

**COMPETITIVE SELECTION PROCESS (CSP) OF LA UNION ELECTRIC COMPANY, INC. (LUECO)
43-64MW BASELOAD AND LOAD FOLLOWING POWER SUPPLY REQUIREMENT**

TOR & EPPA TEMPLATE-RELATED QUERIES/COMMENTS (Not Fully Clarified/Answered in Bid Bulletin No. 5)				
Bid Document	Section/Provision	Query	Recommendations / Proposed Wording	LUECO TPBAC Clarification/s
Bid Bulletin 4	Article 2.3.3	To clarify if this can be amended to read as - - "between the hard copy submission and soft copy submission the former shall prevail", and not the "latter" where it would mean that soft copies will prevail over hard/ printed copies.	May we suggest to revise the subject portion/s to read as - - - "between the hard copy submission and soft copy submission the former shall prevail".	Considering that the soft copy will be opened first during the Opening of Bids, it is but right and proper that the soft copy will prevail over the hard/printed copies.
Bid Bulletin 5	General Comment: We believe that Bid Bulletin No. 5 do not cover all the queries/concerns raised by ALL BIDDERS (as submitted in writing and verbally raised during the PreBid Conference.			
Bid Bulletin 5 Amendments to the Instructions to Prospective Bidder (IPB)	Item 8. Section 3.3.2 Forfeiture of Bid Security h) the Winning Bidder fails to timely submit <u>any document</u> that the ERC may require... Last paragraph: "The Bid Security of the Winning Bidder who committed any of the above violations...."	Circumstances beyond the control of the Winning Bidder should include submission of documents that should come from LUECO and/or any third party. This last paragraph should cover a Bidder and/or the Winning Bidder	May we suggest item (h) to be reworded to include the following phrase: ".... beyond the control of the Winning Bidder <u>including the submission of any document that should come from LUECO and/or any third party.</u> May we further suggest to delete item (e) as the same is basically covered by item (h). Finally, to correct the sequencing of the items.	The five (5) day period is prescribed under the DOE DC2018-02-003. Item (e) refers to pre-filing documentary requirements of the EPPA while Item (h) is further amended to read as follows: <i>(h) the Winning Bidder fails to timely submit any additional document that the ERC may require for the successful filing of the relevant ERC application for approval of the Electric Power</i>

			<p>Suggest to reword as follows: "The Bid Security of a Bidder and/or the Winning Bidder who committed any of the above violations will be forfeited through"</p>	<p><i>Purchase Agreement, within five (5) working days from the signing and execution of the Electric Power Purchase Agreement, except if the delay is caused by any circumstances beyond the control of the Winning Bidder.</i></p> <p>This is well taken. <i>Section 3.3.2 last paragraph is further amended to read as follows:</i></p> <p><i>The Bid Security of a Bidder and/or the Winning Bidder who committed any of the above violations will be forfeited through xxx . . .</i></p>
	<p>Item 17. Penalty for non-supply due to unavailability of power from the Grid</p>	<p>Power Supplier shall pay a penalty equivalent to: 20% x GENRATE from the previous Billing Month x Unsupplied Energy</p> <p>Bid Bulletin No.5 reduced the applicable penalty from 20% to 5%.</p> <p>$FINE_{Buyer} = 5\% \times GEN\ RATE$ of the previous Billing Month x Contract x</p>	<p>Given that the Power Supplier is required to continuously supply power despite non-availability of the same from any other source including the WESM and the Grid and if Power Supplier cannot provide power, then it shall be penalized.</p> <p>We highly recommend, in fairness to Power Supplier</p>	<p>Please note that in Article 4.2 on Failure of Power Plant to Generate Electricity, as amended, and posted in Bid Bulletin No. 5 on Feb. 10, 2021 and hereunder quoted, the penalty is not applicable in cases of Force Majeure.</p> <p><i>"In case SELLER is unable to source electricity from Power Plant for whatever reason except cases of Force Majeure, SELLER shall</i></p>

		<p>(No. of Hours Contract was not taken / Total Hours for the Billing Month)</p>	<p>that in any case, even during Force Majeure Events, the Buyer cannot accept the Contract Capacity and Contract Energy despite all available supply from the Power Supplier other sources including the WESM and the Grid, Buyer should pay a similar Fine.</p>	<p><i>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 xxx . .</i></p> <p>The penalty that you are suggesting to be imposed on the BUYER should there be available supply but the BUYER cannot accept the contract capacity and contract energy in case of force majeure is, in effect, a penalty on the consumers. This scenario will not be allowed by the ERC nor the DOE.</p>
	<p>Item 12 Article 14.2. Buyer Event of Default (a)</p>	<p>a) "...sixty (60) Days after receipt from BUYER of a written notice of BUYERSELLER Event of Default.</p> <p>The TPBAC might have misunderstood the query, we suggest the following rewording</p>	<p>a) " sixty (60) Days after receipt from BUYERSELLER of a written notice of <u>BUYER's</u>SELLER Event of Default.</p>	<p>Thank you for your observation. Article 14.2 Buyer Event of Default letter (a) is hereby amended to read as follows:</p> <p><i>a) BUYER fails to perform any material obligation under this Agreement, excluding the making of any payment which is due, which failure has not been remedied within sixty (60) Days after receipt from BUYER SELLER of a written notice of BUYER SELLER Event Default.</i></p>

