



**Bid Bulletin No. 9**  
**August 05, 2020**  
**Public Bidding No. 19-341-7**

**Engineering, Procurement, Construction and Commissioning (EPCC) Contract for**  
**the Subic-Clark Railway Project**  
**for the Department of Transportation (DOTr)**

Issued pursuant to Sec. 22.5 of the IRR of R.A. 9184 to clarify and/or amend certain provisions in the Bidding Documents issued for this project, considering the issues raised and clarifications made by prospective bidders during the **Pre-Bid Conference** held on **January 10, 2020**, likewise, respond to bidders' written queries received within the prescriptive period for filing.

**A. AMENDMENTS**

AMENDMENTS/INCLUSION			BASES FOR AMENDMENT/INCLUSION
<ul style="list-style-type: none"> <li>Section I. INVITATION TO BID</li> </ul>			
Page I-2			
X XX			
5. The schedule of bidding activities is as follows:			
ACTIVITIES	SCHEDULE	VENUE	
X XX	X XX	X XX	
X XX	X XX	X XX	
X XX	X XX	X XX	
X XX	X XX	X XX	
Last day of Issuance of Supplemental Bid Bulletin	<del>Aug 07, 2020</del> August 28, 2020	PhilGEPS website, PS website, PS bulletin board	<ul style="list-style-type: none"> <li>To reflect the new schedules for the last day of Issuance of Supplemental Bid Bulletin and deadline of Submission and Receipt of Bids due to the Modified Enhanced Community Quarantine (MECQ) caused by the COVID-19 pandemic</li> </ul>
Deadline of Submission and Receipt of Bids	<del>Aug 14, 2020</del> <u>September 04, 2020</u> 10:00a.m	PS Conference Room, Cristobal St., Paco, Manila	
X XX	X XX	X XX	

<ul style="list-style-type: none"> <li>Section III. BID DATA SHEET</li> </ul> <p style="text-align: center;"><b>BID DATA SHEET</b></p> <ul style="list-style-type: none"> <li>The last sentence of Bid Data Sheet Sub-clause 5.4 (b) is amended as follows:  "Where a bidder is a wholly-owned subsidiary of a State-Owned Group, the experience record of the Group shall be considered, provided the ultimate parent company of the Group commits the availability of appropriate skills and resources through the submission of an Affiliate Company Guarantee Form (included in Section VII: Bidding Forms) to the Employer."</li> </ul>	<ul style="list-style-type: none"> <li>Consistent with the practice in other ODA projects.</li> <li>To rely on amended Sub-clause 5.4 (b), please include duly accomplished form, Annex B: Affiliate Company Guarantee (as Tab 21) in the Forms to be submitted, when applicable, during opening of bids</li> </ul>
<ul style="list-style-type: none"> <li>Section V. PARTICULAR CONDITIONS</li> </ul> <p style="text-align: center;"><b>CONTRACT DATA</b></p> <ul style="list-style-type: none"> <li>Contract Data Sub-clause 14.2.3 is amended as follows:  "Percentage deductions for repayment of Advance Payment: 15%"</li> <li>Delete Contract Data Sub-clause 14.3 (Total amount of interim payment).</li> <li>Contract Data Sub-clause 14.3 (Period of Payment) is amended as follows:  "Period of Payment: Monthly"</li> <li>Delete Contract Data Sub-clause 14.6.2 (Minimum Amount of Interim Payment)</li> </ul>	<ul style="list-style-type: none"> <li>DOTr and BCDA, through a Letter dated 24 February 2020, requested for the GPPB's reconsideration re Payment Scheme of the Contract (i.e., that the Payment Scheme be changed to conform with the General Conditions of the FIDIC Silver Book).</li> <li>GPPB, in Resolution No. 07-2020, reiterated its "principle-based approval" of the Bidding Documents for the Project under GPPB Resolution No. 23-2019 subject only to the conditions set therein.</li> <li>GPPB, in its Letter to DOTr and BCDA dated 23 April 2020, emphasized that the GPPB has already made a principle-based approval, subject to the conditions set forth in Resolution No. 23-2019.</li> <li>DOTr and BCDA, in their Letter Reply to GPPB dated 01 May 2020, noted that its proposed Payment Scheme, which adopts Sub-Clause</li> </ul>

	<p>14.4 (Schedule of Payments) of the FIDIC Silver Book (i.e., Progress Payment Scheme), does not limit competition and does not violate any existing procurement law, rule, regulation and associated laws and issuances, considering that: (1) there are no specific laws / rules / regulations / issuances in the Philippines on Turnkey Contracts; and (2) a cursory reading of the General Conditions of Contract of the Philippine Bidding Documents (Infrastructure, 5<sup>th</sup> ed.) reveals that the default Payment Scheme under Philippine Law is Progress Payments (§40: Progress Payments).</p>
<ul style="list-style-type: none"> <li>Section VII. BIDDING FORMS</li> </ul> <hr/> <p><b>BID FORM</b></p> <hr/> <p>Annex B: Affiliate Company Guarantee</p>	<ul style="list-style-type: none"> <li>To rely on amended Section III (Bid Data Sheet), Sub-clause 5.4 (b), please include duly accomplished form, Annex B: Affiliate Company Guarantee (as Tab 21) in the Forms to be submitted, when applicable, during opening of bids</li> </ul>

**B. CLARIFICATIONS**

ITEM	BIDDING DOCS	CLARIFICATION	BASES FOR AMENDMENT/INCLUSION
<b>CHINA HARBOUR ENGINEERING COMPANY LIMITED<sup>1</sup></b>			
1	<p>ITB 16.3 Unless otherwise specified in the BDS, payment of the contract price shall be made in Philippine Pesos.</p>	<p>Suggest putting following information in BDS 16.3:</p> <ol style="list-style-type: none"> <li>1. Payments for Advance Payment shall be made in Philippine Pesos.</li> <li>2. Interim Payments and Final Payment shall be made in the currency that determined in the Loan Agreement between GoP and EXIM Bank of China.</li> <li>3. All the applicable taxes imposed for making any payments shall be paid in Philippine Pesos.</li> </ol>	<ul style="list-style-type: none"> <li>• Please see attached Foreign Exchange and Payment Mechanism as concurred on by the Export-Import Bank of China and the Chinese Embassy for another ODA project.</li> </ul>
2.	<p><b>ITB 18.1</b></p> <p>The Bid Securing Declaration mentioned above is an undertaking among states, among others, that the Bidder shall enter into contract with the Procuring Entity and furnish the performance security required under ITB Clause 32.2, within ten (10) calendar days from receipt of the Notice of Award, and commits to pay the corresponding amount as fine and be suspended for a period of time from being qualified to participate in any government procurement activity in the event it violates any of the conditions stated therein as</p>	<p>Amend as follow:</p> <p><i>The Bid Securing Declaration mentioned above is an undertaking which states, among others, that the Bidder shall enter into contract with the Procuring Entity and furnish the performance security required under ITB Clause 32.2, within twenty-eight (28) calendar days after the effectiveness of the EPCC Contract, and commits to pay the corresponding amount as fine and be suspended for a period of time from being qualified to participate in any government procurement activity in the event it violates any of the conditions stated therein as provided in the guidelines issued by the GPPB.</i></p>	<ul style="list-style-type: none"> <li>• <b>ITB 18.1 is amended as follows:</b>  <i>"The Bid Securing Declaration mentioned above is an undertaking which states, among others, that the Bidder shall enter into contract with the Procuring Entity and furnish the performance security required under ITB Clause 32.2, within ten (10) calendar days from the full effectiveness of the Contract as per Sub-Clause 1.6 of the Particular Conditions of Contract, and commits to pay the</i></li> </ul>

<sup>1</sup> E-mail received on April 07, 2020 (Clarification NO.6) and May 08, 2020 (Clarification No. 7)

	<p>provided in the guidelines issued by the GPPB.</p>		<p>corresponding amount as fine and be suspended for a period of time from being qualified to participate in any government procurement activity in the event it violates any of the conditions stated therein as provided in the guidelines issued by the GPPB.”</p> <ul style="list-style-type: none"> <li>• <i>As answered in Bid Bulletin No. 5 dated 06 May 2020</i></li> </ul>
<p>3.</p>	<p><b>ITB 30.3</b></p> <p>Notwithstanding the issuance of the Notice of Award, award of Contract shall be subject to the following conditions:</p> <p>(a) Submission of the following documents within ten (10) calendar days from receipt of the Notice of Award:</p> <p>(i) In the case of procurement by a Philippine Foreign Service Office or Post, the PhilGEPS Registration Number of the winning foreign Bidder; or</p> <p>(ii) Valid PCAB license and registration for the type and cost of the contract to be bid for foreign bidders when the Treaty or International or Executive Agreement expressly allows submission of the PCAB license and registration for the type and cost of the</p>	<p>Delete sub-paragraph (b)</p>	<ul style="list-style-type: none"> <li>• <i>The request is acceptable, since pursuant to the applicable Philippines – China Executive Agreements, the effectivity of the Contract is contingent upon the effectivity of the Loan Agreement for the Project.</i></li> <li>• <i>See also Bid Bulletin No. 5 dated 06 May 2020 regarding when Performance Security should be posted.</i></li> </ul>

