

Bid Document	Section/ Provision	COMMENTS / CLARIFICATIONS	RECOMMENDATION	TPBAC Clarification/s
TOR	Items 2. Technology of Source Plant	<p>Based on the clarification raised by Bidder No. 5, the Power Supplier is allowed to source from the Wholesale Electricity Spot Market ("WESM") due to operational limitation of the Nominated Power Plant. To wit, (in verbatim):</p> <p><u>Bidder No. 5's Query:</u> As Open Technology, can the Winning Bidder(s) be allowed to source the Contract Capacity/Energy or any portion thereof, from other sources including the WESM due to operational limitation(s) of its source Plant?</p> <p><u>TPBAC's Response:</u> Yes</p> <p>In a separate query by Bidder No. 6, there is a query of similar nature:</p> <p><u>Bidder No. 6's Query:</u> We would like to confirm that LUECO is allowing the Power Supplier to source its supply not just from its own facility, but from other sources including the WESM.</p> <p><u>TPBAC's Response:</u> Yes, but only during unavailability of Nominated Plant during Planned and Unplanned Outages.</p> <p>Further, there is a related query by Bidder No. 2 regarding availability of WESM during Force Majeure</p>	<p>Foremost, we note that from the Terms of Reference ("TOR") of LUECO, the CSP calls for majority of market risks to be absorbed by the Bidders. These risks include but are not limited to the following:</p> <ul style="list-style-type: none"> • Bidders are not allowed to nominate an Outage Allowance which means that Bidders should guarantee 100% availability of supply at the Base Energy Rate ("BER"); • Fixed electricity pricing; • No fuel pass through; • Volatility in the WESM prices are absorbed by the Power Supplier; <p>The provision of ensuring 100% availability, shifts all the risks mentioned above to the Bidder or Power Supplier, especially if this results to the cost of supply higher than that of the BER. This framework as stipulated in the Electric Power Purchase Agreement ("EPPA") categorizes or likens the EPPA to a financial contract. For all periods and for the amount of energy specified in the EPPA, LUECO has no exposure to WESM spot prices.</p> <p>With a financial firm contract, the Power Supplier assumes, among others, all the risks in relation to the volatility of WESM prices, fuel costs, and ensuring 100% availability of supply. With the assumption of these risks, the Power Supplier should be allowed to supply not only from the Nominated Power Plant, but should also be allowed to source its supply to LUECO from other sources and/or the WESM in order to appropriately manage its risks and provide LUECO a rate that takes into consideration</p>	
TOR	Outage Allowance			

EPPA	Clause 8.3.1 page 19	<p><u>TPBAC's Response:</u> In the case of Force Majeure Event affecting Power Supplier, and there is available Supply from other sources, Power shall continue to supply LUECO at BER or WESM Price at LUECO's Market Trading Node, whichever is lower.</p> <p>Based on the responses of the TPBAC, supply from the WESM will only be allowed in case of the unavailability of the Nominated Power Plant during Planned and Unplanned Outages. Due to several clarifications regarding this provision, we would like to reiterate the concern and recommend that Power Suppliers be allowed to source from the WESM.</p>	<p>the risks assumed by the Power Supplier.</p> <p>Notably, financial contracts, where delivery of energy need not come from the nominated power plants and may also come from other sources and/or the WESM, have been recognized by the Energy Regulatory Commission ("ERC"), specifically in ERC Case No. 2019-079RC and ERC Case No. 2019-078, which are financial Power Supply Agreements ("PSA") entered into between AC Energy Corporation and Manila Electric Company ("MERALCO"). The same is true for ERC Case 2019-080 and ERC Case No. 2019-081 entered into between South Premiere Power Corporation and MERALCO; ERC Case 2019-082 between First Gen Hydro Power Corporation and MERALCO and ERC Case 2019-083 between San Miguel Energy Corporation ("SMEC") and MERALCO.</p> <p>Further, there are other several ERC-approved PSAs which show that it is a recognized industry practice that a power supplier can source from the WESM all or a portion of the electricity requirements of its customers. To cite a few examples are ERC Case No. 2018-061RC between GNPower Dinginin Ltd Co. and Pampanga III Electric Cooperative Inc., ERC Case 2019-044RC between Strategic Power Development Corporation and Isabela I Electric Cooperative Inc. and ERC Case 2019-020RC between SMEC and Bohol I Electric Cooperative, Inc.</p>	
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We therefore suggest that:

