



BIDDING
FOR CONTRACT PERIOD ENDING 25 JANUARY 2037

BID BULLETIN NO. 3

To all Interested Bidders:

1. To allow the Interested Bidders more time to peruse the initial soft copy file of Financial Evaluation Workbook, which was released last 20 October 2022 as Bid Bulletin No. 2, **the TPBAC has scheduled a second part of the Pre-Bid Conference on 29 October 2021 at 12:30 P.M. to 2:00 P.M.** and the Interested Bidder's will now have until **3 November 2021** within which to submit written queries, or requests for clarifications or revisions to the Bidding Documents. Thereafter, the TPBAC shall respond or issue the necessary notices and bid bulletins to address said queries or comments, which shall now be no later than **10 November 2021.**

All aforementioned revised Bidding Schedule dates in the Instructions to Prospective Bidders (dated 30 September 2021) (IPB) will be amended in a subsequent Bid Bulletin.

2. The House Rules containing the guidelines and rules to be observed during the Pre-Bid Conference (released through Bid Bulletin No. 2) will be implemented.
3. The Zoom registration details, designated meeting IDs, passcodes, links, and such other information necessary to join the virtual/online Pre-Bid Conference shall be provided by the TPBAC Secretariat to the emails of the Interested Bidders' authorized representatives on or before 9:00 A.M. of 29 October 2021.

Issued on 26 October 2021.

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

(sgd)

Atty. Ferdinand A. Domingo
Chairman



BIDDING
FOR CONTRACT PERIOD ENDING 25 JANUARY 2037

BID BULLETIN NO. 4

To all Interested Bidders:

1. A matrix showing additional amendments to the (i) Bid Requirements (posted on 30 September 2021) and (ii) IPB is set out in **ANNEX A**;
2. A matrix containing a set of queries that have been received and the response of Meralco's Third Party Bids and Awards Committee ("TPBAC") is set out in **ANNEX B**;
3. Accordingly, the following amended IPB annexes or forms are set out in **ANNEX C** as the following attachments:

Attachment	FORM
1	Annex QD-3 (Certification that Nominated Power Plant is Uncontracted), IPB
2	Annex TP-1 (Technical Proposal (Nominated Power Plant)), IPB

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

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

Other than the changes clarified/allowed by the TPBAC in this Bid Bulletin, we reiterate that no change/deviation from the required wording of the IPB annexes or forms shall be made, without prior request made to the TPBAC and its approval.

Issued on 27 October 2021.

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

(sgd)

Atty. Ferdinand A. Domingo
Chairman

AMENDMENTS TO THE BID REQUIREMENTS (posted on 30 September 2021)

Item	Reference / Subject Matter of Amendment	Amendments
1	Qualification Documents (Envelope 1), p. 5	<p>1. Legal Qualification Requirements [...]</p> <p>(f) The Bidder must issue a notarized certification that the Offered Contract Capacity from the Nominated Power Plant: (i) for the entire Past Contract Period, had an installed and uncontracted capacity of at least 70 MW since 25 January 2017; and (ii) for the entire Prospective Contract Period, is not covered by any offtake agreement (e.g., a power supply agreement or ancillary services procurement agreement, including a financial-type arrangement of power supply agreement) at the time of the Operations Effective Date of the PSA that will conflict with the Bidder's obligation should it be declared the Winning Power Supplier. Since this is a competitive selection process for the Past Contract Period and Prospective Contract Period of the PEDC PSA in compliance with the Supreme Court's Decision in G.R. No. 227670 dated 3 May 2019, the PEDC PSA is excluded from the coverage of the aforesaid certifications. [...]</p>
2	Technical Proposal (Envelope 2), p. 6	<p>[...]</p> <p>(d) The Nominated Power Plant must be covered by a valid Transmission Service Agreement and Fuel Supply Plan or Agreement, if applicable, which shall be duly certified by the National Grid Corporation of the Philippines (NGCP) or the corporate secretary, in which case it must be under oath and notarized; and</p> <p>(e) The Nominated Power Plant must be covered by a Fuel Supply Agreement (covering the Past Contract Period) and a Fuel Supply Procurement Plan, and if available, a Fuel Supply Agreement (for the Prospective Contract Period), which shall be duly certified by corporate secretary, in which case it must be under oath and notarized;</p> <p>(f) (e) If applicable, the Certificate of Registration issued by the Board of Investments (BOI), which shall be certified as a true copy by (i) the BOI; or (ii) the corporate secretary, in which case it must be under oath and notarized. [...]</p>

AMENDMENTS TO THE INSTRUCTIONS TO PROSPECTIVE BIDDERS (dated 30 September 2021)

Item	Reference / Subject Matter of Amendment	Amendments																		
1	Section 1 (Bidding Schedule) (see Bid Bulletin No. 3)	<p>[...]</p> <table border="1" data-bbox="600 475 1869 1040"> <thead> <tr> <th data-bbox="600 475 1273 537">Milestone</th> <th data-bbox="1273 475 1522 537">Responsibility</th> <th data-bbox="1522 475 1869 537">Date</th> </tr> </thead> <tbody> <tr> <td colspan="3" data-bbox="600 537 1869 599">[...]</td> </tr> <tr> <td data-bbox="600 599 1273 695">Pre-Bid Conference</td> <td data-bbox="1273 599 1522 695">TPBAC & Bidders</td> <td data-bbox="1522 599 1869 695">22 October 2021</td> </tr> <tr> <td data-bbox="600 695 1273 790"><u>Pre-Bid Conference (2nd Part)</u></td> <td data-bbox="1273 695 1522 790"><u>TPBAC & Bidders</u></td> <td data-bbox="1522 695 1869 790"><u>October 2021</u></td> </tr> <tr> <td data-bbox="600 790 1273 924">Deadline for submission of queries or comments of the Bidders on the Bidding Documents</td> <td data-bbox="1273 790 1522 924">Bidders</td> <td data-bbox="1522 790 1869 924">29 October 2021 <u>3 November 2021</u></td> </tr> <tr> <td data-bbox="600 924 1273 1040">Deadline to respond to queries or comments on the Bidding Documents</td> <td data-bbox="1273 924 1522 1040">TPBAC</td> <td data-bbox="1522 924 1869 1040">5 November 2021 <u>10 November 2021</u></td> </tr> </tbody> </table> <p>[...]</p>	Milestone	Responsibility	Date	[...]			Pre-Bid Conference	TPBAC & Bidders	22 October 2021	<u>Pre-Bid Conference (2nd Part)</u>	<u>TPBAC & Bidders</u>	<u>October 2021</u>	Deadline for submission of queries or comments of the Bidders on the Bidding Documents	Bidders	29 October 2021 <u>3 November 2021</u>	Deadline to respond to queries or comments on the Bidding Documents	TPBAC	5 November 2021 <u>10 November 2021</u>
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2	Section 2.2 (d.) (see Bid Bulletin No. 3)	<p>[...]</p> <p>(d) Bidders will then have until 29 October 2021 <u>3 November 2021</u> within which to submit written queries, or requests for clarifications or revisions to the Bidding Documents. Thereafter, the TPBAC shall respond or issue the necessary notices and bid bulletins to address said queries or comments, which shall be no later than 5 November 2021 <u>10 November 2021</u>.</p> <p>[...]</p>																		
3	Annex 3.1.2 (g.)	<p>[...]</p> <p>(g) a notarized certification, using the form in Annex QD-3, that the Nominated Power Plant: (i) for the entire Past Contract Period, had an installed and uncontracted capacity of at least 70 MW since 25 January 2017; and (ii) for the</p>																		

