



# CLARK ELECTRIC DISTRIBUTION CORPORATION

Bldg. N2830 Bayanihan Street, Clark Freeport Zone, Philippines 2023

(045) 599-3146; (045) 599-7091; (045) 599-3469

www.clarkelectric.ph

## **COMPETITIVE SELECTION PROCESS FOR THE POWER SUPPLY OF 20 MW BASELOAD REQUIREMENTS OF CLARK ELECTRIC DISTRIBUTION CORPORATION (CEDC)**

### **SUPPLEMENTAL BID BULLETIN NO. 3**

*September 28, 2020*

#### **To all Interested Bidders:**

The CEDC, through its Third-Party Bids and Awards Committee (TPBAC), would like to inform all participating bidders of the following responses of CEDC-TPBAC corresponding to the bidders' queries during the pre-bid conference conducted on 21 September 2020, which are set out as follows:

<b>Topic/ Bid Document</b>	<b>Page No./ Article/ Section</b>	<b>Queries/ Clarifications/ Recommendations</b>	<b>CEDC's Responses</b>
CSPP	Page 1 Background of CEDC Competitive Selection Process	<p><b>"The evaluation of offers will be based on a number of factors and will not be limited to the price being offered."</b></p> <p>What other factors is CEDC referring to, please be more specific?</p> <p>May we suggest the deletion of the phrase 'based on a number of factors' to be consistent with the TOR which state that "Thus, other than the contract/price rate, Bidders must meet the minimum contract requirements provided under the TOR in this CSPP."</p>	The phrase "based on a number of factor" shall mean the satisfaction and compliance by the Bidder of the legal, technical, and financial requirements under the CSPP and/or the TOR.
CSPP	Page 2-3 Interested Power Generators	1) We note that the CSPP indicates "power generators" as participants in the bidding. In order to broaden and encourage more entities or participants who can join the bidding, may we suggest that the terms "Power Generators" be replaced with "Power Suppliers". This would also be consistent with the TOR and the Power Supply Agreement template which makes reference to "Power Suppliers" instead of Power Generators. Extension of the qualified bidders to Administrators and bidders who have offtake arrangement.	1) All references to "Power Generators" are hereby changed to "Power Suppliers". "Administrators" and "Off-takers" are deemed "Power Suppliers" are allowed to participate in the CSP.

		<p>2) May we inquire if a Power Generator or power suppliers with a non-firm Ancillary Services Procurement Agreement with the National Grid Corporation of the Philippines (NGCP) will be allowed to participate in the bid? May we suggest that power suppliers with non-firm ASPA's with NGCP be allowed to participate in the bidding since the nature of a non-firm ASPA is not a committed supply, also, under the PSA being a financial contract, the power supplier will always have the flexibility to source from the WESM, at the same contract price. Further, the non-firm ASPA does not preclude the bidder from delivering the Offered Contract Capacity.</p> <p>We also suggest to redefine or include a definition for the term "Bidder" or "Power Supplier" as follows: "Bidder" or Power Supplier means any partnership, consortium, joint venture, or corporation that participates in the Bidding Process that owns the Nominated Power Plant or portfolio of plants, or exercises control, management, or administration over the output or capacity of the Nominated Power Plant or portfolio of plants, or has an offtake power supply agreement with another power supplier or generator. Xxx Only the power generators bidders who comply xxx</p>	<p>2) CEDC wants to have a stable power supply for its captive customers coming from the nominated plant of the winning bidder, thus the plant capacity nominated by the winning bidder should be dedicated to CEDC and will not consider suppliers with a non-firm ASPAs with the National Grid Corporation of the Philippines.</p>
CSP	Page 3 Terms of Reference/ Timetable		To give more time for the submission of bids, the window for submission will be from 8:00 AM to <del>9:30 AM</del> <del>9:00 AM</del> on 05 October 2020.
CSP	Page 5-6 Terms of Reference/ Contract Term	<p><b>" Ten (10) years (starting from December 26, 2020 until December 25, 2030)"</b></p> <p>1) December 26, 2020 is quite near, what if the entire CSP process is</p>	<p>1) In case where the CSP is not yet completed or the</p>

		<p>not yet completed or the required ERC approval of the PSA is not yet obtained on or before December 25, 2020, what will CEDC do and how will these circumstances affect the 10 years Contract Term?</p> <p>2) What other conditions, other than the ERC approval, should be obtained by both Parties prior to actual start of supply of Contract Capacity?</p>	<p>PSA has not yet been approved by ERC before December 26, 2020, the PSA extension provision shall apply in order to compensate for the lost period.</p> <p>2) No other conditions other than ERC approval. Please refer to the Section 1.2.1 of the PSA.</p>
CSPP	Page 5-6 Terms of Reference/ Contract Capacity	<p><b>“20MW (firm and dispatchable)”</b></p> <p>1) Given that the bid is for baseload requirement, there is a need to set a minimum capacity utilization factor which the nominated plant/s will run at to maintain stability in its operations.</p> <p>In addition to the 20MW (firm and dispatchable), may we suggest that a 75% minimum capacity utilization factor also be set.</p> <p>20 MW (firm and dispatchable) – is this a guaranteed 100% Load Factor?</p> <p>Is the 20 MW Contract Capacity to be utilized by way of Minimum Energy Off-Take (MEOT) at 100% capacity utilization or load factor? If not, at what minimum level will CEDC commit to utilize the Contract Capacity?</p> <p>2) Can supply of the Contract Capacity come from a portfolio of affiliated power plants including the Bidder’s Nominated power plant, other generator’s sources and the WESM regardless if Nominated plant is not on outage or under an Event of Force Majeure?</p>	<p>1) Yes. CEDC is committed in accepting and paying for the 100% guaranteed supply throughout the 10-year term, save for cases of force majeure, thus no need for setting a minimum capacity utilization factor</p> <p>2) No. CEDC will only allow supply from any other sources or WESM during forced/scheduled outages of the nominated plant. Charges passed on to CEDC will be the Generation Charge.</p>
CSPP	Page 5-6 Terms of Reference/ Plant Description	<p><b>Baseload</b></p> <p>1) Please define the term “Baseload” as contemplated in this CSP.</p>	<p>1) Baseload power plants shall be able to provide continuous and unvarying supply of electricity with</p>

		<p>2) Will a power plant with an inherent maximum generating capability of less than 50% be qualified to join in this CSP?</p> <p>3) Kindly confirm if new/greenfield plants are eligible to participate (Greenfield plants currently under construction and will be commissioned soon)</p>	<p>minimal time/outages. down</p> <p>2) No.</p> <p>3) For its Baseload power supply requirement, CEDC requires brownfield plants only as this is urgently needed and shall commence on December 26, 2020.</p>
CSPP	Page 5-6 Terms of Reference/ Date of Commencement of Supply	<p><b>December 26, 2020, subject to ERC approval</b></p> <p>1) If by December 26, 2020, no approval is received from ERC will the commencement date be moved?</p> <p>2) Will the ERC approval include Interim Relief? If yes, suggest to revise Section 1.2.1 of the PSA to include Interim Relief in the ERC Approval.</p>	<p>1) Yes.</p> <p>2) The TPBAC shall accept the recommendation.</p>
CSPP	Page 5-6 Terms of Reference/ Tariff Structure	<p><b>Straight energy fee (in Php/kWh), inclusive of line rental and exclusive of VAT, subject to a predetermined Reserve Price, which will only be revealed by the TPBAC to Qualified Bidders during the opening of Bids.</b></p> <p>1) May we be clarified that the rate is fixed for the duration of the contract period, i.e. no indexation any form of escalation.</p> <p>We would like to inquire about the possibility of CEDC also considering forms of rate structure other than "Straight Energy Fee" so as not to limit offers from bidders (ex. Capacity Utilization-Based).</p> <p>Will the Contract Rate (in PhP/kWh) be fixed throughout the duration of the supply period or may be subjected to adjustment? If rate adjustments are to be allowed, will they be on a "monthly or annual basis"?</p>	<p>1) Yes, rate is fixed (in PhP/kWh) without escalation throughout the entire 10-year term and will not consider other forms of rate structure. Capacity utilization-based rate structure is not applicable as CEDC is committed to accept and pay the 20 MW capacity at 100% LF (except in cases of Force Majeure).</p>

		<p>2) We would like to confirm the rationale of requiring bidders to shoulder the line rental cost. Kindly note that LR is independently being charged by the IEMOP and does not form part of the cost of producing power.</p> <p>Kindly note that the line rental fee is independently being charged by the IEMOP and is not part of the generator's cost. It is ever changing due to several market and grid conditions and considered as a pass-thru charge. Hence, we would like to respectfully appeal for this cost not to be shouldered by the Seller.</p> <p>We view this imposition may result to bidders being constrained to add premiums and inflate rates on a yearly basis to cover for the said uncalculated adjustments. This forced mitigation will ultimately translate to increased generation rates and would further burden consumers in the absence of any mechanism to cover any downward adjustments within the contract term -- contrary to the mandate of EPIRA to ensure least cost supply of power for the DU's captive market.</p> <p>3) If Line Rental is for the account of the Seller, will "Other WESM Charges" be for the account of the Buyer?</p> <p>4) We would like to suggest for the Reserve Price to be disclosed before the bid submission so bidders may calibrate and align offers to the advantage of CEDC (ensure lower offers).</p>	<p>2) Line rental is affected mainly by the relative location of the power plant to the delivery point of the DU. If the line rental will not be incorporated in the generation charge, the least cost power supply may not be achieved as a bidder with a higher overall rate resulting from lower generation rate but with higher line rental may win over a bidder with a lower overall rate resulting from higher generation rate but with lower line rental. The TPBAC maintains that Line Rental shall be incorporated in the generation charge.</p> <p>3) WESM Charges attributable to the Power Supplier including line rental are for the account of the power supplier while other WESM charges attributable to DU will be for the account of CEDC.</p> <p>4) The TPBAC maintains the original schedule of disclosing the reserve price immediately preceding to the opening of the financial bid proposals. Disclosure of the reserve price prior to the submission of bids will</p>
--	--	--	---

