

BIDDING DOCUMENTS

Part 3

Procurement for the Supply of Ten (10)
Depot Equipment for the

Expansion of the Existing Depot at
Baclaran and Construction of a New
Satellite Depot at Zapote for LRT Line
1-South (Cavite) Extension Project

Employer: Department of Transportation
Procurement Agent: Procurement Service
Country: The Republic of the Philippines
Project: Capacity Enhancement of Mass
Transit Systems in Metro Manila
Loan No.: PH-P255

PART 3 – CONDITIONS OF CONTRACT AND CONTRACT FORMS

Section VII. General Conditions (GC)

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1. Definitions

1.1 The following words and expression shall have the meanings hereby assigned to them:

- (a) “Base Date” means the date 28 days prior to the latest date for submission of the Bids.
- (b) “Completion” means the Goods or any portion thereof, including the Related Services, if applicable, have been delivered by the Supplier in accordance with the terms and conditions set forth in the Contract.
- (c) “Contract” means the Contract Agreement entered into between the Purchaser and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
- (d) “Contract Documents” means the documents listed in the Contract Agreement, including any amendments thereto.
- (e) “Contract Price” means the price payable to the Supplier as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- (f) “day” means calendar day.
- (g) “GC” means the General Conditions.
- (h) “Goods” means all the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the Purchaser under the Contract.
- (i) “Incoterms” means international rules for interpreting trade terms published by the International Chamber of Commerce (latest edition as the Base Date), 38 Cours Albert 1, 75008 Paris, France.
- (j) “JICA” means Japan International Cooperation Agency.
- (k) “PC” means the Particular Conditions.
- (l) “Project Site” means the place of the final destination as **named in the PC**.
- (m) “Purchaser” means the entity purchasing the Goods and Related Services, as **specified in the PC**.
- (n) “Purchaser’s Country” is the country **specified in the PC**.
- (o) “Related Services” means the services incidental to the supply of the Goods, such as insurance, installation, training and initial maintenance and other such obligations of the Supplier under the Contract, excluding inland transportation and other services required to convey the Goods to their final destination.
- (p) “Subcontractor” means any person to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier, and the legal successors in title to each of these persons.

- (q) “Supplier” means the person(s) whose Bid to perform the Contract has been accepted by the Purchaser and is named as such in the Contract Agreement, and the legal successors in title to this person(s).

2. Contract Documents

- 2.1 Subject to the order of precedence set forth in the Contract Agreement. All documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

3. Corrupt or Fraudulent Practices

- 3.1 If the Purchaser determines, based on reasonable evidence, that the Supplier has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Purchaser may, after giving fourteen (14) days notice to the Supplier, terminate the Supplier’s employment under the Contract and cancel the Contract, and the provisions of GC Clause 33 shall apply as if such expulsion had been made under GC Sub-Clause 33.1.
- 3.2 Should any employee of the Supplier be determined, based on reasonable evidence, to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the Contract, then that employee shall be removed.

4. Interpretation

- 4.1 In the Contract, except where the context requires otherwise:

- (a) words indicating one gender include all genders;
- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) provisions including the word “agree”, “agreed”, or “agreement” require the agreement to be recorded in writing;
- (d) the word “Tender” is synonymous with “Bid”, “Tenderer”, with “Bidder”, and “Tender Documents” with “Bidding Documents”, and
- (e) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record.

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

4.2 Incoterms

- (a) Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms.
- (b) The terms EXW, CIP, FCA, CFR and other similar terms, when used, shall be governed by the rules prescribed in the latest edition of Incoterms as of the Base Date.

4.3 Entire Agreement

The Contract constitutes the entire agreement between the Purchaser and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of the parties with respect thereto made prior to the date of Contract.

4.4 Amendment

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.

4.5 Non-Waiver

(a) Subject to GC Sub-Clause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

(b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which is being waved.

4.6 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

4.7 Country of Origin

“Origin” means the place where the Goods have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

5. Language

5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the Purchaser, shall be written in the language **specified in the PC**. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified, in which case, for purposes of interpretation of the Contract, this translation shall govern.

5.2 The Supplier shall bear all costs of translation to the governing language and all risks of the accuracy of such translation, for documents provided by the Supplier.

6. Joint Venture, Consortium or Association

6.1 If the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the Purchaser for the fulfillment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution of the joint venture, consortium, or association shall not be altered without the prior consent of the Purchaser.

