meralco shall retain the current form of the Direct Agreement.”</p> <p>In addition, as relayed to the TPBAC by Meralco: (a) the governing law shall be Philippine law; (b) Power Supplier can be the one to provide notice to lenders for the enumerated instances; and (c) current language that provides for 90-day period prior notice shall be retained.</p>

				<div>1. any actual or alleged breach or non-performance of or default under any subject agreement,</div> <div>2. any claim by the Buyer of Force Majeure under any subject agreement,</div> <div>3. the commencement, conduct or settlement of any litigation or dispute resolution proceedings under any subject agreement,</div> <div>4. any claim by the Buyer for indemnification pursuant to any subject agreement,</div> <div>5. any proposed assignment by the Buyer of any of its rights and obligations under any subject agreement,</div> <div>6. any proposed amendment or waiver by the Buyer of any provision of any subject agreement or</div> <div>7. the suspension by the Buyer of performance under, or the termination or cancellation by the Buyer of, any subject agreement.</div> <div>3. On paragraph 7 of the Direct Agreement, can cure periods be extended in line with the bidder’s form of direct agreement as prescribed in its financing documents which provides 180 days for non-monetary default?</div>	
142.		<div>p.79-80, Annex B, Bid Bulletin No. 3 (continuation)</div> <div>page 10, item 2,</div> <div>Bid Requirements for Contract Capacity of 1800MW</div>		<div>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).</div> <div>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,</div> <div>$110 = \frac{P_n}{P_o}$</div> <div>Where: Fo 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 Po is the simple average of the actual quarterly fuel price for the four quarters beginning third quarter of 2022, in USD/MMBtu Pn is the simple average of the actual quarterly fuel prices from the preceding four calendar quarters, in USD/MMBtu.</div> <div>For clarity, the calendar quarters are defined by the following dates:</div> <div><div>(i) December 26 to March 25</div><div>(ii) March 26 to June 25</div></div>	<div>p. 79-80, Annex B, Bid Bulletin No. 3 response provided that:</div> <div>“Fuel Cost Adjustment Formula</div> <div>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 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.</div>

			<div><div>(iii) June 26 to September 25</div><div>(iv) September 26 to December 25</div><div>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.</div><div>For Contract Years 11 to 20, the fuel cost shall be a pass-through cost.</div><div>Comment/s & Question/s:</div><div>May we know the rationale of this formula?</div><div>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.</div><div>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.</div><div>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.</div><div>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).</div><div>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 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.</div><div>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</div></div>	<div>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.</div> <div>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.”</div> <div>To address the bidders’ concern previously discussed in Bid Bulletin No. 3 (see above), as relayed to the TPBAC by Meralco, the PSA-template’s Section 1.1 (Definitions); Change in Circumstances mechanism in Section 12.2.2 and ground for termination in the event of Change in Circumstances in Section 18.6.6 shall be revised as follows:</div> <div>“[...]</div> <div>1.1 Definitions</div> <div>“Change in Circumstances means:</div> <div>(a) 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, but in all cases excluding any Legal Requirement or the application or interpretation thereof in existence at such date but which by its</div>
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