		<p>5) In addition, we respectfully suggest for CEDC to evaluate bids based on leveled generation cost as filtering out bids based on price cap may not be reflective of the intent to test bids and see how rate components move overtime.</p> <p>6) Can we include adjustment formula in the tariff structure (indexation for portions of the tariff)?</p> <p>7) What is the basis of the Reserved Price? Is it CEDC's average blended Generation Charge to its captive customers for a certain period?</p>	<p>defeat the competitive nature of the CSP.</p> <p>5) The comparison of prices in the financial bid proposals submitted will be the basis of determining the LCB.</p> <p>6) No. Rate is fixed without escalation for the 10-year term.</p> <p>7) The Reserve Price was arrived at using parameters in CEDC's previous PSAs and economic indices in recent years.</p>
<p>CSP</p>	<p>Page 5-6 Terms of Reference/ Supply of Power</p>	<ul style="list-style-type: none"> <li>• <b>Power Supplier shall not be entitled to any planned/scheduled or forced outage allowances.</b></li> <li>• <b>In the event of Power Supplier's failure to deliver the supply of power to CEDC, due to circumstances not falling under Force Majeure, Power Supplier shall be responsible to source the supply from its portfolio of plants or WESM provided that the price that shall be passed on to CEDC shall be the Generation Charge or WESM rate, whichever is lower</b></li> </ul> <p>1) Since the requirement of CEDC is guaranteed supply without allowable outage, Supplier shall be allowed to supply from its portfolio of plants and/or WESM at Contract Price. Suggest to allow also supply from other power suppliers.</p> <p>It is recommended that the price for the supply of power during plant outage should be the same</p>	<p>CEDC will allow the winning bidder to source from any plant or WESM during unavailability of the nominated plant (e.g. forced/scheduled outages). The charged that will be passed on to CEDC is the contracted generation charge.</p> <p>Revised provision:</p> <p>1) In the event of Power Supplier's failure to deliver the supply of power to CEDC, due to <b><u>forced or planned/scheduled outage of the plant</u></b> <del>circumstances not falling under Force Majeure</del>, Power Supplier shall be responsible to source the supply from its portfolio of plants, the WESM, <b><u>or any</u></b></p>

		<p>as the contracted Generation Charge.</p> <p>2) We would like to suggest for CEDC to set outage allowances for bidders (scheduled and unscheduled) to ensure that power plants are given time to conduct maintenance works, as well as to avoid compelling bidders to tuck escalating premiums in their rates to cover for the uncalculated risks being asked to absorbed. This may not be reflective of the mandate of CSP.</p> <p>3. In view of this, we suggest for CEDC to consider such to be part of its bid evaluation and require bidders to submit writeups or actual protocols as proof of offer in their bid submissions.</p>	<p><b>other source</b> provided that the price that shall be passed on to CEDC shall be the Generation Charge <del>or WESM rate, whichever is lower.</del></p> <p>2) The suggestion to set an outage allowance is already covered by the provision to allow the winning bidder to source power from any other source or WESM and shall charge CEDC the Generation Charge.</p> <p>3) The comparison of prices in the financial bid proposals submitted will be the basis of determining the LCB.</p>
CSPP	Page 5-6 Terms of Reference/ Replacement Energy	<p><b>In the event of Power Supplier's failure to deliver the supply of power to CEDC, due to circumstances not falling under Force Majeure, Power Supplier shall be responsible to source the supply from its portfolio of plants or WESM provided that the price that shall be passed on to CEDC shall be the Generation Charge or WESM rate, whichever is lower.</b></p> <p>We would like to suggest for CEDC to set outage allowances for bidders (scheduled and unscheduled) to ensure that power plants are given time to conduct maintenance works, as well as to avoid compelling bidders to tuck escalating premiums in their rates to cover for the uncalculated risks being asked to absorbed. This may not be reflective of the mandate of CSP.</p>	<p>Revised provision: In the event of Power Supplier's failure to deliver the Contract Capacity due <u>to forced or planned/scheduled outages</u> <del>circumstance not falling under Force Majeure Event</del>, Power Supplier shall be responsible to source the supply from its portfolio of plants, the WESM, <b>or any other source</b> provided that the price that shall be passed on to CEDC shall be the Generation Charge <del>or WESM rate, whichever is lower.</del></p> <p>The suggestion to set an outage allowance during scheduled maintenance is already covered by the above provision.</p>
CSPP	Page 5-6	CEDC shall not be required to make any payment with respect to (i) any	The TPBAC accepted this suggestion during the pre-bid

	Terms of Reference/ Force Majeure	Contract Capacity that is unavailable due to an Event of Force Majeure or (ii) any Contract Capacity that CEDC <del>does not need</del> <b>cannot take or accept</b> due to an Event of Force Majeure.	conference but after consultation with CEDC, the TPBAC is reconsidering its decision and shall maintain the original wordings of the provisions on Force Majeure.
CSPP	Page 5-6 Terms of Reference/ Reduction in Capacity	<p><b>The Contract may be reduced equivalent to the reduction in the demand of captive customers of CEDC by reason of the implementation of Retail Competition and Open Access, the Renewable Energy Law, or other Laws and Legal Requirements</b></p> <p>1) Reduction in Contract Capacity owing to RCOA, Renewable Energy Law or other Laws/Legal requirements should be applied “pro-rata” to all of Buyer’s contracted power suppliers.</p> <p>For any reduction in Contract Capacity not owing to RCOA, Renewable Energy Law or other Laws/Legal requirements, the Buyer should pay the Power Supplier with some sort of a Buy-Out Fee for the equivalent volume of energy at the Contract Price.</p> <p>2) In case of partial Force Majeure affecting CEDC distribution system, how will the load be distributed among various suppliers?</p>	<p>1) CEDC will abide by the existing rules at the time this provision will be implemented and will be guided by the ERC, and most importantly, CEDC’s mandate to supply electricity in least cost manner. As such, this suggestion is noted, but the provision shall be retained as currently worded.</p> <p>2) CEDC shall propose equitable sharing of available load among the power suppliers. This will be incorporated in the PSA that will be executed by CEDC and the winning bidder.</p>
CSPP	Page 5-6 Terms of Reference/ Penalties	<p><b>If Power Supplier fails to provide replacement energy, CEDC may source the replacement energy from WESM and the Power Supplier shall shoulder the difference between the Generation charge and WESM rate.</b></p> <p>Seller may only be penalized for non-delivery of the Contract Capacity if the same is due to unexcused reasons such as outages during Scheduled Outage and Unscheduled Outage of the power plant.</p>	<p>The TPBAC agreed to delete this provision during the pre-bid conference but after consultation with CEDC the TPBAC is reconsidering its decision to retain this provision.</p> <p>This will ensure continuous supply of energy to CEDC’s captive customers during instances when the Power Supplier, for whatever reason, fails to make BCQ declarations to WESM for the replacement energy.</p>



<p>CSPP</p>	<p>Page 5-6 Terms of Reference/ Grounds for Termination of PSA</p>	<ul style="list-style-type: none"> <li>• <b>Failure to deliver or pay for the Contract Capacity</b></li> <li>• <b>Expiry of the PSA</b></li> <li>• <b>Change in Law</b></li> </ul> <p>Suggest to include the provision for possible termination as contemplated in the PSA particularly Article 8 Covenants, Section 8.2 ERC Approval thereof.</p> <p>Can we add other grounds for termination, such as 1) bankruptcy of the Party; 2) breach of obligations under the PSA (not only failure to deliver or pay for the Contract Capacity)?</p>	<p>The TPBAC shall accept the suggested provisions on Termination and will be incorporated in the PSA that will be executed by CEDC and the winning Bidder.</p>
<p>CSPP</p>	<p>Page 6 Terms of Reference/ Paragraph 2</p>	<p>We wish to clarify the provision on the “net of discount” in making bid comparison. Will this mean that discount be considered part of the evaluation. If so, which discounts would these be? <b>We also wish to clarify the statement “the resulting average rate...at one hundred percent (100%) load factor as offered by the bidders will be used by CEDC in the evaluation.”</b></p>	<p>The rate that shall be submitted by the bidder is the final rate whether or not this includes discount/s.</p> <p>Revised provision: For purposes of the bid comparison, the resulting average rate, <del>net of discount,</del> at one hundred percent (100%) load factor as offered by the bidders will be used by the CEDC in the evaluation.</p>
<p>CSPP</p>	<p>Page 6 VIII. Rights of CEDC, Item No. 3</p>	<p><b>“xxx Any clarification submitted by a Bidder in respect to its bid and that is not in response to a request by CEDC shall not be considered.”</b></p> <p>1) May we seek clarification on the intention of the sentence. Does this mean that if CEDC seeks clarification from the bidder, and the bidder fails to respond or address the request, CEDC will not consider the bid?</p> <p>2) We note that the DOE Circular No. 2018-02-0003 provide the justifiable grounds for failure of CSP. Given this, we respectfully propose that the grounds for declaring a failure of CSP should be aligned with the said DOE circular and, in the event that a failure of CSP is declared, the bidders should be duly informed</p>	<p>1) This simply means that only clarifications requested by CEDC in respect to the submitted bids will be considered.</p> <p>2) The grounds for failure of CSP is aligned with the DOE Circular No. 2018-02-0003 and once the TPBAC declares a failure of the CSP, the TPBAC shall duly inform the bidders.</p>

		<p>of the basis for the said action as a matter of due process.</p> <p>3) We propose for CEDC to provide supplemental bid bulletins and allow bidders to submit questions to avoid "erroneous interpretations or conclusions".</p>	<p>3) The opportunity to submit questions was given prior to and during the pre-bid conference and will release the necessary supplemental bid bulletin.</p>
CSPP	<p>Page 7 X. Reserve Price</p>	<p><b>"xxx, Thereafter, the TPBAC Chairman shall place or transfer custody of the sealed outer envelope to a bank representatives of an Allowed Bank, through a custodianship, or escrow arrangement for the security and custody of the Reserve Price envelope, xxx"</b></p> <p>1) We note that the term "Allowed Bank" has been capitalized, however, this term was not defined in the CSPP. May we suggest including a definition of the "Allowed Bank" for purposes of transparency, or indicating the specific bank that will take custody of the Reserve Price envelope.</p> <p>2) What is the basis of the Reserved Price? Is it CEDC's average blended Generation Charge to its captive customers for a certain period? What comprises the Reserve Price?</p> <p>3) We respectfully suggest for CEDC to evaluate bids based on leveled generation cost as filtering out bids based on price cap may not be reflective of the intent to test bids and see how rate components move overtime.</p>	<p>1) The term "Allowed Bank" shall specifically refer to East West Bank</p> <p>2) The Reserve Price was arrived at using parameters in CEDC's previous PSAs and economic indices in recent years.</p> <p>3) The comparison of bid prices in the submitted financial bid proposals will be the basis of determining the LCB.</p>
CSPP	<p>Page 8 XI. Supplemental Bid Bulletin</p>	<p><b>It shall be the responsibility of all Bidders to inquire and secure any such Supplemental Bid Bulletin.</b></p> <p>1) Isn't this the responsibility of the TPBAC of CEDC to ensure that all Bidders are provided with all Supplemental Bid Bulletins</p>	<p>1) The purpose of this provision is to avoid any denial or disclaimers from bidders that for any reason,</p>

