



**OCCIDENTAL MINDORO ELECTRIC COOPERATIVE, INC.
SAN JOSE, OCCIDENTAL MINDORO**



**BID BULLETIN No. 11
Series of 2019**

This Bid Bulletin No. 11 dated 19 November 2019 is being issued to clarify, modify, and amend the Bidding Documents:

A. AMENDMENTS TO THE DRAFT PSA

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RECITALS	
WHEREAS, pursuant to the aforesaid DOE's Circulars No. 2004-01-001, No. DC 2015-06-008 and No. DC 2018-02-033 and the ERC Resolutions No. 21, Series of 2005 and No. 13, Series of 2015, the Buyer had conducted a CSP for the procurement of the current and additional power supply requirements of 42 MW for its franchise area of Mainland Occidental Mindoro;	WHEREAS, pursuant to the aforesaid DOE's Circulars No. 2004-01-001, No. DC 2015-06-008 and No. DC 2018-02-033 and the ERC Resolutions No. 21, Series of 2005 and No. 13, Series of 2015, the Buyer had conducted a CSP for the procurement of the current and additional power supply requirements of 39 MW for its franchise area of Mainland Occidental Mindoro;
WHEREAS, the Seller, a power supplier which participated in the CSP for the procurement of power supply conducted by the Buyer, was declared as the winning bidder and was awarded of the contract for the supply of 42 MW of power to Mainland Occidental Mindoro;	WHEREAS, the Seller, a power supplier which participated in the CSP for the procurement of power supply conducted by the Buyer, was declared as the winning bidder and was awarded of the contract for the supply of 39 MW of power to Mainland Occidental Mindoro;
WHEREAS, the Seller had accepted the award of the contract and the Parties have agreed to enter into a Power Supply Agreement (Agreement) that would govern the supply of 42 MW of power to the Mainland Occidental Mindoro;	WHEREAS, the Seller had accepted the award of the contract and the Parties have agreed to enter into a Power Supply Agreement (Agreement) that would govern the supply of 39 MW of power to the Mainland Occidental Mindoro;
Section 2 Definition of Terms	
	<p><i>For inclusion in Definition of Terms</i></p> <p><i>Affiliate</i> means a corporation that directly or indirectly, to one or more intermediaries, is controlled by, or is under the common control of another corporation which thereby becomes its parent corporation. Two companies are affiliated when one company owns less than a majority of the voting stock of the</p>

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	<p>other, usually less than 50%, or when both are subsidiaries of the third company.</p> <p>Associated Energy refers to the projected energy requirements of the Buyer as shown in Schedule F of Draft PSA.</p>
<p>Commercial Operations Date (COD) shall mean the date wherein the Supplier is to commence supplying the power requirements of the Buyer which is scheduled not be later than March 25, 2020 at 12:00 Noon for the Interim Demand Requirement and not later than March 25, 2022 at 12:00 Noon for the New Generating Capacity.</p>	<p>Commercial Operations Date (COD) shall mean the date wherein the Supplier is to commence supplying the power requirements of the Buyer which is scheduled not be later than November 25, 2020 at 12:00 Noon for the Interim Demand Requirement and not later than November 25, 2022 at 12:00 Noon for the New Generating Capacity.</p>
<p>Net Expected Energy or "NEE" means the net amount of electricity measured at the high voltage side of the main transformer and guaranteed by the SELLER to be available to the BUYER for a particular Contract Year.</p>	<p>Deleted.</p>
<p>True Cost Generation Rate or "TGCR" refers to the total cost incurred by the SELLER to generate the supply of electricity to BUYER set in accordance with Schedule A.</p>	<p>True Cost Generation Rate or "TCGR" refers to the total cost incurred by the SELLER to generate the supply of electricity to BUYER set in accordance with Schedule A.</p>
<p>Section 7 Scope of Agreement</p>	
<p>7.1 General. Except as provided in this Agreement, the Seller shall be responsible for the ownership, control and possession, operation and maintenance of the Power Plant in accordance with Section 7.2 and which Buyer may dispatch in accordance with this Agreement. The Buyer shall dispatch the Power Plant for its power requirements in accordance with the dispatch Protocols in Schedule E, and pay the Fees in accordance with Section 15 of this Agreement. It is understood that, except as otherwise expressly provided for in this Agreement, the BUYER shall only pay for Actual Associated Energy delivered.</p>	<p>7.1 General. Except as provided in this Agreement, the Seller shall be responsible for the ownership, control and possession, operation and maintenance of the Power Plant in accordance with Section 7.2 and which Buyer may dispatch in accordance with this Agreement. The Buyer shall dispatch the Power Plant for its power requirements in accordance with the dispatch Protocols in Schedule E, and pay the Fees in accordance with Section 15 of this Agreement. It is understood that, except as otherwise expressly provided for in this Agreement, the BUYER shall only pay for Actual Energy delivered.</p>
<p>7.2 a) The ownership, control and possession, operation and maintenance</p>	<p>7.2 a) The ownership, control and possession, operation and maintenance</p>

