

BIDDING DOCUMENTS

FOR

PROCUREMENT OF

**PACKAGE CP NS-02: ROLLING STOCK
-COMMUTER TRAINSETS**

Volume III of III

**PART 3 – CONDITIONS OF CONTRACT AND
CONTRACT FORMS**

September 2020

Employer:	Department of Transportation
Procuring Agent:	Procurement Service
Country:	Republic of the Philippines
Project:	The Malolos-Clark Railway Project and the North South Railway Project-South Line (Commuter)
JICA Loan No.:	PH-P270

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BIDDING DOCUMENTS

SUMMARY OF DOCUMENTS

Invitation for Bids (IFB)

Volume I. Part 1 – Bidding Procedures

- Section I. Instructions to Bidders (ITB)
- Section II. Bid Data Sheet (BDS)
- Section III. Evaluation and Qualification Criteria (EQC)
- Section IV. Bidding Forms (BF)
- Section V. Eligible Source Countries of Japanese ODA Loans (ESC)

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- Section VI. Employer's Requirements
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**PART 3 – CONDITIONS OF CONTRACT
AND CONTRACT FORMS**

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SECTION VII. GENERAL CONDITIONS

The General Conditions (GC) governing this Contract are the Standard General Conditions of Contract set forth in Part 3, Section VII of the Standard Bidding Documents for Procurement of Electrical and Mechanical Plant, and for Building and Engineering Works, designed by the Contractor (Trial Version) published by JICA in July, 2015. Those General Conditions of Contract are available only to potential Bidders who purchased the Bidding Documents. The GC is available at the office of the Procurement Service.

The GC are complemented by the Particular Conditions (PC) and clause numbers in the PC correspond to those in GC. Therefore, the GC and the PC together comprise the rights and obligations of the Parties. In the case of any discrepancy between the conditions contained in the GC and the PC, the conditions contained in the PC shall prevail over the GC.

A copy of these General Conditions can be obtained by potential Bidders after purchasing the Bidding Documents from the office of Procurement Service.

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SECTION VIII. PARTICULAR CONDITIONS

The Particular Conditions (PC) complement the General Conditions (GC) to specify data and contractual requirements linked to the special circumstances of the country, the Employer, the Engineer, the sector, the overall project and the Works. Whenever there is a conflict, the provisions herein shall prevail over those in the GC.

Part A, Contract Data of the PC, includes data to complement the GC in a manner similar to the way in which the Bid Data Sheet complements the Instructions to Bidders.

Part B, the Specific Provisions of the PC should specify country- or project-specific provisions for PC in each case.

Clause numbers in the PC correspond to those in the GC.

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Particular Conditions (PC)

Part A - Contract Data

Conditions	Sub-Clause	Data
Employer's name and address	1.1.2.2 & 1.3	Department of Transportation (DOTr). Pinatubo Street, corner Sergio Osmeña Sr. Street, Clark Freeport Zone, Angeles City, Pampanga, 2009 Philippines
Engineer's name and address	1.1.2.4 & 1.3	GCR Consortium, 20 th and 21 st Floor, Greenfield Tower, Mayflower Street, Greenfield District, 1500 Mandaluyong City, Metro Manila, Philippines
Bank's name	1.1.2.11	Japan International Cooperation Agency (JICA)
Borrower's name	1.1.2.12	The Government of the Republic of the Philippines
Time for Completion	1.1.3.3	Seventy-two (72) months for the whole of the Works including design. The Contractor is required to achieve elements of the Works by Key Dates specified in the Attachment-1 to Particular Conditions Part A Contract Data.
Defects Notification Period	1.1.3.7	Two (2) Years per Section / Sub-section
Sections	1.1.5.6	Refer to Attachment 1 "Summary of Key Dates" below.
Electronic transmission systems	1.3	All correspondence/submissions of any nature between the Contractor and the Engineer shall be transmitted via an Electronic Document Management System (EDMS) selected by the Employer (see Employer's Requirements for more details). <i>[Insert Contractor's name and address.]</i>
Governing Law	1.4	The Laws of the Republic of the Philippines