Item	Reference / Subject Matter of Amendment	Amendments
		<p>entire Prospective Contract Period, is not covered by any offtake agreement (e.g., a power supply agreement or ancillary services procurement agreement, including a financial-type arrangement of power supply agreement) at the time of the Operations Effective Date of the PSA that will conflict with the Interested Bidder's obligation should it be declared the Winning Power Supplier. Since this is a competitive selection process for the PEDC PSA in compliance with the Supreme Court's Decision in G.R. No. 227670 dated 3 May 2019, the PEDC PSA is excluded from the coverage of the aforesaid certifications. [...]</p>
4	Section 3.2	<p>[...] (d) The Nominated Power Plant must be covered by a valid Transmission Service Agreement and Fuel Supply Plan or Agreement, if applicable, which shall be duly certified by the National Grid Corporation of the Philippines (NGCP) or the corporate secretary, in which case it must be under oath and notarized; and</p> <p>(e) The Nominated Power Plant must be covered by a Fuel Supply Agreement (covering the Past Contract Period) and a Fuel Supply Procurement Plan, and if available, a Fuel Supply Agreement (for the Prospective Contract Period), which shall be duly certified by corporate secretary, in which case it must be under oath and notarized;</p> <p>(f) (e) If applicable, the Certificate of Registration issued by the Board of Investments (BOI), which shall be certified as a true copy by (i) the BOI; or (ii) the corporate secretary, in which case it must be under oath and notarized. [...]</p>
5	Section 3.3.2	<p>3.3.2 FORFEITURE OF BID SECURITY</p> <p>The Bid Security shall be subject to forfeiture in its entirety in favor of Meralco upon the occurrence of any of the following events: [...] (e) an Interested Bidder submits more than one Bid and such submission is attended by misrepresentation or fraud; [...]</p>
6	Section 3.3.3	<p>3.3.3 RETURN/CANCELLATION OF BID SECURITY</p> <p>(a) Interested Bidders who (i) are disqualified due to Sections 2.10.4 (a) to (b) (d); xxx [...]</p>

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT PERIOD FROM 26 JANUARY 2017 TO 25 JANUARY 2037

INSTRUCTIONS TO PROSPECTIVE BIDDERS / BIDDING DOCUMENTS-RELATED QUERIES/COMMENTS					
		TOPIC / BID DOCUMENT REFERENCE	ARTICLE / SECTION / PAGE NO.	DISCUSSION OF COMMENTS / QUESTIONS FOR CLARIFICATION RECOMMENDATIONS / PROPOSED WORDING	TPBAC RESPONSE
1.		Disallowances and Refund	ITB/TOR p.4	<p>"If the rate finally approved by the ERC for the PEDC PSA is lower than the Proposed Price of Winning PS ("FA Rate"), then the variance between the: (a) FA Rate and Proposed Price of the Winning PS is for account of PEDC; and (b) PA Rate and Proposed Price of the Winning PS is for account of the Winning PS."</p> <p>Query: Please elaborate on this further. What will be the mechanics for the disallowances and refund for Meralco, PEDC, and Winning PS.</p>	Details on this matter are discussed under Section 3.3 of the Instructions to Prospective Bidders (IPB) and an overview of the Financial Evaluation Workbook and refund scenarios will be presented during the Pre-Bid Conference.
2.		Instruction to Prospective Bidders	3.3 (d)	The IPB states that the Financial Evaluation Workbook will be available before the Pre-Bid Conference. May we know when it will be released?	It was released via Bid Bulletin No.1 last 20 October 2021.
3.		Financial Evaluation Workbook	IPB Sec 3.3 (d) pp. 24-25	When will this be provided to the Bidders? May we request that the use of the workbook be explained the Bidders?	It was released via Bid Bulletin No. 1 last 20 October 2021. An overview of the Financial Evaluation Workbook and refund scenarios will be presented during the Pre-Bid Conference.
4.		Component A of Proposed Price for Past Contract Period	IPB Sec 3.3. (d) item 1 p.25	<p>Given the complexity of the requirement for the Past Contract Period, we are humbly requesting the TPBAC to briefly explain again how the Bidders should interpret this specific portion of the IPB. Can the TPBAC kindly explain this as well using the Financial Evaluation Workbook for the Bidders to get more clarity?</p> <p>For Component B, are the Bidders only supposed to input a Refund Amount (not in Php/kWh)?</p> <p>During actual implementation, will the Bidder be able to recover the total refund amount similar to the LCOE methodology explained under this provision?</p>	<p>An overview of the Financial Evaluation Workbook and refund scenarios will be presented during the Pre-Bid Conference.</p> <p>Yes</p> <p>It is assumed that the Bidder will incorporate the recovery of its stated refund amount (Component A and B) in the rates that it will submit for the Prospective Contract Period.</p>
5.		IPB	Bid Price and Bid Security 3.3. (d-1) Page 24-25	<p>Please clarify Section 3.3. (d) item 1</p> <ul style="list-style-type: none"> • What do you mean by the Components A and B? • Are we required to offer an amount for Comp. A and B? • Please provide PEDC price and price structure, and the equivalent kWh offtake for Components A and B. 	<p>It is the amount that the Bidder is willing to refund Meralco customers. Putting a non-zero value in Component A and B means that the Bidder is offering a rate lower than the current PEDC rate, hence a refund will be given to Meralco's customers.</p> <p>It is up to the Bidder what value it will enter as long as it is non-negative.</p> <p>The equivalent kWh offtake as of the cut-off date can be seen in the Final Version of the FEW.</p>

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT PERIOD FROM 26 JANUARY 2017 TO 25 JANUARY 2037

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				<ul style="list-style-type: none"> When can you determine the Cutoff date? 	Target cut-off date is as of Oct 2021 Supply Month
6.		IPB	Bid Price and Bid Security 3.3. (d-1) Page 25	<p>Please elaborate and provide example for this section.</p> <p><i>"For LCOE evaluation purposed of the Required Contract Period, the resulting total refund amount from Components A and B of the Proposed Price for the Past Contract Period shall be integrated in to the Proposed Price for the Prospective Contract Period, by assuming that the Interested Bidder will be recovering said refund amount during the first five (5) years of the Prospective Contract Period. The resulting LCOE of the Required Contract Period will be the sole basis in determining the Best Bid."</i></p>	An overview of the Financial Evaluation Workbook, disallowances and refund scenarios will be presented during the Pre-Bid Conference.
7.		General Query		Should the required submission not be applicable to the Bidder, do we need to provide a letter explaining the non-applicability, or will a mere sheet of paper stating "Not Applicable" suffice?	Since it is the Bidder determining for itself the non-applicability of a particular requirement prescribed under the Bid Documents for this CSP, the Bidder bears the risk of the TPBAC interpreting differently the applicability or non-applicability of the said requirement. As such, it would be best if a write-up/explanation is submitted by the Bidder.
8.		IPB	General Query	We suggest that for those requirements which are Not Applicable to Bidder, put "N/A".	(same answer)
9.		Certification of Documents	IPB Sec. 2.1 (h)	<p>Can one certification encompass all submissions in one envelope? For example, the required certified true copies under the Qualification Documents, can the Corporate Secretary issue only one Certification for all the documents? If so, do we need to include said certification on each portion of the Qualification Documents?</p> <p>Will photocopies suffice for the succeeding documents?</p>	<p>The Certification envisioned in this Sec. 2.1(h) of the IPB is for documents that are voluminous in pages.</p> <p>Yes, the Corporate Secretary can issue only one certification for all the documents, provided these are enumerated in the said certification and the certification is attached/included in each portion of the Qualification Document, in case the original and scanned soft copy files are created separately.</p> <p>Yes, based on Sec. 3.4.1 (c) of the IPB. However, to clarify and to aid the TPBAC's evaluation, the original copy must be attached to where it first appeared. For example, if the original copy of Document X is required in both Envelopes 1 and 3, the TPBAC should expect to see/evaluate the original copy of Document X in Envelope 1 (not the photocopy version) and only the photocopy in Envelope 3.</p>

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT PERIOD FROM 26 JANUARY 2017 TO 25 JANUARY 2037