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<p>of the Power Plant, including obtaining all necessary Government Consents, including environmental approvals, required in connection with the Power Plant, in accordance with Good Industry Practice, the technical parameters set forth in Schedule D and in compliance with Applicable Law. Provided that, the Seller shall not be held liable for any deficiency/ies arising from the requirements of any Government Consents, including but not limited to the Environmental Compliance Certificate (ECC), which came about prior to the Seller's ownership, control and possession of the Site;</p>	<p>of the Power Plant, including obtaining all necessary Government Consents, including environmental approvals, required in connection with the Power Plant, in accordance with Good Industry Practice, the technical parameters set forth in Schedule D and in compliance with Applicable Law;</p>
<p>7.2 k) Generate and supply the electricity requirements of the Buyer up to the Net Expected Energy level and deliver at the Delivery Point/s in accordance with the terms of this Agreement.</p>	<p>7.2 k) Generate and supply the electricity requirements of the Buyer up to the Contracted Capacity of 39MW and deliver at the Delivery Point/s in accordance with the terms of this Agreement.</p>
<p>7.3 e) Operate and maintain its distribution system as to comply with the standard parameters in accordance with the Philippine Distribution Code.</p>	<p>7.3 e) Operate and maintain its distribution system as to comply with the standard parameters in accordance with the Philippine Distribution Code, the Philippine Small Grid Guidelines, and other Applicable Law.</p>
<p>Section 8 Effectivity, Term, Commercial Operation Date (COD)</p>	
<p>8.3.1 For the Interim Demand Requirement - not later than March 25, 2020 at 12:00 Noon;</p>	<p>8.3.1 For the Interim Demand Requirement - not later than November 25, 2020 at 12:00 Noon;</p>
<p>8.3.2 For the New Generating Capacity – not later than March 25, 2022 at 12:00 Noon.</p>	<p>8.3.2 For the New Generating Capacity – not later than November 25, 2022 at 12:00 Noon.</p>
<p>Section 9 Sunset Clause and Delay Events</p>	
<p>9.1 Sunset Clause. If the Commercial Operation Dates of Interim Demand Requirement and New Generating Capacity do not occur within 30 and 180 days, after the March 25, 2020 at 12:00 Noon and March 25, 2022, respectively, the</p>	<p>9.1 Sunset Clause. If the Commercial Operation Dates of Interim Demand Requirement and New Generating Capacity do not occur within 30 and 180 days, after the November 25, 2020 at 12:00 Noon and November 25, 2022, respectively, the Parties may terminate</p>



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Parties may terminate this Agreement in accordance with Section 20.4 of this Agreement.	this Agreement in accordance with Section 20.4 of this Agreement.
<p>9.3.1</p> <p><i>In case of a delay in the COD of the Interim Demand Requirement due to an Excused Delay Event, the Seller shall provide the Replacement Capacity and Associated Energy at contract price for the Interim Demand Requirement. On the other hand, delay in the COD of the New Generating Capacity shall require the Seller to provide Replacement Capacity and Associated Energy at contract price for the New Generating Capacity. The Buyer shall receive, accept and pay such Replacement Capacity and Associated Energy.</i></p>	<p>9.3.1</p> <p><i>In case of excused delay in COD of the new generating capacity, the seller may extend the interim supply for a maximum period of four (4) months from the scheduled COD of the New Generating Capacity based on the approved rate of interim and shall be subject to the provision of Section 19.</i></p>
9.3.2 Failure of the Seller to provide the Replacement Capacity and Associated Energy shall be subjected to Section 19.	Deleted.
Section 10 ERC Application and Approval	
<p>10.1</p> <p>ERC Application. Within five (5) days from Effective Date, the Parties shall cooperate and jointly file the necessary application for the approval of this Agreement (“ERC Application”) with the ERC, such that:</p>	<p>10.1</p> <p>ERC Application. Within fifteen (15) days from Effective Date, the Parties shall cooperate and jointly file the necessary application for the approval of this Agreement (“ERC Application”) with the ERC, such that:</p>
Section 11 Sale and Supply of Demand Requirements	
<p>11.2.2</p> <p>The Parties herby, agree to modify or adjust the level of Contracted Quantities upon the activation of or attainment of thresholds for the compliance of Retail Competition and Open Access Rules, in such a manner that the business intensions of all other electricity</p>	<p>11.2.2</p> <p>The Parties may, however, agree to modify or adjust the level of Contracted Quantities upon the activation of or attainment of thresholds for the compliance of Retail Competition and Open Access Rules, in such a manner that the business intensions of all other</p>