EPPA Electricity Fees	Article 5.1	Kindly reword Article 5.1 because it seems to be focusing on the Supplier's invoice and not the applicable Electricity Fees.	Electricity Fees. SELLER shall render to BUYER an itemized Invoice for each Billing Month in accordance with the provisions of this Agreement and SCHEDULE 4 5 . BUYER shall pay Invoices when due and payable in accordance with this Agreement and SCHEDULE 5.	Schedule 5 refers to the obligation of the SELLER to render an Itemized Invoice in accordance with Schedule 5. Schedule 4 pertains to the formula of Electricity Fee only.
Seller Conditions Precedent	Article 13.2	We suggest to include the receipt by Seller of a copy of the ERC Order or Decision approving the EPPA as Article 13.2.2	13.2.2 In addition to the conditions precedent specified in Section 13.2.1, the ERC Approval of this Agreement or the rates, terms and conditions, under this Agreement, as applicable, shall be a condition precedent to the performance by the SELLER of its obligations hereunder. It is understood that the SELLER and the BUYER shall jointly file with the ERC to secure the ERC Approval.	Article 13.2.1 SELLER Conditions Precedent is further amended to read as follows: (i) copies of the SEC Certificate of Registration, Articles of Incorporation/Partnership and By-Laws of the SELLER, each certified by the corporate secretary/ Managing Partner any responsible officer of the Partnership of the SELLER; In case of Unincorporated Partnership/Consortium, evidence that the rights and obligations/liabilities in this Bidding and resulting EPPA are solidary. (ii) xxx (iii) copy of the ERC approval, whether interim relief, provisional or final.
	Item 12 Article 14.2 Item (f)	As revised in Bid Bulletin No. 5 BUYER fails to make any payment of a Final Invoice when such invoice becomes due and payable in accordance with ARTICLE 5 of this Agreement and such payment is not	For purposes of EPPA Article 14.2 (f), we further suggest that the period for non-payment of a Final Invoice be <u>reduced to sixty (60) Days</u> from receipt of Final Invoice. This would be consistent with the TPBAC's	Article 14.2 Buyer Event of Default letter (f) is amended to read as follows: <i>f) BUYER fails to make any payment of a Final Invoice when such invoice becomes due and</i>

		<p>made with in ninety (90) Days after the due date of the relevant Final Invoice.</p>	<p>answer (firm commitment of a full payment) on the query regarding Security Deposit as follows:</p> <p><i>"There is no need for Security Deposit because the PPD that LUECO stands to lose in case of partial payment is a substantial amount."</i></p>	<p><i>payable in accordance with ARTICLE 5 of this Agreement and such payment is not made within one hundred twenty (120) Ninety (90) Days after the due date of the relevant Final Invoice.</i></p> <p>Article 14.1 letter (f) is amended to read as follows:</p> <p><i>f) SELLER breaches any of its material representations and warranties under this Agreement and such breach is not remedied within one hundred twenty (120) Ninety (90) Days after written notice from BUYER to SELLER stating that such a breach has occurred.</i></p> <p><i>If you will notice, the BUYER and the SELLER stand on equal footing when it comes to the number of days within which to remedy any breach.</i></p>
TOR	Item 7. Tariff Structure	<p>(1) The term "Contract Price" in Annex B LCOE Calculation Sheet is not defined clearly nor has there been any mention of the "Basic Energy Rate or BER"</p>	<p>(1) Bid Bulletin No. 5 clarified that the Contract Price is equivalent to the LCOE. Note however that the term "Basic Energy Rate or BER" is utilized in the TOR (Tariff Structure) and the EPPA (Schedule 4). However, Annex B (LCOE Calculation Sheet) of the TOR made no specific mention of the BER.</p>	<p>Please see our amendments in Annex B of the TOR, where the Contract Price is also the GENRATE.</p> <p>Please see Items 4 and 9 of the TOR as amended and Article 4.1 of the EPPA as amended and further amendment of Article 8.2 of the EPPA, where the BER is replaced with "Electricity Fee".</p>