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10.		Submission of QD, TP, and BID	IPB Sec 3.4.1 (c) p.31	What if the same document is required for different envelopes? Will a photocopy still suffice?	(same answer)
11.		Certification of Absence of Unsatisfactory Performance	IPB Sec 3.1.3 p.22	Clarification: Is the list of counterparty/ies limited to MER and its affiliates engaged in power generation, distribution, and supply? Same goes for the required Notarized Certification?	Yes, only Meralco and/or its Affiliates engaged in power generation, distribution, and supply, especially for the required Notarized Certification. However, while the financial lender/s of the Bidder or any of its Affiliates engaged in power generation of any such power supply or off take agreements need not issue the said Notarized Certification, their identities must be declared or disclosed in ANNEX A of Annex QD-4 (Bid Requirements, item 1.c.i.1.).
12.		List of Counterparties / Financial Lenders	Annex A of Annex QD-4	Can the list of Financial Lenders be limited to that pertaining to the Bidder?	No, it should also include those of its Affiliates engaged in power generation. In any case, the coverage is already limited in that: (i) it should only be in relation to power supply or off take agreements with Meralco and/or its Affiliates engaged in power generation, distribution, and supply; and (ii) a mere list is being required (i.e., the Notarized Certification requirement need not be issued by said identified financial lender/s).
13.		Counterparties Certification	Annex QD-4A	Is this certification limited to MERALCO and its affiliates? Suggest not to include certification from Financial Lenders if this is the initial requirement.	(same answer, see items 11 and 12)
14.		Statement of Financial Capability		Is it necessary to provide the basis of computation/supporting documents other than the AFS for the data to be provided in the Statement of Financial Capability?	If all information can be traceable to the AFS, there is no need to submit the basis for the computation. Otherwise, the TPBAC will need additional supporting document before it considers a line item during validation/evaluation.
15.		Statement of Financial Capability	Annex QD-5	Can the Bidder's Controller certify the document instead of the CFO and Treasurer?	As per IPB, the requirement is CFO or Treasurer. The TPBAC will accept the certification of the equivalent position of the CFO or Treasurer in the absence of such position.
16.		Instruction to Prospective Bidders	3.2 Technical Proposal/24	Suggest below to read: (d) <u>The Nominated Power Plant must be covered by a valid Transmission Service Agreement which shall be duly certified by (i) the National Grid Corporation of the Philippines or (ii) the corporate secretary, in which case it must be under oath and notarized.</u> (e) <u>The Nominated Power Plant must be covered by a Fuel Supply Procurement Plan or Agreement, if applicable, which shall be duly certified by corporate secretary, in which case it must be under oath and notarized;</u> and (f) If applicable, the Certificate of Registration issued by the Board of	The TPBAC notes the clarifications and concerns of several bidders on this matter, and upon re-evaluation of this requirement, the TPBAC wishes to clarify that the requirement of submitting the Nominated Power Plant's Fuel Supply Agreement or Plan is in connection with having a Past Contract Period and Prospective Contract Period requirement in the TOR Table. Thus, the item (d) to (e) of the Technical Proposal (Envelope 2) of the Bid Requirements, and Sec. 3.2 (d) to (e) of the IPB will be revised as follows: "xxx

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT PERIOD FROM 26 JANUARY 2017 TO 25 JANUARY 2037

INSTRUCTIONS TO PROSPECTIVE BIDDERS / BIDDING DOCUMENTS-RELATED QUERIES/COMMENTS				
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			Investment (BOI) which shall be certified as true copy by (i) the BOI or (ii) corporate secretary, in whichcase it must be under oath and notarized.	<p>(d) The Nominated Power Plant must be covered by a valid Transmission Service Agreement and Fuel Supply Plan or Agreement, if applicable, which shall be duly certified by the National Grid Corporation of the Philippines (NGCP) or the corporate secretary, in which case it must be under oath and notarized; and</p> <p>(e) The Nominated Power Plant must be covered by a Fuel Supply Agreement (covering the Past Contract Period) and a Fuel Supply Procurement Plan, and if available, a Fuel Supply Agreement (for the Prospective Contract Period), which shall be duly certified by corporate secretary, in which case it must be under oath and notarized;</p> <p>(f) (e) If applicable, the Certificate of Registration issued by the Board of Investments (BOI), which shall be certified as a true copy by (i) the BOI; or (ii) the corporate secretary, in which case it must be under oath and notarized."</p> <p>A Bid Bulletin to reflect this change and the necessary amendment to the provisions of the Bid Requirements and IPB shall be issued.</p>
17.	Pre-Bid Conference questions		If the existing Fuel Supply Agreement is to expire before the end of the Prospective Contract period, will the bidder be required to submit a Fuel Supply Plan?	Yes, based on the response above.
18.	Instruction to Prospective Bidders	3.2 (d)	Section 3.2 (d) states that submission of the Fuel Supply Plan or Agreement is "if applicable" only. Please clarify whether "if applicable" refers to the Fuel Supply Plan or Fuel Supply Agreement, or both. Is the Bidder required to submit all of its existing Fuel Supply Agreements or will the Fuel Supply Plan suffice? Due to confidentiality clauses in the Fuel Supply Agreements, we are prevented from disclosing the said agreements to third parties.	(see response above) Yes, a redacted version of the Fuel Supply Agreement is acceptable.
19.	TSA and Fuel Supply Plan	IPB Sec 3.2 (d) p.24	Requesting your consideration to allow Bidders to submit a redacted copy of the Transmission Supply Agreement and Fuel Supply Plan/Agreement given its confidential nature.	Yes, a redacted version of the Fuel Supply Agreement is acceptable.

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT PERIOD FROM 26 JANUARY 2017 TO 25 JANUARY 2037

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20.		IPB	Technical Proposal Documents 3.2. (d) Page 24	Will a Notarized Fuel Procurement Plan suffice the Fuel Supply Plan/ Agreement requirement? For the Fuel Supply Agreement requirement, will a redacted copy acceptable?	(see response above) Yes, a redacted version of the Fuel Supply Agreement is acceptable.
21.		Pre-Bid Conference questions		Can the Bidders submit a redacted version of the TSA as well?	Yes, a redacted version of the Transmission Supply Agreement is acceptable.
22.		Instructions onto Prospective Bidders	3.2 (d)	Is there a template for the Fuel Supply Plan to be submitted?	None, but it should be the standard acceptable industry standard or practice of preparing a Fuel Supply Procurement Plan in operating a power plant.
23.		Technical Proposal (Nominated Power Plant)	Annex TP-1 item 1	"Proof that the Bidder or its direct shareholder representing Controlling interest is the developer of, owner of, and Controls, the Nominated Power Plant and has sufficient authority to enter into the offtake agreement with Meralco" Query: What document/s should be submitted in compliance with item 1 of Annex TP-1?	The diagram of corporate structure submitted in Envelope 1 and the required documents for Envelope 2 (COC/PAO, etc.) will be evaluated by the TPBAC as proof of this requirement.
24.		Technical Characteristics of the Plant	Annex TP-1 item 2	Please clarify how we should fill-out the table. Specifically, the portion on Bidder's Submission. For the column on Bidder's Submission after "Past Contract Period", do we just indicate the COC No. and WESM Reg? For the column on Bidder's Submission after "Prospective Contract Period", do we just indicate "YES" or "NO"?	Yes, for the Past Contract Period, just indicate the details of the COC/PAO encompassing January 26, 2017 (as indicated in the Bidder's latest Expression of Interest) and attached as annex to this form Annex TP-1 (and/or Envelope 2). Yes, the understanding is correct for the Prospective Contract Period.

COMPETITIVE SELECTION PROCESS (CSP) FOR CONTRACT PERIOD FROM 26 JANUARY 2017 TO 25 JANUARY 2037

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			Plant Type	Past Contract Period	Bidder's Submission	Prospective Contract Period	Bidder's Submission
				Single brownfield power plant in commercial operations since 25 January 2017.	[Attach the ERC COC and WESM registration]	Baseload (firm and dispatchable for all trading intervals of the Required Contract Period)	[Yes or No]
25.	IPB	Technical Proposal Documents 3.2. (a) Page 23	<p><i>Technical characteristics of the Plant showing evidence of compliance to the technical requirements stated in the Invitation to Bid's Terms of Reference Table ("TOR Table")</i></p> <p>What document will suffice this requirement?</p>			The submission of a correctly filled out ANNEX TP-1 table (see immediately preceding response) and all the required attached documents of ANNEX TP-1 will be evaluated by the TPBAC as proof of this requirement (along with the Bidder's other Document Submissions already opened by the TPBAC).	
26.	Bid Security	Annex BID-2	<p>Suggest to include instances when Meralco can draw from the SBLC. We understand that it is already in the IPB, but there is not mention of this in the Bid Security template.</p> <p>Can the bank revise and comment on the template as provided in Annex BID-2?</p>			<p>Instances would be those allowing for forfeiture of the Bid Security under Sec. 3.3.2. of the IPB and relevant provisions of the PSA.</p> <p>The TPBAC discourages the revision of the Bid Security template (ANNEX BID-2). Should the Bidder or its bank insist, any proposed changes should be submitted to the TPBAC for prior approval.</p>	
27.	Bid Price and Bid Security	IPB Sec 3.3 (d) item 2.a.ii p.26	Is the basis of the annual escalation the Total Contract Price for the previous year?			No, the annual escalation will be applied on the declared escalating component capped at 60% of the Total Contract Price. The PSA Appendices and Financial Evaluation Workbook will show the exact calculations of the annual escalation of prices.	
28.	Bid Price and Bid Security	IPB Sec 3.3 (d) pp. 24-26	Given that the requirement is to submit a USB containing the Financial Evaluation Form, does this only apply to the hard copy submission? Or do we upload it as well into the cloud-based folder for the soft copy submission?			<p>For the Financial Evaluation Workbook, the filled-out soft copy file [used to print the hard copies] should be submitted in the cloud-based folder and in the USBs (included in the set of original copies of Envelope 3, inside an enclosed box).</p> <p>So to clarify, the soft copies are to be submitted twice. One is during the uploading for the cloud-based folder uploading and the other is for the USB storage device attachment to the original copies box. The hard copy printouts, to be signed by the bidder's authorized representative, is only for the original copy box.</p>	
29.	Bid Price and Bid Security	IPB Sec 3.3 (e) p.27	Is there a required separate submission for this item? Or is this already included inside the Financial Evaluation Workbook submission under Sec 3.3 (d)?			Sec. 3.3 (e) is only a clarificatory provision. There is no required separate submission. This can also be seen in the Financial Evaluation Workbook.	