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suppliers of and the Buyer shall not be impaired.	electricity suppliers of and the Buyer shall not be impaired.
Section 12 Commissioning Energy	
<p>12.3 Commissioning Energy Fees. <i>The Buyer shall purchase the Commissioning Energy Output at a rate equivalent to the Contract Price and Associated Charges less the Capacity Recovery Fee (CRF) and Fixed O&M Fees in accordance with the ERC approved PSA.</i></p>	<p>12.3 Commissioning Energy Fees. <i>The Buyer shall purchase the commissioning energy output at a rate equivalent to the actual cost of fuel and the ERC approved variable operations and maintenance rate.</i></p>
Section 13 Power Plant Outages	
<p>13.1 <i>There will be no allocation for outage allowance under this Agreement. The Seller shall provide 24/7 supply.</i></p>	<p>13.1 <i>The Seller shall be allowed 16 hours annual scheduled outage allowance for each power plant. This scheduled outage allowance is for preventive maintenance of power plant substation including control system.</i></p>
Section 14. Capacity Availability Declarations	
<p>14.1 <i>The Seller shall provide the Buyer the Capability and Availability Declaration of its Generating units for the Next Schedule Day not later than 9 AM daily as listed in Schedule E.</i></p>	<p>14.1 <i>The Seller shall provide the Buyer a Weekly Capability and Availability Declaration of its Generating units as listed in Schedule D. Any changes in the Capability and Availability Declaration, the Seller shall inform the Buyer day ahead not later than 9AM. Likewise, the Buyer will provide the Seller of its week-ahead load schedule containing its hourly load requirements.</i></p>
Section 15 Billing and Payment	
<p>15.1.1 There shall be no Minimum Energy Off-Take (MEOT) such that the Buyer shall pay the Variable Operation and Maintenance Fee and Fuel Fee if any, based only on the Actual Associated Energy delivered by the Seller;</p>	<p>15.1.1 There shall be no Minimum Energy Off-Take (MEOT) such that the Buyer shall pay the Variable Operation and Maintenance Fee and Fuel Fee if any, based only on the Actual Energy delivered by the Seller;</p>
<p>15.1.2 The Fixed Component Fee shall be</p>	<p>15.1.2 The Fixed Component Fee should be</p>

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based on the Actual Associated Energy delivered and only Fixed Operation and Maintenance Fee shall be allowed to be indexed.	based on the contracted capacity and only Fixed Operation and Maintenance Fee shall be allowed to be indexed.
<p>15.10 Method of Payment. The Buyer shall pay the Seller without any bank charges or other related fees through to the Bank Account of the Seller, who shall be responsible to update the Buyer promptly of any change in writing. The currently designated Account is as shown:</p> <p>Account Name :</p> <hr/> <p>Bank Name/Branch :</p> <hr/> <p>Bank Address :</p> <hr/> <p>Bank Account No. :</p> <hr/> <p>Swift Code :</p> <hr/> <p>Account Type :</p> <hr/> <p>Account Name :</p> <hr/>	<p>15.10 Monthly Payment shall be made through check payable to the Seller.</p>
Section 19 Seller's Events of Default	
<p>19.1 Distinction of Events. All events attributable to the Seller that result in an actual failure to deliver to the Buyer the required Contract Capacity and/or Associated Energy shall constitute a Seller's Event of Default.</p>	<p>19.1 Distinction of Events. All events attributable to the Seller that result in an actual failure to deliver to the Buyer the required Contract Capacity shall constitute a Seller's Event of Default.</p>
<p>19.3.4 The Seller breaches any of its material representations, warranties, covenants or obligations under this Agreement (other than a breach otherwise referred to in this Section) - the Seller shall have thirty (30) days from receipt of written notice of default from the Seller within which to cure such default.</p>	<p>19.3.4 The Seller breaches any of its material representations, warranties, covenants or obligations under this Agreement (other than a breach otherwise referred to in this Section) - the Seller shall have ninety (90) days from receipt of written notice of default from the Buyer within which to cure such default.</p>