7. Notices

7.1 Any notice given by one party to the other pursuant to the Contract shall be in writing and delivered against receipt.

7.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

8. Governing Law

8.1 The Contract shall be governed by and interpreted in accordance with the laws of the Purchaser's Country, **unless otherwise specified in the PC.**

9. Settlement of Disputes

9.1 The Purchaser and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.

9.2 If, after twenty-eight (28) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Purchaser or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract. Arbitration shall be conducted as follows.

(a) if the Contract is with foreign Suppliers (or if the lead partner is a foreign Supplier, in case of a JV), international arbitration with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration, by one or more arbitrators appointed in accordance with said arbitration rules.

(b) if the Contract is with domestic Suppliers, arbitration with proceedings conducted in accordance with the laws of the Purchaser's Country.

The place of arbitration shall be a neutral location determined in accordance with the applicable rules of arbitration; and the arbitration shall be conducted in the language for communications defined in GC Sub-Clause 5.1.

9.3 Notwithstanding any reference to arbitration herein,

(a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and

(b) the Purchaser shall pay the Supplier any monies due the Supplier

10. Scope of Supply

10.1 The Goods and Related Services to be supplied shall be as specified in the Schedule of Requirements.

11. Delivery and Documents

- 11.1 Subject to GC Sub-Clause 31.1, the delivery of the Goods and Related Services shall be in accordance with the Delivery Schedules specified in the Schedule of Requirements. The details of shipping and other documents to be furnished by the Supplier are **specified in the PC**.

12. Supplier's Responsibilities

- 12.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with GC Clause 10, and the Delivery Schedules, as per GC Clause 11.

13. Contract Price

- 13.1 Prices charged by the Supplier for the Goods supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its Bid, with the exception of any price adjustments **authorized in the PC**.

14. Terms of Payment

- 14.1 The Contract Price, including any Advance Payments, if applicable, shall be paid as **specified in the PC**.
- 14.2 The Supplier's request for payment shall be made to the Purchaser in writing, accompanied by invoices be made to the Purchaser in writing, accompanied by invoices describing, as appropriate, the Goods and Related Services delivered, and by the documents submitted pursuant to GC Clause 11 and upon fulfillment of all other obligations stipulated in the Contract.
- 14.3 Payments shall be made promptly by the Purchaser, but in no case later than sixty (60) days after submission of an invoice or request for payment by the Supplier, and after the Purchaser has accepted it.
- 14.4 The currencies in which payments shall be made to the Supplier under this Contract shall be those in which the Bid Price is expressed.
- 14.5 In the event that the Purchaser fails to pay the Supplier any payment by its due date, the Purchaser shall pay to the Supplier interest on the amount of such delayed payment for the period of delay until payment has been made in full, whether before or after judgment or arbitrage award. Unless otherwise stated in the PC, the applicable interest rate shall be at the annual rate of three (3) percentage points above the discount rate of the central bank in the country of the currency (ies) of payment, or if not available, the interbank offered rate, and shall be paid in such currency.

15. Taxes and Duties

- 15.1 For Goods supplied from outside the Purchaser's Country, the Supplier shall entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the Purchaser's Country.
- 15.2 For Goods supplied from outside the Purchaser's Country, the Supplier shall entirely responsible for all taxes, duties license fees, etc., incurred until delivery of the contracted Goods to the Purchaser.

- 15.3 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in the Purchaser's Country, the Purchaser shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

16. Performance Security

- 16.1 If required as **specified in the PC**, the Supplier shall, within twenty-eight (28) days of the notification of Contract award, provide a performance security for the performance of the Contract in the amount **specified in the PC**.
- 16.2 The proceeds of the Performance Security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.
- 16.3 As **specified in the PC**, the Performance Security if required, shall be denominated in the currency (ies) of the Contract, or in a freely convertible currency acceptable to the Purchaser; and shall be in one of the format stipulated by the Purchaser in Section IX, Contract Forms, or in another format acceptable to the Purchaser.
- 16.4 The Performance Security shall be discharged by the Purchaser and returned to the Supplier not later than twenty-eight (28) days following the date on which the Supplier's performance obligations under the Contract, including any warranty obligations, have been completed.

17. Copyright

- 17.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the Purchaser by the Supplier herein shall remain vested in the Supplier, or, if they are furnished to the Purchaser directly or through the Supplier by any third party, including suppliers of materials, the copyright in such materials shall remain vested in such third party.