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30.		Bid Price and Bid Security	IPB Sec 3.3 (f) p.27	Do we have to submit soft copies / scanned copies of the print outs given that it is already inside the Financial Evaluation Form?	Yes, the print outs are the required originals of the Financial Evaluation Workbook, as this will be signed by the Interested Bidder's authorized representative.
31.		Submission of QD, TP, and BID	IPB Sec 3.4 p.30	Should the EOI, CU, and Data Privacy Form be inside either of Envelopes 1, 2, or 3? Or should it be in a separate envelope inside the box?	It can be in a separate envelope, but the TPBAC suggests that it be included in Envelope 1.
32.		Submission of QD, TP, and BID	IPB Sec 3.4.1 (e) p.31	Should the USBs contain all of the required documentary submissions? If so, should it include the soft copies of the latest EOI, CU, and Data Privacy Form as well? In which folder/envelope should we include it in?	Yes, the USBs are meant as a back-up for the TPBAC, TWG, and Secretariat should there be technical issues in downloading the cloud-based folders during the Opening and Evaluation of Document Submissions. Yes, the TPBAC suggests that the soft copies of the EOI, CU, and Data Privacy Form be included in the set for Envelope 1.
33.		Format of Submission	IPB Sec 3.4.2 pp. 31-32	Who can sign each page of the QD, TP, and BID Documents? Can any of the Authorized Reps do so?	Yes, provided they are authorized to do so under Annex QD-1A.
34.		Failed Bidding	IPB Sec 7 (d) p.40	So, if only one Bidder meets the Reserve Price or complies with the Bid requirements, the CSP is not declared a failed bidding?	Sec. 7 (d) of the IPB contemplates a scenario where the Opening of Bid Prices (Envelope 3) stage (i.e. at least two (2) Qualified Bidders already "passed" the evaluation of Qualification Documents [Envelope 1] or Technical Proposal [Envelope 2]) has been reached. At this point, there will be no failed bidding even if only one Bidder passes the evaluation of the Reserve Price or Envelope 3 bid requirements, as by this stage there was at least 2 Qualified Bidders' whose Envelopes 3 were opened.
35.		IPB	Qualification Documents 3.1.3. page 22	We suggest to limit this to regulated contracts or DUs only, due to the confidentiality agreement with respective customers.	Sec. 3.1.3 of the IPB discussing the requirement of Absence of Unsatisfactory Performance Record and Outstanding Dispute is required for proper due diligence evaluation by the TPBAC. In any case, the coverage is already limited to the Bidder and any of its Affiliates engaged in power generation <i>vis-a-vis</i> any power supply or off take agreements with Meralco and/or its Affiliates engaged in power generation, distribution, and supply.
36.		IPB	Technical Proposal Documents 3.2. Page 23	Please clarify the specific date of the COC and direct member WESM registration to qualify as a Nominated Power Plant.	It should be the Nominated Power Plant's existing COC/PAO and WESM registration and market participation agreement that shows that the Plant has been in commercial operation since January 25, 2017 (or earlier) up to the present.

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37.		IPB	ANNEX QD-1 item 4 Page 50	<p>Item 4. <i>(Name of Bidder) acknowledges the right of the TPBAC to reject its Document Submissions without assigning any reason and to cancel the Bidding at any time, without incurring any liability to the (Name of Bidder).</i></p> <p>For transparency purposes and given that this is a public bid, we feel that it is reasonable to provide a justifiable reason in case of reject of the submitted docs.</p>	This manifestation is duly noted and will be considered by the TPBAC.
38.		IPB	ANNEX TP-1 item 2 Page 68	<p>Considering the delay of the issuance of the ERC COC/PAO, will the application of the renewal of the COC/PAO suffice the requirement?</p>	<p>Yes, provided that: (i) the previous COCs/PAOs certifies commerciality of the plant since January 25, 2017 (or earlier) up to the present and (ii) the Bidder cannot use the unsuccessful application for the renewal of the COC/PAO as a reason for non-performance of its obligations under the PSA.</p> <p>Furthermore, if the Bidder is deemed the Winning Power Supplier, should the ERC not accept the application for approval of the PSA, holds in abeyance, delays or disapproves the said application for the reason that the Power Supplier's COC/PAO is a mere application for renewal, the said Power Supplier's Bid Security will be forfeited pursuant to Section 12.1.2 of the PSA which states that: "In the event that a delay in ERC Approval is due to Power Supplier's failure to comply with any order or directive of the ERC or provide any document required by the ERC, Meralco reserves the right to forfeit ten percent (10%) of the Bid Security amount for each month of such delay."</p>
39.		Instruction to Prospective Bidders and Annex TP-1	General	<p>For documents that are allowed to be certified by the corporate secretary with no indication that it can also be certified by the assistant corporate secretary, will the TPBAC allow the documents to instead be certified by the Bidder's assistant corporate secretary? E.g. certified true copy of COC/PAO, Market Participation Agreement, Transmission Service Agreement, Fuel Supply Plan/Agreement, BOI Registration under Section 3.2</p> <p>If allowed, may we amend Annex TP-1 to reflect "assistant corporate secretary" instead of "corporate secretary"?</p>	Yes, for this purpose, reference to the Corporate Secretary can be issued by the Assistant Corporate Secretary, especially if authorized under the company's by-laws to issue such certifications.
40.		Instruction to Prospective Bidders	2.10.4, 3.3.2, and 3.3.3	<p>Under Section 3.3.3, Bidders who are disqualified due to Section 2.10.4 (a) to (d) shall have their Bid Security returned or cancelled. Section 2.10.4 (a) to (d) states that:</p>	This is a typographical error. In cases of Conflict of Interest, the Bid Security will be forfeited in its entirety pursuant to Sec. 3.3.2. Thus, Section 3.3.3 of the IPB will be amended to read: "xxx (i) who are disqualified due to Sections 2.10.4. (a) to (b) ; (d) " while Sec. 3.3.2 (e) of the IPB will be amended to read as follows: "an