		<p>specially the timely release of the same.</p> <p>2) In case several queries and/or concerns raised during the Pre Bid conference are not clarified in the Supplemental Bid Bulletins or possibly new concerns are to be raised owing to the issued Supplemental Bid Bulletins, will the Bidders still be given an opportunity to raise additional/further queries and be clarified by the TPBAC?</p>	<p>they haven't received such bid bulletin.</p> <p>2) No. The TPBAC have already given the bidders enough opportunity to raise their concerns through advanced queries and during the pre-bid conference and activities related to the CSP shall be conducted as scheduled due to time constraint since the requirement is urgently needed by CEDC.</p>
<p>CSPP</p>	<p>Page 9 XII. Responsibility of Bidders</p>	<p>1) What is the rationale about this provision? <b>Section 12.7 “It unconditionally and irrevocably waives any defect, deviation or infirmity in the CSP conducted by CEDC through the TPBAC up to and including the date hereof.’</b></p> <p>2) We suggest to delete the 60 days validity period given our experiences from recent CSPs, most of the timelines were moved. The 60-day validity might affect some of the permits to be submitted, which will expire by November and December even January. Even before the pandemic, we experienced hard time securing some documents</p> <p><b>By submitting a bid, the Bidder acknowledges that it has reviewed, is fully acquainted with, and unconditionally accepts the terms under the CSPP, its procedures and TOR, and any Supplemental Bid Bulletin that may be issued by the TPBAC.</b></p> <p>3) In case of conflict or discrepancy between the procedures, TOR, Supplemental Bid Bulletin and the PSA which shall prevail?</p>	<p>1) This provision was included to ensure that the proceedings will not be stalled for questions or concerns irrelevant to the CSP.</p> <p>2) The TPBAC decides to retain Section 12.5 regarding the 60 days Bid validity. Nevertheless, if special circumstances occur, such as a pandemic, in the interest of fairness and equity, such period may be extended at the sole discretion of the TPBAC and only upon formal written request stating the specific ground for such request for extension.</p> <p>3) The supplemental bid bulletin shall prevail. Any terms, conditions and provisions in the Bidding Documents inconsistent with the latest Bid Bulletin will be amended, modified</p>

		<p>4) Is Certified True Copy signed by the Authorized Representative be accepted?</p> <p>Kindly clarify if documents can be certified as true copy by legal custodian (company custodian)?</p>	<p>and superseded accordingly.</p> <p>4) It is only the legal or company custodian of the documents who will be allowed to authenticate or certify that the documents are the true copies of the original and shall execute a Certification and Undertaking that the copies to be certified and submitted are the scanned copy/ies of the original of the documents in his/her possession and scanned in color, and that the certified true copies of the foregoing documents, as certified by the appropriate government agency, shall be provided to CEDC upon post-qualification. A template for the Certification and Undertaking will be sent to the bidders.</p>
<p>CSPP</p>	<p>Page 10 XIII. Bid Security</p>	<p><b>Each Bidder shall submit as part of the First Envelope, a bid security amounting to Php 50,000,000.00 in the form of;</b></p> <p><b>a. Manager’s check</b> <b>b. Irrevocable Letter of Credit</b> <b>c. Bank Guarantee</b></p> <p>1) We would like to kindly request to include Surety Bond as one of the forms of the Bid Security.</p> <p><b>The Bid Security must contain the following information:</b></p> <p><b>1. Name of financial institution</b> <b>2. Amount of Undertaking</b> <b>3. Conditions for payment/forfeiture as provided below</b> <b>4. Beneficiary: CEDC</b> <b>Period of Validity – 60 days from date of bid submission</b></p>	<p>1) No. CEDC will only allow the modes of payment of the Bid Security through either Manager’s Check, Irrevocable Letter of Credit or Bank Guarantee.</p> <p>2) No. This information shall be provided if the payment</p>

		<p>2) Does this requirement apply only if the Bid Security is in the form of a letter of credit?</p> <p>3) Is the Bidder / Bank allowed to use their format, instead of Annex D?</p> <p>4) As indicated in the CSPP, the Bid Security shall among others indicate the conditions for payment/forfeiture of the bid security which were enumerated as items "a" to "g" on the succeeding paragraph. However, the template SBLC provided does not indicate such.</p> <p>5) We would like to request for the rationale/basis of the amount of the bid security</p> <p>6) On grounds for forfeiture of bid security item (g), suggest to restate to: "If Winning Bidder <b>unjustifiably</b> refuses to execute the PSA."</p>	<p>will be made through a SBLC or Bank Guarantee.</p> <p>3) No, the template must be the same for all bidders. An updated SBLC template will be provided.</p> <p>4) An updated SBLC template, which indicates the conditions for payment/forfeiture of the bid will be provided.</p> <p>5) The bid security is based on the estimated one (1) month power bill using 2019 WESM prices.</p> <p>6) The TPBAC, as agreed with CEDC, shall retain this provision as currently worded.</p>
<p>CSPP</p>	<p>Page 10-11 XIV. Bid</p>	<p><b>"The bidders shall submit a soft copy and three (3) printed sets of the Bid where each Bid shall be enclosed in two (2) separate envelopes."</b></p> <p>1) May we clarify whether this will require actual submission and that opening of the bids will be done in the office of CEDC?</p> <p>Kindly clarify if all three (3) printed sets are original documents or one (1) original and two (2) photocopies?</p> <p>Do we need to include an electronic copy of the bid in a USB flash drive in each of the 3 sets or only in the original copy?</p>	<p>1) As per Supplemental Bid Bulletin No. 2 issued by the TPBAC on September 15, the submission, opening and evaluation of the bids will be fully virtual. Note, however, that for purposes of post-qualification of the winning bidder, the submission of printed copies is still required.</p> <p>No, the bid documents will be submitted through email as stated in the Supplemental Bid Bulletin No. 2.</p>

		<p><b>The first envelope shall contain the eligibility requirements, including the technical component of the bid. The second envelope shall contain the financial component of the bid.</b></p> <p>2) If document/s are not applicable to the Bidder, do we provide a write-up stating that it is inapplicable?</p> <p><b>“The first and last pages of each document submitted, and all pages and all portions of the pages where corrections or amendments have been made shall be signed by the Bidder’s authorized representative”</b></p> <p>3) May we confirm if the authorized representative should sign the first and last page only or all pages?</p> <p>4) Would initial signature suffice?</p>	<p>2) No need to provide write-up if the requirements are with “if applicable” clause, but those documents that are mandatorily required by CEDC shall be completely provided.</p> <p>3) The authorized representative shall sign only the first and last pages of all the documents submitted. However, if there are pages with erasures, these shall also be signed on that portion of that page.</p> <p>4) Yes, an initial signature will suffice.</p>
<p>CSPP</p>	<p>Page 11 XIV. Bid/ A. First Envelope/ a. Legal</p>	<p><b>iv. Bidder’s Securities and Exchange Commission Registration Certificate, whichever may be appropriate under existing laws of the Philippines;</b></p> <p><b>v. Bidder’s Articles of Incorporation and By-Laws;</b></p> <p><b>vi. Bidder’s latest General Information Sheet;</b></p> <p><b>ix. A Certificate of Registration issued by the Board of Investments (BOI), if applicable;</b></p>	<p>1) It is only the legal or company custodian of the documents who will be allowed to authenticate or</p>

		<p>1) Is Certified True Copy of the documents listed above signed by the Authorized Representative be accepted?</p> <p><b>x. Bidder's Certificate of Good Performance from at least one (1) existing and previous customer(s)</b></p> <p>2) Can an existing and previous customer be the same EC if it has an expired and existing contract with the bidder?</p> <p><b>xi. Certification/Attestation/ Undertaking xxx as Annex E and Sworn Undertaking that the Bidder shall abide by the decisions of the TPBAC xxx</b></p> <p>3) Please confirm if the Sworn Undertaking refers to Annex E item 13. "The Bidder, if applicable, as well as their affiliates, assigns and successors-in-interest, shall abide by the decision of the TPBAC xxx" and not a separate document.</p>	<p>certify that the documents are the true copies of the original and shall execute a Certification and Undertaking that the copies to be certified and submitted are the scanned copy/ies of the original of the documents in his/her possession and scanned in color, and that the certified true copies of the foregoing documents, as certified by the appropriate government agency, shall be provided to CEDC upon post-qualification. A template for the Certification and Undertaking will be sent to the bidders.</p> <p>2) CEDC requires the bidder to have certificate of good performance from at least one existing or previous customer.</p> <p>3) Yes. The template in Annex E refers to the same document as stated in the item XI. of the legal requirements.</p>
<p>CSPP</p>	<p>Page 12 XIV. Bid/ A. First Envelope/ b. Technical</p>	<p><b>List of projects undertaken over the last 5 years, if applicable</b></p> <p>1) Does this refer to PSAs contracted by the Bidder over the last 5 years?</p> <p>2) Does "Project" mean power supply contracts?</p>	<p>1) Yes. Note that this requirement is only needed if it is applicable to the Power Supplier.</p> <p>2) Yes.</p>

		<p><b>Track records for the last five (5) years in operating the power plant, if applicable.</b></p> <p>3) Please specify what track record is needed.</p> <p><b>Key Personnel Experience</b></p> <p>4) Please specify who are the Key Personnel.</p> <p><b>Other relevant information showing proof of the technical capabilities of the Bidder that would be helpful to the TPBAC.</b></p> <p>5) Kindly specify what other relevant information are required to be submitted?</p>	<p>3) Any document which demonstrates the good performance of the bidder in operating the plant (e.g. awards or records showing that the nominated plant has minimal or no major troubles or prolonged downtime aside from the Annual Preventive Maintenance).</p> <p>4) The bidders are required to submit the curricula vitae of their management committee as well as their key technical personnel responsible for the overall operation and maintenance of the nominated plant. For plant administrator, the job descriptions as well as positions of the management team and technical team will suffice. Note that both the curriculum vitae and job descriptions must be signed by the person to whom it pertains to and must bear the statement "certified true and correct as of (date)", or its equivalent, for authentication purposes.</p> <p>5) Any document which demonstrates technical capabilities of the bidder in operating the plant (e.g. award/certificate). Note that this requirement is only needed if it is applicable to the Power Supplier.</p>
--	--	---	--