(1) Section 4 of the TOR revised as follows:

4	<i>Required Contracted Energy</i>	<i>Power Supplier shall be responsible for providing for the full energy requirements of LUECO, <u>from the Plant, the WESM, or any other source</u>, net of any reduction by reason of the enforcement of Retail Competition and Open Access and the Renewable Energy Law. Xxx xxx</i>
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(2) The EPPA, particularly, Sections 4.1 and 4.2, Page 13 be revised as follows:

*4.1 Supply of Electricity. Subject to the terms and conditions of this Agreement, from the Commencement Date until the expiration of the Cooperation Period or earlier termination of this Agreement, **SELLER shall make available to LUECO the Contract Capacity to be sourced from the Power Plant, the WESM, or any other source.** SELLER shall ensure that its daily declarations of BCQs reported to the Market Operator (as required by the WESM Rules) accurately reflects the metered quantities in each of LUECO's Delivery Points net of any reduction by reason of enforcement of RCOA and/or Renewable Energy law. Xxx xxx*

This is well-taken, this will be adopted. Item No. 4 of TOR is amended to read as follows:

Power Supplier shall be responsible for providing for the full energy requirements of LUECO, **from the Plant, the WESM, or any other source at prevailing Electricity Fee**, net of any reduction by reason of the enforcement of Retail Competition and Open Access and the Renewable Energy Law. This is projected to be between 224,962 MWH - 337,349 MWH per year

But please take note of the amended Article 8.2 above.

Article 4.1 SUPPLY OF ELECTRICITY is amended to read as follows:

4.1 Supply of Electricity. Subject to the terms and conditions of this Agreement, from the Commencement Date until the expiration of the Cooperation Period or earlier termination of this Agreement, **SELLER shall make available to LUECO the Contract Capacity to be sourced from the Power Plant, the WESM at prevailing Electricity Fee, or any other source.** xxx . . .

			<p>4.2 Failure of Power Plant to Generate Supplier to Supply Electricity. In case SELLER is unable to source electricity from Power Plant for whatever reason, SELLER shall undertake alternative sourcing arrangements to compensate for the failure or shortfall, <u>at the Electricity Fee</u>. provided that, BUYER shall pay to SELLER the prevailing Electricity Fee or from the alternative source, whichever, is lower. In case SELLER fails to supply BUYER electricity due to unavailability of supply from its Power Plant, WESM, and any other source, SELLER shall pay a fine calculated as follows: xxx</p>	<p>Article 4.2 Failure of Power Plant to Generate Electricity is amended to read as follows per Bid Bulletin No. 5 posted last Feb 10, 2021:</p> <p><i>In case SELLER is unable to source electricity from Power Plant for whatever reason except cases of Force Majeure, SELLER shall undertake alternative sourcing arrangements to compensate for the failure or shortfall, provided that, BUYER shall pay to SELLER the prevailing Electricity Fee or from the alternative source, whichever, is lower. In case SELLER fails to supply BUYER electricity due to unavailability of supply from its Power Plant, WESM, and any other source, SELLER shall pay a fine calculated as follows:</i></p> <p><i>Fine = 20% 5% x GENRATE from the previous Billing Month x Unsupplied Energy</i></p> <p><i>Where:</i></p> <p><i>Unsupplied Energy = the average of the last 4 same day, same hour of the Trading Intervals affected by the loss of supply from Power Plant, WESM, and any other source which shall be used to reduce the generation charge to the consumers. For avoidance of doubt, in case SELLER fails to supply electricity despite availability thereof, then Section 14.1 shall apply.</i></p>
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IPB	Section 3.2 c	<p>Based on the response of the TPBAC on the query of Bidder No. 4, it was emphasized that the TPBAC <u>requires at least three (3) years of data</u> in relation to the interconnection, operation and maintenance of the Nominated Power Plant or portfolio of plants.</p> <p>For a Nominated Power Plant which is operating less than 3 years or is yet to undergo commercial operation prior to the commencement date of supply to LUECO, this requirement will not be applicable.</p>	<p><i>We suggest the following revision:</i></p> <p>(c) Details of interconnection, operation, and maintenance of the Nominated Power Plant or portfolio of plants, including but not limited to general information on the Nominated Power Plant or portfolio of plants and key components thereof, plant site/s, and interconnection site/s, for at least three (3) years; and</p>	<p>Track record on the Nominated Plant is necessary.</p>
		<p>We suggest that the submission of the historical three-year data be deleted. This is also to ensure participation of more Bidders including those with newer plants, promoting more competition; thus, ensuring LUECO the best rate possible for its captive customers.</p>		<p>If the Nominated Power Plant has been in Commercial Operation for less than 3 yrs then Bidder may submit less than 3 years of data together with proof that such Power Plant has only been operating for less than 3 yrs. Proof can be Certificate of Commercial Operations or any similar document.</p> <p>If you want to change or add to your Nominated Plant, you may do so until 05 April 2021 by amending your Expression of Interest.</p> <p>We will be releasing Bid Bulletin No. 6 regarding this matter.</p>