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				<p>2.10.4 GROUNDS FOR DISQUALIFICATION</p> <p>A Bidder may be disqualified from participating in the Bidding for any of the following reasons:</p> <ul style="list-style-type: none"> (a) the Bidder is an Affiliate of Meralco which has entered into bilateral power supply contracts with Meralco for at least 50% of Meralco's total demand; (b) the Bidder's Proposed Price for the Prospective Period and/or its LCOE for the Required Contract Period exceeds the applicable Reserve Price; (c) submission of more than one Bid for each Bidder; (d) Bidder has a Conflict of Interest; <p>However, Section 3.3.2 states that Bidders who are disqualified based on the grounds in that section shall have their Bid Security forfeited. The grounds of submission of more than one Bid and Conflict of Interest appear in both Section 2.10.4 (a) to (d) and Section 3.3.2. Thus, there seems to be conflicting rules whether or not the Bid Security shall be forfeited for Bidders who are guilty of submission of more than one Bid or of having a Conflict of Interest. Please clarify.</p>	<p>Interested Bidder submits more than one Bid and such submission is attended by misrepresentation or fraud;"</p> <p>A Bid Bulletin to reflect this change and the necessary amendment to the provisions of the IPB shall be issued.</p>
41.		Instruction to Prospective Bidders	3.3 Bid Price and Security,d (1) /25	xxx (B) Proposed Refund, <u>if applicable</u> , for the period xxxx	The TPBAC prefers to retain the original wording. The Bidder can put zero as an input if it wishes not to give a refund.
42.		Instruction to Prospective Bidders	3.3 Bid Price and Security,d (1) /25	<p>Clarification on: xxx For LCOE evaluation purposes... the resulting total refund amount from Components A and B ... will be recovering said refund amount during the first five (5) years of the Prospective Contract Period xxx</p> <ul style="list-style-type: none"> - In the case of Component A where the Bidder can opt to submit a Proposed Price in Php/kWh, will the refund amount for the first five years be calculated also in terms of Php/kWh such that the total refund amount recoverable may vary from month to month depending on the dispatch of 70 MW by Meralco? <p>Will this be the same case when applying such refund in the LCOE workbook?</p>	<p>No. Regardless of the inputted value in Component A, the refund that will be considered in the LCOE calculation is the total refund amount. If the Bidder opts to put a Php/kWh rate, then it will be converted into an amount by getting the difference of that rate and the Effective PEDC PSA Rate then multiplying it to the actual dispatch of PEDC as of the cut-off date.</p> <p>No</p>

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43.		Instruction to Prospective Bidders	3.3 Bid Price and Security, d (2) (a) (i) /26	<p>Clarification on: xxx Proposed Minimum Energy Off-take xxx</p> <ul style="list-style-type: none"> - Can the Bidder offer a different MEOT for each of the years in the Prospective Contract Period? - Can the Bidder offer a different discount on Proposed Price applicable to excess energy above MEOT for each of the years in the Prospective Contract Period? 	<p>No.</p> <p>No.</p>
44.		Instruction to Prospective Bidders	3.3 Bid Price and Security, d (2) (a) (ii) /26	<p>Clarification on: xxx Only up to sixty percent (60%) xxx</p> <ul style="list-style-type: none"> - Can the Bidder offer a different percentage to be escalated (max of 60%) for each of the years in the Prospective Contract Period? - Can the Bidder offer a different escalation rate (max of 3.5%) for each of the years in the Prospective Contract Period? 	<p>No.</p> <p>Yes.</p>
45.		Instruction to Prospective Bidders	3.3 Bid Price and Security, d (2) (c) /26	<p>Clarification on: xxx Line Rental cap xxx</p> <ul style="list-style-type: none"> - Can the Bidder offer a different Line Rental cap for each of the years in the Prospective Contract Period? 	<p>Yes.</p>
46.		Instruction to Prospective Bidders	3.3 Bid Price and Security, d.2.d/26	<p>Please consider below as additional provision:</p> <p>For clarity, the Past Contract Period shall be set to zero in accordance with ERC Case No.2006-049RC where cost of procuring AS under the ASPP shall be recovered 100% from the load customers but only until such time that such AS is already traded in the WESM.</p>	<p>The TPBAC prefers to retain the original language. There is no need for the additional provision. The PSA provisions already indicates that the refund amount for the Past Contract Period excludes any ancillary service cost incurred due to PEDC deliveries.</p>
47.		Instruction to Prospective Bidders	3.3 Bid Price and Security d.4/27	<p>What if the Interested Bidder accidentally adopts the initial version in its Bid Price, how will this be treated by the TPBAC?</p>	<p>This will be the lookout and risk of the Bidder. The TPBAC will accept it as final version the Bid Price submitted inside the Bidder's Envelope 3.</p> <p>However, as a reminder to the bidders, any proof of:</p> <ol style="list-style-type: none"> i. deliberate submission of the initial version because, for example, it will result to a favorable result or lower LCOE computation as compared to the final version of the Financial Evaluation Workbook: ii. tampering by the bidders of the formula and other inputs in final version of the Financial Evaluation Workbook, as submitted in their Bid Price (Envelope 3), can be used as a citation against the bidder for misrepresentation and a ground for disqualification in this bidding.

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48.		Instruction to Prospective Bidders	3.3 Bid Price and Security e/27	On the commencement of a Prospective Contract Period of the Winning Power Supplier, what if the 75 th day falls before the regular Billing Period, will TPBAC consider that the commencement should be immediately on the next Billing Period?	The definition of Billing Period in the PSA indicates onset upon Operations Effective Date, which may occur on a date other than the 26 th of the month.
49.		Instruction to Prospective Bidders	3.3.3 Return/ Cancellation of Bid Security, c/29	Meralco should inform the Bidder that has not been disqualified on the extension of the validity of Bid Security. The timeline provided may be ideal and delays may happen without the knowledge of the Bidder. Suggest for Meralco to advise the Bidder that has not been disqualified to extend the Bid Security validity accordingly.	Sec. 3.3.3 (c) refers to the Qualified Bidders whose Bid Prices (Envelope 3) passed the Reserve Price comparison and evaluation, but unfortunately did not submit the lowest LCOE. These are Qualified Bidders being referred to under Sec. 3.3.3 (c) but this suggestion of informing the said bidders is duly noted when the TPBAC notifies Qualified Bidders, especially when it is being evaluated as a possible Next Best Bid and there is a need to extend the validity of its Bid Security.
50.		Instruction to Prospective Bidders	3.4.2 Format of Submission of Qualification Documents (b)/32	Please clarify Name to be indicated in the sealed envelope shall be the Bidder while the email address shall be the authorized representative as indicated in the EOI. As well, please confirm that the email addresses of the authorized representatives can all be indicated in the envelope.	This understanding is correct.
51.		Instruction to Prospective Bidders	3.4.4 Format of Submission of Bid Price (b)/33	Please clarify Name to be indicated in the sealed envelope shall be the Bidder while the email address shall be the authorized representative as indicated in the EOI. As well, please confirm that the email addresses of the authorized representatives can all be indicated in the envelope.	This understanding is correct.
52.		Instruction to Prospective Bidders	3.4.5 Placement in a Sealed Box or Container of the Original Copy/33	Please clarify Name to be indicated in the sealed envelope shall be the Bidder while the email address shall be the authorized representative as indicated in the EOI. As well, please confirm that the email addresses of the authorized representatives can all be indicated in the envelope.	This understanding is correct.
53.		Pre-Bid Conference questions		Why is there a need to divide the NPV of the value by the NPV of the energy when the discount rate used for both is the same? The result of the undiscounted rate per kWh is the same as the one discounted.	The formula of dividing the NPV of Amount over the NPV of Energy is a consequence of the derivation of the mathematical formula for

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			<p>For example, in the LCOE Computation sheet, if you divide row 14 by the sum of row 4 and 5, which is the set of rows for the undiscounted value, it's going to be the same for dividing row 29 with the sum of row 19 and 20, which is the set of rows for the discounted amount. This means that the discounting has no impact in the LCOE.</p> <p>The discounting has technically no impact because you are dividing the amount and the energy by the same discount rate. It's doctrinal mathematics. You're dividing both the NPV of the amount by (1+d) raised to (i-1) and the energy by (1+d) raised to (i-1). In mathematical computation, both of those figures just cancel out.</p>	<p>computing the LCOE. May we also invite you to look closely at the formula provided in the slide:</p> <div style="border: 1px solid black; padding: 10px; margin: 10px 0;"> <p style="text-align: center;">DERIVING THE LCOE FORMULA</p> <p>Now there exist an annual "contract price" X, such that:</p> $\sum_{i=1}^n \frac{CP_i E_i}{(1+d)^{i-1}} = \sum_{i=1}^n \frac{XE_i}{(1+d)^{i-1}}$ <p style="text-align: center;">Where X = same "contract price" (Php/kWh) for each Year</p> <p>Solving for X:</p> <div style="border: 1px solid green; padding: 5px; display: inline-block;"> $X = \frac{\sum_{i=1}^n \frac{CP_i E_i}{(1+d)^{i-1}}}{\sum_{i=1}^n \frac{E_i}{(1+d)^{i-1}}} = \frac{\text{NPV of Amount}}{\text{NPV of Energy}} = \text{LCOE}$ </div> </div> <p>The factor (1+d) raised to (i-1) in the numerator and denominator are part of the summation of the amount and energy, respectively, hence they cannot be cancelled out. The factor (1+d) raised to (i-1) will differ for each component of the summation adding to the argument that it cannot be factored out of the summation equation.</p>
54.	Pre-Bid Conference questions		<p>The total refund amount was incorporated in the LCOE by assuming that the winning bidder will recover said refund amount during the first five years of the prospective contract period; however, the design of the bid (that is, a base price and escalated annually) is inconsistent with this, and that the refund amount, had the winning bidder incorporated this in its proposed price, would be recovered for the entire term of the contract. Following this, in the computation of the LCOE, shouldn't the refund amount be then spread throughout the entire 15-year term of the contract rather than for the first five years only?</p>	<p>As relayed to the TPBAC by the DU, the 5-year period to cover the refund will be retained. The refund is expected for the first five years to allow the customers to enjoy this benefit early on, in keeping with ERC's policy of effecting refund over a period not longer than the period payments are made. In this case, the payments are made by customers over a five-year period from 2017 to 2022. In any case, this refund mechanism is one of the matters that the ERC is expected to rule on.</p>
55.	Pre-Bid Conference questions		<p>What is the rationale for the 100% Load Factor in the LCOE evaluation for the prospective contract period? What is MERALCO's expected Load Factor for the term of the contract? Shouldn't the</p>	<p>The rationale for the 100% load factor in the LCOE evaluation is that this is a baseload contract for the Prospective Contract Period. The DU expects to dispatch the contract at the Winning Power</p>