		<p><b>Details of the power plant being offered by the Bidder which includes the following: Number and average duration of scheduled and unscheduled outages</b></p> <p>6) Please specify range (in years) for the average duration of outages.</p> <p><b>Certificate of Compliance (“COC”) issued by the ERC pursuant to the Guidelines for the Issuance of COC for Generation Companies/Facilities</b></p> <p>7) If the Power Supplier has a pending application for the renewal of the COC with the ERC, will the copy of the said application be acceptable in lieu of the COC?</p> <p>Kindly confirm if the Certificate of Compliance requirement is not applicable for new/greenfield plants.</p> <p><b>Environmental Compliance Certificate (“ECC”) issued by the Department of Environment and Natural Resources (“DENR”)</b></p> <p>8) Kindly confirm if the Environmental Compliance Certificate requirement is not applicable for new/greenfield plants.</p> <p><b>Bidder’s Transmission Service Agreement (“TSA”) issued by National Grid Corporation of the Philippines (“NGCP”)</b></p> <p>9) Kindly confirm if the Transmission Service</p>	<p>6) Average duration of outages for the last five (5) years, or for power plants with less than five (5) years in operation, the bidders may use their latest available data.</p> <p>7) For its Baseload power supply requirement, CEDC requires brownfield plant with existing and unexpired COCs as CEDC’s supply requirement is urgently needed and shall commence on December 26, 2020.</p> <p>8) For its Baseload power supply requirement, CEDC requires brownfield plants with existing and unexpired COC as CEDC’s supply requirement is urgently needed and shall commence on December 26, 2020.</p> <p>9) For its Baseload power supply requirement, CEDC requires brownfield plants with existing and unexpired COC as CEDC’s supply</p>
--	--	---	---

		<p>Agreement requirement is not applicable for new/greenfield plants.</p> <p>10) If document/s are not applicable to the Bidder, do we provide a write-up stating that it is inapplicable?</p> <p><b>Evidence of compliance to the requirements stated in the Terms of Reference Table ("TOR Table") attached as Annex B.</b></p> <p>11) Is Annex G, the draft PSA be included as attachment in the eligibility envelope along with Annex B?</p>	<p>requirement is urgently needed and shall commence on December 26, 2020.</p> <p>10)The documents that are mandatorily required by CEDC shall be completely provided. Those indicated to be provided "if applicable" should be provided only when relevant to Power Supplier.</p> <p>11)No need to include the draft PSA in the Annex B.</p>
CSPP	Page 13 XIV. Bid/ A. First Envelope/ c. Financial	<p><b>Details of equity (Annex F) indicating the capital structure and source of funds with supporting documents.</b></p> <p>1) What supporting documents do we need to submit?</p> <p><b>Any other relevant information regarding financial track record and capabilities of the Bidder that it believes would be helpful to the TPBAC.</b></p> <p>2) Kindly specify what other relevant information are required to be submitted?</p>	<p>1) Formal sworn statement from treasurer discussing the origin of the funds involved in their business/ activity that generated the funds used to sustain operations.</p> <p>2) Any document which demonstrates a good financial track record of the bidder. Note that this requirement is only needed if it is applicable to the Power Supplier.</p>
CSPP	Page 13 XIV. Bid/ B. Second Envelope	<p>1) Do you have any specific format for the financial proposal?</p>	<p>1) One line item indicating the price being offered only.</p>

		<p>2) Will CEDC provide the Bidders with an e-copy of the Bid Evaluation/ Calculation Template (Excel format)</p> <p>3) Is the “final rate” in PhP/kWh to be submitted by the Bidder in the Financial Bid envelope be the Lowest Calculated Bid (LCB) for: Base Year level or Levelized Cost of Electricity (LCOE) over the duration of the supply period? What required assumptions for calculation of LCB or LCOE in case the same will be the basis of the Bid Price evaluation?</p> <p>Furthermore, we suggest to have a standard set of reference rate components and escalation parameters wherein offers will be calibrated in order to ensure an apples-to-apples comparison of bids. This is consistent to other previous CSPs that concluded successfully. (ex. FOREX, fuel price – coal, LNG, diesel, US CPI, PH CPI, reference month, etc.)</p> <p>At what “base index” levels should the “straight energy rate” be calculated? CEDC should provide the “base indices” as well as projected indices for consistent and uniform use of all Bidders.</p> <p>4) At what Capacity Utilization Factor (CUF) or Load Factor (LF) should the “straight energy rate” be designed?</p> <p>5) If Line Rental is for the account of the Seller, will “Other WESM Charges” be for the account of the Buyer?</p>	<p>2) No. Based on the minimum requirements, the tariff structure is a straight energy fee, thus one line item rate shall be reflected in the financial bid.</p> <p>3) No particular method is recommended by CEDC since rate is fixed and without escalation for the 10-year term. The assumptions and methodology in coming up with the bid price shall be at the discretion of the Bidders as the TPBAC shall only compare the price per kWh of the submitted bids subject to the Reserve Price.</p> <p>4) 100% CUF/LF</p> <p>5) Yes. WESM Costs attributable to the DU shall be for the account of the DU (e.g. Trading Amounts, NSS, MRU, PSA) except for line rental charges and WESM Costs attributable to the Power Supplier, which will be shouldered by the supplier.</p>
--	--	---	---

		<p>6) We would also like for the detailed evaluation parameter and methodology for comparison with Reserve Price and the LCB.</p>	<p>6) The Reserve Price was arrived at using parameters in CEDC's previous PSAs and economic indices in most recent years.</p>
<p>CSPP</p>	<p>Page 14 XVI. Evaluation of Bid</p>	<p>Pls clarify the methodology of determining the Lowest Calculated Bid (LCB).</p> <p>We would like to request for the detailed briefing of CEDC's evaluation process and rate parameter considerations (including formulas) to be used in the CSP.</p> <p>We would also like for the detailed evaluation parameter and methodology for comparison with Reserve Price and the LCB.</p>	<ul style="list-style-type: none"> <li>• Initially, the first envelope containing the eligibility requirements will be opened and will be subjected to a non-discretionary pass or fail test to determine if it meets the set criteria. If a bidder submitted all the required document, it shall be rated "passed", otherwise if the bidder fails to include any requirement or its submission is incomplete it shall be considered as "failed". Only bidders whose eligibility requirements are rated "passed" will be qualified to proceed to the second stage.</li> <li>• Before the start of the opening of the envelopes for the financial proposal, the TPBAC shall disclose the Reserve Price to all the bidders who were rated "passed" in the first stage. The Reserve Price shall set the price cap.</li> <li>• The financial proposal of the bidder will then be opened and be compared to the Reserve Price, if the financial bid is higher than the Reserve Price, the financial bid shall be rated "failed", otherwise if the bidders' financial bid is lower than the Reserve Price, the bid shall be rated "passed".</li> <li>• Bidders' financial bids that were rated "passed" shall be ranked from lowest to highest. Thereafter, the qualified bidder with the Lowest Calculated Bid (LCB) will undergo post-qualification.</li> </ul>

CSPP	Page 15 XVII. Post- Qualification	<p><b>c. Whether or not the LCB, in its totality, is the most advantageous offer received by the CEDC as evaluated vis-à-vis the TOR.</b></p> <p>We suggest deleting the phrase 'in its totality' to avoid any misunderstanding or confusion as to basis of the post-qualification evaluation. We suggest that the bidder with the LCB should automatically result to the winning supplier. This would also be consistent with No. 4 of XVII where the bidder with the Lowest Calculated Responsive Bid shall be declared as the winning bidder.</p>	The TPBAC agrees to delete the phrase "in its totality".
CSPP	Page 16 XIX. Notice of Award	<p><b>Proof of commitment of the required equity contribution, set at PhP10,000,000 minimum paid up capital.</b></p> <p>1) May we suggest deletion of this requirement.</p> <p>2) We would like to be clarified on the basis of the performance security. How is this computed?</p>	<p>1) The TPBAC decides to retain this provision.</p> <p>In lieu of unused cash resources as mandated by ERC under the revised rules for the issuance of licenses to Retail Electricity Suppliers (RES) of ERC Case No. 2010-008 Revenue Memorandum (RM).</p> <p>2) Similar to the bid security, the performance security is the estimated one (1) month power bill using 2019 WESM prices. The Performance Security is a financial guarantee for the performance of the winning bidder's obligations in the PSA.</p>
CSPP	Page 16 XX. Contract Execution	<p><b>All filing fees, costs of publication and similar direct costs of the ERC Application shall be for the account of the Power Supplier, while jurisdictional publications shall be shouldered by CEDC.</b></p> <p>Please specify these direct costs.</p>	Direct costs include expenses incurred for the filing of the PSA to ERC (printing, reproduction, office materials, etc.).

CSPP	Page 19 Annex B: Terms of Reference	May we know how column 3 will be answered? Will it just be a reiteration of Column B or can we simply indicate "Compliant".	Under Column 3 of Annex B, if bidders are amenable/capable of providing the minimum requirements as stated in the TOR, they may indicate "Compliant" otherwise state "Non-compliant".
CSPP	Page 27 Annex F: Details of Equity	<p>May we be allowed to revise Annex F as follows:</p> <p>For the purpose of demonstrating the financial capability of (name of Company), We, (Name of Corporate Secretary &amp; Finance Manager), the duly elected, qualified and incumbent Corporate Secretary and Finance Manager of the said Corporation duly organized and existing under and by virtue of the laws of the Philippines, do hereby certify that:</p> <p>1. The capital structure of the Corporation as of December 31, 2019 consists of ___ outstanding shares as follows:</p>	<p>At a minimum, the finance manager is only a support. However, the bidder may opt to include also the name of its finance officer under the first paragraph in the equity template.</p> <p>Revised Provision:</p> <p>For the purpose of demonstrating the financial capability of (name of Company), <del>+</del> <b>We</b>, (Name of Corporate Secretary &amp; <b>Finance Officer</b>), <del>a</del> <b>the</b> duly elected, qualified and incumbent Corporate Secretary and <b>Finance Officer</b> of (name of the Company, the "Corporation" for brevity) a corporation duly organized and existing under and by virtue of the laws of the Philippines, do hereby certify that:</p> <p>1. The capital structure of the Corporation as of December 31, 2019 consists of ___ <b>outstanding</b> shares as follows:</p>
CSPP	Page 27 Annex F: Details of Equity	Since we will be submitting the latest GIS, we suggest that all information for Annex F shall be based on the latest GIS and not as of December 31, 2019. The information as of December 31, 2019 may have already changed if there are new GIS submissions.	The latest GIS which bears the stamped received by the Securities and Exchange Commission (SEC) will be accepted. However, if the latest GIS is an amendment, we will also require the submission of the original GIS (meaning the immediately preceding GIS) where the amendment was based from.
CSPP	Other	Is CDEC amenable for the winning Bidder to Build a Solar Plant within CDEC vicinity to augment the	For its Baseload power supply requirement, CEDC requires brownfield plants with existing