IPB	Section 3.2 Page 14	<p>Based on the response of the TPBAC on the query of the Bidder No. 7, we would like to thank the TPBAC for recognizing the contracts for Management or the Independent Power Producer Administration Agreement (“IPPAA”) as an alternative submission for the COC.</p> <p>In fact, this is just a reiteration of the TPBAC publication of the Invitation to Bid (“ITB”), wherein under item #14, a documented EPPA or IPPAA may be submitted in lieu of the COC.</p> <p>To ensure that there is no conflict in the IPB, we would suggest that the IPB be revised to mirror this requirement.</p>	<p><i>We suggest the following revision on Item b of Section 3.2 of Page 14 of the Instruction to Prospective Bidders (“IPB”):</i></p> <p>(b) <u>Whenever possible</u>, the Nominated Power Plant or portfolio of plants must be covered by a Certificate of Compliance (“COC”) from the ERC. If the Nominated Power Plant or portfolio of plants is/are located in Luzon or Visayas, it must be registered as a direct member of the WESM. <u>Alternatively, the Bidder may submit a joint certification issued by the Bidder and its supplier certifying on the existence of an Electricity Power Purchase Agreement (EPPA) for/with the intended source plant/s; administration or management agreements for management of Plant, Independent Power Producer Administration Agreement (IPPAA), or such other analogous agreements which the Bidder may have with its supplier;</u></p>	<p>There is no need to revise.</p> <p>As stated in Section 3.2 of the IPB, it made mention of requirements covered by the TOR table which includes, among others;</p> <ul style="list-style-type: none"> • a Certificate of Compliance (COC), and/or documented Electricity Power Purchase Agreement (EPPA) for/with the intended source plant/s; for management of Plant, Independent Power Producer Administration Agreement (IPPAA).
IPB	Section 9 Page 26	<p>Related to our query above in allowing the submission of an EPPA with the intended source plant/s or administration or management agreements for management of the Plant, Independent Power Producer Administration Agreement (IPPAA), we reiterate that for clarity and consistency, the definition of the Bidder be revised to capture this concept.</p> <p>The TPBAC indicated in its response to this query is “well-taken”, however we noticed that this has not been incorporated in the recently issued Bid Bulletins No. 4 and 5.</p>	<p><i>To ensure that the IPB is consistent, we suggest to revise the provision as follows:</i></p> <p>“Bidder” means any partnership, consortium, or corporation that participates in the Bidding Process <u>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 is the off-taker of the capacity of another supplier.</u></p>	<p>Section 9 Definitions is amended to read as follows: (to be posted as Bid Bulletin No. 6)</p> <p><i>“Bidder” means any partnership, consortium, 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 is the off-taker of the capacity of another supplier.</i></p>