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				<p>Load Factor used in the LCOE evaluation be the same to MERALCO's expected Load Factor for the entire term of the contract?</p> <p>Considering that this is supposed to be a baseload contract, shouldn't the MEOT reflect 100% LF?</p>	<p>Supplier's nominated annual MEOT PCF up to 100% PCF. To give the DU greater flexibility to manage its sourcing strategy and maintain its mandate to provide least cost supply to its customers, the DU decided to evaluate the offers at the maximum possible PCF that this contract can be dispatched.</p> <p>Consistent with the previous CSPs that MERALCO conducted, the maximum allowed annual MEOT for a baseload is at 75%. A higher annual MEOT PCF (i.e. 100% PCF) will limit the flexibility of the DU to manage its sourcing strategy since the DU will now be constrained to dispatch the contract at full capacity during all hours even if there are other cheaper sources. The maximum allowed annual MEOT PCF of 75% for this CSP is consistent with the DU's PSPP wherein the contracted energy or the energy that the DU is committed to consume for Baseload Contracts is at 75% PCF with respect to the contract capacity. Take note that the maximum allowed annual MEOT PCF of 75% is a cap for purposes of this CSP. The bidder can actually lower its nominated annual MEOT PCF depending on its bidding strategy.</p>
56.		Pre-Bid Conference questions		<p>Are you saying the bidder may offer below the contract capacity at any time? I mean on the implementation?</p> <p>During the implementation, as you said, the bidder may offer even below 75% on the MEOT. So, meaning that the winning power supplier during implementation may offer below contract capacity at any time.</p>	<p>For this CSP, it is stated in the TOR that the offered capacity is exactly 70 MW. The bidder must make available its entire contract capacity for all trading intervals of the Prospective Contract Period. For clarity, and as stated in the Operating Procedures of the PSA, the Power Supplier must offer its full contract capacity for all trading intervals. It is the DU that has the prerogative to take that full capacity or only a part of it, depending on its sourcing strategy.</p>
57.		Pre-Bid Conference questions		<p>In the computation of the reserve price, did MERALCO consider the effect of the recent high in the fuel prices (i.e. Newcastle Index)?</p>	<p>As relayed to the TPBAC by the DU, it is based on the DU's evaluation of prevailing market prices and recent-ERC approved prices.</p>
58.		ANNEX BID-2		<p>Bidder has provided Annex BID-2 to its preferred bank for comments. The Bidder / bank has asked to make certain formal changes to the form of the bid security through mark-ups or comment boxes.</p> <p>Most significant changes are the following:</p> <ol style="list-style-type: none"> 1. In clause 2 of the form, the bank proposed to insert the requirement for drawing of the SBLC is the: (i) original copy of the 	<p>As relayed to the TPBAC by the DU, it is <u>not amenable</u> to the proposed modifications. Specifically:</p> <ol style="list-style-type: none"> 1. and 2.

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			<p>SBLC and amendments, if any; and (ii) notarized demand for payment.</p> <p>2. Drawing documents allowing the option of: "or sent to the Issuer to the following contact information:" Bidder/bank comments that "This needs to be deleted. Drawing documents must be submitted physically. E-submission not allowed."</p> <p>3. There appears to be a suggestion of removing the signature portion of the form by the bank's authorized representative and/or removal of the notarial acknowledgment.</p>	<p>Not amenable. The requested changes will impose stringent requirements before the DU can draw from the SBLC considering the varying community quarantines that are implemented, which can easily hinder physical submission of the demand letter.</p> <p>3. <i>The removal of the signature portion of the authorized representative or notarial acknowledgment.</i> – Not amenable. Submission of SBLC without the signature of the bank's authorized representative and/or unnotarized SBLC may not be binding or result to an unenforceable document, affecting the TPBAC or DU's ability to draw on the Bid Security.</p>

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59.		Recitals	PSA Recitals (E) p.1	Requesting that this provision be amended for Bidders who are IPPAs. And include any other provisions in the PSA required by PSALM under the IPPAAs.	The Recitals portion will be amended to reflect the details of the Winning Power Supplier.
60.		Change in Circumstance	PSA Sec. 1.1 Change in Circumstance (a); p.3	<p>"any Law coming into effect after the signing of this Agreement, including the adoption or enactment, or any change or repeal with respect to the imposition of taxes, duties, levies, fees, charges and similar impositions, and the right to remit or convert currencies, but in all cases excluding any Legal Requirement or the application or interpretation thereof in existence at such date but which by its explicit terms became effective only after the date of this Agreement"</p> <p>Query: Are there such Legal Requirements? Is this exception subject to the Severability provision?</p>	Section 1.1, definition of Change in Circumstances, must be read in conjunction with the other Change in Circumstances provision (Article 11). In general, it covers instances when such Change in Circumstances causes serious damage to, or materially and adversely affects the financial condition of, any of the Parties, for which reason it will be materially more burdensome to continue with obligations under the PSA. The provisions on Change in Circumstances do not contemplate instances wherein the effect is to render any provision of the PSA invalid, illegal or unenforceable, which is covered by Section 18.5.
61.		Term of Agreement (Extension)	PSA Sec. 2.2.3 p.12	<p>"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 Meralco, by giving prior written notice to Power Supplier at least one hundred eighty (180) Days prior to the end of the Term"</p> <p>Proposal: Extension should not be solely Meralco's option. Extension should be executed subject to mutual agreement of both Parties.</p>	As relayed to the TPBAC by Meralco, the DU will retain language of this provision.
62.		WESM Declaration	PSA Sec 4.5.1 p.14	<p>"...Power Supplier shall pay Meralco an administrative fee of Fifty Thousand Pesos (Php 50,000) for each Trading Interval of erroneous BCQ declaration that is due to Power Supplier's fault."</p> <p>Recommendation: Propose to remove administrative fees of Php50,000.00 per interval. Have Supplier pay imbalances only. This will be heavy on the Supplier especially since the market already shifted to the 5-min market.</p>	This is a standard provision in ERC-approved PSAs of Meralco. The imposition of the administrative fee serves to deter erroneous BCQ declarations by Power Supplier. It is Power Supplier's lookout to make use of the multiple opportunities to correct BCQ to make sure that no erroneous declaration will result.
63.		Outages	PSA Sec 7.2 p.15	<p>"...Failure of Power Supplier to provide it Major Maintenance Outage and Scheduled Outage shall preclude Power Supplier from invoking Article 13."</p> <p>Query:</p> <ol style="list-style-type: none"> Why is Supplier required to provide this information to Meralco when the Supplier has no outage allowance anyway? Meralco should be indifferent. Why is this requirement linked to the right to invoke FM (Article 13)? Submitting reports on Major Maintenance and 	<ol style="list-style-type: none"> This is for planning and monitoring purposes of the DU. In addition, for determination of propriety of Power Supplier's FM claim, Major Maintenance Outage and Scheduled Outage are to be distinguished from Forced Outage. The intention is to determine if Power Supplier may have contributed to the lack of availability of power supply. For example, in case of a red alert where there is no supply available in the market and Power Supplier's Plant is on outage, the cause of outage may be examined - if scheduled as approved by the System Operator (SO), then