		Power Supply and add a renewable component to the Power Supply?	and unexpired COC as CEDC's supply requirement is urgently needed and shall commence on December 26, 2020. Any future requirement of CEDC is yet to be determined and this would be subject to another CSP.
CSP	Other	Kindly confirm if the bidders can request documents from CEDC pertaining to its demand and supply, financial and operating performance.	No. The documents being requested from CEDC is immaterial to the conduct of this CSP. Kindly refer to the Terms of Reference for the relevant terms for CEDC's demand requirement.
CSP	Others	Kindly confirm if the Bidding Entity can assign or transfer its obligation to supply the contracted capacity to its Affiliate, subsidiary company or SPV Company? For instance, the bidding entity's SPV will be the Supplier Party of the PSA.	No, CEDC will not allow change in bidding entity.
PSA	Page 3 Article 1.2.2	<b>The Term may be renewed for an additional period of up to one (1) year under the same terms and conditions, at the option of CEDC, by giving prior written notice to Power Supplier at least one hundred eighty (180) Days prior to the end of the Term.</b>  Suggest to include "xxx prior to the end of the Term, provided that Power Supplier subsequently agrees in writing to the term extension under the same terms and conditions."	The TPBAC agrees to revise the phrase.  Revised provisions:  The Term may be extended for an additional period of up to one (1) year under the same terms and conditions, at the option of CEDC, by giving prior written notice to <b><u>and upon agreement in writing by</u></b> Power Supplier at least one hundred eighty (180) Days prior to the end of the Term.
PSA	Page 3 Article 2	<b>WESM Declarations</b> 1) We would like to clarify if this mean that CEDC shall not be allowed to submit Real-Time Nominations or any revision on their nomination?  2) While this is safe for both parties, but should there be any discussion in the event that CEDC failed to submit DAN and supplier used WAN instead?  3) What if the error is beneficial with CEDC? Can Power Supplier likewise reimburse the amount to CEDC? Will it be acceptable to	This is not applicable since this is a firm, take or pay PSA contract.

		issue a bill adjustment and reflect it on the succeeding Billing Period?	
PSA	Page 3 Article 2.1.1	<p><b>Immediately upon the Commencement Date, Power Supplier shall make available, sell and deliver to CEDC, and CEDC shall purchase from Power Supplier xxx...</b></p> <p>1) Please define "Commencement Date" as differentiated from "Effectivity Date".</p> <p>2) Suggest to include: (b) in case of unavailability of the Plant, from its portfolio of plants, <u>other power suppliers</u>, or WESM;</p>	<p>1) Please refer to Section 1.2.1 of the PSA.</p> <p>1.2.1 This Agreement shall become effective upon PSA signing. In addition, provided that this Agreement has been approved by the Energy Regulatory Commission ("ERC"), whether provisional or final ("ERC Approval"), the mutual obligation of the Parties to deliver and purchase the Contract Capacity and Associated Energy shall begin on December 26, 2020 ("Commencement Date"), and shall expire on December 25, 2030, unless terminated earlier in accordance with Article 11 (Termination) or extended by the Parties.</p> <p>2) The TPBAC shall accept the recommendation. This will be incorporated in the PSA that will be executed by CEDC and the winning Bidder.</p>
PSA	Page 3 Article 2.1.2	<p><b>In the event of Power Supplier's Failure to deliver the Contract Capacity due to a circumstance not falling under Article 7 (Force Majeure) Power Supplier shall be responsible to source the supply from its portfolio of plants or WESM provided that the price that shall be passed on to CEDC shall be the Generation Charge or WESM rate, whichever is lower.</b></p> <p>We suggest to delete 2.1.2 since</p>	<p>This provision will ensure continuous supply of energy to CEDC's captive customers during instances when Power Supplier, for whatever reason, fails to make BCQ declarations for the replacement energy.</p> <p>The TPBAC, as agreed with CEDC, shall retain this provision with revision.</p> <p>Revised provision:</p>



		<p>2.1.1 already provides that the Power Supplier may supply from the portfolio of power plants or the WESM at the Generation Charge.</p>	<p>In the event of Power Supplier's failure to deliver the Contract Capacity <u>in accordance with Section 2.1.1, due to a circumstance not falling under Article 7 (Force Majeure), Power Supplier CEDC shall be responsible to</u> source the replacement energy <u>supply from its portfolio of plants or WESM</u> and Power Supplier shall shoulder the difference between the Generation Charge and WESM rate in case the WESM rate is higher. <del>provided that the price that shall be passed on to CEDC shall be the Generation Charge or WESM rate, whichever is lower.</del></p>
PSA	Page 3 Article 4	<p>1) We would like to clarify the payment due if the timing falls on a holiday.</p> <p>2) We would like to request for CEDC to consider providing flexibility for the Seller to charge either PHP/USD to certain cost components as applicable.</p> <p>3) <b>Suggested provisions for payment:</b></p> <p>1.1 Billing Period. The Billing Period prescribed in the WESM Rules shall be the standard billing period for all payments under this Agreement. The Parties shall coordinate with the Transmission Utility and agree on a suitable procedure for determination of the billing cycle and meter reading to be reflected in the Settlement Protocol.</p> <p>1.2 Timeliness of Payment. All invoices under this Agreement shall be due and payable in accordance with the Seller's invoice instructions.</p> <p>1.3 Seller Direct Billing. The Seller may directly bill the Buyer for</p>	<p>1) If the payment due date falls on a holiday, the payment shall be done in the next working day.</p> <p>2) The TPBAC decided that the payment currency shall be in PHP.</p> <p>3) The TPBAC, as agreed with CEDC, shall retain the provision on billing and payment as currently worded.</p>

		<p>the Contract Price in accordance with the following procedure:</p> <p>(a) As soon as practicable after the end of each Billing Period or other event for which an itemized invoice would be issued, the Seller will render to the Buyer an invoice for the payment obligations incurred hereunder during the preceding Billing Period or arising due to such event. The invoice shall indicate the Contract Price in Dollars and, for informational purposes only, its Peso equivalent based on the exchange rate published in <a href="http://www.pds.com.ph/">http://www.pds.com.ph/</a> within three (3) Business Days prior to the invoice date. For the avoidance of doubt, notwithstanding the presentation of the Contract Price's Peso equivalent in the invoice, the currency of payment shall be in accordance with Section 1.4 hereof.</p> <p>(b) Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with the Seller's invoice instructions on or before the twenty-fifth (25th) day of the succeeding calendar month from the relevant Billing Period ("Payment Period"). The Buyer will make payments by electronic funds transfer, or by other mutually agreed alternative method, to the account designated by the Seller. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from, and including, the due date to, but excluding, the date the delinquent amount is paid in full. In addition, the Buyer acknowledges that in the event the Buyer fails to pay in full the amounts due to be paid by it in accordance with the Seller's invoice instructions, the Transmission Utility or Market Operator, as the case may be, may, at the instructions of the Seller, cause a disconnection or cessation in the supply of electricity to the</p>	
--	--	--	--



		<p>Buyer until all amounts due are paid in full.</p> <p>1.5 Other Billing Procedures. The Parties acknowledge that, given the ongoing evolution of the WESM and the requirements of the Bangko Sentral ng Pilipinas and the lenders to the Seller, there may be more desirable and efficient billing procedures established in the future. The Parties agree to cooperate to implement such procedures if they are found to be mutually beneficial.</p>	
PSA	Page 3 Article 4.1	<p>1) Can we include adjustment formula in the tariff structure under Article 4.1 (indexation for portions of the tariff)?</p> <p>2) Will the monthly capacity utilization factor be at 100% of the Contract Capacity for the duration of the PSA?</p>	<p>1) No. Rate is fixed without escalation throughout the 10-year term.</p> <p>2) Yes</p>
PSA	Page 4 Article 4.3.1	<p><b>Provided further that CEDC shall not be required to make a payment on any Final Invoice that is manifestly in error, apparently xxx..</b></p> <p>1) Please clarify further the phrase "manifest in error, apparently invalid or not in the form or substance contemplated by this Agreement"</p> <p>2) Disputed billing shall not be an excuse or ground for the BUYER to delay payment of the disputed bill or any succeeding billings or to unilaterally deduct any amount therefrom.</p>	Disputed bills are paid, EXCEPT if the Invoice is affected by any of these obvious errors.
PSA	Page 5 Article 5.1	<p><b>Power Supplier shall be responsible for, and shall make timely payment of, the following amounts:</b></p> <p><b>(a) WESM Costs attributable to supply of power;</b>  <b>(b) WESM line rental charges associated with the bilateral contract quantities arising from this Agreement for the transmission of Contract Capacity from the Plant to the delivery point;</b></p>	

		<p>1) Please define "WESM Costs"</p> <p>2) Does this mean all WESM Costs including line rental shall be for the account of the Power Supplier? If yes, this should be made clear in the Tariff Structure discuss in the TOR.</p> <p>3) How will CEDC allocate WESM Costs amongst all its power suppliers?</p> <p>4) We would like to clarify does this mean that WESM charges, DOE charges and corresponding VAT cannot be passed on to CEDC?</p> <p>5) <b>Suggested additional provision:</b>  <b>GOVERNMENTAL CHARGES AND WESM CHARGES</b></p> <p>1.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes and charges, so long as neither Party is materially adversely affected by such efforts and provided the same is not contrary to law.</p> <p>1.2 Governmental Charges. All value added taxes, sales taxes, goods and services taxes, excise taxes, import duties, stamp taxes, charges imposed by the Department of Energy under Energy Regulations No. 1-94, as amended from time to time, and similar taxes and charges imposed by any government authority ("Governmental Charges") on or with respect to the Product at, before or after the Delivery Point, including taxes on fuel (including supplemental fuel) purchased by the Seller to generate electricity</p>	<p>1) WESM Costs are costs attributable to power supplier such as market fees and energy imbalance fees.</p> <p>2) No. Payments attributable only to the Power Supplier including line rental shall be paid solely by the Power Supplier.</p> <p>3) No allocation shall be made. Please refer on the response above.</p> <p>4) No. Payments attributable only to the Power Supplier shall be paid solely by the Power Supplier.</p> <p>5) The TPBAC, as agreed with CEDC, shall maintain the provision on Taxes, Fees and Costs as currently worded.</p>
--	--	---	--