		<p>(2) Pre-determined "Reserve Prices" for Contract Year 1 and LCOE</p> <p>During the PreBid Conference, the TPBAC replied that the "Reserve Prices" are determined based on what is the most advantageous to the end-consumers .</p> <p>Bidders are all aware that the CSP's intent is to be able to solicit the cheapest and most advantageous offer for LUECO and its end-consumers. However, please be also cognizant that the following given assumptions are to be strictly considered in formulating the Bid Price to be offered by each Bidder : (a) supply of power at an average generation rate at 60% CUF, (b) inclusive of Line Rental and all WESM charges, (c) inclusive of Replacement Power Costs for all outages (Scheduled/Forced Outages and even during Force Majeure Events), (d) net of discount(s) PAR & PPD (e) inclusive of VAT.</p>	<p>Please define the term in both the TOR (body and Annex B) and the EPPA particularly in Schedule 4 (Electricity fees)</p>	<p>Item 4 Required Contracted Energy is amended to read as follows:</p> <p>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</p> <p>ITEM 9: Outage Allowance Power Supplier shall guarantee 100% availability of supply at BER prevailing Electricity Fee regardless of source plant's availability or unavailability whether due to a Planned or Unplanned Outage. In the case of Force Majeure Event affecting Power Supplier, Power Supplier shall continue to supply LUECO at BER prevailing Electricity Fee or WESM Price at LUECO's Market Trading Node, whichever is lower.</p> <p>SCHEDULE 4 of the EPPA (Electricity Formula) is amended to read as follows: Electricity Fee = {[(E x GENERATE) - PAR Discount] x (1+ VAT)} + [(EFM x EFM RATE) x (1+Effective VAT)]</p>
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				<p>Article 8.2 Instances of Force Majeure is further amended to read as follows:</p> <p>xxx . . .</p> <p>In the case of Force Majeure Event affecting Power Supplier, and there is available supply from another source, Power Supplier shall continue to supply LUECO at BER prevailing Electricity Fee or WESM Price at LUECO's Market Trading Node, whichever is lower. Power Supplier shall guarantee 100% availability of supply at BER prevailing Electricity Fee regardless of source plant's availability or unavailability whether due to a Planned or Unplanned Outage.</p> <p>For reference, "System Emergency" refers to any unforeseeable condition affecting the System (as defined in the Grid Code), which may cause (i) the grid-wide unavailability of Supply disconnection of the Power Plant from the Luzon Grid, or any disruption in the supply of electric energy from the Power Plant for reasons other than a forced outage, or (ii) suspension of electric energy off-take from SELLER in order to prevent or avoid significant disruption of service to BUYER or danger to life or property.</p> <p>For the avoidance of doubt, the Power Supplier shall not be entitled to claim declare any of its the above cited act or omission as Force Majeure.</p>
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			<p>(2) Given all these RISKS that the Bidder/Power Supplier is required to take, it is just reasonable that the Reserved Prices SHOULD be apple-to-apple with the costs and risks contemplated in the entire TOR and EPPA and not simply the most advantageous to the end-consumers. There should be a sense of balance to the equation.</p> <p>$GenRate_{y1} \leq Reserve Price_{y1}$ $Bid Price_{LCOE} \leq Reserve Price_{LCOE}$</p> <p>Reserve Prices should also be inclusive of (a) Line Rental and all WESM charges, (b) inclusive of Replacement Power Costs for all outages (Scheduled/Forced Outages and even during Force Majeure Events), (c) net of discount(s) PAR & PPD (d) inclusive of VAT and calculated at 60% CUF</p>	<p>Much as we would like to give you the detailed components, however our present rate is inclusive of all Line Rentals and Market Related charges, hence, we do not have those data.</p> <p>As to your assumptions, it is your responsibility to consider all those in your Bid Price_{LCOE}.</p>
TOR	Power Act Reduction (PAR)	<p>QUERY: Is the granting of a PhP0.30/kWh PAR discount a "FIRM" requirement in the Bid Proposal? No PAR offer means disqualification?</p> <p>TPBAC REPLY: PAR is optional.</p>	<p>The Power Act Reduction (PAR) is explicitly included/mentioned in the ITB (LCOE Result Worksheet, page 16), the TOR (item 8) as well as the EPPA (Schedule 4, PAR DISCOUNT - page 41) which is almost the reciprocal of the PPD.</p> <p>Please confirm that should a Bidder opt not to offer a PAR Discount, its Bid Proposal shall not be considered "non-compliant" or be declared "disqualified"</p>	PAR is optional, hence, it is not a ground for disqualification.
TOR	Prompt Payment Discount (PPD)	(1) QUERY: Why is PPD not mentioned anywhere in the TOR nor in Schedule 4 (Electricity Fees) of the EPPA?	(1.a) All TOR's in the CSP's of other DUs (whether electric cooperative and private owned DUs) are explicit about the DISCOUNTS in all	Again, it is the DOE that ordered the removal of the PPD in our Terms of Reference (TOR) and instead to be included in the IPB.

		<p>TPBAC REPLY: As per order of the DOE, it should not be included in the Terms of Reference (TOR) but instead to be included in the IPB. Hence, it is included in the LCOE worksheet.</p> <p>(2) QUERY: Is the PPD also a "FIRM" requirement in the Bid Proposal? No PPD offer means disqualification?</p> <p>TPBAC REPLY: Yes. PPD has a minimum value of 3% in the LCOE Workbook. Bid is invalid if left blank.</p>	<p>Bid Documents e. g. TOR, IPB, PSA Template.</p> <p>(1.b) The TOR is the MAIN BASIS for a Bidder's Price Bid thus, the TOR should clearly include all required assumptions including discounts .</p> <p>(2) Given that the PPD is a FIRM REQUIREMENT in the Bid Proposal, the same should be specifically indicated in both the TOR and the EPPA and not only made part of the LCOE calculation workbook</p>	<p>This is explicitly stated in their letter to LUECO.</p> <p>Please refer to comments above. Please note that it is also embodied in our EPPA other than in the IPB.</p>
Other Matters		<p>If at any point during the Term of the EPPA, LUECO becomes a Direct WESM Member (either voluntarily or in compliance with DOE, ERC, NEA circulars, issuances, etc.), the Parties shall discuss and negotiate any required amendment to the EPPA, pertinent protocols to comply with WESM Rules.</p>		<p>It depends on the requirements of the DOE and ERC from LUECO should the latter opt to be a direct WESM member.</p>
TOR	Item 14	<ul style="list-style-type: none"> experience in supplying to a Distribution Utility to be evidenced by an ERC approval or on-going ERC application; 	<p>May we suggest to limit requirement to one (1) ERC approval or application?</p>	<p>We stick to our own requirement. The conjunction used is "or".</p>
TOR	Item 14	<ul style="list-style-type: none"> sufficient available capacity to supply LUECO's requirements from Commencement date, to be evidenced by a notarized certification in the form and substance provided together with this TOR. 	<p>For the notarized certification, please clarify if this is the same with Annex 4 "Certification of Uncontracted Capacity of the Nominated Plant" or do you have different template for this requirement?</p>	<p>Yes.</p> <p>Item 14 of the TOR is amended to read as follows:</p> <p>xxx . . .</p> <ul style="list-style-type: none"> sufficient available capacity to supply LUECO's requirements