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				Scheduled Outages has no link to the right of any Party in this PSA to invoke Force Majeure.	Power Supplier may be allowed to invoke FM; but if forced or went beyond the schedule approved by SO, Power Supplier cannot invoke FM.
64.		Reduction in Contract Capacity and Associated Energy	PSA Sec 8.1 p.15	How will the reduction be determined for this PSA? We suggest that the reduction be prorated amongst Meralco's Suppliers.	The DU shall abide by the existing rules at the time this reduction is implemented, guided by the ERC, and most importantly, the DU's mandate to supply electricity in the least-cost manner.
65.		ERC Approval	PSA Sec 12.2.2 (i) p.22	<p>"...If the Parties are unable to agree on the required amendment within thirty (30) Days from receipt of the ERC Approval resolving the motion for reconsideration, or if the motion for reconsideration is not resolved by the ERC within one hundred twenty (120) days after its filing, or the amendment is disapproved by the ERC, or approved by the ERC but still contains any material term or condition that is not acceptable to either Party, acting reasonably, then either Party may terminate this Agreement and the Bid Security shall be returned to Power Supplier "</p> <p>Proposal: Only the adversely affected Party should have the right to terminate the Agreement.</p>	Quoted portion of Section 12.2.2 (i) contemplates a situation wherein Parties are unable to agree on the required amendment. In such case, both Parties may be adversely affected; thus, remedy of termination is made available to either Party.
66.		ERC Approval	PSA Sec 12.2.2 (ii) p.23	<p>"If Power Supplier does not file a motion for reconsideration with the ERC and/or notifies Meralco that it intends to terminate this Agreement, Meralco shall have the right to forfeit the Bid Security to the extent of twenty-five percent (25%) thereof."</p> <p>Proposal: Propose to revise the right of Meralco to forfeit the Bid Security in the event that Supplier fails to comply with any order or directive of the ERC. The Supplier will be forced to comply even if there are valid grounds to oppose the motion for reconsideration.</p>	Bidder's mention of a motion for reconsideration vis-a-vis failure to comply with an ERC order or directive is covered by (i), not (ii). As relayed to the TPBAC by Meralco, the DU will retain language of this provision. It should be noted that forfeiture of Bid Security is not anchored on the filing of the motion for reconsideration per se, but on failure of Power Supplier to (a) comply with any order or directive by ERC, or (b) provide any document required by ERC; and such failure results in its obligations under the PSA not being performed.
67.		Events of Force Majeure	PSA Sec 13.1 (b) item iv p.24	<p>"no obligation of either Party, which arose before the occurrence of the event that caused the suspension of performance of obligations hereunder, shall be excused as a result of an Event of Force Majeure (for the avoidance of doubt, day-ahead nominations by Meralco pursuant to Section 4.1(b) shall not be considered a pre-existing obligation for this purpose)"</p> <p>Query: Please enumerate obligations that are referred to in this provision.</p>	Please note that this is a standard provision in Meralco's PSAs. This pertains to all obligations of the Parties under the PSA that arose prior to occurrence of the Event of FM.

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68.		Instances of Force Majeure	PSA Sec 13.2 p.25	<p>"For clarity, Power Supplier shall not be allowed to claim Force Majeure under Article 13 in case there is supply available from the WESM or any other source."</p> <p>Proposal: Since Power Supplier is required to nominate a Plant in this PSA, this provision should be removed. This removes the of the Supplier to claim Force Majeure even during FM events.</p>	Since the definition of Contract Capacity and Section 4.1 (a) provide that the Contract Capacity can be sourced by Power Supplier from the Plant, the WESM or any other source , it is only when there is no supply available from WESM or any other source that Power Supplier may claim FM. Hence, the last paragraph of Section 13.2.
69.		Meralco's Events of Default	PSA Sec 14.2 p.29	<p>"For the avoidance of doubt, it is understood and agreed that, subject to Meralco exerting best efforts to procure the extension or renewal of its Franchise, the expiration and/or non-renewal of the Franchise shall not be considered a Meralco Event of Default."</p> <p>Recommendation: Propose to include a provision stating that in case of non-renewal, the obligations under this PSA shall be transferred to MERALCO's successor. And in case MERALCO renews a portion of its franchise, MERALCO and Power Supplier shall continue the PSA but amend the CC and Associated Energy to reflect the prorated reduction.</p>	Considering that the terms of the subsequent franchise are beyond Meralco's control, Meralco cannot commit to its successor (if any) automatically assuming the rights and obligations under the PSA or to continue the PSA with a reduced Contract Capacity.
70.		Agreed Damages	PSA Sec 14.3 p.29	<p>"...The remedies in this Section 14.3 are exclusive remedies in cases of termination of this Agreement."</p> <p>Query: If a Party exercises this provision upon termination, no other remedy is available to that Party?</p>	Agreed Damages in Section 14.3 are exclusive remedies in case of termination by reason of Event of Default.
71.		Other Rights and Remedies	PSA Sec 14.6.1 p.31	<p>"Upon the breach by either Party of any representations, warranties, covenants or obligations hereunder, the Party damaged by any such breach may, in its sole discretion, in addition to exercising any other remedies provided for hereunder, proceed in accordance with Article 16 to protect and enforce its rights, to recover any damages to which it may be entitled (including all costs and expenses reasonably incurred in the exercise of its remedy, but subject to the limitations in Section 14.3.) or to seek specific performance by the other Party of such other Party's obligations under this Agreement."</p> <p>Query: Please confirm if this provision contemplates a scenario where a Party breaches the PSA but the other Party does not terminate the Agreement?</p>	The contemplation of this provision includes the instance when a Party may not wish to terminate the PSA at the outset and instead refer the matter to Amicable Settlement.
72.		PSA Template	4.2 Contract Price /13	Clarification on: xxx The Contract Price for the first Contract Year is [PhP] per kWh,1subject to [twelve percent (12%)] value-added tax (VAT) and an annual escalation as computed and shown in Schedule 1 of Appendix C; xxx	To ensure that the DU's customers enjoy the full benefit of any representation that a Bidder's Proposed Prices is subject to a VAT rate that is less than 12%, (1) said VAT rate declared by

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				<ul style="list-style-type: none"> - How will VAT adjust if Bidder indicated a VAT percentage that is less than 12% and which was consequently considered in the determination of its LCOE? <p>Why is there an annual escalation applied on the first Contract Year when IPB (3.3) (d) (2) indicated that escalation will only be applied on the second contract year</p>	<p>the Bidder upon submission of its Bid is binding upon it for the entire Term of the PSA; and (2) any costs arising from VAT above such rate, including any future change in VAT rate under law, shall be for account of such Power Supplier and cannot be passed on to the DU and its customers and/or claimed as Change in Circumstances. The circumstance is similar as when the PS bids specifically under the assumption of zero-rated VAT, in that their representation that their Proposed Price is subject to zero-rate VAT shall bind them and be kept throughout the term of the PSA. Any subsequent change in tax rate or laws allowing PS to have the zero-rated status shall be of no moment and PS shall bear all the subsequent cost relating to such change.</p> <p>On the other hand, just to complete the picture, for the bidders indicating that their Proposed Price is subject to 12% VAT, any change in applicable VAT rate shall be deemed a Change in Circumstances under Article 11 (Section 10.2 of the PSA).</p> <p>Section (3.3) (d) (2) of the IPB merely provides an express language as to when annual escalation shall be imposed. For Section 4.2 of the PSA, reference to the annual escalation "as computed and shown in Schedule 1 of Appendix C" is made. Notably it is clearly shown in Table 2 of Schedule 1 of Appendix C that there is no escalation for Contract Year 1.</p>
73.		PSA Template	7. Outages 7.2 /15	<p>Clarification on: xxx Failure of Power Supplier to provide its Major Maintenance Outage and Scheduled Outage shall preclude Power Supplier from invoking Article 13. xxx</p> <ul style="list-style-type: none"> - May we know why is Power Supplier precluded from invoking Article 13 (Force Majeure) as a result of non-declaration of Major Maintenance Outage and Schedule Outage? 	See answer to item 56.