		<p>pursuant to this Agreement, or the transactions contemplated by this Agreement, shall be for the account of the Buyer. The Seller's own income taxes, property taxes and local business taxes are for its own account. In the event the Seller is required by Applicable Laws to remit or pay any such Governmental Charges, such amounts will be set forth in the invoice for the next subsequent Billing Period and shall be due and payable by the Buyer.</p> <p>1.4 WESM Charges. All line rental charges, market fees and other similar fees imposed by the Wholesale Electricity Spot Market ("WESM Charges") on or with respect to the Product are subject to change and shall be for the account of the Buyer. WESM Charges are not yet included in the Contract Price therefore any subsequent imposition of WESM Charges will be charged separately with the Contract Price invoiced to the Buyer.</p>	
PSA	Page 5 Article 5.2(b)	<p><b>National Grid Corporation of the Philippines ("NGCP") Charges</b></p> <p>Item 5.2 (b) of the PSA should be deleted as the same has no relevance in the terms and conditions of sale and purchase of the Contract Capacity, which is purely generation in nature. CEDC being a regulated entity has its own Transmission Service Agreement subjected to approval of the ERC and covering whatever authorized</p>	The TPBAC shall delete the provision.
PSA	Page 6 Article 5.3	<p>1) We would like to request to CEDC to consider issuance of ITH from other agency than BOI.</p> <p>2) We would like to suggest to delete the indemnity clause. Treatment on withholding should be changed as soon as there is a change, reversal or ruling affecting the claim of exemption of withholding tax. This should</p>	<p>1) No, the TPBAC decided that ITH should only come from BOI.</p> <p>2) The TPBAC, as agreed with the CEDC, shall maintain this provision as currently worded.</p>

		not be part of the indemnity clause. Furthermore, CEDC should not stop withholding just because the Power Supplier requested them not to. Non-withholding should be solely based on the documents submitted by the supplier are proof of its eligibility to tax exemption.	
PSA	Page 7 Article 6.2	<b>The Contract Capacity may be reduced equivalent to the reduction in the demand of captive customers of CEDC by reason of the implementation of RCOA, the renewable energy law, or other laws and legal requirements.</b>  Reduction in Contract Capacity under this CSP/PSA should be pro-rated with existing Contract Capacities under various supply contracts with other power suppliers.	CEDC will abide by the existing rules at the time this provision will be implemented and be guided by the ERC, and most importantly, CEDC's mandate to supply electricity in least cost manner. As such, this suggestion is noted, but the provision shall be retained as currently worded.
PSA	Page 7 Article 6.3	<b>CEDC shall also be entitled to assign, transfer, designate, delegate or allocate any portion of the Contract Capacity (as determined by CEDC) to any of its Affiliates, or to any of its business segments, to the extent allowed by LAW, or to any third party acceptable to Power Supplier, its right to purchase such portion of Contract Capacity reduced as a result of RCOA, the renewable energy law, or other laws and legal requirements.</b>  Assignment, transfer, designation, delegation or allocation of any portion of the Contract Capacity should be with written consent of the Power Supplier.	Revised wording:  CEDC shall also be entitled to assign, transfer, designate, delegate or allocate any portion of the Contract Capacity (as determined by CEDC) to any of its Affiliates, or to any of its business segments, to the extent allowed by Law, or to any third party acceptable to <b><u>and with the written consent of the</u></b> Power Supplier, its right to purchase such portion of Contract Capacity reduced as a result of RCOA, the renewable energy law, or other laws and legal requirements.
PSA	Page 8 Article 7.3	xxx For the avoidance of doubt and notwithstanding any other provision of this Agreement, CEDC shall not be required to make any payment with respect to (i) any Contract Capacity that is unavailable due to an Event of Force Majeure or (ii) any Contract Capacity <b><u>that CEDC cannot take</u></b>	During the pre-bid conference, the TPBAC accepted the recommendation but after consultation with CEDC, the TPBAC is reconsidering its decision and shall maintain this provision as currently worded.

		<p><b>or accept</b> due to an Event of Force Majeure.</p> <p>In case of partial Force Majeure affecting CEDC distribution system, how will the load be distributed among various suppliers?</p> <p>Suggested Provision on Force Majeure  “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations hereunder, which event or circumstance was not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Without limiting the generality of the foregoing, “Force Majeure” shall include:</p> <p>(a) acts of God;</p> <p>(b) acts of war or the public enemy, whether war be declared or not, invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, public disorders, insurrection, rebellion, civil commotion, act of terrorism, explosion, sabotage, arson, riots and violent demonstrations;</p> <p>(c) strikes, labor disputes, in any such case which are widespread, nationwide, or directed only at a Party (provided, in the case of a strike directed at a Party, such Party is using reasonable efforts to overcome such strike and it could not reasonably have been avoided or prevented);</p> <p>(d) floods, tidal waves, tsunamis, fires, earthquakes, typhoons and other natural calamities;</p> <p>(e) expropriation, requisition, confiscation, nationalization or other compulsory acquisition, export or import restriction by any governmental authorities, closing of</p>	<p>CEDC shall propose equitable sharing of available load among the power suppliers. This will be incorporated in the PSA that will be executed by CEDC and the winning Bidder.</p> <p>The TPBAC, as agreed with CEDC, shall maintain provisions on Force Majeure as currently worded.</p>
--	--	---	--

		<p>harbors, docks, canals or other assistance to or adjuncts of the shipping or navigation of or within any place, rationing or allocation, whether imposed by law, decree or regulation by, or by compliance of industry at the insistence of, any governmental authority;</p> <p>(f) arbitrary or capricious or unreasonable denial, conditioning, variation, termination or voiding of, or failure or delay in granting or renewing, any governmental authorization required for such Party's performance of its material obligations hereunder, notwithstanding such Party's due application therefore and diligent efforts to obtain the same;</p> <p>(g) a change in Applicable Laws in force from time to time after the date hereof;</p> <p>(h) the inability of the Seller to purchase electricity for delivery to the Buyer due to the unavailability of electricity in the Wholesale Electricity Spot Market such as, but not limited to, the suspension of the market; and,</p> <p>(i) a grid-wide transmission system failure. Without limiting the generality of the foregoing, "Force Majeure" shall not include:</p> <p>(i) mechanical and electrical breakdown or failure of equipment, machinery or plant owned or operated by either Party due to the manner in which such equipment, machinery or plant has been operated or maintained (whether or not by such Party);</p> <p>(ii) the Seller finding another market for the Product at a price greater than the Contract Price;</p> <p>(iii) the Buyer having the opportunity to buy the Product at a price lower than the Contract Price;</p>	
--	--	--	--





		<p>(iv) the Buyer losing its markets;</p> <p>(v) the Buyer's inability economically to use or resell the Product purchased hereunder;</p> <p>and,</p> <p>(vi) without prejudice to Section 3.5, the Buyer's inability to use or receive the Product as a result of a failure by a Transmission Utility to perform its obligations under a relevant Transmission Agreement.</p> <p>3.4 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations herein (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). During the Force Majeure event, the non-Claiming Party shall likewise be relieved of its obligations to the Claiming Party, but only those obligations corresponding to the performance of the Claiming Party excused by such Force Majeure event.</p> <p>The Claiming Party shall always attempt to remedy the Force Majeure with all reasonable dispatch. However, if the duration of any Force Majeure event exceeds or is expected by the Claiming Party to exceed one hundred eighty (180) days, then the Parties shall meet and discuss any appropriate action required with the objective of maintaining, to the extent feasible, the rights and obligations of the Parties under this Agreement. If any Force Majeure exceeds three hundred sixty (360) days, then this Agreement shall be terminated, by notice of either Party delivered to the other Party within five (5) days after the end of such three hundred</p>	
--	--	---	--



		<p>sixty (360) day period. If any Force Majeure is expected by the Claiming Party to exceed three hundred sixty (360) days then the Claiming Party may give notice to the other Party at any time of the Claiming Party's desire to terminate this Agreement. The non- Claiming Party shall notify the Claiming Party, within ten (10) days of receipt of such notice, of either: (1) its acceptance of the notice, in which case this Agreement shall terminate effective on the date of such responsive notice; or (2) its disagreement with the Claiming Party's expectation of the duration of such Force Majeure event, in which case the dispute shall be resolved pursuant to Article IX. For the avoidance of doubt, the Scheduled Termination Date shall be extended, day for day, for the duration of any Force Majeure event.</p> <p>3.6 Regulatory Approvals. The obligations of the Seller to sell and deliver the Product, or cause the Product to be delivered, to the Buyer hereunder are subject to the Seller and the Buyer having obtained all required governmental approvals and permits including, without limitation, any required approvals from the ERC or the WESM. The Seller and Buyer agree that the filing of this Agreement with the ERC will be a joint filing of both Parties. The Parties acknowledge that, given the ongoing evolution of the WESM and regulations governing the electricity market, there may be circumstances that require the Parties to amend this Agreement. Both Parties hereby agree to fully cooperate to implement such amendments, especially as they relate to full compliance with Applicable Laws. In the event that the ERC does not approve the Agreement and as a result thereof the Parties are prevented from implementing material terms of the Agreement within two (2) years from filing, the</p>	
--	--	---	--



		Parties shall cooperate to the fullest extent and exert best efforts to maintain the effectivity of this Agreement. If no agreement is reached between the Parties, the PPSA shall terminate without penalty to either Party upon prior written notice.	
PSA	Page 9 Article 9	<p><b>Suggested Provisions on Dispute Resolution</b></p> <p>9.1 Executive Resolution. If any dispute or disagreement shall arise between the Parties in connection with or arising out of this Agreement, either Party may request in writing that its respective chief executive officers, as applicable, meet within ten (10) days and attempt to resolve the dispute by themselves and if not resolved within thirty (30) days after such notice or any extension thereof (as mutually agreed to by the Parties), the Parties may mutually agree to refer the dispute to the ERC for resolution and/or to any other government agency having jurisdiction over the dispute.</p> <p>9.2 Commercial Arbitration. In the event that the Parties fail to resolve a dispute pursuant to Section 9.1 above, the Party initiating arbitration proceedings may request commercial arbitration. Within ten (10) days after receipt of such a request, each Party's authorized representative shall confer with the other and attempt to agree upon appointment of a single arbitrator. If such agreement is not accomplished, either Party may request the International Chamber of Commerce to appoint an arbitrator familiar with the industry standards for international private power facilities in accordance with its Rules of Conciliation and Arbitration, which rules shall govern the conduct of the arbitration in the absence of contrary agreements by the Parties. The arbitrator shall conduct hearing(s) in Singapore</p>	The TPBAC, as agreed with CEDC, shall maintain provisions on Dispute Resolution as currently worded.