	<p>contract to be bid as a pre-condition to the Award;</p> <p>(b) Posting of the performance security in accordance with ITB Clause 32;</p> <p>(c) Signing of the Contract as provided in ITB Clause 31; and</p> <p>(d) Approval by higher authority, if required, as provided in Section 37.3 of the IRR of RA No.9184.</p>		
4.	<p><b>ITB 31.2</b></p> <p>Within ten (10) calendar days from receipt of the Notice of Award, the successful Bidder shall post the required performance security, sign and date the Contract and return it to the Procuring Entity.</p>	<p>Amend ITB 31.2 as follow:</p> <p><i>Within ten (10) calendar days from receipt of the Notice of Award, the successful Bidder shall sign and date the Contract and return it to the Procuring Entity.</i></p>	<ul style="list-style-type: none"> <li>• <i>The request is acceptable. As answered in Bid Bulletin No. 5 dated 06 May 2020.</i></li> </ul>
5.	<p><b>ITB 32.1</b></p> <p>To guarantee the faithful performance by the winning Bidder of its obligations under the Contract, it shall post a performance security within a maximum period of ten (10) calendar days from the receipt of the Notice of Award from the Procuring Entity and in no case later than the signing of the Contract.</p>	<p>Amend ITB 32.1 as follow:</p> <p><i>To guarantee the faithful performance by the winning Bidder of its obligations under the Contract, it shall post performance securities in the proportion equal to the proportion of delivered parts of Site to the Contractor in accordance with Sub-Clause 2.1 within a maximum period of twenty-eight (28) calendar days from the date of full effectiveness of the Contract as per Sub-Clause 1.6.</i></p>	<ul style="list-style-type: none"> <li>• <i>The request is acceptable. ITB Sub-clause 32.1 is amended as follows:</i></li> <li>• <i>"To guarantee the faithful performance by the winning Bidder of its obligations under the Contract, it shall post a performance security in the proportion equal to the proportion of delivered parts of Site to the Contractor in accordance with Sub-Clause 2.1 within a maximum period of ten (10) calendar days from the date of full effectiveness of the Contract as per Sub-Clause 1.6, and at such</i></li> </ul>

			<p>later time/s, again in proportion to the later-delivered additional part/s of the Site, if the Site is not fully-delivered on the date of full effectiveness of the Contract.”</p>
<p>6.</p>	<p><b>ITB 33</b></p> <p>Within seven (7) calendar days from the date of approval of the Contract by the appropriate government approving authority, the Procuring Entity shall issue the Notice to Proceed (NTP) together with a copy or copies of the approved contract to the successful Bidder. All notices called for by the terms of the contract shall be effective only at the time of receipt thereof by the successful Bidder.</p>	<p>Amend ITB 33 as follows:</p> <p><i>Within seven (7) calendar days after the date of full effectiveness of the Contract as per Sub-Clause 1.6, the Procuring Entity shall issue the Notice to Proceed (NTP). All notices called for by the terms of the contract shall be effective only at the time of receipt thereof by the successful Bidder.</i></p>	<ul style="list-style-type: none"> <li>The request is acceptable, since pursuant to the applicable Philippines – China Executive Agreements, the effectivity of the Contract is contingent upon the effectivity of the Loan Agreement for the Project. Please note, however, that per Bid Bulletin No. 5 dated 06 May 2020, the following sentence was added to ITB 33: <ul style="list-style-type: none"> <li>“The following sentence is added to ITB 33: “The above notwithstanding, the Procuring Entity shall issue a Partial NTP for Advance Works together with a copy or copies of the approved contract to the successful Bidder within seven (7) calendar days from the date of approval of the Contract by the appropriate government approving authority. Advance works shall include the following: (1) geotechnical, soil, and topographic investigations and surveys, and other</li> </ul> </li> </ul>
			<ul style="list-style-type: none"> <li>appropriate government approving authority. Advance works shall include the following: (1) geotechnical, soil, and topographic investigations and surveys, and other</li> </ul>

			<p>investigations and surveys that may be necessary for purposes of Preliminary, Concept, and other Design Works for the Project; (2) Preliminary, Concept, and other Design Works, to the extent agreed by the Employer and Contractor; (3) clearing, grubbing, and tree cutting works; (4) fencing and other site security works; (5) construction of roadways and other temporary access infrastructure; (6) construction of site offices and other related temporary facilities for the Employer and Contractor; and (7) establishment of construction yards, batching plants, and other temporary facilities, which are among the Works in Section VI: Employer's Requirements, Sub-clause 2.1.7 of the Bidding Documents."</p>
7.	<p><b>Contract Data 14.2.3</b></p> <p>Percentage deductions for repayment of Advance Payment: 100%</p>	<p>Amend Contract Data 14.2.3 as follow:</p> <p>Percentage deductions for repayment of Advance Payment: 15%</p>	<ul style="list-style-type: none"> <li>The request is acceptable. Please see Table A: Amendments above.</li> </ul>



8.	<p><b>Contract Data 14.3</b></p> <p>Total amount of Interim Payment: 40% of the Contract Price (from which amount shall be deducted 100% of the Advance Payment amount)</p>	1. Delete Contract Data 14.3	<ul style="list-style-type: none"> <li>The request is acceptable. Please see Table A: Amendments above.</li> </ul>
9.	<p><b>Contract Data 14.3</b></p> <p>Period of payment: Upon the completion of all civil and structural works (including buildings) for the following sections:</p> <ol style="list-style-type: none"> <li>Tunnel section;</li> <li>All elevation sections and river crossing bridges;</li> <li>50% of at-grade sections;</li> <li>The following terminals: <ol style="list-style-type: none"> <li>Subic Logistic Terminal</li> <li>Clark Logistic Terminal</li> <li>Clark Depot Complex</li> </ol> </li> </ol>	<p>Option 1: Delete this Contract Data, so the period of payment shall be monthly.</p> <p>Option 2: If milestones are preferred, we suggest the number be increased such that interim payments can reflect actual work completed, and a proposed milestone is attached.</p>	<ul style="list-style-type: none"> <li>The request (Option 1) is acceptable. Please see Table A: Amendments above.</li> </ul>
10.	<p><b>Contract Data 14.6.2</b></p> <p>Minimum amount of interim payment: 25% of the Contract Price</p>	<p>Amend Contract Data 14.6.2 as follow:</p> <p><i>Minimum amount of interim payment: 2.5% of the Contract Price</i></p>	<ul style="list-style-type: none"> <li>Please see Table A: Amendments above.</li> </ul>
11.	<p><b>Contract Data 14.8</b></p> <p>Financing Charges for Delayed Payments: Not applicable</p>	Delete Contract Data 14.8	<ul style="list-style-type: none"> <li>Original requirement shall be retained. As answered in Bid Bulletin No. 5 dated 06 May 2020</li> </ul>
12.	<p><b>Contract Data 14.15</b></p> <p>Currency of Payment: Philippine Pesos</p>	<p>Amend Contract Data 14.15 as follow:</p> <p>1. Payments for Advance</p>	<ul style="list-style-type: none"> <li>Please see attached Foreign Exchange and Payment Mechanism as concurred on by the</li> </ul>