18. Confidential Information

- 18.1 The purchaser and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Subcontractor such documents, data, and other information it receives from the Purchaser to the extent required for the Subcontractor to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor an undertaking of Confidentiality similar to that imposed on the Supplier under GC Clause 18.
- 18.2 The Purchaser shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the Contract. Similarly, the Supplier shall not use such documents, data, and other information received from the Purchaser for any purpose other than the performance of the Contract.
- 18.3 The obligation of a party under GC Sub-Clauses 18.1 and 18.2 above, however, shall not apply to information that:
- (a) the Purchaser or Supplier need to share with JICA or other institutions participating in the financing of the Contract;
 - (b) now or hereafter enters the public domain through no fault of that party;

- (c) can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
 - (d) otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.
- 18.4 The above provisions of GC Clause 18 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the supply or any part thereof.
- 18.5 The provisions of GC Clause 18 shall survive completion or termination, for whatever reason, of the Contract.

19. Subcontracting

- 19.1 The Supplier shall notify the Purchaser in writing of all subcontracts awarded under the Contract if not already specified in the Bid. Such notification, in the original Bid or later shall not relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.
- 19.2 Subcontracts shall comply with the provisions of GC Clause 3.
- 19.3 If the Supplier uses a subcontractor for production and sales of Goods offered, such a subcontractor shall be named in the Contract. The Supplier shall be required to obtain the prior consent of the Purchaser in case the Supplier intends to replace any subcontractor named in the Contract with another subcontractor.

20. Specifications and Standards

20.1 Technical Specifications and Drawings

- (a) The Goods and Related Services supplied under this Contract shall conform to the technical specifications and standards mentioned in the Schedule of Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the Goods' country of origin.
- (b) The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the Purchaser, by giving a notice of such disclaimer to the Purchaser.
- (c) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the Purchaser and shall be treated in accordance with GC Clause 31.

21. Packing and Documents

- 21.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods' final destination and the absence of heavy handling facilities at all points in transit.

21.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, **specified in the PC**, and in any other instructions ordered by the Purchaser.

22. Insurance

22.1 **Unless otherwise specified in the PC**, the Goods supplied under the Contract shall be fully insured against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms or in the manner specified in the PC

23. Transportation

23.1 **Unless otherwise specified in the PC**, responsibility for arranging transportation of the Goods shall be in accordance with the Specified Incoterms.

24. Inspections and Tests

24.1 The Supplier shall at its own expense and at no cost to the Purchaser carry out all such tests and/or inspections of the Goods and Related Services as are **specified in the PC**.

24.2 The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the Goods' final destination, or in another place in the Purchaser's Country as **specified in the PC**. Subject to GC Sub-Clause 24.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.

24.3 The Purchaser or its designated representative shall be entitled to attend the tests and/or inspections referred to in GC Sub-Clause 24.2, provided that the Purchaser bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

24.4 Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the Purchaser. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Purchaser or its designated representative to attend the test and/or inspection.

24.5 The Purchaser may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed to verify that the characteristics and performance of the Goods comply with the technical specifications codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the delivery dates and completion dates and the other obligations so affected.

24.6 The Supplier shall provide the Purchaser with a report of the results of any such test and/or inspection.

24.7 The Purchaser may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to the Purchaser, and shall repeat the test and/or inspection, at no cost to the Purchaser, upon giving a notice pursuant to GC Sub-Clause 24.4.

24.8 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the Purchaser or its representative, nor the issue of any report pursuant to GC Sub-Clause 24.6, shall release the Supplier from any warranties or other obligations under the Contract.

25. Liquidated Damages

25.1 Except as provided under GC Clause 30, if the Supplier fails to deliver any or all of the Goods or Related Services by the Completion date specified in the Contract, the Purchaser may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage **specified in the PC** of the delivered price of the delayed Goods or Related Services for each week or part thereof of delay until actual delivery, up to a maximum deduction of the percentage **specified in the PC**. Once the maximum is reached, the Purchaser may terminate the Contract pursuant to GC Clause 33.

26. Warranty

26.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.

26.2 Subject to GC Sub-Clause 20.1(b), the Supplier further warrants that the Goods shall be free from defects arising from any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the Purchaser's Country where the Project Site is located.

26.3 **Unless otherwise specified in the PC**, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination defined as the Project Site, or for eighteen (18) months after the date of shipment from the port or place of loading in the country of origin, whichever period concludes earlier.

26.4 The Purchaser shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The Purchaser shall afford all reasonable opportunity for the Supplier to inspect such defects.

