

PRIVILEGED AND CONFIDENTIAL

P3 Responses to Quanta/ATCO Additional Clarifications (Fifth Submission)

Ref. #	Section	Quanta/ATCO Consortium Question	P3 Response
1.	Sections 14 and 18 – Operator Damage Cap and Limitations of Liability	<p>Thank you for your November 15 response to our request for additional clarifications. With respect to your response to question 3, we remain somewhat confused by the drafting as well as the response to our question. Please confirm as to both of the following questions, as these issues are critical to the pricing of our proposal.</p> <p>(A) In your view, is there a total cap on Operator’s liability under the OMA for all instances other than where caused by gross negligence or willful misconduct by Operator? For instance, in clause c. of your response, you note in subclauses (i), (ii) and (iii) the caps applicable to Delay Liquidated Damages, termination damages and indemnification liabilities. Would each of the causes of liability in your clause c. be subject to an overall liability cap (i.e. the amounts noted in Section 18.3(i) for the yearly cap and the annual cap), notwithstanding that each of the items have a separate sub-cap as outlined in clause c., subclauses (i), (ii) and (iii)?</p> <p>(B) Your response in 3 b. states:</p> <p style="padding-left: 40px;">b. The cap specified in Section 14.6(d)(i) relates to damages <i>in connection with a termination for an Operator Event of Default.</i> [emphasis added] This cap is separate and apart from the cap under Section 18.3(a) which relates to liability for indemnification under Article 18.</p> <p>This appears to contradict the drafting in OMA Section 14.6(d), introductory paragraph, which provides “...in the event that a Party breaches this Agreement <i>or</i> the Agreement is otherwise terminated ...” [emphasis added] – this language clearly provides that the amounts in the following clauses (i) and (ii) would cap both Parties’ liabilities for both breach of the OMA or other termination of the OMA, and that this</p>	<p>(A) As indicated in prior responses, the caps in Section 18.3(a)(i) are caps on Operator’s liability to Owner Indemnitees under Article 18, rather than a total cap on amounts payable by Operator to Owner under the O&M Agreement. The O&M Agreement contains two additional and separate caps on amounts payable by Operator to Owner: (i) pursuant to Section 4.8(a), a cap on the amount of Delay Liquidated Damages and (ii) pursuant to Section 14.6(d)(i), a cap on damages in connection with a termination for an Operator Event of Default. The three separate caps will be bid by the Qualified Respondents, and together they represent the total liability under the O&M Agreement (other than in the case of gross negligence or willful misconduct by Operator).</p> <p>(B) The updated O&M Agreement clarifies that the cap in Section 14.6(d)(i) relates to damages in connection with an early termination of the O&M Agreement due to an Operator Event of Default. The reference in Section 14.6(d) to breaches of the O&M Agreement has been removed.</p>

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		<p>would be an aggregate cap for all such events that occur during the term of the OMA.</p> <p>Please confirm this is still the case as this element is critical for pricing our proposal.</p>	
2.	Section 2.2.(b)(ix) – Effective Date Conditions	<p>With respect to your November 15 response, question 9, we propose to set up a conference call between our bankruptcy/PROMESA counsel and yours to further understand the basis for your response to this question. Again, this is a critical issue and it relates directly to the ability to be paid during the Front- End Transition Period. Please confirm availability for such a call and propose possible dates and times.</p>	<p>Confirmed. The Authority and its advisors are available for a call at 2pm EST / 3pm AST on Thursday, November 21.</p>
3.	Section 4.5(f) – Service Commencement Date Conditions	<p>With regard to Section 4.5(f), as currently drafted, the condition is that "Owner shall have engaged a qualified environmental consultant to prepare a baseline environmental study to reasonable identify Pre-Existing Environmental Conditions that present a risk of material liability." We believe that the condition should be revised as follows to clarify that the condition is preparation and delivery of a baseline environmental study; not engagement of a consultant:</p> <p><i>"Owner's qualified environmental consultant shall have prepared and delivered a baseline environmental study that reasonably identifies Pre-Existing Environmental Conditions that present a risk of material liability."</i></p> <p>Please confirm.</p>	<p>Although the condition precedent to the Service Commencement Date relates to engagement of a qualified environmental consultant, the intent is for Pre-Existing Environmental Conditions that present a risk of material liability to be identified by the Service Commencement Date.</p>
4.	<i>RFP – Attachment 1 to Bid Security</i>	<p>The RFP states that the Place for Presentation of Draft in Progress must be a Bank/Branch in New York, New York or San Juan, Puerto Rico. Qualified Respondent's letter of credit will be issued by Citibank N.A., a member of The Clearing House (which is based in New York), and the LC will be subject to New York law, but they process all LCs in Tampa, Florida. The address on the letter of credit is Citibank, N.A., c/o Citicorp</p>	<p>Confirmed. It is acceptable for the Letter of Credit's place of presentation to be Tampa, Florida (rather than New York or San Juan).</p>

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		<p>North America, Inc., Attn: US Standby Unit, 3800 Citibank Center, Building B, 1st Floor, Tampa, FL 33610.</p> <p>The letter of credit indicates that it shall be honored by issuer if presented at the office of its servicer, Citicorp North America, Inc. at the above address.</p> <p>Please confirm that having the place for presentation in Tampa is acceptable and will satisfy the requirements of Attachment 1 to Bid Security.</p>	
5.	<i>RFP – Definitive Form 1.5</i>	With regard to Definitive Form 1.5, Number 6: Financial Management Milestones, item i. entitled “Establishing a delegation of authority matrix and process,” please advise whether this item refers to the approach to establishing a delegation of authority matrix and process for activities that will occur during the Front-End Transition Period or for activities that will occur after Service Commencement Date.	The delegation of authority matrix and process referred to in Number 6 of Definitive Form 1.5 should relate to activities that will occur after the Service Commencement Date.