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				Does failure to declare MMO and/or SO for a particular contract year preclude PSfrom invoking FM for that relevant contract year only, or is it for the duration of the entire Term?	Failure of Power Supplier to submit its MMO and/or SO for a particular contract year will preclude it from invoking FM for that relevant contract year only.
74.		PSA Template	11. Charges Due to Change in Circumstances 11.3 /20	Clarification on: xxx Power Supplier's payment of liquidated damages, which shall be in lieu of all other damages to which Meralco may be entitled, in the amount equivalent to the sum of: (a) the product of the Contract Price (at the time of failure to reach a mutually satisfactory resolution or Power Supplier's notification of non-acceptance of the ERC approval, whichever is applicable) and the Associated Energy with respect to the Contract Capacity computed using a 100% plant capacity factor for five (5) years,or the remaining Term, whichever is shorter; and (b) any amount for refund computed in accordance with Section 9.4. xxx - Is it really Meralco's intent to apply a different LD formula from that discussed under 14.2.3 (Agreed Damages)?	Yes. The LD in Section 11.3 is in relation to Fuel CIC, while Section 14.3 is in relation to Events of Default.
75.		PSA Template	Appendix C(B) (2) /47	Clarification on: xxx MEOT Energy Payment xxx - If MEOT is reconciled annually per IPB (3.3) (d) (2) (a), how does the MEOTreconcile with the definition of MEOTM in Appendix C?	A different level of MEOT per month (MEOT _M) will give Meralco the flexibility to manage its generation cost. As stated in the PSA Operating Procedures, the summation of the monthly MEOT _M should be equivalent to the annual MEOT, hence guaranteeing the Power Supplier that its MEOT offtake will be consumed.
76.		PSA Template	Appendix C(B) (2) /47	Clarification on: xxx Excess Energy Payment (EEP) xxx - If MEOT is reconciled annually per IPB (3.3) (d) (2) (a), how will MEOT be computed on a monthly basis such that an EEP may be expected on a monthlybasis too as suggested by the formula?	The concept of MEOT _M as seen in the PSA Appendices will allow Meralco to exercise the EEP on a monthly basis.
77.		PSA Template	Appendix C(B) (2) /47	Clarification on: xxx $\sum BCQM$ xxx - What is being summed here with M as the counter?	Sum of the BCQ for the month
78.		PSA Template	Appendix D (1) /53	Clarification on: xxx MEOT _n means the Minimum Energy Off-Take for the Contract Year n(in kWh), based on the schedule of capacities given in Article 1 of this Agreement. MEOT _n is equal to the summation	

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				<p>of the MEOTM for the Contract Year, calculated as follows: xxx</p> <ul style="list-style-type: none"> - Does Meralco have the flexibility to change effective monthly capacity factors by virtue of submitting a Month-Ahead Hourly Nomination Schedule which is in itself non-binding so long as it complies with the annual MEOT calculated under Appendix D of the PSA? 	Yes, Meralco can submit different MEOT energy per month as long as the year-end total of the monthly MEOT energy is equal to the annual MEOT
79.		PSA Template	Schedule 1 Table 1. Base Rates & Appendix F	<p>Clarification on Refund:</p> <ul style="list-style-type: none"> - Input in Schedule 1 on the refund is an absolute amount in Php while the formula in Appendix F is the product of the proposed refund amount in Php/kWh and actual energy delivered by PEDC in kWh. <p>Please further clarify treatment of Refund Amount for the Transition Period (RATP) and coverage period. There is no equivalent item in Schedule 1 for this amount.</p>	RATP is not included in Schedule 1 because it will not be considered in the LCOE evaluation of all bidders. The RATP will be an additional refund amount that will be based on the Bidders proposed Contract Price for the first Contract Year of the Prospective Period in case the ERC Approval will fall after January 25, 2022. Details of the computation is indicated in Appendix F of the PSA template.
80.		PSA Template	11.3 Charges Due to Change in Circumstance & Schedule 1 Table 2. Annual Contract Price Escalation and Line Rental Cap	<p>Section 11.3 of the draft PSA essentially states that any change in the proportionate allocation of AS charges shall be considered a Change in Circumstance. And in such event, Power Supplier and Meralco shall file an Application for Price Adjustment with the ERC. Meralco shall not be liable for such additional AS charges until ERC approves the Application for Price Adjustment. However, the Bid Requirements (page 7) states that the AS Cost Recovery Cap shall be P0.28/kWh, but the lower between actual AS cost and the AS Cost Recovery Cap will be implemented upon effectivity of the regulations that mandate a proportionate allocation of AS charges among affected generation companies, which is considered a pass-through cost. The language of the Bid Requirements gives the impression that AS charge is automatic as long as within the AS Cost Recovery Cap.</p> <p>Questions:</p> <ul style="list-style-type: none"> - If (after implementation of such regulations) AS Charges is below or equal to the AS Recovery Cap, can Power Supplier adjust the Contract Price automatically, or does 	<p>Upon effectivity of the regulations that mandate a proportionate allocation of AS charges among affected generation companies, which is considered a pass-through cost, the Winning Power Supplier shall charge the lower between actual AS cost and the AS Cost Recovery Cap indicated in its Bid. However, if any subsequent Law introduces a change in the proportionate allocation or pass-through nature of AS charges as considered in this CSP, which results in the imposition of AS charges on Winning Power Supplier, the Winning Power Supplier may claim a Change in Circumstance under Section 11.3. In such case, an Application for Price Adjustment will be filed before the ERC and the corresponding AS charges shall form part of the price that Meralco will charge to its customers only upon ERC's final approval or resolution of the Application for Price Adjustment.</p> <p>The AS Recovery Cap acts a cap for the allowable AS Cost that the Power Supplier can recover from Meralco. If the actual AS Charges is below or equal to the nominated AS Recovery Cap,</p>

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				<p>Power Supplier still have to file an Application for Price Adjustment with ERC?</p> <ul style="list-style-type: none"> - Do we understand it correctly that the P0.28/kWh AS Cost Recovery Cap is only for purposes of computing LCOE? Therefore, during contract implementation, Power Supplier may actually apply for a higher AS cost recovery (in excess of P0.28/kWh) if this is approved by ERC when the Power Supplier files the Application for Price Adjustment pursuant to Section 11.3 of the PSA. 	<p>then Power Supplier can recover the whole cost of the AS Charges. Conceptually, it is like the Line Rental Cap.</p> <p>No, the 0.28 PhP/kWh AS Cost Recovery Cap (assuming the Bidder did not increase its nominated AS Cost Recovery Cap) will be binding to the Winning Power Supplier. If the actual AS Charges are higher than 0.28 PhP/kWh, then the Power Supplier cannot recover anything more than 0.28 PhP/kWh.</p> <p>Considering this valid concern of the bidder, in order to clarify further, <u>item B. (Payment Structure), Appendix C (Calculation of Payment) of the PSA template</u> shall be revised to reflect this:</p> <p>The payment to be made in each relevant Billing Period during the Term shall consist of MEOT Energy Payment (MEP), Excess Energy Payment (EEP), Line Rental Adjustment Payment (LRAP), and Ancillary Service Cost Recovery Payment (ASCRP). Thus, the Monthly Power Bill ("MPB") payment for each Billing Period, in PHP, shall be equal to:</p> <p style="text-align: center;">MPB = (MEP + EEP) - LRAP + ASCRP</p> <p>For the ASCRP, the applicable formula shall be:</p> <p style="text-align: center;">ASCRP = min [ASCR_{actual}, (ASCR_{cap,n} * ΣBCQM)]</p> <p>Wherein: ASCR_{actual} = actual ancillary services charges imposed and billed to the Power Supplier based on the approved implementing rules and guidelines of DOE Circular No. DC2019-012-0018, in PhP, provided that if the Power Supplier's Plant is not fully contracted under this Agreement, the Parties shall agree on the methodology to allocate the actual ancillary services charges relative to the Contract Capacity and/or Associated Energy, as applicable. Power Supplier can</p>

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					<p>not impose or charge this component to Meralco unless Parties have agreed on an allocation methodology.</p> <p>ASCRCAP_n = the Annual Ancillary Service Cost Recovery Cap for Contract Year n, in PhP/kWh, as set forth in Schedule 1 of this Appendix C of the Power Supply Agreement.</p> <p>ΣBCQ_M = total BCQ declared by Power Supplier to Meralco for the relevant Billing Period as determined in Appendix D of the Power Supply Agreement</p>