		<p>Payment shall be made in Philippine Pesos.</p> <p>2. Interim Payments and Final Payment shall be made in the currency that is determined in the Loan Agreement between GoP and EXIM Bank of China.</p> <p>3. All the applicable taxes imposed for making any payments shall be paid in Philippine Pesos.</p>	<p><b>Export-Import Bank of China and the Chinese Embassy for another ODA project.</b></p>
13.	<p><b>Contract Data 19.2.3</b></p> <p>Period of Insurance for Liability for Breach of Professional Duty: 12 years from issuance of Taking-Over Certificate or as required under applicable law, whichever period is longer.</p>	<p>Amend as follow:</p> <p><i>Period of Insurance for Liability for Breach of Professional Duty: 8 years from Commencement Date</i></p>	<ul style="list-style-type: none"> <li>• <i>The request is acceptable. As answered in Bid Bulletin No. 5 dated 06 May 2020.</i></li> </ul>
14.	<p><b>Contract Data 19.2.3(a)</b></p> <p>Amount of Insurance Required for Liability for Breach of Professional Duty: ₱5 billion or the amount as required by applicable law, whichever is greater</p>	<p>Amend as follow:</p> <p><i>Amount of Insurance Required for Liability for Breach of Professional Duty: ₱1.5 billion</i></p>	<ul style="list-style-type: none"> <li>• <i>The request is acceptable. As answered in Bid Bulletin No. 5 dated 06 May 2020.</i></li> </ul>
15.	<p><b>Contract Data 19.2.4</b></p> <p>Amount of Insurance Required for Injury to Persons and Damage to Property: 30% of Contract Price</p>	<p>Amend as follow:</p> <p><i>Amount of Insurance Required for Injury to Persons and Damage to Property: 10% of Contract Price</i></p>	<ul style="list-style-type: none"> <li>• <i>The proposal is accepted. As answered in Bid Bulletin No. 5 dated 06 May 2020.</i></li> </ul>
16.	<p><b>Contract Data 21.6</b></p> <p>Rules of Arbitration: Rules of procedure of the Construction Industry Arbitration Commission of the Philippines</p>	<p>Option 1: Delete Contract Data 21.6, so the ICC rules shall be applied.</p> <p>Option 2: Amend as follow: Rules of Arbitration: Rules of procedure of the Singapore</p>	<ul style="list-style-type: none"> <li>• <i>Original requirement shall be retained. GPPB required this revision pursuant to Section 59 of R.A. 9184 during the Bidding Documents approval process.</i></li> </ul>

		International Arbitration Centre	
17.	<p><b>Contract Data 21.6</b></p> <p>Place of Arbitration: Philippines</p>	<p>Amend as follows:</p> <p>Place of Arbitration: Singapore</p>	<ul style="list-style-type: none"> <li><b>Original requirement shall be retained. As answered in Bid Bulletin No. 5 dated 06 May 2020.</b></li> </ul>
18.	<p>PCC 2.1</p> <p>If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall give Notice to the Employer within seven (7) days of the expiration of the time stated in the schedule of right of access produced under the Advance Contract or by BCDA for giving such right or possession.</p> <p>Notwithstanding other terms in this Contract, in the event of any failure or delay by the Employer to hand over the Contractor possession of the lands necessary for the execution of the Works or to give the necessary notice to commence the Works or to provide the necessary drawings or instructions or any other delay caused by the consultant of the Advance Contract or BCDA or the Employer due to any other cause whatsoever, then such failure or delay shall in no way affect or vitiate the Contract or alter the character thereof or entitle the Contractor to damages or compensation</p>	<p>Amend this paragraph as follow:</p> <p>If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT and/or payment of such Cost Plus Profit</p>	<ul style="list-style-type: none"> <li><b>Original requirement shall be retained. As answered in Bid Bulletin No. 5 dated 06 May 2020.</b></li> </ul>

	<p>therefor, but in any such case, the Employer may grant such extension or extensions of the completion date in accordance with Clause 20 [Employer's and Contractor's Claims] as may be considered reasonable.</p>		
<p>19.</p>	<p><b>PCC 4.2</b></p> <p>For Sub-Clause 4.2.2 [Claims under the Performance Security]:</p> <p>Insert this as sub-paragraph (f) of the first paragraph:</p> <p>"(f) during the Defects Liability Period, failure by the Contractor to undertake, within 90 days from the Employer's issuance of an order, repair works for any damage to the Works on account of the Contractor's use of inferior material. [IRR §62.2.2.1]</p> <p>Delete the second paragraph.</p> <p>Delete sub-paragraph (i) of the third paragraph.</p> <p><u>For Sub-Clause 4.2.3 [Return of the Performance Security]:</u></p> <p>Insert at the end of sub-paragraph (a):</p> <p>"subject to the following conditions:</p> <p>(i) There are no pending claims against the</p>	<p>Amend as follows:</p> <p>"(f) during the Defects Liability Period, failure by the Contractor to undertake, within 90 days from the Employer's issuance of an order, repair works for any defects in the Works on account of the Contractor's use of inferior material.</p> <p>Delete the wording of "Delete the second paragraph".</p> <p>Delete the wording of "Delete sub-paragraph (i) of the third paragraph".</p> <p>Retain the original wording of FIDIC for <u>Sub-Clause 4.2.3 [Return of the Performance Security]</u>.</p>	<ul style="list-style-type: none"> <li>Original requirement shall be retained. As answered in Bid Bulletin No. 5 dated 06 May 2020.</li> </ul>

	<p>Contractor or the surety company filed by the Employer;</p> <p>(ii) The Contractor has no pending claims for labor and materials filed against it; and</p> <p>(iii) The other terms of the Contract." [IRR §39.5][PBD Infra GCC §7.4]</p>		
20.	<p><b>PCC 8.1</b></p> <p>Replace the text of Sub-Clause 8.1 to read as follows:</p> <p>"Within 7 days from the date of approval of the Contract by the appropriate government approving authority, the Employer shall issue the Notice to Proceed to the Contractor and give the Contractor a copy of the approved Contract. [PBD Infra ITB §33]</p> <p>The Notice to Proceed shall state the Commencement Date.</p> <p>"The Contractor shall commence the design of the Works after the receipt by the Contractor of all approvals of the Contractor's Documents in accordance with Sub-Clause 5.2 [Contractor's Documents]."</p>	<p>Amend PCC 8.1 as follow:</p> <p><i>Replace the text of Sub-Clause 8.1 to read as follows:</i></p> <p><i>"Within 7 days from the date of full effectiveness of the Contract, the Employer shall issue the Notice to Proceed to the Contractor. The Notice to Proceed shall state the Commencement Date.</i></p> <p><i>"The Contractor shall commence the design of the Works subject to the Contractor has received from the Employer the signed Contract and in the event that the Contract has not come into full force as per Sub-Clause 1.6, a Notice of Request to commence the preliminary design work. The Contractor shall commence the construction of the Works after the receipt by the Contractor of all approvals of the Contractor's Documents in accordance with Sub-Clause 5.2 [Contractor's Documents]."</i></p>	<ul style="list-style-type: none"> <li>• <b>Refer to Bid Bulletin No. 5 dated 06 May 2020.</b></li> </ul>
21.	<p><b>PCC 8.10</b></p> <p>Amend the first paragraph of Sub-Clause 8.10 by deleting the phrase "and/or payment of such Cost Plus</p>	Delete PCC 8.10	<ul style="list-style-type: none"> <li>• <b>Original requirement shall be retained. As answered in Bid Bulletin No. 5 dated 06</b></li> </ul>

	Profit".			<b>May 2020.</b>
22.	<b>PCC 8.11</b> Delete the text of Sub-Clause 8.1.1.	Delete PCC 8.11		<ul style="list-style-type: none"> <li>Original requirement shall be retained. As answered in Bid Bulletin No. 5 dated 06 May 2020.</li> </ul>
23.	<b>PCC 10.1</b> Amend item (i) of the fourth paragraph of Sub-Clause 10.1 to read as follows: “(i) issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract;” Delete the fifth paragraph of Sub-Clause 10.1, which refers to the Employer’s failure to either issue the Taking-Over Certificate or reject the Contractor’s application.	Delete PCC 10.1		<ul style="list-style-type: none"> <li>As answered in Bid Bulletin No. 5 dated 06 May 2020, which provides as follows:</li> <li>The first part of the request (amendment to item i) is acceptable.</li> <li>Re second part of the request (deletion of fifth paragraph), original requirement shall be retained. GPPB required the deletion during the Bidding Documents approval process to align with the Philippine Bidding Documents.</li> </ul>
24.	<b>PCC 14.4</b> Delete the text of Sub-Clause 14.4.	Delete PCC 14.4		<ul style="list-style-type: none"> <li>Original requirement shall be retained. As answered in Bid Bulletin No. 5 dated 06 May 2020.</li> </ul>
25.	<b>PCC 14.7</b> ... Amend sub-paragraph (b)(i) of Sub-Clause 14.7 by	Delete these three paragraphs.		<ul style="list-style-type: none"> <li>Original requirement shall be retained. GPPB required these revisions pursuant to</li> </ul>