		<p>which is the default venue of arbitration or, in the Philippines by agreement of the Parties, the language to be used shall be English, and within thirty (30) days thereafter, shall notify the Parties in writing of its decision stating separately findings of fact and determinations of law. The arbitrator shall not have the power to add to or amend this Agreement. The Parties exclude</p> <p>any right of application or appeal to any courts in connection with any question of law arising in the course of arbitration or with respect to any award made. Subject to such limitation, the decision of the arbitrator shall be final and binding, and the arbitrator shall be entitled to grant equitable awards compelling specific performance or restraining any actual or threatened breach of any material obligation of the Agreement. The decision of the arbitrator shall determine and specify how the expenses of the arbitration shall be allocated.</p>	
PSA	Page 9 Article 9.2	<p><b>In case the dispute is validly lodged before a competent court, the venue of the action shall be in Mabalacat City.</b></p> <p>Suggested revision: "xxx venue of the action shall be in Mabalacat City if filed by CEDC, and in Makati City if instituted by Power Supplier."</p>	The TPBAC shall retain the provision as currently worded.
PSA	Page 9 Article 11.1	<p><b>CEDC shall, from and after the occurrences of a breach under Section 11.1 and even during the Curing Period, be entitled to source energy from WESM or other parties, and Power Supplier shall be liable to pay CEDC the difference between the amount CEDC actually paid for such energy and the Generation Charge xxx.</b></p> <p>Include provisions covering the specific instances on Default of Buyer and Default of Power Supplier.</p>	<p>The TPBAC, as agreed with CEDC, shall retain the provisions on Termination with revision to include suggested inclusions of other grounds of Termination such as the non-acceptance of either party of ERC adjustment rate as contemplated in Article 8.2 of the PSA and the Bankruptcy of either party.</p> <p>Revised provisions on Termination:</p>

		<p>Suggested provision on <b>Events of Default</b></p> <p>1.1 Events of Default. An “Event of Default” shall mean, with respect to the relevant Party (such Party being, in respect of the Event of Default, a “Defaulting Party” and the other Party being the “Non-Defaulting Party”), any of the following Buyer Events of Default or Seller Events of Default:</p> <p>1.1.1 A “Buyer Event of Default” shall mean, with respect to the Buyer, the occurrence of any one or more of the following:</p> <p>(a) the failure to make, when due, any payment to Seller required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after Buyer’s receipt of written notice for such payment;</p> <p>(b) any representation or warranty made by the Buyer herein is false or misleading in any material respect when made or when deemed made or repeated and has a material adverse effect on the transactions contemplated by this Agreement;</p> <p>(c) the failure to perform any material covenant or obligation set forth in this Agreement if such failure is not remedied within five (5) Business Days after Buyer’s receipt of written notice thereof;</p> <p>(d) the Buyer consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of the Buyer under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the Seller; and</p>	<p>11.1 <b><u>A Party in this Agreement shall be considered in default when it fails to perform any of its obligations as set forth in this Agreement and such failure is not remedied within thirty (30) days after written notice by the other Party thereof;</u></b></p> <p>CEDC shall, from and after the occurrence of a breach under Section 11.1 and even during the Curing Period, be entitled to source energy from the WESM or other parties, and Power Supplier shall be liable to pay CEDC the difference between the amount CEDC actually paid for such energy and the Generation Charge. For this purpose, CEDC has the right to immediately draw on the Performance Security for the settlement of any amounts owing to it.</p> <p>11.2 If within thirty (30) days after receipt from CEDC of the written notice in Section 11.1 (the “Curing Period”), the actual failure on the part of Power Supplier to make available the Contract Capacity and deliver to CEDC the Contract Capacity has not been remedied by Power Supplier, CEDC may terminate this</p>
--	--	--	--

		<p>(e) the Buyer becomes Bankrupt or there occurs and is a continuation of:</p> <p>(i) a default, event of default or other similar condition or event in respect of the Buyer under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than Ten Million US Dollars (\$10,000,000.00), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable; or</p> <p>(ii) a default by the Buyer in making on the due date therefore one or more payments, individually or collectively, in an aggregate amount of not less than One Million US Dollars (\$1,000,000.00).</p> <p>1.1.2 A "Seller Event of Default" shall mean, with respect to the Seller, the occurrence of one or more of the following:</p> <p>(a) the failure to make, when due, any payment to Buyer required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after Seller's receipt of written notice for such payment;</p> <p>(b) any representation or warranty made by the Seller herein is false or misleading in any material respect when made or when deemed made or repeated and has a material adverse effect on the transactions contemplated by this Agreement;</p> <p>(c) the failure by the Seller to perform any material covenant or obligation set forth in this Agreement, including delivering the Quantity of the Product at Minimum Capacity Utilization Factor at the Contract Price, if such failure is not remedied within five (5) Business Days after the Seller's receipt of written notice thereof; and,</p> <p>(d) the Seller consolidates or amalgamates with, or merges with or into, or transfers all or</p>	<p>Agreement and pursue any remedy available to it under this Agreement, at law or in equity, in addition to liquidated damages in Section 12.1.</p> <p>11.3 Subject to seven (7) days prior written notice to CEDC, <b><u>CEDC shall be required to post on the immediately succeeding Billing Period, a Security Deposit with the Power Supplier equivalent to 100% of average monthly power bill, this Agreement may be terminated by Power Supplier</u></b> if, after thirty (30) days from the due date, CEDC fails to pay any undisputed amount in the Final Invoice.</p> <p>11.4 Either Party shall have the right to terminate this Agreement by serving thirty (30)-day advance written notice to the other due to violation <b><u>or breach by a Party</u></b> of any of the provisions hereof or any of the grounds provided for herein, <b><u>in case such violation or breach is not remedied by a Party,</u></b></p> <p>11.5 Termination on Expiry</p> <p>This Agreement shall terminate on the last Day of the Term unless otherwise extended by the Parties.</p>
--	--	---	--

		<p>substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of the Seller under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the Buyer.</p> <p>1.2 Notice of Default. The Non-Defaulting Party may deliver a notice to the Defaulting Party specifying in reasonable detail the relevant Event of Default (the "Notice of Default"). If, within thirty (30) days after the receipt of the Notice of Default by the Defaulting Party, the Event of Default has not been remedied, the Non-Defaulting Party may terminate this Agreement upon prior written notice and pursue any remedy available to it under this Agreement, at law or in equity. For the purposes of this Agreement, the date on which this Agreement is terminated pursuant to this Section 4.2 shall be referred to herein as the "Early Termination Date".</p> <p>1.3 Mitigation Measures in the Event of Default. The Parties shall implement the mutually agreed measures to mitigate the Buyer's and Seller's risks as a consequence of the other Party's default and establish and implement mechanisms to address the consequence of any Party's default including netting out any or all amounts due to the Defaulting Party under this Agreement against all amounts that are due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount.</p> <p>1.4 Suspension of Performance. Notwithstanding any other provision of this Agreement, if an Event of Default shall have occurred and be continuing, the</p>	<p>11.6 Termination in the Event of <b>Change in Law</b></p> <p>(a) If a Change in Law materially and adversely affects the ability of a Party to perform its obligations under this Agreement, affects the sale or purchase of Contract Capacity in accordance with this Agreement, makes the administration or operational aspects of such performance materially more burdensome (whether made at the direction of any Governmental Instrumentality or otherwise) or causes or may cause serious damage to, or materially and adversely affects the financial condition of a Party, the affected Party may give notice to the other Party, specifying the Change in Law and its effects on the notifying Party. The Parties shall enter into good faith negotiations to agree on a satisfactory solution regarding the amendment of this Agreement to restore the notifying Party's commercial position prior to the Change in Law, including an</p>
--	--	---	---

		<p>Non-Defaulting Party, shall have the right to suspend performance of its obligations under this Agreement until the Event of Default has been remedied, upon prior written notice to the Defaulting Party and exercise any remedy available under this Agreement and at law or in equity.</p>	<p>adjustment of the Price. If the Parties fail to reach a mutually satisfactory resolution within sixty (60) Days from the commencement of negotiations, the Party that is affected by the Change in Law may terminate this Agreement upon sixty (60) Days prior written notice to the other Party.</p> <p>(b) If a Change in Law occurs under the circumstances and having the consequences described in Section 5.4c. and the Parties have failed to agree on a solution satisfactory to each of the Parties, then either Party may terminate this Agreement upon sixty (60) Days prior written notice to the other Party.</p> <p><b><u>11.7 Other Grounds</u></b></p> <p><b><u>This Agreement may likewise be terminated by the Parties based on the following grounds:</u></b></p> <p><b><u>(i) Non-acceptance of either Party of the ERC adjustment rate as contemplated in Article 8.2 of this Agreement; and</u></b></p> <p><b><u>(ii) Bankruptcy of either Party.</u></b></p>
--	--	--	--



PSA	Page 9 Article 11.3	<p><b>Subject to seven (7) days prior written notice to CEDC, this Agreement may be terminated by Power Supplier if, after thirty (30) days from the due date, CEDC fails to pay any undisputed amount in the Final Invoice.</b></p> <p>In lieu of Termination option, we suggest that in any case the Buyer fails to pay in full any power bill, then Buyer shall be required to post on the immediately succeeding Billing Period, a Security Deposit with the Power Supplier equivalent to 100% of average monthly power bill.</p>	<p>The TPBAC shall accept the suggestion.</p> <p>Revised wording:</p> <p>11.3 Subject to seven (7) days prior written notice to CEDC, <u><b>CEDC shall be required to post on the immediately succeeding Billing Period, a Security Deposit with the Power Supplier equivalent to 100% of average monthly power bill,</b></u> <del>this Agreement may be terminated by Power Supplier</del> if, after thirty (30) days from the due date, CEDC fails to pay any undisputed amount in the Final Invoice.</p>
PSA	Page 10 Article 12	<p><b>xxx the Party in breach shall pay liquidated damages in an amount equivalent to present value of the Generation Charge for the remaining Term</b></p> <p>Suggest to include specific formula and sample calculation of Liquidated Damages.</p> <p><b>Suggested provisions:</b> LIMITATIONS 1.1 Limitation of Remedies, Liabilities, and Damages. Except as set forth herein, there is no warranty of merchantability or fitness for a particular purpose, and any and all implied warranties are disclaimed. The Parties confirm that the express remedies and measures of damages provided in this Agreement satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages shall be the sole and exclusive remedy, the obligor's liability shall be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein, the</p>	$LD = \sum_{n=0}^N \frac{MPB_n}{(1+i)^n}$ <p>Where:</p> <p>LD – liquidated damages MPB<sub>n</sub> – month power bill of the remaining term N – no. of months remaining term i – prevailing interest rate/12</p> <p>The TPBAC, as agreed with CEDC, shall maintain provisions on Liquidated Damages as currently worded.</p>