				from Commencement date, to be evidenced by a notarized certification in the form and substance provided in the IPB. together with this TOR
IPB	Section 3.1.2 (b) (c)	<p>a) <i>copy of its SEC Certificate of Incorporation, which shall be certified as a true copy by (i) the SEC; or (ii) the corporate secretary, in which case, it must be under oath and notarized;</i></p> <p>b) <i>copy of its articles of incorporation and by-laws or articles of partnership, which shall be certified as a true copy by (i) the SEC; or (ii) the corporate secretary, in which case, it must be under oath and notarized;</i></p> <p>c) <i>copy of its latest General Information Sheet, stamped "received" by the SEC, which shall be certified as a true copy by (i) the SEC; or (ii) the corporate secretary, in which case, it must be under oath and notarized</i></p>	<p>MPPCL cannot provide a Securities and Exchange Commission ("SEC") Certificate of Incorporation because the SEC has not issued in favor of MPPCL a Certificate of Registration when it was established in 2007. The SEC only issued a certificate on MPPCL's original Articles of Partnership dated 25 June 2007 (the date the partnership was established).</p> <p>Since the bidder is a partnership, it does not have and is not required by law to have a SEC Certificate of Registration and By-laws. It is also not required by the SEC to submit a GIS.</p> <p>Thus, in lieu of said requirements, MPPCL requests that it be allowed to submit a copy of the certificate issued by the SEC approving its Articles of Partnership, as well as its original and the latest Articles of Partnership.</p>	<p>Section 3.1.2 is further amended to read as follows:</p> <p>xxx</p> <p><i>c) copy of its latest General Information Sheet in case of a Corporation, stamped "received" by the SEC, which shall be certified as a true copy by (i) the SEC; or (ii) the corporate secretary, in which case, it must be under oath and notarized</i></p> <p>Item (b) of Section 3.1.2 mentions of Articles of Partnership, hence, MPPCL being a Partnership is only required to submit Item (b) or the latest amended Articles of Partnership.</p> <p>Yes.</p>

IPB	Section 3.1.2 (a) (d)	<p><i>a) copy of its SEC Certificate of Incorporation, which shall be certified as a true copy by (i) the SEC; or (ii) the corporate secretary, in which case, it must be under oath and notarized;</i></p> <p><i>d) a diagram of the corporate structure of the Bidder with an indication of which entity has Controlling interest over, or is the Affiliate or Ultimate Parent of, the Bidder and a copy of the shareholders' agreement, pooling agreement, voting trust agreement or equivalent document if the Bidder is a partnership or consortium, which shall be certified as a true copy by the corporate secretary (or its equivalent), which certification must be under oath and notarized;</i></p>	<p>If the following documents are not available since the bidder is a partnership, can we just write "Not Applicable"?</p> <p>In lieu of said requirements, MPPCL requests that it be allowed to submit a copy of the its original and the latest Articles of Partnership</p>	<p>Article 13.2.1 SELLER Conditions Precedent is further amended to read as follows:</p> <p>(i) copies of the SEC Certificate of Registration, Articles of Incorporation/Partnership and By-Laws of the SELLER, each certified by the corporate secretary/Managing Partner any responsible officer of the Partnership of the SELLER;</p> <p>In case of Unincorporated Partnership/Consortium, evidence that the rights and obligations/liabilities in this Bidding and resulting EPPA are solidary.</p> <p>(ii) xxx</p> <p>(iii) copy of the ERC approval, whether interim relief, provisional or final.</p>
IPB	Section 3.1.2 (d)	<p><i>a diagram of the corporate structure of the Bidder with an indication of which entity has Controlling interest over, or is the Affiliate or Ultimate Parent of, the Bidder and a copy of the shareholders' agreement, pooling agreement, voting trust agreement or equivalent document if the Bidder is a partnership or consortium, which shall be certified as a true copy by the corporate secretary (or its equivalent), which certification</i></p>	<p>Affiliates have been broadly defined and given the existing Affiliates of the Bidder, it will include companies outside the power industry.</p> <p>May we suggest limitation of this requirement to Affiliates engaged in power generation only?</p>	<p>Yes.</p> <p>Article 3.1.2 (d) is further amended to read as follows:</p> <p><i>(d) a diagram of the corporate structure of the Bidder with an indication of which entity has Controlling interest over, or is the Affiliate or Ultimate Parent of, the Bidder engaged in Power Generation and a copy of the shareholders' agreement, pooling agreement,</i></p>

		<i>must be under oath and notarized;</i>		<i>voting trust agreement or equivalent document if the Bidder is a partnership or consortium, which shall be certified as a true copy by the corporate secretary (or its equivalent), which certification must be under oath and notarized;</i>
IPB	Section 3.1.2 (g)	<i>"if the Bidder is under a partnership or consortium, the Bidders should submit an agreement showing that their liability in this Bidding and the resulting Electric Power Purchase Agreement shall be solidary for the parties thereto. It should be certified as a true copy by the duly authorized officer of said joint venture/partners, in which case, it must be under oath and notarized;</i>	Please clarify that this requirement only applies for partnership or consortium formed only for the purposes of this bidding and not for existing partnerships such as MPPCL.	Please take note of the last sentence that mentions of Joint Ventures/Partners (supposedly with other Companies which is established for a common goal, i.e. for the purpose of Bidding and Supply of Power to LUECO for a given period of time) hence, MPPCL is not included among those.
IPB	Section 3.1.4 (a)	<i>a) copy of the audited (parent and consolidated, if applicable) financial statements of the Bidder or any of its direct shareholders representing Controlling interest, Affiliates or Ultimate Parent for the last three (3) years {the latest of which must not be earlier than for the year ending December 31, 2019} duly stamped "received" by the Bureau of Internal Revenue ("BIR") or SEC, or the equivalent thereof in a foreign country, which shall be certified as a true copy by (i) the BIR or SEC, or the equivalent thereof in a foreign country; or (ii) the chief financial officer or treasurer, in which case,</i>	If Bidder AFS for the last 3 years will be submitted, is the Bidder also required to submit the AFS of its Parent Company Separate AFS and Consolidated AFS? If yes, may we know the reason please for this additional requirement? Can submission of the Bidder's- AFS comply with this requirement considering that the Bidder can provide AFS for the past three (3) years?	The requirement is the copy of the Audited Financial Statement of the Parent and Consolidated filed with the SEC as per the PFRS (Philippine Financial Reporting Standards). Please submit this on top of the above requirements.