	<p>replacing the phrase "Employer receives" with the phrase "Employer's Representative has verified and certified". [IRR Annex E, §5.2]</p> <p>Amend sub-paragraph (b)(ii) of Sub-Clause 14.7 by replacing the phrase "Employer receives" with the phrase "Employer's Representative has verified and certified". [IRR Annex E, §5.2]</p> <p>...</p> <p>Amend sub-paragraph (c)(i) of Sub-Clause 14.7 by replacing the term "receives" with the phrase "has verified and certified".</p>		<p><b>§5.2, Annex E, Implementing Rules and Regulations of R.A. 9184 during the Bidding Documents approval process.</b></p>
26.	<p><b>PCC 14.8</b></p> <p>Delete the text of Sub-Clause 14.8 and replace with the following:          "The Employer shall not pay any interest for delayed payments and adjustments." [PBD Infra GCC §40.3]</p>	Delete PCC 14.8	<ul style="list-style-type: none"> <li>• <b>Original requirement shall be retained. As answered in Bid Bulletin No. 5 dated 06 May 2020.</b></li> </ul>
27.	<p><b>PCC 14.15</b></p> <p>Delete the second sentence of Sub-Clause 14.15 and its subparagraphs (a) through (g).</p>	Delete PCC 14.15	<ul style="list-style-type: none"> <li>• <b>Please see attached Foreign Exchange and Payment Mechanism as concurred on by the Export-Import Bank of China and the Chinese Embassy for another ODA project.</b></li> </ul>
28.	<p><b>PCC 15.5</b></p> <p>Amend the first paragraph of Sub-Clause 15.5 by inserting:</p>	Amend PCC 15.5 by inserting a new paragraph:  <i>The Employer shall not</i>	<ul style="list-style-type: none"> <li>• <b>Original requirement shall be retained. As answered in Bid Bulletin No. 5 dated 06</b></li> </ul>

	<p>the phrase ", in whole or in part," after the term "the Contract"; and [PBD Infra GCC §18.1] the phrase "if it has determined the existence of conditions that make the implementation of the Project economically, financially or technically impractical or unnecessary, such as, but not limited to, fortuitous events or changes in the Law of the Country or the policies of the Country's national government," after the term "Employer's convenience". [IRR Annex I, §II.B] [PBD Infra GCC§18.1]</p> <p>Replace the third paragraph of Sub-Clause 15.5 with the following:</p> <p>"Termination under this Sub-Clause shall take effect 28 days after the Contractor receives this Notice."</p>	<p><i>terminate the Contract under this Sub-Clause in order to execute the Works himself or to arrange for the Works to be executed by another contractor.</i></p>	<p><b>May 2020.</b></p>
<p>29.</p>	<p><b>PCC 15.6</b></p> <p>Delete sub-paragraph (b) in the first paragraph of Sub-Clause 15.6.</p> <p>Delete the phrase "without the need for the Contractor to submit a Statement" in the third paragraph of Sub-Clause 15.6.</p> <p>Insert the following as the fourth paragraph of Sub-Clause 15.6:</p> <p>"Notwithstanding any provision in the Contract to the contrary, if the Contract is terminated for the</p>	<p>Amend PCC 15.6 by deleting the paragraph of "<del>Delete sub-paragraph (b) in the first paragraph of Sub-Clause 15.6</del>" such that the Sub-paragraph (b) in the first paragraph of Sub-Clause 15.6 of GCC shall be retained.</p>	<ul style="list-style-type: none"> <li>• <b>Original requirement shall be retained. As answered in Bid Bulletin No. 5 dated 06 May 2020.</b></li> </ul>



	Employer's convenience under Sub-Clause 15.5, the Employer's Representative shall issue a certificate for (i) the value of the Works done and the Materials ordered, (ii) the reasonable Cost of removal of Equipment and repatriation of the Contractor's Personnel employed solely for the Works, and (iii) the Contractor's Cost in protecting and securing the Works, less any amount of advance payments received up to the date of the certificate." [PBD Infra GCC §46.2]		
30.	<b>PCC 17.4</b> Amend sub-paragraph (a) of Sub-Clause 17.4 by deleting the phrase ", unless attributable to any negligence, willful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents".	Delete PCC 17.4	<ul style="list-style-type: none"> <li>• <b>Original requirement shall be retained. As answered in Bid Bulletin No. 5 dated 06 May 2020.</b></li> </ul>
31.	<b>PCC 18.5</b> Amend sub-paragraph (c) of Sub-Clause 18.5 to read as follows: "(c) the Cost of demobilization." [PBD Infra GCC §20.4(b)]  Delete sub-paragraphs (d) and (e) of Sub-Clause 18.5.	Delete this paragraph.	<ul style="list-style-type: none"> <li>• <b>Original requirement shall be retained. GPPB required this revision pursuant to §20.4 of the Philippine Bidding Documents (Infrastructure) during the Bidding Documents approval process.</b></li> </ul>
32.	<b>PCC 21.6</b> Replace the text of Sub-Clause 21.6 with the	Delete PCC 21.6	<ul style="list-style-type: none"> <li>• <b>Original requirement shall be retained. As answered in Bid</b></li> </ul>

	<p>following:</p> <p>"Unless settled amicably, any Dispute between the Parties shall be finally settled by arbitration in the Country according to the arbitration rules of the Construction Industry Arbitration Commission of the Philippines [RA §59] [IRR §59.2] [PBD Infra GCC §21.3].</p> <p>"No Party may initiate arbitration proceedings except in any of the conditions below:</p> <p>"(a) the initiating Party has given a NOD with regard to such Dispute in accordance with the provisions of Sub-Clause 3.5.5 [Dissatisfaction with Employer's Representative's determination] or Sub-Clause 21.4.4 [Dissatisfaction with DAAB's decision];</p> <p>"(b) the initiating Party is exercising its right under Sub-Clause 21.7 [Failure to Comply with DAAB's Decision] against the other Party that failed to comply with a DAAB decision;</p> <p>"(c) Sub-Clause 21.8 [No DAAB in place] is applicable."</p> <p>"The arbitral award shall be</p>		<p><b>Bulletin No. 5 dated 06 May 2020.</b></p>
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	<p>appealable by way of a petition for review to the Court of Appeals. The petition shall raise pure questions of law and shall be governed by the Rules of Court." [RA §60]</p>		
33.	<p><b>Appendix – General Conditions of Dispute Avoidance/Adjudication Agreement</b></p> <p>Replace all references to "International Chamber of Commerce" and "ICC" with "Philippine Dispute Resolution Center Inc."</p>	Delete this paragraph.	<ul style="list-style-type: none"> <li>Original requirement shall be retained. GPPB required this revision pursuant to Section 59 of R.A. 9184 during the Bidding Documents approval process.</li> </ul>
34.	<p><b>Appendix – General Conditions of Dispute Avoidance/Adjudication Agreement Clause 12</b></p> <p>Replace "International Chamber of Commerce 2017" with "Philippine Dispute Resolution Center Inc.". Delete the phrase ", and Article 30 and the Expedited Procedure Rule at Appendix VI of these Rules of Arbitration shall apply."</p>	Delete this paragraph.	<ul style="list-style-type: none"> <li>Original requirement shall be retained. GPPB required this revision pursuant to Section 59 of R.A. 9184 during the Bidding Documents approval process.</li> </ul>
35.	<p><b>ER 6.2.1</b></p> <p>The Design shall be carried out in accordance with the Regulations, Standards, and Codes of Practice of the People's Republic of China, except to the minimum extent necessary to comply with the laws of the Philippines.</p>	<p>We have noted specific requirements in some other Clauses in the ER to be inconsistent with this principle (i.e. some requirements are following neither the Regulations, Standards, and Codes of Practice of the People's Republic of China, nor the laws of the Philippines).</p> <p>Please can it be confirmed that all the Regulations, Standards,</p>	<ul style="list-style-type: none"> <li>As answered in Bid Bulletin No. 5 dated 06 May 2020, which provides: "It is confirmed that notwithstanding anything to the contrary in the Employer's Requirements, ER 6.2.1 shall prevail, where the Contractor</li> </ul>