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Section 25 Warranty Against Fraudulent And Corrupt Practices	
<p>25.1 Each Party represents and warrants to the other that it and its representatives, affiliates, or consortium/partnership have complied with all laws dealing with corrupt or illegal payments, gifts, or gratuities. Each Party agrees not to (and to cause its representatives, affiliates, or consortium/partnership not to), in connection with the activities contemplated by this Agreement, pay, promise to pay, seek, accept, or authorize the payment of any money or anything of value, directly or indirectly, to any person for the purpose of illegally or corruptly influencing any OMECO employee or official. Furthermore, each Party agrees that in connection with this Agreement and the activities contemplated hereby, it and its representatives, affiliates, or consortium/partnership will not take any action, or fail to take any action, which act or failure to act would subject the other Party or any of its representatives, affiliates, or consortium/partnership to liability under the laws of its country of domicile dealing with corrupt payments. Each Party agrees to indemnify the other Party from and against any loss, liability or damage (including reasonable attorney's fees) arising from or relating to such Party's breach of its representations, warranties, and obligations under this Section. Each Party represents and warrants to the other Party that prior to the date of this Agreement, it and its representatives, affiliates, or consortium/partnership have not taken any action in continuation of the foregoing in connection with the subject matter hereof.</p>	<p>25.1 Each Party represents and warrants to the other that it and its representatives, Power supplier or its affiliate, or consortium/partnership of power suppliers have complied with all laws dealing with corrupt or illegal payments, gifts, or gratuities. Each Party agrees not to (and to cause its representatives, Power supplier or its affiliate, or consortium/partnership of power suppliers not to), in connection with the activities contemplated by this Agreement, pay, promise to pay, seek, accept, or authorize the payment of any money or anything of value, directly or indirectly, to any person for the purpose of illegally or corruptly influencing any OMECO employee or official. Furthermore, each Party agrees that in connection with this Agreement and the activities contemplated hereby, it and its representatives, Power supplier or its affiliate, or consortium/partnership of power suppliers will not take any action, or fail to take any action, which act or failure to act would subject the other Party or any of its representatives, Power supplier or its affiliate, or consortium/partnership of power suppliers to liability under the laws of its country of domicile dealing with corrupt payments. Each Party agrees to indemnify the other Party from and against any loss, liability or damage (including reasonable attorney's fees) arising from or relating to such Party's breach of its representations, warranties, and obligations under this Section. Each Party represents and warrants to the other Party that prior to the date of this Agreement, it and its representatives, Power supplier or its affiliate, or consortium/partnership of power suppliers have not taken any action in continuation of the foregoing in connection with the subject matter hereof.</p>



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	<p>For inclusion in Section 25:</p> <p>25.2 The Seller and the Buyer shall observe the highest standard of ethics for the duration of the PSA and during the execution of all agreements. In pursuance of this policy, the following definitions shall apply:</p> <ul style="list-style-type: none"> a) "Corrupt practice" means behavior on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves and/or others, or induce others to do so, by misusing the position in which they are placed, and it includes the offering, giving, receiving, or soliciting of anything of value to influence the action of any such official involved in this Transaction or in contract execution; entering into any agreement or transaction manifestly and grossly disadvantageous to the OMECO, whether or not any person profited or will profit thereby; and b) "Fraudulent practice" means a misrepresentation of facts in order to influence the process or outcome of this Transaction or the execution of an agreement to the detriment of the OMECO, and includes collusive practices among Bidders (prior to or after Bid submission) designed to establish Bid prices at artificial, non-competitive levels and to deprive the OMECO of the benefits of free and open competition. c) "Collusive practices" means a scheme or arrangement between two or more Bidders, with or without the knowledge of the OMECO, designed to establish Bid prices at artificial, non-competitive levels;



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	<p>d) "Coercive practices" means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in this Transaction, or affect the execution of an agreement.</p>
Section 29 Force Majeure	
<p>29.3 Temporary Force Majeure. Both parties shall be excused from performing their respective obligations under this Agreement upon the occurrence of an Event of Force Majeure for a period not exceeding 90 days (Temporary Force Majeure Period). In case of an Event of Force Majeure under Section 29.1 hereof, the Commercial Operations Period shall be extended, without need of further agreement or consent, by such number of days necessary to allow the Seller to supply the kWh-shortfall in the Net Expected Energy during the Temporary Force Majeure Period.</p>	<p>29.3 Temporary Force Majeure. Both parties shall be excused from performing their respective obligations under this Agreement upon the occurrence of an Event of Force Majeure for a period not exceeding 90 days (Temporary Force Majeure Period). In case of an Event of Force Majeure under Section 29.1 hereof, the Commercial Operations Period shall be extended, without need of further agreement or consent, by such number of days necessary to allow the Seller to supply the kWh-shortfall during the Temporary Force Majeure Period.</p>
Section 32 Assignment of Rights	
	<p>For inclusion in PSA:</p> <p>32.1 The Seller shall not assign his rights or obligations under this Contract, in whole or in part.</p>

This Bid Bulletin No. 11, Series of 2019 shall form part of the Bidding Documents. Any provisions in the Bidding Documents inconsistent herewith is hereby amended, modified and superseded accordingly.

For information of all concerned.

FOR THE TPBAC:


CELSO D. GARCIA
 TPBAC Chairman