

BID DOCUMENT	SECTION AND/OR PAGE	COMMENTS / CLARIFICATIONS	RECOMMENDATION	RESPONSE
General	Bidding Entity	<p>May we suggest that substitution of a Bidding Entity by its affiliate or subsidiary be allowed.</p> <p>We currently fielded our Parent Company as the Bidding Entity and would like to use the Nominated Plant itself as the bidding entity.</p>	<p>We suggest the TPBAC impose a deadline (ex:5 days before Bid Submission Deadline) when Bidders can submit a revised Expression of Interest indicating the new Bidding Entity.</p>	<p>Approved, 5 days before Bid Submission Deadline will be set the deadline for the substitution of the bidding entity.</p>
General	Extension of Bid Submission Deadline	<p>Considering restrictions in office gatherings and to provide the Bidders with ample opportunity to complete all documentary submissions, may we suggest that the Bid Submission Deadline be moved to December 2021 or even January 2022?</p> <p>This will also provide TPBAC enough time to address all comments that may be raised by the Bidders, and since the CSP Circular provides 180 days to complete the process.</p>		<p>Not acceptable. Time is of the essence here as AEC also has to allot time for post-qualification, contract negotiations, ERC approval and for the winning bidder to construct the RE Plant (in case it is a new plant) in time for the 26 March 2023 COD.</p>
TOR	10.2b of Technical Qualifications / Page 8	<p>During the 1<sup>st</sup> Pre-Bid, the TPBAC allowed "Administrators" to participate in the bidding.</p> <p>Administrators usually do not own the Nominated Power Plant but have control over the output/electricity produced by the plant.</p> <p>We suggest a refinement in the applicable provision of the TOR.</p>	<p>To ensure the participation of Administrators, we suggest rewording of 10.2b of the TOR to read:</p> <p>In relation to the Nominated Power Plant, Bidder must provide evidence that the Bidder or its direct shareholders is the owner of, <del>and or</del> <b>controls the output of the</b> the Nominated Power Plant and has sufficient authority to enter into the power supply agreement with AEC.</p>	<p>Will look into the appropriate language for this provision and issue a bid bulletin for this</p>
TOR	15. Deadline for Submission	<p>To clarify, the bid submission is ONLY done electronically and there</p>	<p>We suggest that Bidders initially provide the soft copy of the Manager's Check together with</p>	<p>Manager's check must be physically submitted <b><i>on or</i></b></p>

	of Bids / Page 11	is no need to submit the hard copy of the bid submission?  During the 1 <sup>st</sup> Pre-Bid, it was mentioned that the Bid Security (Manager's check) will have to be hand-delivered at AEC's office.	the electronic copy of the Bid, and submit/send the manager's check within 5 days from bid opening deadline.	<b>before</b> the bid submission deadline.
TOR	23. Post Qualification	Under the TOR, post-qualification shall verify, validate and ascertain all statements and documents submitted by the Bidder with the Lowest Calculated Bid. May we clarify what does this process involve (e.g., submission of hard copies, etc.)?		Post-qualification refers to committing to certain timelines, such as when to achieve ECC, NCIP, DAR clearance, financial closing & EPC, COC, so winning bidder can operate on or before 26 March 2023.
TOR	24.4 AEC Rights / Page 15	In the interest of fairness, may we suggest that Bidders be given a reason for the rejection of their bids as well as be informed of the grounds/action taken by the TPBAC.  We suggest deletion of the last phrase in 24.4.	24.4 To annul and declare a failure of the competitive selection process and reject all bids at any time prior to contract award without incurring any liability to the affected bidders <del>or any obligation to inform the bidder/s of the ground of action.</del>	Phrase will be retained in the TOR but this does not preclude AEC from informing the bidders of the results of the evaluation.
TOR	Annex 3 BCQ Nomination / Page 18	May we confirm that the capacity per hour indicated in the table will be the minimum nomination per hour from AEC for all days of the year? In which case, a solar plant that generates a lower capacity than the guaranteed capacity in Annex 3 for a particular day will have to supply the shortfall from other RE plants in its portfolio and also guarantee that this shortfall will be met with Renewable Energy Certificates (RECs).  Please also confirm our understanding that the maximum capacity that AEC can nominate in any given hour is 13,000 kW x 107%.		Capacity indicated in Annex 3 table is the minimum off-take for all days of the year.  Any shortfall may be provided with Replacement Power from a portfolio that is also RPS-eligible but should be from the same node, unless winning bidder agrees to assume the difference in line rental.  AEC can nominate a maximum of 107% of the daily BCQ (97,800kWh x 107%) which can be distributed to any of the trading intervals.

PSA	Security Deposit	<p>Since a performance bond is also being required from the Suppliers, may we suggest including a provision in Article II that will allow the Supplier to collect a Security Deposit for AEC equivalent to 2 months of the electric power bill. This will provide some level of security as well for the prompt payment of electric power bills.</p> <p>In the alternative, can the Parties agree instead that a Security Deposit will be required ONLY if AEC delays in the payment of its electric power bills.</p>		AEC will not agree to a Security Deposit but can provide upon request a certification that it is in good standing with its current suppliers.
PSA	Dispute Resolution Process	To avoid any conflict or questions on jurisdiction, may we suggest that disputes between the parties be filed with the ERC pursuant to Section 43(u) of the EPIRA which vests original and exclusive jurisdiction to the ERC over <i>“all cases involving disputes between and among participants and players in the energy sector”</i> .		Venue for dispute resolution is open for contract negotiations with the winning bidder.
PSA	Non-approval or modified approval by the ERC	We suggest including a section in the PSA which will provide remedies to both parties in case the ERC does not approve the PSA within a certain period of time and in case the ERC modifies the PSA.	<p>We suggest that:</p> <ul style="list-style-type: none"> <li>• Either Party may terminate the PSA if the ERC has not issued any approval (provisional or final) within 180 days (<i>Parties can agree on the number of days</i>) from the filing of the PSA.</li> <li>• In case the ERC modifies the PSA in terms of the rates, the Supplier should be allowed to exhaust all remedies and suspend its supply until resolved by the ERC.</li> <li>• If no favorable decision was obtained after 180 days from the filing of all remedies, the Supplier</li> </ul>	Suggestions are not acceptable to AEC

			should be given the option to terminate to ensure its financial viability.	
PSA	13.7 Jurisdiction / Page 12	We suggest revising this Section to avoid any conflict with the Dispute Resolution Process and for the parties to agree that the ERC will have jurisdiction over disputes in the contract.	13.7 Jurisdiction – each party irrevocably and unconditionally submits to the <del>non</del> -exclusive jurisdiction of the <b>ERC</b> <del>courts of the Philippines and courts of appeal from them</del> for determining any dispute concerning this Agreement or the transactions contemplated by this Agreement. Each party waives any right it has to object to an action being brought in <b>the ERC</b> <del>those courts</del> including, but not limited to claiming that the action has been brought in an inconvenient forum or <b>the ERC has no</b> <del>those courts</del> <del>do not</del> have jurisdiction.	This can be taken up during contract negotiations with the winning bidder.