		<p>and Codes of Practices shall be in accordance with those of PRC, except to the minimum extent necessary to comply with the laws of the Philippines. Please can it be confirmed that should any discrepancies occur Clause 6.2.1 of the ER shall prevail.</p>	<p><i>believes that the Regulations, Standards, and Codes of Practice ("Regulations") of the People's Republic of China ("PRC") are equivalent to the corresponding Regulations of the Philippines, then the Contractor may use the Regulations of PRC after providing sufficient substantiation to demonstrate functional equivalence between the concerned PRC and Philippines Regulations, and provided further, that in cases where the Regulations of PRC have no corresponding Regulations in the Philippines, then the Contractor may use the Regulations of PRC, upon sufficient substantiation of the absence of functionally equivalent Regulations in the Philippines."</i></p>
36.	<p><b>Checklist and Tabbing of Bidding Requirements</b></p> <p>Tab No. 1 - Bid Form  Tab No. 2 - Omnibus Sworn Statement  Tab No. 3 - Bid Securing Declaration  Tab No. 4 - Bidder's Experience</p>	<p>We would like to request for the revision of the Checklist and Tabbing of Bidding Requirements to avoid confusion on the preparation of bids taking into consideration the following:</p> <ul style="list-style-type: none"> <li>- Only those requirements enumerated in ITB and BDS</li> </ul>	<ul style="list-style-type: none"> <li>• <i>The request is acceptable. Tab No. 18 shall now refer to the Statement of Five Largest Completed Contracts, Tab No. 19 shall now refer to the Statement of: (1) Ongoing Contracts and; (2) Awarded But Not Yet Completed Contracts, and Tab No.</i></li> </ul>

<p>Tab No. 5 - Design Methodology  Tab No. 6 - Construction Management Strategy  Tab No. 7 - Method Statement for Key Construction Activities  Tab No. 8 - Contractor's Equipment  Tab No. 9 - Code of Conduct  Tab No. 10 - Works Program  Tab No. 11 - Project Organizational Chart  Tab No. 12 - Risk Assessment  Tab No. 13 - Interface Management  Tab No. 14 - Key Personnel Qualifications and Level of Effort  Tab No. 15 - Resume of Key Personnel  Tab No. 16 - Subcontractors  Tab No. 17 - Price Schedule  Tab No. 18 - Certification on no negative slippage of fifteen percent (15%) or more in any one (1) of ongoing projects and no negative slippage of ten percent (10%) or more in each of two (2) or more ongoing projects, or if it has such negative slippage, a certified statement disclosing the ongoing project(s) with negative slippage and the percentage of negative slippage as of 31 January 2019  Tab No. 19 - Letter Testimonial from Bank.</p>	<p>Clauses 12 and 13 should be included in the Checklist. Documents in Tab Nos. 18 and 19 are not among those enumerated in ITB and BDS, which shall be submitted during the post qualification stage as per Clause 34.3 IRR.</p> <p>- To be consistent with the rules on sealing and marking of bids in ITB Clause 20, separate tabbing should be observed for each of the two envelopes – (1) eligibility and technical component envelope and (2) financial component envelope.</p>	<p><b>20 shall now refer to the Computation of NFCC. It is noted that bidders are not precluded to submit the Certification on no negative slippage of fifteen percent (15%) or more in any one (1) of ongoing projects and no negative slippage of ten percent (10%) or more in each of two (2) or more ongoing projects, or if it has such negative slippage, a certified statement disclosing the ongoing project(s) with negative slippage and the percentage of negative slippage as of 31 January 2019 during the submission and opening of bids to facilitate post-qualification.</b></p> <ul style="list-style-type: none"> <li><b>Please note that per above, Tab No. 21 shall now refer to the Affiliate Company Guarantee Form</b></li> </ul>
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37.	Proposed Preliminary Works	Terms and Schedule is attached.	<ul style="list-style-type: none"> <li>The proposal is not accepted. As answered in Bid Bulletin No. 5 dated 06 May 2020 and item 8 above which revised ITB Sub-Clause 33 with an additional sentence regarding Advance Works.</li> </ul>
38.	Bid Bulletin No. 3 March 2020 Public Bidding No. 19-341-7 Deadline of Submission and Receipt of Bids	<p>Due to Corona virus (COVID-19) outbreaks around the World, the entire Luzon, including the National Capital Region (NCR), is currently subject to Enhanced Community Quarantine and Stringent Social Distancing Measures. To comply with these policies of the Government of Philippines, we would like to request a one-month extension of the deadline of submission of the Bid from 17th April 2020 to 17th May 2020.</p> <p>In parallel with that extension, we also request one-month extension to the deadline for additional requests for clarification and/or amendments of the items in the Bidding Documents.</p> <p>Kindly grant our proposed extension requests.</p>	<ul style="list-style-type: none"> <li>Please refer to Bid Bulletin No. 4 issued on 16 April 2020.</li> </ul>
39	ITB 32.1 To guarantee the faithful performance by the winning Bidder of its obligations under the Contract, it shall post a performance security within a maximum period of ten (10) calendar days from	It is quite possible that the Site will be delivered to the Contractor partially, thus the Contractor would like to require to post the performance security in proportion of the delivered parts of Site.	<ul style="list-style-type: none"> <li>See item 5 above.</li> </ul>

	<p>the receipt of the Notice of Award from the Procuring Entity and in no case later than the signing of the Contract.</p>	<p>We respectfully advised to amend ITB 32.1 as follow:</p> <p>To guarantee the faithful performance by the winning Bidder of its obligations under the Contract, it shall post a performance security in the proportion equal to the proportion of delivered parts of Site to the Contractor in accordance with Sub-Clause 2.1 within a maximum period of ten (10) calendar days from the date of full effectiveness of the Contract as per Sub-Clause 1.6.</p>	
40	<p>Contract Data 1.1.24</p> <p>Defects Notification Period: 730 days</p>	<p>According to industrial practice in Philippines, we respectfully advised to amend as follow:</p> <p>Defects Notification Period: 365 days</p>	<ul style="list-style-type: none"> <li>• <b>The request is acceptable, consistent with practice in other ODA projects.</b></li> </ul>
41	<p>Contract Data 14.5</p> <p>Payments for Plant and Materials Intended for the Works: Not applicable</p>	<p>Considering the nature of the procurement wherein several materials and equipment will be installed and commissioned, we respectfully request to amend Contract Data 14.5 by allowing payment of plant and materials when shipped/delivered although not completely put in place.</p>	<ul style="list-style-type: none"> <li>• <b>As answered in Bid Bulletin No. 5 dated 06 May 2020, which provides:</b>  <b>"Original requirement shall be retained, since General Conditions Sub-clause 14.5 is only applicable in cases where Plant and/or Materials are listed in the Contract Data, which is not the case here"</b></li> </ul>
42	<p>Contract Data 21.6</p> <p>Place of Arbitration: Philippines</p>	<p>For an international project (especially for an ODA project), we respectfully suggest to amend as follow:</p> <p>Place of Arbitration: Singapore</p>	<ul style="list-style-type: none"> <li>• <b>See item 17 above.</b></li> </ul>