Conditions	Sub-Clause	Data
Ruling language	1.4	English
Language for communications	1.4	English
Time for access to, and possession of, all parts of the Site	2.1	At no time will the Contractor be given possession of the Site, only access to parts of the site in possession of other contractors or of the Employer. The Employer shall give the Contractor right of access to, and/or occupation of parts of the Site (parts of the North and South Depots) and permission to prove the performance of the Rolling Stock on the main line where available. Access will be provided in accordance with the schedule described in Attachment-2 to Particular Conditions Part A Contract Data.
Engineer’s Duties and Authority	3.1(B)(ii)	Variations resulting in an increase of the Accepted Contract Amount in excess of one percent (1%) shall require approval of the Employer.
Performance Security	4.2	The Performance Security will be in the form of one "demand guarantee" for ten percent (10%) of the Accepted Contract Amount and for the same currencies and proportion as the Accepted Contract Amount. The amount of the Performance Security will be reduced in accordance with the provisions of PC Sub-Clause 4.2.
General Design Obligations	5.1	Period for notifying errors, faults and defects in the Employer’s Requirements: ninety (90) days.

Conditions	Sub-Clause	Data
Normal working hours	6.5	<p>Normal working hours is from 08:00 to 17:00 inclusive of 60 minutes meal period. However, overtime at the Contractor’s expense will be permitted in accordance with Clause 6.5 (b) of the GC, subject to compliance with the applicable rules and regulations of Philippines Labor Codes.</p> <p>Any work planned (in the Philippine only) will require prior approval of the Engineer inclusive of test running and performance proving.</p>
Commencement of Works	8.1	<p>The Commencement of the Works planned date is May 1, 2021.</p> <p>Access dates are scheduled in Attachment 2.</p>
Delay damages for the Works	8.7	<p>The daily amount payable for delay in achieving each Key Date as set out in the attached ‘Table 1 – Key Dates’ (see Attachment 1 hereto) shall be as follows:</p> <p>KD 1 - JPY 161,845,629 KD 2 – JPY 80, 922, 814 KD 3 – JPY 404,614,072 KD 4 – JPY 404,614,072 KD 5 – JPY 161,845,629 KD 6 – JPY 809,228,144 KD 7 – JPY 809,228,144 KD 8 – JPY 809,228,144 KD 9 – JPY 809,228,144 KD 10 – JPY 809,228,144 KD 11 – JPY 809,228,144 KD 12 – JPY 809,228,144 KD 13 – JPY 809,228,144 KD 14 – JPY 242,768,443 KD 15 – JPY 161,845,629</p>
Maximum amount of delay damages	8.7	<p>The maximum amount for cumulative delay damages for the Contract shall not exceed ten percent (10%) of the final Contract Price.</p>
Provisional Sums	13.5.(b)(ii)	<p>Fifteen percent (15%) of the actual amounts paid (or due to be paid) by the Contractor.</p>