		<p>obligor's liability shall be limited to direct actual damages only, such direct actual damages shall be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived. Unless expressly herein provided, neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages, by statute, quasi-delict or contract, under any indemnity provision or otherwise. It is the intent of the Parties that the limitations herein imposed on remedies and the measure of damages be without regard to the cause or causes related thereto, including the negligence of any party, whether such negligence be sole, joint or concurrent, or active or passive. To the extent any damages required to be paid hereunder are liquidated, the Parties acknowledge that the damages are difficult or impossible to determine or obtaining an adequate remedy is inconvenient and the damages calculated hereunder constitute a reasonable approximation of the harm or loss.</p>	
PSA	Page 10 Article 12.1	<p><b>For the avoidance of doubt, nothing in this Section 12.1 shall preclude the other Party from enforcing its right to receive any <u>indemnity</u> under the circumstances such as loss of or damage to property or death or injury to persons, resulting from any negligent act or omission of either Party or any of its employees, directors, agents, or shareholders arises out of or is in any manner connected with the performance of this Agreement, in addition to Liquidated Damages under this Section.</b></p> <p>Suggest to delete since this is not usually being provided in the PSA. Even without providing this, any Party is entitled to all legal</p>	The TPBAC shall retain this provision as currently worded.

		remedies available to it, at law or in equity.	
PSA	Miscellaneous	<p>Suggested provision on Confidentiality</p> <p>1.9 Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, lenders, investors (including potential investors), counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.</p> <p>Suggest to include Bidder's standard DPA provisions:</p> <p>"Data Privacy. The Supplier shall comply with the requirements under the Data Privacy Act of 2012, and such rules, orders, and regulations as may be issued by the National Privacy Commission ("NPC") in relation to the processing and possession of Personal Information and/or Sensitive Personal Information (as such terms are defined in the Data Privacy Act of 2012) comprising the Data. The Supplier exercise of the rights of data subjects under the Data Privacy Act of 2012. "Data" means the contract files, materials and other information in physical, electronic or any other form pertaining to the Services, as communicated and provided to the Supplier by BUYER. Data shall include All Personal Information and Sensitive Personal Information</p>	The TPBAC, as agreed with CEDC, shall maintain provision on confidentiality as currently worded.

		<p>as defined in the Data Privacy Act of 2012, pertaining to BUYER's personnel or to any third party whose Personal Information and/or Sensitive Personal Information as disclosed by BUYER to the Supplier in accordance with this Agreement.</p> <p>1. The Supplier shall ensure that only authorized employee shall process or have access to the Data. Confidentiality obligations shall be imposed to such employees evidenced by a written confidentiality agreement which shall survive the term of employment of the employee.</p> <p>2. The Supplier shall be responsible for the custody and safekeeping of the Data, immediately from the Supplier's receipt of such Data until the same is returned by the Supplier to BUYER. All Data shall be returned by the Supplier within thirty (30) days from the date of termination of this Agreement:</p> <p>2.1 The Supplier shall cease to be responsible for the loss of Data from the date the same is returned to BUYER; provided, that the Supplier's liability for the loss of Data not returned within the period specified above shall be in full force and effect until such Data is returned by the Supplier, or the return of such Data is waived by BUYER in writing. Data shall be considered lost if the Supplier is not able to return Data received by it within a period of fifteen (15) days from the lapse of the period specified above;</p> <p>2.2 All Data provided by BUYER shall be used and processed by the Supplier exclusively and solely for the purpose of allowing the Supplier to perform the Services specified in the scope of work pursuant to this Agreement. The Supplier shall be solely and exclusively liable for the use of such Data beyond the normal requirements to perform its</p>	
--	--	--	--

		<p>obligations under this Agreement, and the Supplier shall indemnify and hold BUYER free and harmless from and against any and all liability, damages, claims, actions, expenses, losses, or fees that may arise from the unauthorized use of the Data;</p> <p>2.3 The Supplier shall return such Data or portions thereof as BUYER may request from time to time, within fifteen (15) days from the date of BUYER's written request. The Supplier shall furthermore comply with BUYER's reasonable instructions for the correction, alteration, and disposal of any Data provided by it and under the custody of the Supplier;</p> <p>2.4 The Supplier shall exercise extraordinary diligence in protecting the integrity and confidentiality as well as in ensuring the availability of Data and shall implement adequate administrative, physical and technical safeguards for the protection of the Data ("Data Privacy and Security System"); and ensure that all such safeguards, including the manner in which the Data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms of this Agreement. The Supplier shall, upon request of BUYER, provide to BUYER information on the Data Privacy and Security Systems employed by the Supplier in relation to the access, use, storage, processing, disposal and disclosure of the Data, and comply with BUYER's reasonable instructions on such improvements of the Data Privacy and Security System as BUYER finds to be necessary; provided, that the Supplier's compliance with any such instructions shall not diminish its liability for all indemnities that may be due to BUYER as a result of the Supplier's breach of any of its obligations pursuant to this Agreement;</p>	
--	--	--	--



		<p>2.5 The Supplier shall notify BUYER immediately of any breach of its Data Privacy and Security System which compromises any of the Data, within two (2) hours from knowledge or the reasonable belief of the occurrence thereof. The Supplier shall provide BUYER every assistance necessary to allow BUYER to comply with the notification requirement under existing privacy laws and regulations, as well as in any investigation that may be conducted in connection with the breach. The Supplier shall immediately undertake corrective actions to mitigate possible harm or negative consequences to the individuals affected by the breach;</p> <p>2.6 Ownership of any Data shall remain with BUYER and the Supplier shall not use the same in other projects; and</p> <p>2.7 The Supplier shall immediately inform BUYER if, in its opinion, an instruction given by BUYER infringes the Data Privacy Act, its Implementing Rules and Regulations, or any other issuance of the NPC.</p> <p>3. The Supplier shall provide the Services based on the Data requested from, and provided by, BUYER from time to time.</p> <p>4. The Supplier shall not subcontract the processing of Data or transfer the Data to another country without the prior written instruction or consent of BUYER.</p> <p>5. The Supplier shall register and maintain and keep valid and subsisting its registration of its data privacy system with the NPC, within a reasonable time from the effectivity of the requirement therefor pursuant to the Data Privacy Act of 2012, or such rules, orders, circulars or memoranda as</p>	
--	--	--	--



		<p>the NPC shall issue from time to time during the term of this Agreement.</p> <p>6. The Supplier shall make available to BUYER all information necessary to demonstrate compliance with the Supplier's obligations under this Agreement, the Data Privacy Act of 2012 and applicable regulations of the NPC. In this regard, BUYER may conduct an audit at its option.</p> <p>The Supplier shall be solely and exclusively liable for any breach of its obligations under this Agreement, and for any breach by it of the relevant data privacy laws, such as but not limited to Data Privacy Act of 2012, during the Term. The Supplier shall indemnify and hold BUYER free and harmless from any liability, damages, claims, action, expenses, losses, or fees that may arise from the Supplier's breach as described under this Agreement, the Data Privacy Act of 2012 and applicable regulations of the NPC; furthermore, the Supplier shall substitute BUYER and assert itself as the real party-in-interest in any and all actions, whether of a civil, administrative, or criminal nature, that may be brought against BUYER in relation to the Supplier's breach of any of its obligations as described under this Agreement.</p>	
PSA	Miscellaneous	<p>Suggested provisions on <b>Severability of Provisions</b></p> <p>If any provision hereof is invalid and unenforceable in any jurisdiction, then, to the fullest extent permitted by law, (i) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be construed in order to carry out the intentions of the Parties as nearly as may be possible and (ii) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.</p>	The TPBAC, as agreed with CEDC, shall maintain the provision on Severability of Provisions as currently worded.
PSA	Miscellaneous	Suggest to include FCPA provisions:	The TPBAC, as agreed with CEDC, shall maintain the

		<p>“U.S. Foreign Corrupt Practices Act. The Parties agree to comply with the provisions of the United States Public Law 95-213, the Foreign Corrupt Practices Act of 1977, and any amendments thereto (the “FCPA”). The Parties specifically understand and agree that they shall not, contrary to the prohibitions set forth in the FCPA, make any offer, payment, promise to pay or authorization of the payment of any money, or make any offer, gift, promise to give, or authorization of the giving of anything of value, to any government official, any political party or official thereof, any candidate for political office, any official of any public organization, or any other person associated with the Buyer or its executives or officers related in any way with the transactions contemplated by this Agreement.”</p> <p>Suggest to include assignment provision:  “Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, the Seller, with notice to the Buyer but without its consent, may: (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds in respect hereof in connection with any financing or other financial arrangements wherein the lenders, subject to the terms and conditions of the financing documents, shall have the right to exercise the Sellers’s rights and obligations hereunder, and in such case, the Buyer agrees to enter into an acknowledgement and consent with the collateral agent as to the foregoing substantially in the form set forth in Annex C, or (ii) transfer or assign this Agreement to any Affiliate of the Seller or to any entity organized as the Project company;</p>	<p>Miscellaneous Provisions as currently worded.</p>
--	--	--	--



		provided, further however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof, and upon any such assumption pursuant to (ii) above, the assignor shall be relieved of any further liability hereunder to the maximum extent permitted by law.”	
PSA	Others	<p>Can the winning bidder negotiate the terms of the PSA?</p> <p>Is CEDC open to accept a bidder’s own PSA template (or at least negotiate the terms in the prescribed PSA draft)? This is to address the possibility of bidders already having PSA forms that are already ERC-approved.</p> <p>After the issuance of the Notice of Award will there be a PSA negotiation?</p>	<p>Except for the details pertaining to Power Supplier, the terms of the PSA are not subject to amendments as the terms are treated as a template based on the Terms of Reference. As such, the PSA can no longer be “negotiated” and we cannot include a period for “negotiation”.</p> <p>CEDC has its own terms under which it agrees to purchase the energy from the winning Power Supplier.</p>
PSA	Others	<p>We suggest to include in the PSA the following:</p> <p>1) Article on Definition of Terms for consistent understanding of the Parties</p> <p>2) Nomination Protocol (to be discussed during contract negotiation).</p>	<p>1) Terminologies are already defined in the PSA, thus the need to include an Article for the definition of terms is not necessary.</p> <p>2) Nomination/ dispatch protocol is not needed since this is a firm, take-or-pay PSA contract.</p>

This Bid Bulletin No. 3, series of 2020 shall form part of the Bidding Documents. Any terms, conditions and provisions in the Bidding Documents inconsistent with this Bid Bulletin are hereby amended, modified and superseded accordingly.

For guidance and information of all concerned.

  
 Albee Alliana Recio  
 Chairman, TPBAC