43	PCC 2.1	<p>If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall give Notice to the Employer within seven (7) days of the expiration of the time stated in the schedule of right of access produced under the Advance Contract or by BCDA for giving such right or possession.</p> <p>Notwithstanding other terms in this Contract, in the event of any failure or delay by the Employer to hand over the Contractor possession of the lands necessary for the execution of the Works or to give the necessary notice to commence the Works or to provide the necessary drawings or instructions or any other delay caused by the consultant of the Advance Contract or BCDA or the Employer due to any other cause whatsoever, then such failure or delay shall in no way affect or vitiate the Contract or alter the character thereof or entitle the Contractor to damages or compensation therefore, but in any such case, the Employer may grant such extension or extensions of the completion date in accordance with Clause 20 [Employer's and Contractor's Claims] as may be considered reasonable.</p>	<p>It is quite possible that a the Site will be delivered to the Contractor partially, the Contractor would like emphasis that if additional cost incurred arising out of the late delivery of the Site, such cost shall be compensated by the Employer for the said cost is not beyond the control of and not foreseeable to the Contractor.</p> <p>We respectfully advised to amend this paragraph as follow:</p> <p>If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT and/or payment of such Cost</p>	<ul style="list-style-type: none"> <li>• See item 18 above.</li> </ul>
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44	<p>PCC 4.2</p> <p>For Sub-Clause 4.2.2 [Claims under the Performance Security]:</p> <p>Insert this as sub-paragraph (f) of the first paragraph:</p> <p>"(f) during the Defects Liability Period, failure by the Contractor to undertake, within 90 days from the Employer's issuance of an order, repair works for any damage to the Works on account of the Contractor's use of inferior material. [IRR §62.2.2.1]</p> <p>Delete the second paragraph.</p> <p>Delete sub-paragraph (i) of the third paragraph.</p> <p>For Sub-Clause 4.2.3 [Return of the Performance Security]:</p> <p>Insert at the end of sub-paragraph</p> <p>(a): "subject to the following conditions:</p> <p>(i) There are no pending claims against the Contractor or the surety company filed by the Employer;</p> <p>(ii) The Contractor has no pending claims for labor and materials filed against it; and</p> <p>(iii) The other terms of the Contract." [IRR §39.5][PBD Infra GCC §7.4]</p>	<p>Contractor shall be liable for any defects in Works rather than "damage" which cannot be controlled by the Contractor.</p> <p>We respectfully advice to amend as follow:</p> <p>"(f) during the Defects Liability Period, failure by the Contractor to undertake, within 90 days from the Employer's issuance of an order, repair works for any defects in the Works on account of the Contractor's use of inferior material.</p> <p>Performance security shall be forfeited in the event it is established that the winning bidder is in default in any of its obligations under the contract.</p> <p>Therefore, the Contractor shall be entitled to be indemnified if the Employer forfeits the performance security based on a claim that the Employer is not entitled to. This finds further support from the principle of unjust enrichment.</p> <p>In relation to this, we respectfully suggest to amend PCC 4.2 by retaining the second paragraph and sub-paragraph (i) of the third paragraph of Sub-Clause 4.2.2.</p>	<p>• See item 19 above.</p>
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45	<p>PCC 5.2</p> <p>Delete the fourth paragraph providing that the Employer is deemed to have given a Notice of No-objection if the Employer fails to give a Notice within the Review Period.</p> <p>For Sub-Clause 5.2.3 [Construction]:</p> <p>Delete the parenthetical phrase "(or is deemed to have been given)" in subparagraph (a) of the first paragraph.</p>	<p>The Employer is obliged to give approval/disapproval/notice to the Contractor in the designated period to make sure the work will be implemented on schedule.</p> <p>We respectfully advise to delete these two paragraphs.</p>	<ul style="list-style-type: none"> <li>As answered in Bid Bulletin No. 5 dated 06 May 2020, which provides: "Original requirement shall be retained. GPPB required the deletion during the Bidding Documents approval process to align with the Philippine Bidding Documents."</li> </ul>
46	<p>PCC 5.8</p> <p>Delete the parenthetical phrase "(or is deemed to be given)" in the first paragraph of Sub-Clause 5.8.</p>	<p>Employer is obliged to give approval/disapproval/notice to the Contractor in the designated period to make sure the work will be implemented on schedule.</p> <p>We respectfully advise to delete the paragraph of PCC 5.8.</p>	<ul style="list-style-type: none"> <li>As answered in Bid Bulletin No. 5 dated 06 May 2020, which provides: "Original requirement shall be retained. GPPB required the deletion during the Bidding Documents approval process to align with the Philippine Bidding Documents."</li> </ul>
47	<p>PCC 7.5</p> <p>Delete the last sentence of the second paragraph of Sub-Clause 7.5 providing that the Employer is deemed to have given a Notice of No-objection if the Employer fails to give a Notice within a prescribed period.</p>	<p>Employer is obliged to give an approval/disapproval/notice to the Contractor in the designated period to make sure the work will be implemented on schedule.</p> <p>We respectfully advise to delete the paragraph of PCC 7.5.</p>	<ul style="list-style-type: none"> <li>As answered in Bid Bulletin No. 5 dated 06 May 2020, which provides: "Original requirement shall be retained. GPPB required the deletion during the Bidding Documents approval process to align with the Philippine Bidding Documents."</li> </ul>
48	<p>PCC 8.3</p> <p>Delete the following sentence in the fourth paragraph, now renumbered as the third paragraph:</p>	<p>Employer is obliged to give approval/disapproval/notice to the Contractor in the designated period to make sure the work will be implemented on</p>	<ul style="list-style-type: none"> <li>As answered in Bid Bulletin No. 5 dated 06 May 2020, which provides: "Original requirement</li> </ul>

	<p>"If the Employer gives no such Notice:</p> <ul style="list-style-type: none"> <li>- within 21 days after receiving the initial programme; or</li> <li>- within 14 days after receiving a revised programme the Employer shall be deemed to have given a Notice of No objection and the initial programme or revised programme (as the case may be) shall be the Programme." </li></ul>	<p>schedule.</p> <p>We respectfully advised to delete this paragraph of PCC 8.3</p>	<p><b>shall be retained. GPPB required the deletion during the Bidding Documents approval process to align with the Philippine Bidding Documents."</b></p>
49	<p>PCC 8.10</p> <p>Amend the first paragraph of Sub-Clause 8.10 by deleting the phrase "and/or payment of such Cost Plus Profit".</p>	<p>Sub-Clause 8.10 refers to a suspension order issued by the Employer, which may not have been anticipated by the Contractor. Prior to the suspension order, the contractor may have incurred and/or committed a certain amount of money in relation to the implementation of the Project, e.g. rent of equipment, payment of salaries of workers. In addition, under Sub-Clause 8.9, the Contractor is obligated during the period of suspension to protect, store and secure such part or all of the Works (as the case may be) against any deterioration, loss or damage, which will also entail cost.</p> <p>In the interest of fairness, we respectfully request the Procuring Entity, to delete PCC 8.10 and allow the Contractor to claim for payment of cost incurred during the suspension period, subject to verification of the Employer.</p>	<ul style="list-style-type: none"> <li>• <b>See item 21 above.</b></li> </ul>

50	<p>PCC 10.1</p> <p>Delete the fifth paragraph of Sub-Clause 10.1, which refers to the Employer's failure to either issue the Taking-Over Certificate or reject the Contractor's application.</p>	<p>We respectfully request to amend the fifth paragraph of Sub-Clause 10.1 by stating that failure to issue a Taking-Over Certificate within the prescribed period shall be considered as fault of the Employer that will entitle the Contractor to payment of cost.</p>	<ul style="list-style-type: none"> <li>• See item 23 above.</li> </ul>
51	<p>PCC 14.5</p> <p>Delete the text of Sub-Clause 14.5.</p>	<p>In relation to our proposal to amend Contract Data 14.5 above, we respectfully request to delete PCC 14.5.</p>	<ul style="list-style-type: none"> <li>• See item 41 above.</li> </ul>
52	<p>PCC 14.7</p> <p>Amend sub-paragraph (b)(i) of Sub-Clause 14.7 by replacing the phrase "Employer receives" with the phrase "Employer's Representative has verified and certified". [IRR Annex E, §5.2]</p> <p>Amend sub-paragraph (b)(ii) of Sub-Clause 14.7 by replacing the phrase "Employer receives" with the phrase "Employer's Representative has verified and certified". [IRR Annex E, §5.2]</p> <p>Amend sub-paragraph (c)(i) of Sub-Clause 14.7 by replacing the term "receives" with the phrase "has verified and certified".</p>	<p>In the interest of fairness, we respectfully request the Procuring Entity, to delete these three paragraphs.</p>	<ul style="list-style-type: none"> <li>• See item 25 above.</li> </ul>
53	<p>PCC 14.8</p> <p>Delete the text of Sub-Clause 14.8 and replace with the following:</p> <p>"The Employer shall not pay any interest for delayed payments and adjustments." [PBD Infra GCC §40.3]</p>	<p>We request to delete PCC 14.8 or add a Particular Condition stating the following:</p> <p>"The Procuring Entity shall ensure timely payment to the Contractor in accordance with the provisions of the Contract and the existing laws, rules and</p>	<ul style="list-style-type: none"> <li>• The request to delete PCC 14.8, as answered in Bid Bulletin No. 5 dated 06 May 2020, is not acceptable. The requested additional language is accepted, to be added at the end of PCC 14.8.</li> </ul>

54	<p>PCC 14.15</p> <p>Delete the second sentence of Sub-Clause 14.15 and its subparagraphs (a) through (g).</p>	<p>regulations of the Philippines.”</p>	
		<p>Bid Bulletin No. 5 provides that payment shall be subject to Foreign Exchange Rate and Payment Mechanism for ChineseODA projects, as may be concurred to by the Export-Import Bank of China and/or the Chinese Embassy.</p> <p>In relation to this, we respectfully request to delete PCC 14.15 and retain the General Conditions for Sub-Clause 14.15 and its subparagraphs (a) through (g), in anticipation of the foreign currency payment that may be concurred to by the Export-Import Bank of China and/or the Chinese Embassy.</p>	<ul style="list-style-type: none"> <li>• <b>See item 27 above.</b></li> </ul>
55	<p>PCC 15.5</p> <p>Amend the first paragraph of Sub-Clause 15.5 by inserting:</p> <p>the phrase “, in whole or in part,” after the term “the Contract”; and [PBD Infra GCC §18.1] the phrase “if it has determined the existence of conditions that make the implementation of the Project economically, financially or technically impractical or unnecessary, such as, but not limited to, fortuitous events or changes in the Law of the Country or the policies of the Country’s national government,” after the term “Employer’s convenience”. [IRR Annex I, §III.B] [PBD Infra GCC §18.1]</p>	<p>In the interest of fairness, we respectfully request the Procuring Entity, to amend PCC 15.5 by inserting a new paragraph:</p> <p>The Employer shall not terminate the Contract under this Sub-Clause in order to execute the Works himself or to arrange for the Works to be executed by another contractor.</p>	<ul style="list-style-type: none"> <li>• <b>See item 28 above.</b></li> </ul>