		<i>it must be under oath and notarized; and</i>		
IPB	3.1.4.(b)	<i>(b} copy of the most recent quarterly financial statements, which shall be certified as a true copy by the chief financial officer or treasurer, and must be under oath and notarized .</i>	<p>For the most recent quarterly financial statements, do we need to submit the first three (3) quarters of 2020 or just the 3rd quarter ended 30 September 2020?</p> <p>If the Bidder's latest unaudited quarterly FS will be submitted, is the Bidder also required to submit the unaudited quarterly FS of its Parent Company (both Separate and Consolidated)? If yes, may we know the reason please for this additional requirement?</p>	<p>The most recent 3 quarters of 2020 depending on the accounting period of the Bidder.</p> <p>Only the most recent quarterly FS of the Bidder.</p>
IPB	Section 3.2 (c)	<i>Details of the 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</i>	<p>From our previous comments, Query: What particular document shall be attached to this requirement? TPBAC Answer: Item 4 of ANNEX 7 of the /PB is self- explanatory. It is dependent on your internal records and/or monitoring. Usually these are documents submitted to ERC upon application for Certificate of Compliance. We require at least three years data.</p>	<p>These are documents being submitted to ERC upon application for COC.</p> <p>The Suppliers are the ones knowledgeable of what documents to be submitted to ERC in their application for COC or renewal of COC.</p>

			<p>What particular document do we need to submit for this requirement? Will the submission of the following documents: Connection Agreement ,Metering Service Agreement, Transmission Service Agreement, and GCMR or MOR of the Nominated Power Plant suffice or comply with this requirement?</p>	<p>What you mentioned are legal requirements. What we need are the technical documents.</p>
IPB	ANNEX 2	<p><i>AUTHORITY TO PARTICIPATE IN THE BIDDING AND DESIGNATION OF AUTHORIZED REPRESENTATIVE</i></p>	<p>Are the Authorized Representatives limited only to those listed in the Expression of Interest? May we be allowed to include additional Authorized Representatives?</p> <p>Is there a maximum number of representatives to be appointed?</p> <p>MPPCL already provided substitutes to attend the Pre-bid conference. However, it would like to change authorized representatives for the bid submission date. Can it do so by indicating the names of the new representatives in Annex 2 which is required to be submitted during bid submission deadline or do we have to send a new letter prior to bid submission deadline on the substitution or the amendment of the EOI?</p>	<p>The authorized persons are limited to only two (2) so as to have easier and smooth flow of meetings, considering the number of Bidders. If there is a need to change the authorized representative or change him/her due to his/her absence in the scheduled meeting, please inform us in advance via email.</p>

	<p>ANNEX 2 #4</p>	<p><i>At a (regular/special) meeting of the board of directors of the Company, held on (date) at (place), in which meeting a quorum was present and acting throughout the following resolutions were unanimously passed and approved:</i></p>	<p>Some of the statements in Annex 2 template does not apply to partnerships. Can we change "At a (regular/special) meeting of the board of directors of the Company ..." to "At a (regular/special) meeting of the partners of the Company ..."?</p>	<p>ANNEX 2 AUTHORITY TO PARTICIPATE IN THE BIDDING AND DESIGNATION OF AUTHORIZED REPRESENTATIVE</p> <p style="text-align: center;">xxx</p> <p>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></p> <p>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></p> <p>4. <i>At a (regular/special) meeting of the board of directors/partners 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></p>
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IPB	ANNEX 2	<p><i>RESOLVED FURTHER, that (name of representative 1 and representative 2) are hereby appointed as the authorized representatives of the Company during the Bidding, authorized to execute, sign, submit and receive documents for, and otherwise act in the name of, the Company;</i></p> <p><i>RESOLVED FINALLY, that any and all acts done or performed by (name of representative 1 and representative 2) under and by--virtue of this resolution be, as they are hereby, confirmed and ratified.</i></p>	<p>We note that the resolutions indicated in Annex 2 does not include the authority to execute the PSA in case MPPCL is declared the winning bidder. Does that mean we need to execute another secretary certificate for this in case we are declared the Winning Bidder?</p>	<p>Please refer to the last page of the EPPA where the signatories are shown, and they are the respective Presidents of the Companies. In case of a Partnership, the equivalent position of the President will have to sign unless there is a Board Resolution authorizing his representative to sign for and in his behalf.</p>
IPB	<p>Section 3.1.2 (h)</p> <p>ANNEX 4</p>	<p><i>h) a notarized certification in the form of Annex 4, that the Offered Capacity from the Nominated Power Plant and/or each of the plants in its portfolio, at the time of Commencement Date and the for the entire Cooperation Period is not covered by an offtake agreement xxx subject of an application for approval pending before the ERC, such application shall be withdrawn and the relevant offtake agreement terminated as of Commencement Date.</i></p> <p><i>CERTIFICATION OF UNCONTRACTED CAPACITY OF THE NOMINATED POWER PLANT</i></p>	<p>To align with the requirement under Section 3.1.2 (h), we propose to limit the last paragraph of Annex 4 only to those pending applications that will overlap with the Offered Capacity.</p> <p>Since the Bidder has available capacity to supply the Offered Capacity, it should not be required to withdraw any pending application with the ERC.</p>	