Conditions	Sub-Clause	Data									
Total advance payment	14.2	One overall Advance Payment of fifteen percent (15%) of the Accepted Contract Amount payable in the currencies and proportions in which the Accepted Contract Amount is payable									
Repayment amortization rate of advance payment	14.2(b)	Thirty percent (30%).									
Percentage of Retention	14.3(c)	Ten percent (10%).									
Limit of Retention Money	14.3(c)	Five percent (5%) of the corresponding amount of each Section, into which the Accepted Contract Amount is apportioned in accordance with the relevant percentage stated in PC Part A Sub-clause 14.9.									
Plant and Materials	14.5(b)(i)	Not applicable.									
	14.5(c)(i)	Not applicable.									
Minimum Amount of Interim Payment Certificates	14.6	Amount combined together both Local Currency and Foreign Currency equivalent to twenty-five hundredths of a percent (0.25%) of the Accepted Contract Amount. For the purpose of this Sub-Clause, the exchange to be employed for currency conversion shall be the exchange rate in accordance with Sub-Clause 14.15 (d).									
Relevant Percentage Weighting for Release of Retention for each Section	14.9	For the purposes of this Sub-Clause: (i) the word ‘Section’ shall be deemed to refer to the elements of work identified in ‘Table 1 – Key Dates’ shown in Attachment 1 hereto, and (ii) the relevant percentage for each such Key Date (‘Section’) shall be as follows:									
		<table border="1"> <thead> <tr> <th>Section</th> <th>Trainsets</th> <th>Percentage Weighting</th> </tr> </thead> <tbody> <tr> <td>KD 6</td> <td>First 5 trainsets</td> <td>12.5%</td> </tr> <tr> <td>KD 7</td> <td>Trainsets 6-10</td> <td>12.5%</td> </tr> </tbody> </table>	Section	Trainsets	Percentage Weighting	KD 6	First 5 trainsets	12.5%	KD 7	Trainsets 6-10	12.5%
		Section	Trainsets	Percentage Weighting							
KD 6	First 5 trainsets	12.5%									
KD 7	Trainsets 6-10	12.5%									

Conditions	Sub-Clause	Data		
		KD 8	Trainsets 11-15	12.5%
		KD 9	Trainsets 16-20	12.5%
		KD 10	Trainsets 21-25	12.5%
		KD 11	Trainsets 26-30	12.5%
		KD 12	Trainsets 31-35	12.5%
		KD 13	Remaining 3 trainsets	12.5%
<p>Periods for submission of insurance:</p> <p>a. evidence of insurance.</p> <p>b. relevant policies</p>	18.1	<p>(a) Fourteen (14) days from the Commencement Date.</p> <p>(b) Within twenty-eight (28) days from the Commencement Date.</p>		
<p>Maximum amount of deductibles for insurance of the Employer's risks</p>	18.2(d)	Deductible per occurrence shall not exceed Japanese Yen Ten Million (JPY10,000,000).		
<p>Minimum amount of third-party insurance</p>	18.3	Yen one hundred million (JPY100,000,000) for any one incident in the Philippines with number of incidents unlimited.		
<p>Date by which the DB shall be appointed</p>	20.2	Within twenty-eight (28) days after a Party gives notice to the other Party of intention to refer a dispute to a DB in accordance with Sub-Clause 20.4.		
<p>The DB shall be comprised of</p>	20.2	Three (3) Members.		
<p>Appointment (if not agreed) to be made by</p>	20.3	International Chamber of Commerce (ICC).		

ATTACHMENT 1

SUMMARY OF KEY DATES

- (1) The Employer requires the Contractor to complete certain elements of work by specific Key Dates (KD). Delay in achieving those Key Dates shall render the Contractor liable to pay Delay Damages (as set out in Part A, Contract Data, of the Particular Conditions).
- (2) Achieving a Key Date for an element of work means that, before the expiry of the number of months relevant to the element in question (as specified in “Table 1 – Key Dates” below), all works related to that element have been completed to the satisfaction of the Engineer. The number of months shown in Table 1 against a Key Date and its specific element of work signifies the maximum duration in months from the Commencement Date within which the identified element must be completed. The number of months shown in Table 1 will be converted into actual calendar dates after receipt by the Contractor of the Engineer’s notification of the Commencement Date for the Project.