<p>IPB</p>	<p>Annex 2, Item 3 / Page 33</p>	<p>To ensure consistency with the clarification of the TPBAC with the IPB and its annexes, on the proposed definition of Bidder above, may we suggest the replacement of the word "Company" to Bidder in Annex 2 of the IPB.</p> <p>The TPBAC indicated in its response to this query is "well-taken", however we noticed that this has not been incorporated in the recently issued Bid Bulletins No. 4 and 5.</p>	<p><i>We suggest to revise the provision as follows:</i></p> <p>AUTHORITY TO PARTICIPATE IN THE BIDDING AND DESIGNATION OF AUTHORIZED REPRESENTATIVE</p> <ol style="list-style-type: none"> 1. xxx 2. I am the duly elected (corporate secretary) of (name of owner of the Nominated Power Plant <u>or name of the Bidder that exercises control, management, or administration over the output or capacity of the Nominated Power Plant or portfolio of plants, or is the off-taker of the capacity of other suppliers</u>) (the "Company" "Bidder"), a (partnership/corporation) organized and existing under and by virtue of the laws of the Republic of the Philippines. 	<p>ANNEX 2 AUTHORITY TO PARTICIPATE IN THE BIDDING AND DESIGNATION OF AUTHORIZED REPRESENTATIVE</p> <p>xxx</p> <ol style="list-style-type: none"> 2. <i>I am the duly elected (corporate secretary) of (name of owner of the Nominated Power Plant or name of the Bidder that exercises control, management, or administration over the output or capacity of the Nominated Power Plant or portfolio of plants, or is the off-taker of the capacity of other suppliers) (the "Company" "Bidder"), a (partnership/corporation) organized and existing under and by virtue of the laws of the Republic of the Philippines.</i> 3. <i>The Company Bidder owns, and/or operates and maintains, administers, manages, or is the off-taker or purchases the capacity or output a (specify details of the Nominated Power Plant, such as capacity and plant type) located in (specify location).</i> 4. <i>At a (regular/special) meeting of the board of directors of the Company Bidder, held on (date) at (place), in which meeting a quorum was present and acting throughout the following resolutions were unanimously passed and approved:</i>
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IPB	Annex 7, Page 43	<p>On Page 2 of the ITB under the section of Eligibility Requirements of Power Supplier, the submission of the COC is just one of the options as eligibility requirements for Power Supplier. To wit;</p> <p>Must have:</p> <ul style="list-style-type: none"> • a Certificate of Compliance (COC), and/or or documented Electricity Power Purchase Agreement (EPPA) for/with the intended source plant/s; for management of Plant, Independent Power Producer Administration Agreement (IPPAA) <p>xxx</p> <p>The TPBAC indicated in its response to this query is "well-taken", however we noticed that this has not been incorporated in the recently issued Bid Bulletins No. 4 and 5.</p>	<p><i>We suggest to revise Annex 7 as follows:</i></p> <p>TECHNICAL PROPOSAL (NOMINATED POWER PLANT)</p> <p>1. xxx Copy of Certificate/s of Compliance ("COC") from the ERC for the Nominated Power Plant and/or portfolio of plants, and/or documented Electricity Power Purchase Agreement (EPPA) for/with the intended source plant/s; for management of Plant, Independent Power Producer Administration Agreement (IPPAA), or such other analogous agreements which the Bidder may have with its supplier which shall be certified as a true copy xxx</p>	<p>ANNEX 7 TECHNICAL PROPOSAL (NOMINATED POWER PLANT) No. 2 is amended to read as follows:</p> <p><i>Required attachments:</i></p> <ol style="list-style-type: none"> 1. xxx 2. Copy of Certificate/s of Compliance (COC) from the ERC for the Nominated Power Plant and/or portfolio of plants, and/or documented Electricity Power Purchase Agreement (EPPA) for/with the intended source plant/s; for management of Plant, Independent Power Producer Administration Agreement (IPPAA), which shall be certified as a true copy by (i) the ERC; or (ii) the corporate secretary, in which case it must be under oath and notarized; 3. xxx 4. xxx 5. xxx