26.5 Upon receipt of such notice, the Supplier shall, within a reasonable period, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the Purchaser.

26.6 If having been notified, the Supplier fails to remedy the defect within a reasonable period, the Purchaser may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

27. Patent Indemnity

27.1 The Supplier shall, subject to the Purchaser's compliance with GC Sub-Clause 27.2 indemnify and hold harmless the Purchaser and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Purchaser may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

- (a) the installation of the Goods by the Supplier or the use of the Goods in the Purchaser's Country where the Project Site is located; and
- (b) the sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

- 27.2 If any proceedings are brought or any claim is made against the Purchaser arising out of the matters referred to in GC Sub-Clause 27.1, the Purchaser shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the Purchaser's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.
- 27.3 If the Supplier fails to notify the Purchaser within twenty-eight (28) days after receipt of such notice that it intends to conduct any such proceedings or claim, then the Purchaser shall be free to conduct the same on its own behalf.
- 27.4 The Purchaser shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.
- 27.5 The Purchaser shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the Purchaser.

28. Limitation of Liability

- 28.1 Except in cases of criminal negligence or willful misconduct,
 - (a) The Supplier shall not be liable to the Purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser and
 - (b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Supplier to indemnify the Purchaser with respect to patent infringement

29. Change in Laws and Regulations

- 29.1 Unless otherwise specified in the Contract, if after the Base Date, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed (which shall be deemed to include any change in interpretation or application by the competent authorities) in the Purchaser's Country where the Project Site is located that subsequently affects the delivery date and/or the Contract Price, then such delivery date and/or

Contract Price shall be correspondingly adjusted, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GC Clause 13.

30. Force Majeure

- 30.1 The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 30.2 For purpose of this Clause, “Force Majeure” means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 30.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

31. Change Orders and Contract Amendments

- 31.1 The Purchaser may at any time order the Supplier through notice in accordance GC Clause 7, to make changes within the general scope of the Contract in any one or more of the following:
- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
 - (b) the method of shipment or parking;
 - (c) the place of delivery; and
 - (d) the Related Services to be provided by the Supplier.
- 31.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier’s performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery schedules, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier’s receipt of the Purchaser’s change order.
- 31.3 Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.
- 31.4 Subject to the above, no variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties

32. Extensions of Time

- 32.1 If any time during performance of the Contract, the Supplier or its Subcontractors should encounter conditions impeding timely delivery of the Goods or Related Services pursuant to GC Clause 11, the Supplier shall promptly notify the Purchaser in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.
- 32.2 Except in case of Force Majeure, as provided under GC Clause 30, a delay by the Supplier in the performance of its delivery obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GC Clause 25, unless an extension of time is agreed upon, pursuant to GC Sub-Clause 32.1.

33. Termination

33.1 Termination for Default

- (a) The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the contract in whole or in part, if the Supplier, in the judgment of the Purchaser has engaged in fraud and corruption, as defined in GC Clause 3, in competing for or in executing the Contract.

(b) If the Supplier:

- (i) fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GC Clause 32; or
- (ii) fails to perform any other obligation under the Contract;

then the Purchaser may, without prejudice to any other rights it may possess under the Contract, give a notice to the Supplier stating the nature of the default and requiring the Supplier to remedy the same. If the Supplier fails to remedy or to take steps to remedy the same within fourteen (14) days of its receipt of such notice, then the Purchaser may terminate the contract forthwith by giving a notice of termination to the Supplier that refers to GC Sub-Clause 33.1.

In the event the Purchaser terminates the Contract in whole or in part, pursuant to GC Clause 33.1, the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered, and the Supplier shall be liable to the Purchaser for any additional costs for such similar Goods or Related Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

33.2 Termination for Insolvency.

- (a) The Purchaser may at any time terminate the Contract by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the Purchaser.

33.3 Termination for Convenience.

- (a) The Purchaser, by notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that

termination is for the Purchaser's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.

- (b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:
- (i) to have any portion completed and delivered at the Contract terms and prices; and/or
 - (ii) to cancel the remainder and pay to the supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

34. Assignment

- 34.1 Neither the Purchaser nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

35. Export Restriction

- 35.1 Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the Purchaser, the Purchaser's Country, or to the use of the products/goods, systems or services to be supplied, which arise from trade regulations from a country supplying those products/goods, systems or services, and which substantially impede the Supplier from meeting its obligations under the Contract, shall release the Supplier from the obligation to provide deliveries or services, always provided, however, that the Supplier can demonstrate to the satisfaction of the Purchaser that it has completed all formalities in a timely manner, including applying for permits, authorizations and licenses necessary for the export of the products/goods, systems or services under the terms of the Contract. Termination of the Contract on this basis shall be for the Purchaser's convenience pursuant to Sub-Clause 33.3.