TABLE 1 – KEY DATES		
Key Date	Element of Work	No. of Months
KD 1	Achievement: Completing Final Design Review.	12 months
KD 2	Achievement: Deliver the mock up to the site	22 months
KD 3	Achievement: Completing FAI and FAT.	25 months
KD 4	Achievement: Supply and delivery of the following Rolling Stock equipment for training purposes to the CP NS-01 Contractor at the North Depot for Training Center Facility: <ul style="list-style-type: none"> - Equipment for driving simulator, - Pantograph, and - Bogie assembly for motor car including traction motor, gearbox and coupling. 	30 months
KD 5	Achievement: Completion of training and delivery of Operation and Maintenance Manual.	46 months
KD 6	Achievement: Delivery of First Batch of 5 trainsets and completion of testing and commissioning thereof plus handing over.	44 months
KD 7	Achievement: Delivery of Second Batch of 5 trainsets and completion of testing and commissioning thereof plus handing over.	49 months
KD 8	Achievement: Delivery of Third Batch of 5 trainsets and completion of testing and commissioning thereof plus handing over.	54 months

TABLE 1 – KEY DATES		
Key Date	Element of Work	No. of Months
KD 9	Achievement: Delivery of Fourth Batch of 5 trainsets and completion of testing and commissioning thereof plus handing over.	59 months
KD 10	Achievement: Delivery of Fifth Batch of 5 trainsets and completion of testing and commissioning thereof plus handing over.	64 months
KD 11	Achievement: Delivery of Sixth Batch of 5 trainsets and completion of testing and commissioning thereof plus handing over.	69 months
KD 12	Achievement: Delivery of Seventh Batch of 5 trainsets and completion of testing and commissioning thereof plus handing over.	74 months
KD 13	Achievement: Delivery of Eighth Batch of 3 trainsets, and completion of testing and commissioning thereof plus handing over.	77 months
KD 14	Achievement: Delivery of all spare parts, consumables, special tools and jigs, plus as-built drawings.	47 months
KD 15	Achievement: Completion of Trial Operation and the whole of the Works.	78 months

(3) The Contract Packages with which the Works will be required to interface are as shown below.

- The North South Commuter Railway Project (Malolos-Tutuban) (NSCR):
 - Package CP 01 Elevated Structures, 6 Stations and Depot,
 - Package CP 02 Elevated Structures and 3 Stations,
 - Package CP 03 Rolling Stock, and
 - Package CP 04 E&M Systems and Track Works.
- The Malolos-Clark Railway Project (MCRP):
 - Package CP N-01 Building and Engineering Works for approx. 17 km of Viaduct Structure, including Station Buildings at Calumpit and Apalit,
 - Package CP N-02 Building and Engineering Works for approx. 16 km of Viaduct Structure, including an Elevated Station Building at San Fernando,
 - Package CP N-03 Building and Engineering Works for approx. 12 km of Viaduct Structure, including Elevated Station Buildings at Angeles and Clark,
 - Package CP N-04 Building and Engineering Works for approx. 6.5 km of Railway Track Structure, including Underground Station at Clark International Airport,
 - Package CP N-05 Building and Civil Engineering Works for the North Depot Buildings, including related infrastructure and Track Work Sub-Ballast.
- The Malolos-Clark Railway Project (Blumentritt Extension) (MCRP-Ext.):

- Package CP S-01 Building and Civil Engineering Works for approx. 1.1 km of Viaduct Structure, including Station Building at Blumentritt.
- The North South Railway Project-South Line (Commuter) (NSRP-South):
 - Package CP S-02 Building and Engineering Works for approx. 7.85 km of Railway Track Structure, including 3 Station Buildings at Espana, Santa Mesa and Paco,
 - Package CP S-03a Building and Civil Engineering Works for approx. 4.5 km of Railway Track Structure, including 2 Station Buildings at Buendia and EDSA,
 - Package CP S-03b Building and Civil Engineering Works for approx. 10.62 km of Railway Track partially at grade, partially on Viaduct, including 4 Station Buildings at Nichols, FTI, Bicutan and Sucat,
 - Package CP S-04 Building and Civil Engineering Works for approx. 8.54 km of Viaduct Structure including 2 Station Buildings at Alabang and Muntinlupa,
 - Package CP S-05 Building and Civil Engineering Works for approx. 12.8 km of Viaduct Structure, including 4 Station Buildings at San Pedro, Pacita, Binan and Santa Rosa,
 - Package CP S-06 Building and Civil Engineering Works for approx. 10.2 km of Viaduct Structure and approx. 1.4 km of Depot Access Line, including 3 Station Buildings at Cabuyao, Banlic and Calamba, and
 - Package CP S-07 Building and Civil Engineering Works for South Depot Buildings, including related infrastructure and Trackwork Sub-Ballast.
- The Malolos-Clark Railway Project (MCRP) and the North South Railway Project – South Line (Commuter) (NSRP-South):
 - Package CP NS-01 E&M Systems and Track Works, and
 - Package CP NS-03 Rolling Stock – Limited Express Trainsets.