	<p>Replace the third paragraph of Sub-Clause 15.5 with the following:</p> <p>"Termination under this Sub-Clause shall take effect 28 days after the Contractor receives this Notice."</p>		
56	<p>PCC 15.6</p> <p>Delete sub-paragraph (b) in the first paragraph of Sub-Clause 15.6.</p> <p>Delete the phrase "without the need for the Contractor to submit a Statement" in the third paragraph of Sub-Clause 15.6.</p> <p>Insert the following as the fourth paragraph of Sub-Clause 15.6:</p> <p>"Notwithstanding any provision in the Contract to the contrary, if the Contract is terminated for the Employer's convenience under Sub-Clause 15.5, the Employer's Representative shall issue a certificate for (i) the value of the Works done and the Materials ordered, (ii) the reasonable Cost of removal of Equipment and repatriation of the Contractor's Personnel employed solely for the Works, and (iii) the Contractor's Cost in protecting and securing the Works, less any amount of advance payments received up to the date of the certificate." [PBD Infra GCC §46.2]</p>	<p>We respectfully request to amend PCC 15.6 by deleting the paragraph of "Delete sub-paragraph (b) in the first paragraph of Sub-Clause 15.6" such that the Sub-paragraph (b) in the first paragraph of Sub-Clause 15.6 of GCC shall be retained.</p>	<ul style="list-style-type: none"> <li>• <b>See item 29 above.</b></li> </ul>
57	<p>PCC 18.5</p> <p>Amend sub-paragraph (c) of Sub-Clause 18.5 to read as follows:</p> <p>"(c) the Cost of</p>	<p>We respectfully request the Procuring Entity to delete this paragraph.</p>	<ul style="list-style-type: none"> <li>• <b>See item 31 above.</b></li> </ul>

58	<p>demobilization." [PBD Infra GCC §20.4(b)]</p> <p>Delete sub-paragraphs (d) and (e) of Sub-Clause 18.5.</p>		
	<p>PCC 21.6</p> <p>Replace the text of Sub-Clause 21.6 with the following:</p> <p>"Unless settled amicably, any Dispute between the Parties shall be finally settled by arbitration in the Country according to the arbitration rules of the Construction Industry Arbitration Commission of the Philippines [RA §59] [IRR §59.2] [PBD Infra GCC §21.3].</p> <p>"No Party may initiate arbitration proceedings except in any of the conditions below:</p> <p>"(a) the initiating Party has given a NOD with regard to such Dispute in accordance with the provisions of Sub-Clause 3.5.5 [Dissatisfaction with Employer's Representative's determination] or Sub-Clause 21.4.4</p> <p>[Dissatisfaction with DAAB's decision];</p> <p>"(b) the initiating Party is exercising its right under Sub-Clause 21.7 [Failure to Comply with DAAB's Decision] against the other Party that failed to comply with a DAAB decision;</p> <p>"(c) Sub-Clause 21.8 [No DAAB in place] is applicable."</p> <p>"The arbitral award shall be appealable by way of a petition for review to the Court of Appeals. The</p>	<p>For an international project (especially for an ODA project), it is suggested to apply international arbitration rules and the arbitration shall be in the third place.</p> <p>We respectfully advised to delete the paragraph PCC 21.6</p>	<ul style="list-style-type: none"> <li>• <b>See item 32 above.</b></li> </ul>

	petition shall raise pure questions of law and shall be governed by the Rules of Court." [RA §60]		
59	<p><b>Appendix – General Conditions of Dispute Avoidance/Adjudication Agreement</b></p> <p>Replace all references to "International Chamber of Commerce" and "ICC" with "Philippine Dispute Resolution Center Inc."</p>	<p>For an international project (especially for an ODA project), it is suggested to apply international arbitration rules and the arbitration shall be in the third place.</p> <p>We respectfully suggest to delete this paragraph.</p>	<ul style="list-style-type: none"> <li>• <b>See item 33 above.</b></li> </ul>
60	<p><b>Appendix – General Conditions of Dispute Avoidance/Adjudication Agreement Clause 12</b></p> <p>Replace "International Chamber of Commerce 2017" with "Philippine Dispute Resolution Center Inc." . Delete the phrase " , and Article 30 and the Expedited Procedure Rule at Appendix VI of these Rules of Arbitration shall apply."</p>	<p>For an international project (especially for an ODA project), it is suggested to apply international arbitration rules and the arbitration shall be in the third place.</p> <p>We respectfully suggest to delete this paragraph.</p>	<ul style="list-style-type: none"> <li>• <b>See item 34 above.</b></li> </ul>
61	<p>ER 6.2.1</p> <p>The Design shall be carried out in accordance with the Regulations, Standards, and Codes of Practice of the People's Republic of China, except to the minimum extent necessary to comply with the laws of the Philippines.</p> <p>Bid Bulletin No.5</p> <p>Employer's Requirements, ER 6.2.1 shall prevail, where the Contractor believes that the Regulations, Standards, and Codes of Practice ("Regulations") of the People's Republic of China</p>	<p>We wish to clarify that Bid Bulletin No. 5 retains the original requirement under ER 6.2.1 as the general rule. Thus, the Design shall be carried out in accordance with the Regulations, Standards, and Codes of Practice of the People's Republic of China, except to the minimum extent necessary to comply with the laws of the Philippines.</p> <p>In addition to this general rule, Bid Bulletin No. 5 provided additional rule that Regulations of the PRC can also be applied in lieu of the Regulations of the Philippines by sufficiently</p>	<ul style="list-style-type: none"> <li>• <b>See item 35 above.</b></li> </ul>



	<p>("PRC") are equivalent to the corresponding Regulations of the Philippines, then the Contractor may use the Regulations of PRC after providing sufficient substantiation to demonstrate functional equivalence between the concerned PRC and Philippines Regulations, and provided further, that in cases where the Regulations of PRC have no corresponding Regulations in the Philippines, then the Contractor may use the Regulations of PRC, upon sufficient substantiation of the absence of a functionally equivalent Regulations in the Philippines.</p>	<p>demonstrating their functional equivalence. It is our understanding that the "Regulations of the Philippines" mentioned in Bid Bulletin No. 5 refers to the same concept of "minimum extent necessary to comply with the laws of the Philippines."</p>	
62	<p>Checklist and Tabbing of Bidding Requirements</p> <p>Tab No. 1 - Bid Form</p> <p>Tab No. 2 - Omnibus Sworn Statement</p> <p>Tab No. 3 - Bid Securing Declaration</p> <p>Tab No. 4 - Bidder's Experience</p> <p>Tab No. 5 - Design Methodology</p> <p>Tab No. 6 - Construction Management Strategy</p> <p>Tab No. 7 - Method Statement for Key Construction Activities</p> <p>Tab No. 8 - Contractor's Equipment</p> <p>Tab No. 9 - Code of Conduct</p> <p>Tab No. 10 - Works Program</p>	<p>We would like to request for the revision of the Checklist and Tabbing of Bidding Requirements to avoid confusion on the preparation of bids taking into consideration the following:</p> <p>Only those requirements enumerated in ITB and BDS Clauses 12 and 13 should be included in the Checklist. Documents in Tab Nos. 18 and 19 are not among those enumerated in ITB and BDS, which shall be submitted during the post qualification stage as per Clause 34.3 IRR.</p> <p>To be consistent with the rules on sealing and marking of bids in ITB Clause 20, separate tabbing should be observed for each of the two envelopes – (1)</p>	<ul style="list-style-type: none"> <li>• <b>See item 36 above.</b></li> </ul>