Section VIII. Particular Conditions

PART 3 - SECTION VIII
PARTICULAR CONDITIONS OF CONTRACT

Particular Conditions (PC)

Clause	Data
GC 1.1(1)	The Project Site(s) final destination(s) is/are: LRT Line 1 Baclaran Expansion Depot LRTA Compound, Aurora Blvd., Pasay City 1300 Metro Manila
GC 1.1(m)	The Purchaser is: Department of Transportation (DOTr)
GC 1.1(n)	The Purchaser's Country is : Republic of the Philippines
GC 5.1	The language shall be: English
GC 11.1	Details of Shipping and other Documents to be furnished by the Supplier are: Bill of lading, evidence of payment of freight and insurance, Manufacturer's Warranty Certificate, Inspection Certificate, Supplier's factory shipping details. The above documents shall be received by the Purchaser before arrival of the Goods and, if not received, the Supplier will be responsible for any consequent expenses.
GC 13.1	The Prices charged for the Goods Supplied and Related Services performed shall not be adjustable.
GC 14.1	The method and conditions of payment to be made to the Supplier under this Contract shall be as follows: (i) Advance Payment: Fifteen (15) percent of the Contract Price shall be paid, Forty-five (45) days upon submission of claims for payment. Advance Payment Security is required. (ii) Detail Design Work complete and approved: Ten (10) percent of the Contract Price (iii) Delivery of Equipment on Site : Forty- five (45) percent of the Contract Price (iv) Completion of Testing and Commissioning and Taking Over : Forty-five (45) percent of the Contract Price
GC 16.1	A Performance Security is: Not required.
GC 16.3	Not Applicable
GC 21.2	The packing, marking and documentation within and outside the packages shall be: The outer packaging must be clearly marked on at least Four (4) sides as follows: 1. Name of the Procuring Entity 2. Name of the Supplier 3. Contract Description 4. Final Destination 5. Gross Weight 6. Any special lifting instructions

	<p>7. Any special handling instructions 8. Any relevant Hazardous Chemical (HAZCHEM) classifications</p> <p>A packaging list identifying the contents and quantities of the package is to be placed on an accessible point of the outer packaging if practical. If not practical the packaging list is to be placed inside the outer packaging but outside the secondary packaging.</p>
GC 22.1	The insurance coverage shall be as specified in the Incoterms.
GC 23.1	<p>Responsibility shall be as follows: The Supplier is required under the Contract to transport the equipment at LRT Line1 Baclaran Expansion Depot, LRTA Compound, Aurora Blvd., Pasay City 1300, Metro Manila</p>
GC 24.1	<p>The inspections and tests shall be: Please refer to Part 2: Section VI; 4. Inspections and Tests</p>
GC 24.2	The inspections and tests shall be conducted at: Philippines and /or equipment country of origin.
GC 25.1	The liquidated damage shall be: Not Applicable
GC 26.3	The period of validity of the warranty shall be: Seven hundred thirty (730) days.
GC 26.3	For purposes of the warranty, the place(s) of final destination(s) shall be: LRT Line 1 Baclaran Expansion Depot, LRTA Compound, Aurora Blvd., Pasay City 1300, Metro Manila

PART 3 - SECTION IX

CONTRACT FORMS

SECTION IX - CONTRACT FORMS

Table of Forms

1	Letter of Acceptance	1
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3	Advance Payment Security	4

Letter of Acceptance

[Insert letterhead paper of the Employer]

[Insert date]

To: _____ *[Name and address of Supplier]*

This is to notify you that your Quotation dated *[Insert date]* for the execution to Supply Ten (10) Depot Equipment (which includes the Design, Fabrication, Delivery, Transportation, Installation, Testing and Commissioning, Training and Supply of Maintenance Manual) for Capacity Enhancement of Mass Transit Systems in Metro Manila, LRT Line 1 – South (Cavite) extension Project; Expansion of the Existing Depot at Baclaran and Construction of a New Satellite Depot at Zapote and the Accepted Contract Price of *[Amount in words and figures]*, is hereby accepted by our Agency.