		<p>xxx</p> <p><i>"I further certify that any offtake agreement of the Nominated Power Plant or each of the plants in our portfolio that is subject of an application for approval pending before the ERC shall be withdrawn and the relevant offtake agreement terminated no later than the Commencement Date. "</i></p>	<p>Please consider the following revisions in Annex 4:</p> <p><i>"I further certify that any offtake agreement of the Nominated Power Plant or each of the plants in our portfolio that will render the Bidder incapable of supplying the Offered Capacity and is the subject of an application for approval pending before the ERC shall be withdrawn and the relevant offtake agreement terminated no later than the Commencement Date. "</i></p> <p>Further, please clarify that the phrase "or each of the plants in its/our portfolio" refers to such power plants nominated by the Bidder to be the source power plant/s for the Offered Capacity.</p>	<p>This is well taken.</p> <p>ANNEX 4 of the IPB is amended to read as follows:</p> <p>xxx</p> <p><i>"I further certify that any offtake agreement of the Nominated Power Plant or each of the plants in our portfolio that will render the Bidder incapable of supplying the Offered Capacity and is the subject of an application for approval pending before the ERC shall be withdrawn and the relevant offtake agreement terminated no later than the Commencement Date. "</i></p> <p>Yes.</p>
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IPB	ANNEX 5	<p>1. (Insert name of Bidder) and its Affiliates do not have any record of Unsatisfactory Performance on any of their projects and contracts.</p>	<p>Affiliates have been broadly defined and given the existing Affiliates of the Bidder, it -will include companies outside the power industry.</p> <p>Please limit definition of Affiliates to those affiliates engaged in power generation.</p>	<p>ANNEX 5 Item No. 1 is amended to read as follows:</p> <p>1. (Insert name of Bidder) and its Affiliates engaged in power generation and/or Supply do not have any record of Unsatisfactory Performance on any of their projects and contracts.</p>												
IPB	Section 3.4.1(b)	<p>(b) Whenever possible, the Qualification Documents, Technical Proposal and Bid must be printed in A4-size paper and in its absence, in letter size (8 1/2 x 11) and bound together in ring binders or folders of appropriate size. Documents must be paginated and text must be at least of 14-font size, Times Roman font.</p>	<p>Is the pagination of documents continuous for the whole requirements or only per envelope?</p>	<p>Per envelope.</p>												
IPB	ANNEX 6	<p>3. (Name of Bidder) is a customer in good standing in the following Bank(s):</p> <table border="1" data-bbox="728 997 1173 1449"> <thead> <tr> <th data-bbox="728 997 943 1077">Name of Bank</th> <th data-bbox="943 997 1070 1077">[Bank 1]</th> <th data-bbox="1070 997 1173 1077">[Bank 2]</th> </tr> </thead> <tbody> <tr> <td data-bbox="728 1077 943 1114">Address</td> <td data-bbox="943 1077 1070 1114"></td> <td data-bbox="1070 1077 1173 1114"></td> </tr> <tr> <td data-bbox="728 1114 943 1262">Contact Person [Name and Title]</td> <td data-bbox="943 1114 1070 1262"></td> <td data-bbox="1070 1114 1173 1262"></td> </tr> <tr> <td data-bbox="728 1262 943 1449">Contact Details [Address/ Telephone Number/Email Address]</td> <td data-bbox="943 1262 1070 1449"></td> <td data-bbox="1070 1262 1173 1449"></td> </tr> </tbody> </table>	Name of Bank	[Bank 1]	[Bank 2]	Address			Contact Person [Name and Title]			Contact Details [Address/ Telephone Number/Email Address]			<p>Should Bidder list names of 2 banks in which it has maintained bank accounts?</p>	<p>Yes. But you may wish to add more banks.</p>
Name of Bank	[Bank 1]	[Bank 2]														
Address																
Contact Person [Name and Title]																
Contact Details [Address/ Telephone Number/Email Address]																

IPB	ANNEX 6	<p><i>Statement of Financial Capability</i></p> <p>I, <i>(insert name)</i>, <i>(insert citizenship)</i>, of legal age, with office address at <i>(insert address)</i>, as the <i>(insert position/designation)</i> of <i>(insert name of entity)</i>, a <i>(partnership/corporation)</i> organized and existing under and by virtue of the laws of the <i>(country of incorporation)</i>, after having been duly sworn according to law, hereby certify for and on behalf of (name of entity) that the information stated in this Notarized Statement of Financial Capability is true and that the attached documents are genuine and true copies of the original.</p>	<p>If the Bidder can provide the 3-year AFS, can the Bidder issue this statement of financial capability on its behalf?</p> <p>If the parent company will issue this statement on behalf of the Bidder, will the information in this statement be computed using the Parent Company Separate AFS or the Consolidated AFS?</p>	<p>Yes.</p> <p>No need but the consolidated AFS or the AFS of the parent company is still required.</p>
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IPB	ANNEX 6	<p><i>Statement of Financial Capability</i></p> <p>1. The (name of entity) has an Unrestricted Net Worth equivalent to [x] based on the submitted consolidated financial statements, certified true copies of which is attached to this certificate.</p>	Should the Unrestricted Net Worth in item 1 be equal to the Net Worth referred to in Item 11 of page 42 of the Instructions to Bidders?	Item 1 refers to the Unrestricted Net Worth based on the submitted Consolidated AFS. On the other hand, Item 6 refers to the Unrestricted retained earnings or Net Worth of the Bidder.										
IPB	ANNEX 6	<p>2. The Financial Summary of (name of entity) for the financial year 2019 is as follows:</p> <table border="1" data-bbox="728 687 1176 1094"> <thead> <tr> <th data-bbox="728 687 1077 762">Financial Information</th> <th data-bbox="1077 687 1176 762">2019</th> </tr> </thead> <tbody> <tr> <td data-bbox="728 762 1077 874">(indicate last day of accounting year)</td> <td data-bbox="1077 762 1176 874"></td> </tr> <tr> <td data-bbox="728 874 1077 949">1. Total Assets</td> <td data-bbox="1077 874 1176 949"></td> </tr> <tr> <td data-bbox="728 949 1077 1024">2. Total Liabilities</td> <td data-bbox="1077 949 1176 1024"></td> </tr> <tr> <td data-bbox="728 1024 1077 1094">3. Total Equity (sum of 4,5,6,7,8,9, and10)</td> <td data-bbox="1077 1024 1176 1094"></td> </tr> </tbody> </table>	Financial Information	2019	(indicate last day of accounting year)		1. Total Assets		2. Total Liabilities		3. Total Equity (sum of 4,5,6,7,8,9, and10)		If financial information from the Parent Company Consolidated or Separate AFS will be used, where can we indicate items falling under "Other Equity (such as unrealized fair value adjustments on FVOCI financial assets, remeasurement adjustments on employee benefits plan, cumulative translation adjustments, etc.)" so that we can derive Item 3 - Total Equity that is traceable to the 2019 Consolidated and Separate AFS of the Parent Company correctly?	This refers to Financial Information from the Bidder and not from the Parent Company.
Financial Information	2019													
(indicate last day of accounting year)														
1. Total Assets														
2. Total Liabilities														
3. Total Equity (sum of 4,5,6,7,8,9, and10)														
IPB	Section 3.2 (a), (b) and (c) and ANNEX 7	<p>TECHNICAL PROPOSAL (Nominated Power Plant)</p> <p><i>Required Attachments:</i></p> <p>1. The identification of list of characteristics of the Nominated Power Plant or portfolio of plants showing evidence of compliance to the requirements stated in</p>	<p>Please clarify that the phrase "or portfolio of plants" refers to such power plants nominated by the Bidder to be the source power plant/s for the Offered Capacity.</p> <p>Further, are we required to provide all ERC approvals and</p>	<p>Yes.</p> <p>With regard to the Nominated Plants, yes.</p>										