63	<p>Tab No. 11 - Project Organizational Chart</p> <p>Tab No. 12 - Risk Assessment</p> <p>Tab No. 13 - Interface Management</p> <p>Tab No. 14 - Key Personnel Qualifications and Level of Effort</p> <p>Tab No. 15 - Resume of Key Personnel</p> <p>Tab No. 16 - Subcontractors</p> <p>Tab No. 17 - Price Schedule</p> <p>Tab No. 18 - Certification on no negative slippage of fifteen percent (15%) or more in any one (1) of ongoing projects and no negative slippage of ten percent (10%) or more in each of two (2) or more ongoing projects, or if it has such negative slippage, a certified statement disclosing the ongoing project(s) with negative slippage and the percentage of negative slippage as of 31 January 2019</p> <p>Tab No. 19 - Letter Testimonial from Bank.</p>	<p>eligibility and technical component envelope and (2) financial</p>	
	<p>Bid Bulletin No. 4 16 April, 2020 Public Bidding No. 19-341-7 Deadline of Submission and Receipt of Bids</p>	<p>Due to Coronavirus (COVID-19) outbreak in global, the entire Luzon, including the National Capital Region (NCR) was taken an Enhanced Community Quarantine and the Stringent Social Distancing Measures. To comply with Philippines policies, we would like to request for one-month extension of the deadline of submission of the Bid from 18th May 2020 to 18th June 2020.</p>	<ul style="list-style-type: none"> <li>• <b>Please refer to Bid Bulletin No. 6 dated 14 May 2020.</b></li> </ul>

		Kindly grant our proposed extension request.	
<b>CHINA RAILWAY INTERNATIONAL GROUP CO. LTD.<sup>2</sup></b>			
1	<p>ITB 28.2</p> <p>Within a non-extendible period of five (5) calendar days from receipt by the Bidder of the notice from the SBAC that it submitted the Lowest Calculated Bid, the Bidders shall submit its latest income and business tax returns filed and paid through the BIR Electronic Filing and Payment System (eFPS) and other appropriate licenses and permits required by law and stated in the <b>BDS</b>.</p>	<p>Q1: As a foreign contractor, we still are in the process to register in the SEC and BIR and City Hall after we were informed as a prospective bidder for the contract of SCRP, so actually we now have no income and tax record in the BIR Electronic Filing and Payment System. If informed as LCB after bid evaluation, can we only submit the appropriate license and permits such as MAYORS/Business Permit – CITY HALL, License to Transact Business in The Philippines – SEC, FORM 2303 Certificate of Registration – BIR?</p> <p>Q2: what it means for "latest"? The latest month or latest quarter or latest year? and shall all Tax returns filed and paid documents shown in below be submitted?</p> <p>1\ 1601C - Withholding tax compensation (monthly)</p> <p>2\ 0619E/1601EQ- Withholding tax expanded (monthly and quarterly)</p> <p>3\ 2550M/2550Q - VAT (monthly and quarterly)</p> <p>4\ 1702Q- Quarterly Income tax</p>	<ul style="list-style-type: none"> <li>• <b>ITB 28.2 is amended as follows:</b></li> <li><b>"Within a non-extendible period of five (5) calendar days from receipt by the Bidder of the notice from the SBAC that it submitted the Lowest Calculated Bid, the Bidder shall submit its latest annual income and business tax returns filed and paid to the Bidder's concerned statutory regulator (e.g., counterpart in China of the Philippines' Securities and Exchange Commission, Philippine Stock Exchange, and / or Bureau of Internal Revenue) and other appropriate licenses and permits required by law and stated in the BDS."</b></li> </ul>

<sup>2</sup> E-mail received on July 20, 2020.

	5\ 1702RT - annual income tax	
	6\ 0605- annual registration	

By Rules, all other related provisions in the Bidding Documents correspondingly affected by these amendments are likewise deemed amended to conform to this Bid Bulletin.

Amendments made herein shall be considered an integral part of the Bidding Document.

The clarifications explain in greater detail the purpose or intent of the requirement and do not necessarily amend that particular provision in the Bidding Documents

  
**JACKIE MERCADO**  
*Vice Chairperson, BAC V*

## Affiliate Company Guarantee

Name of Contract/Contract No.: \_\_\_\_\_

Name and address of Employer: Department of Transportation (DOTr)  
Pinatubo Street corner Sergio, Osmeña Sr. Street, Clark Freeport Zone,  
Mabalacat City, Pampanga 2009, Philippines  
(together with successors and assigns)

We have been informed that *[name of Contractor]* (hereinafter called the "Contractor") is submitting an offer for the above-referenced Contract in response to your invitation, and that the conditions of your invitation require its offer to be supported by an affiliate company guarantee.

In consideration of you, the Employer, awarding the Contract to the Contractor, we *[name of affiliated company]* irrevocably and unconditionally guarantee to you, as a primary obligation, that (i) throughout the duration of the Contract, we will make available to the Contractor our financial, technical capacity, expertise and resources required for the Contractor's satisfactory performance of the Contract; and (ii) we are fully committed, along with the Contractor, to ensuring a satisfactory performance of the Contract.

If the Contractor fails to so perform its obligations and liabilities and comply with the Contract, we will indemnify the Employer against and from all damages, losses and expenses (including legal fees and expenses) which arise from any such failure for which the Contractor is liable to the Employer under the Contract.

This guarantee shall come into full force and effect when the Contract comes into full force and effect. If the Contract does not come into full force and effect within a year of the date of this guarantee, or if you demonstrate that you do not intend to enter into the Contract with the Contractor, this guarantee shall be void and ineffective. This guarantee shall continue in full force and effect until all the Contractor's obligations and liabilities under the Contract have been discharged, when this guarantee shall expire and shall be returned to us, and our liability hereunder shall be discharged absolutely.

This guarantee shall apply and be supplemental to the Contract as amended or varied by the Employer and the Contractor from time to time. We hereby authorize them to agree on any such amendment or variation, the due performance of which and compliance with which by the Contractor are likewise guaranteed hereunder. Our obligations and liabilities under this guarantee shall not be discharged by any allowance of time or other indulgence whatsoever by the Employer to the Contractor, or by any variation or suspension of the works to be executed under the Contract, or by any amendments to the Contract or to the constitution of the Contractor or the Employer, or by any other matters, whether with or without our knowledge or consent.

This guarantee shall be governed by the law of the same country (or other jurisdiction) that governs the Contract and any dispute under this guarantee shall be finally settled pursuant to the dispute resolution mechanism under the Contract. We confirm that the benefit of this guarantee may be assigned subject only to the provisions for assignment of the Contract.

Signed by: ..... Signed by: .....  
[signature] [signature]

..... [name] .....  
..... [name] .....  
..... [position in parent/subsidiary company] .....  
..... [position in parent/subsidiary company] .....

Date: .....

## Commercial Contract Payment Mechanism

### 1. Payment Mechanism / Payment Terms

- 1.1. For each Claim for Payment ("CfP") (i.e., each Progress Billing for Remunerations, Milestones, and/or Reimbursables), (a) up to 85% of the Total Amount shall be funded by the Export-Import Bank of China ("China Eximbank") Loan Proceeds ("LP"), and shall cover amounts for works performed outside the Philippines, and for a portion of works performed within the Philippines, and (b) at least 15% of the Total Amount shall be funded by the Government of the Philippines ("GOP"), and shall cover amounts for taxes for works performed within the Philippines, and, if applicable, shall also cover amounts for other works performed within the Philippines that have not been covered by the Loan.
- 1.2. The LP Portion shall be directly paid in full by China Eximbank to the Contractor pursuant to the Loan Agreement.
- 1.3. The GOP Portion, less taxes that are subject to withholding by DOTr pursuant to applicable Philippine tax laws and regulations ("Withholding Taxes"), shall be directly paid by DOTr to the Contractor.
- 1.4. The Withholding Tax withheld by DOTr shall be remitted by DOTr to the Bureau of Internal Revenue ("BIR"), and DOTr shall issue to the Contractor the relevant Withholding Tax Certificate within ten (10) days from the Contractor's receipt of payment for the GOP Portion.

### 2. Foreign Exchange Rate

- 2.1. The portion of the Commercial Contract that will be funded with LP shall be paid in US Dollars ("USD") through direct payment by China Eximbank to the Contractor, pursuant to the Loan Agreement, and since the Loan Agreement is intended to be denominated in USD.
- 2.2. Since the Commercial Contract is denominated in Philippine Peso ("PHP"), the Contractor shall submit its CfPs to DOTr and BCDA denominated in PHP, with a breakdown showing which portion will be LP-funded ("LP Portion") and which portion will be funded by GOP Counterpart ("GOP Portion").
- 2.3. For purposes of determining the USD amount that will be directly paid by China Eximbank to the Contractor under each CfP, the LP Portion of a CfP shall be converted from PHP to USD using the fixed USD:PHP Foreign Exchange Rate that was used for purposes of determining the Loan Agreement Amount, which is 1 USD: [\*] PHP.