Authorized Signature; _____

Name and Title of Signatory: **ARTHUR P. TUGADE**, Secretary

Name of Agency: **DEPARTMENT OF TRANSPORTATION**

Authorized Signature; _____

Name and Title of Signatory: _____

Name of Supplier: _____

Contract Agreement

THIS CONTRACT AGREEMENT is made

the *[insert day]* day of *[insert month]*, *[insert year]*,

BETWEEN

1. Department of Transportation (DOTr) of the Republic of the Philippines and having its principal place of business at DOTr compound Apo Court, Pinatubo St. corner Serge Osmeña St., Clark Freeport Zone, Pampanga (hereinafter “the Purchaser”), and
2. *[Insert name of Supplier]*, a corporation incorporated under the laws of *[Insert country of Supplier]* and having its principal place of business at *[Insert address of Supplier]* (hereinafter “the Supplier”).

WHEREAS the Department of Transportation (DOTr) invited Bids for certain Goods and Related Services for the Supply of Ten (10) Depot Equipment (which includes the Design, Fabrication, Delivery, Transportation, Installation, Testing and Commissioning, Training and Supply of Maintenance Manual) to be supplied by the Supplier for Capacity Enhancement of Mass Transit Systems in Metro Manila, LRT Line 1 – South (Cavite) extension Project; Expansion of the Existing Depot at Baclaran and Construction of a New Satellite Depot at Zapote and has accepted a Bid by the _____ *[Supplier]* to execute for the supply and delivery of Depot Equipment for the sum of _____ (hereinafter “Contract Price”)

The Purchaser and the Supplier agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned in the Conditions of Contract referred to.
2. The following documents shall constitute the Contract between the Purchaser and the Supplier, and each shall be read and construed as an integral part of the Contract:
 - (a) This Contract Agreement
 - (b) Letter of Acceptance
 - (c) Letter of Bid
 - (d) Particular Conditions
 - (e) General Conditions
 - (f) Technical Requirements (including Schedule of Requirements and Technical Specifications)
 - (g) Other completed Bidding Forms submitted with the Bid
 - (h) Acknowledgement of Compliance with Guidelines for Procurement under Japanese ODA Loans
 - (i) Form DEC – Declaration as to the Origin of Goods and Services and the Eligibility of Supplier(s)
3. This Contract Agreement shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the Contract documents, then the documents shall prevail in the order listed above.

4. In consideration of the payments to be made by the Purchaser to the Supplier as hereinafter mentioned, the Supplier hereby covenants with the Purchaser to provide the Goods and Related Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
5. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the Goods and Related Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of [*insert name of country*] on the day, month and year indicated above.

Signed by, for and on behalf of the Purchaser

[Signature]

[Title]

in the presence of [*insert identification of official witness*]

Signed by, for and on behalf of the Supplier

[Signature]

[Title]

in the presence of [*insert identification of official witness*]

Advance Payment Security Form

[Guarantor letterhead or SWIFT identifier code]

Beneficiary: Department of Transportation (DOTr)

Address: DOTr Compound Apo Court Pinatubo St.,
Corner Serge Osmeña St., Clark Freeport Zone
Pampanga, 1555 Philippines

Date: *[Insert date of issue]*

ADVANCE PAYMENT GUARANTEE No.: *[Insert guarantee reference number]*

Guarantor: *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[insert complete name and address of Supplier, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called “the Applicant”) has entered into Contract No. *[insert reference number of the Contract]* dated *[insert date]* with the Beneficiary, for the supply of *[insert description of Goods and Related Services]* (hereinafter called “the Contract”).

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum of *[insert amount in words]* (*[insert amount in figures]*) is to be made against an advance payment guarantee.

At the request of the Applicant, we as Guarantor hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* (*[insert amount in words]*) upon receipt by us of the Beneficiary’s first demand in writing accompanied by a written statement stating that the Applicant is in breach of its obligation under the Contract because the Applicant used the advance payment for purposes other than toward supply of the Goods and the Related Services.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary’s bank stating that the advance payment referred to above has been credited to the Applicant on its account number *[insert number]* at *[insert name and address of Applicant’s bank]*.

This guarantee shall remain valid and in full effect from the date of the advance payment received by the Applicant under the Contract until *[insert date]*.

This Guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458¹.

[signature(s)]

[Note: All italicized text is for use in preparing this form and shall be deleted from the final product.]

Japan International Cooperation Agency

URL:<http://www.jica.go.jp>

E-mail:gltps-lp@jica.go.jp