		<p><i>the Invitation to Bid's Terms of Reference Table ("TOR Table");</i></p> <p><i>Items 2, 3 and 4 attachments also refer to "portfolio of plants".</i></p>	<p>all pending ERC applications filed by the Bidder?</p>	
IPB	ANNEX 7	<p>Certification regarding Technical Proposal</p> <p><i>xxx, the details of the Nominated Power Plant and/or portfolio of plants are as follows:</i></p> <p><i>xxx</i></p> <p><i>Current Status of Power Plant Generation Source</i></p> <p><i>Reserve Capacity</i></p> <p><i>Reserve capacity has been defined under Bid Bulletin No.5 as the net of the Maximum Plant Capacity less Total Contracted Capacity and Pending PSAs for Approval by ERC.</i></p>	<p>Please clarify that the phrase "and/or portfolio of plants" refers to such power plants nominated by the Bidder to be the source power plant/s for the Offered Capacity.</p> <p>Please clarify the following items:</p> <ol style="list-style-type: none"> 1. Current status - Can we indicate "operational or under-commissioning"? 2. Generation Source - Does this refer to Primary Fuel Source of the Nominated Power Plant? 3. Reserve Capacity - Does the term "Maximum Plant Capacity" refer to Installed Capacity or Net Dependable Capacity of the Nominated Power Plant? 	<p>Yes.</p> <ol style="list-style-type: none"> 1. Yes. 2. Yes. 3. Net Dependable Plant Capacity.

IPB	Section 3.4.1(e)	Electronic copies of ALL documents submitted in the Bid shall be in PDF format.	Please advise if there is a preferred file name for each document.	We will issue Bid Bulletin regarding this.
IPB	Article 8.1 and 8.2	Period/s within which to file a written request for reconsideration and protest.	Please clarify if the word "days" refers to "Business Days" as mentioned under Section 9 (Definitions).	<p>Sections 8.1 and 8.2 are amended to read as follows:</p> <p>8.1 A decision of the TPBAC at any stage of the CSP may be questioned by filing a written request for reconsideration within three (3) business days upon receipt of written notice or upon verbal notification. The TPBAC shall decide on the request for reconsideration within seven (7) business days from receipt thereof.</p> <p>8.2. In the event that the request for reconsideration is denied, decisions of the TPBAC may be protested in writing to the governing board of LUECO. The protest must be filed within seven (7) business days from receipt of the resolution denying the request for reconsideration. xxx</p>
EPPA	Article 20.1	Entire Agreement	In case there are any inconsistencies between any of the attachments and the body of EPPA, which document/provision shall prevail? Body of EPPA or the which specific document?	<p>Please refer to Article 20.1.2 of the EPPA.</p> <p>Article 20.1.2 is amended to read as follows:</p> <p>... In case of inconsistency between the text of the Articles of this Agreement and the Terms</p>

				of Reference (TOR), the latter former shall prevail.
EPPA	Article 20.1.1	The Appendices, Schedules and Terms of Reference (TOR) are hereby made an integral part of this Agreement and shall be fully binding upon the Parties.	Are the Bid Bulletins and IPB, among others part of appendices?	No. Only those appendices mentioned in the EPPA because the latter is the embodiment of the agreement of the parties.
Other Matters		Annexes Template	Can we remove the LUECO Logo watermark in the Annexes upon execution? This is relevant in view of the denial of LUECO to provide word versions of the Annexes. This is equally important for the Bid Security to be issued by Acceptable Banks since the Acceptable Banks will not agree to insert LUECO logo as watermark.	Yes only on ANNEX 9 Bid Security Format to be issued by the Bank.
		Signing of Documents	Can the signature of the Authorized Representative appear only on the first page of each document?	On all pages of the original copies for security purposes. The other copies are just photocopies of the signed original set.
		Bid Submission	Are we still allowed to ask questions before the Bid Submission Deadline aside from the queries/clarifications submitted within the timeline of the "Submission of Comments"?	The deadline has been set and we do not have the luxury of time to answer further questions.