IPB	Sections 3.1 - 3.3	<p>For all documents to be submitted which are required to be certified by the corporate secretary, we suggest that the assistant corporate secretary also be allowed to certify copies of these documents.</p> <p>The TPBAC clarified that this suggestion be allowed provided that it is also mentioned in the By-laws.</p>	<p>There are other officers who are not explicitly required under applicable law to be listed in the company's by-laws (ex: assistant corporate secretary). However, under the Revised Corporation Code as well as By-laws, the board of directors may appoint such officers as it may deem necessary.</p> <p>We suggest that the Bidder shall be allowed to submit a Secretary's Certificate showing a Resolution from the board of directors which allows the assistant corporate secretary to certify documents as true and authentic copies of the originals.</p>	Your request is considered.
ITB EPPA	Regulatory Approvals / Page 2 Section 13.1.2.3	<p>Although the EPPA recognizes adjustment of any payment based on the ERC Approvals, it was also indicated that any modification made by the ERC to the rates, terms and conditions of the EPPA shall not be a ground for the Power Supplier to terminate the EPPA.</p> <p>To allow and/or provide remedies to both the Power Supplier and LUECO in case of adverse orders or decisions of the ERC (<i>ex: non-approval of the Power Act Reduction, non-approval of the Electricity Fee as applied</i>), we suggest that the provision be revised to allow both parties to pursue remedies, such as the filing of motions for reconsideration of a decision of the ERC.</p>	<p><i>We suggest to revise Section 13.1.2.3 of the EPPA as follows:</i></p> <p>13.1.2.3 If the ERC Approval requires any portion of the sum that has been paid by BUYER to SELLER to be adjusted, SELLER shall make the necessary adjustments in accordance with the directive of the ERC. In the event of any disallowance in the Electricity Fee, the same shall be for the account of SELLER. For clarity, any modification made by the ERC to the rates, terms and conditions of this Agreement shall not be grounds for SELLER's right to terminate this Agreement. the Parties shall in good faith resolve the required amendment, including seeking a reconsideration by the ERC. 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, then either Party may terminate this EPPA, and the Bid Security or Performance Bond shall be returned to Power Supplier.</p>	The regulatory body, which is the ERC, has the last say of the EPPA. At most, the Parties can only file for Motion for Reconsideration. This Motion for Reconsideration is an automatic legal remedy for adverse decisions. It does not have to be provided in the contract.

		<p>We suggest that like any PSA, the Power Supplier shall be free to file a motion for reconsideration with the ERC. If the ERC requires any amendment to or modification of any provision of the PSA that is not acceptable to either Party, the Parties shall be accorded the opportunity to cooperate and resolve the required amendment, including seeking further review or consideration by the ERC. If the issue is not resolved by the Parties and/or disapproved by ERC, then either Party shall be accorded the opportunity to terminate the Agreement without penalty.</p> <p>This way, the sanctity of the original terms of the contract as agreed upon and based on an open, transparent, public, and competitive bidding, is preserved and each Party was given the opportunity to resolve in good faith any modification made by the ERC.</p>		<p>This is a given legal remedy, but in case of disapproval by the ERC, the termination of the EPPA is not one of the remedies.</p>
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IPB	Section 3.4.1 (e), as amended	<p>We thank the TPBAC for recognizing the difficulty of document preparation particularly in the preparation of the soft copies. Instead of submitting the soft copies via USB/thumb flash memory drive, soft copies will now be submitted via electronic mail.</p> <p>For purpose of clarity, we suggest that the soft copies to be submitted shall be the PDF copies of all documents marked as ORIGINAL only. That is, there is no need to submit via email a separate set of soft copies for COPY No. 1, COPY. 2 and so on, since the content will just be the same as that of the ORIGINAL copy.</p>	<p><i>Suggest to revise Section 3.4.1 (e) as:</i></p> <p>(e) Electronic copies of ALL documents marked as ORIGINAL submitted in the Bid shall be in PDF format via email.</p>	<p>Section 3.4.1 letter (e) is further amended as follows:</p> <p><i>(e) Electronic copies of ALL documents submitted in the Bid shall be in PDF format via email. There shall be one password per envelope. Hence, there shall be three different passwords for the three envelopes.</i></p> <p>There shall be only one email bid submission per envelope. Should there be more than one email submission in case of errors, only the latest submission shall be considered within the deadline set for the purpose. Envelopes 1 and 2 shall be sent via Google drive due to the volume of the documents and should be password-protected; while envelope 3 shall be sent via email and password-protected. In addition to the PDF format of the LCOE worksheet, its Excel format shall also be provided. In case of conflict in the LCOE worksheet, the PDF format shall prevail.</p> <p>Participating Bidders are required to submit the soft copy of their documents and must be password-protected on April 12, 2021, on or before 9 o'clock in the morning and its hard copies on or before 12 noon of the same date at the address to be posted through a Bid Bulletin on the DOE CSP Portal and LUECO website.</p>
EPPA	Section 8.2 (g), page 18	<p>8.2 Instances of Force Majeure Xxx xxx</p> <p>(g) unavailability of power from the System;</p> <p>May we clarify the ground of unavailability of power form the System, under the draft EPPA, the word "System" has not been defined. Since the WESM is the market for the buying and selling of electricity, may we suggest that the word "System" be changed to "WESM".</p>	<p>8.2 Instances of Force Majeure xxx xxx</p> <p>(g) unavailability of power from the System WESM;</p>	<p>We stick to our original provision.</p>