		<p>Answers to the Comments/Questions of all the Bidders submitted on or before Jan 25, 2021</p>	<p>As per your answer to our comment submitted last January 25,2021. <i>"May we kindly request for LUECO to release a bid bulletin after the Pre-bid Conference and before the deadline of submission of comments on February 11, 2021 so that the Bidders can still include their additional questions/clarifications regarding the discussion on the Pre-bid Conference?"</i> TPBAC Answer: <i>As to the questions/clarifications submitted on/or before Jan 25, 2021, the TPBAC shall issue Bid Bulletin on the Q and A as soon as all queries have been addressed.</i></p> <p>In connection to this, may we follow up on the issuance of a bid bulletin containing the responses to the queries of all the bidders. Please note that we only received the responses to MPPCL's queries. We would like to be furnished also, through a Bid Bulletin, of all the TPBAC's responses to all bidders' queries.</p>	<p>The responses of TPBAC to all the queries of all the Bidders submitted last January 25 have long been posted in the LUECO Website. In fact it was posted on February 9, 2021 and you were informed of this via email.</p> <p>According to DOE, we do not have to post the Q and A of the Bidders in their DOE CSP Portal, hence, it was only posted in the LUECO website.</p>
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		Billing Cycle	What is LUECO's Billing Cycle?	LUECO's Supplier billing cycle is from the 26 th day of the month to 25 th of the following month.
TOR	5	Bid Bulletin No. 5 states that Commencement Date of Supply shall be "August 26, 2021 or upon approval by the ERC (whether provisional or final), whichever is later but to coincide with NGCP Billing every 261h day of the month".	<p>Please consider the revision as follows:</p> <p>August 26, 2021 or upon approval by the ERC (whether interim relief, provisional or final), whichever is later but to coincide with NGCP Billing every 25th day of the month</p>	<p>Item No. 5 of the TOR is further amended to read as follows:</p> <p>"August 26, 2021 or upon approval by the ERC (whether interim relief, provisional or final), whichever is later but to coincide with NGCP Billing every 26th day of the month".</p>
TOR	19	Power Supplier shall put a Performance Security in the form of an irrevocable Stand-By Letter of Credit equivalent to Three Hundred Fifty Million Pesos (Php 350,000,000.00) in the form of an Irrevocable Standby Letter of Credit (SBLC) in favor of LUECO to be issued by any the banks listed in Annex C which shall be drawn upon for the liquidated damages or market exposure that LUECO shall incur in an event of any default under the EPPA.	<p>Please consider reducing the performance security amount to a more reasonable level.</p> <p>Can we include "the winning bidder and LUECO may come up with other guarantees as they may mutually agree"?</p>	<p>Please refer to Article 14.3.2 Liquidated Damages regarding the basis of the PhP 350,000,000.00</p> <p>"14.3.2 Upon the occurrence of a BUYER Event of Default that affects the ability of BUYER to receive and pay for the electricity in accordance with this Agreement and results in the early termination of this Agreement (and without prejudice to any other provisions of this Agreement prior to such termination), SELLER shall be entitled to Liquidated Damages in lieu of all other damages to which it may be entitled in respect of such Event of Default, equivalent to four (4) months' worth of</p>

				<p>electricity payment calculated as the sum of the previous four (4) months' worth of electricity payments made by BUYER to SELLER, net of any deductions that the Law may require.”</p> <p>Hence, the Performance Security imposed on the SELLER is equivalent to the Liquidated Damages imposable on the BUYER in case of its Event of Default.</p>
ITB/TOR	19	Minimum Energy Offtake	<p>Considering that LUECO will not have a minimum energy offtake and it shall be billed only as metered, does this mean Supplier will be the exclusive supplier of LUECO except for MQ corresponding to RCOA and RE? Or can LUECO contract parts of its capacity/metered quantities to other generators?</p>	<p>Yes. Please refer to TOR.</p> <p>No.</p>

ITB/TOR	3	Annual Capacity and Energy Estimates	<p>Will the actual MQ of LUECO be capped based on the Annual capacity estimate herein?</p> <p>Or are these just estimates and are non-binding?</p>	<p>No.</p> <p>Yes.</p>
IPB	Section 3.3. (b)	<p>Bid and Bid Security</p> <p>(b) Bid Security equivalent to <u>One Hundred Sixty Million Pesos (PhP160,000,000.00)</u> in the form of an irrevocable standby letter of credit issued by an Allowed Bank listed in ANNEX 11 and using the template in ANNEX 9 (without modification);</p>	<p>Please consider reducing the bid security amount to a more reasonable level.</p>	<p>The TPBAC cannot reduce the bid security amount because said requirement is in anticipation of a worse-case scenario when the Winning Bidder refuses to sign the EPPA. In this case the BUYER has to undergo another round of Bidding. In the meantime, the BUYER has to procure its Supply from another source due to the delay in the commencement of Supply.</p>
IPB	ANNEX 9	<p>Bid Security template</p> <p>2. Subject to the other provisions of this Letter of Credit, LUECO is hereby irrevocably authorized to make one drawing for the entire Stated Amount under this Letter of Credit by presenting to the Issuer, at its address set forth above, <u>a demand for payment to LUECO in substantially the form attached as</u></p>	<p>Will LUECO provide a separate "ANNEX" for the drawing certificate/demand for sight payment? ANNEX 9 is the Bid Security draft and will be printed in the letterhead of the issuing bank. Under Item 2 of the Bid Security draft, it mentioned also ANNEX 9 which is the main bid security draft to</p>	<p>ANNEX 9 #2 is amended to read as follows:</p> <p>2. Subject to the other provisions of this Letter of Credit, LUECO is hereby irrevocably authorized to make one drawing for the entire Stated Amount under this Letter of Credit by presenting to the Issuer, at its address set forth above, a demand for payment to LUECO in</p>

		<u>ANNEX 9, duly completed, and is in the form of a letter on LUECO's letterhead signed by any of its authorized signatories.</u>	be printed in LUECO' s letterhead also.	substantially the form to be provided by the Bank attached as ANNEX 9, duly completed, and is in the form of a letter on LUECO's letterhead signed by any of its authorized signatories.
IPB	ANNEX 11	List of Allowed Banks	Can LUECO further expand the list of allowed banks to include other big local commercial and universal banks as well as foreign banks with local branches like Standard Chartered Bank Manila, Maybank Philippines and Mizuho Bank - Manila Branch among others. Gencos may not have available credit lines with the said list of allowed banks and securing a credit line may take some time because the amount of the bid security is quite big at P160M-.	LUECO will consider additional Banks provided they are local commercial and universal Banks.