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ATTACHMENT 2

TIME FOR ACCESS TO THE SITE

- (1) The date on which the right to access to a part of the Site as the works area available to the Contractor are defined below and the extents of such areas are specified in the Employer's Requirements.
- (2) Month numbers shown in the schedule signify the elapsed time in months from the Commencement Date. The month numbers shall be converted into actual calendar dates after receipt by the Contractor of the Engineer's notification of the Commencement Date. Access Date means the first day of the month specified below

Access Date	Site (Works Area)	Month no.
AD 1	On-board Signalling System and other equipment to be mounted on the Rolling Stock supplied by CP NS-01 Contractor from E&M Systems and Track Works. The E&M System and Track Works Contractor will supply this equipment in Japan at the Rolling Stock Contractor's premises	
	AD-1A: for trainsets one to nineteen supplied under this contract	30 months
	AD-1B: for trainsets twenty to thirty-eight supplied under this contract	49 months
AD 2	Access to allocated areas within the North Depot for receiving trainsets, assembling, testing, commissioning and test running within the depot.	35 months
AD 3	Access to the mainline from CIA to Malolos (as available) for Test running and Performance Proving	36 months
AD 4	Access to allocated areas within the South Depot for receiving trainsets, assembling, testing, commissioning and test running within the depot.	48 months
AD 5	Access to the mainline from Calamba to Alabang	51 months
AD 6	Access to the whole mainline from Calamba to CIA	68 months
NB	<ol style="list-style-type: none"> 1. <i>Access will be given progressively to the whole of the North South Commuter Railway for the use of this Rolling Stock.</i> 2. <i>Obtaining permission from the Railway Safety Inspector to use the Rolling Stock for commercial operations will be the responsibility of the Employer with the support of the Rolling Stock manufacturer.</i> 	

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Particular Conditions

Part B - Specific Provisions

These Particular Conditions changes (add, amend, modify, replace or delete) the Clauses contained in the General Conditions, and shall take precedence over those contained in the General Conditions

The Appendix to Tender has been reworded as “**Contract Data**”. Any remaining references to Appendix to Tender in the General Conditions shall be understood to be reworded as “Contract Data”.

All references to DAB in the General and Particular Conditions shall be changed to **DB** as Contract Sub-Clause 1.1.2.9.

GC Sub-clause

Description

1.1

Definitions

Add the following Sub-Clause 1.1.2.13:

“1.1.2.13 “Interface Contractor” means any other contractor employed by the Employer for carrying out works and/or services not included in the Contract but forming a part of the Project, where such requirements for interfacing are identified under item (3) in Attachment 1 to PC Part A [*Summary of Key Dates*].”

Add the following sentence at the end of Sub-Clause 1.1.3.9:

““week” means 7 calendar days, “month” means a calendar month (Gregorian months) and “year” means 365 days.”

Add the following Sub-Clause 1.1.6.11

“Key Date” means a date stipulated within the Contract by which a particular condition, which is also stipulated, must be achieved.

“Key Dates” are specified in Attachment 1 to PC Part A [*Summary of Key Dates*]. Any failure to achieve a “Key Date” results in the deduction of Delay Damages at the daily rate stated in PC Part A Sub-clause 8.7 [*Delay Damages for the Works*].”

4.1

Contractor’s General Obligations

Add the following words after the words “between the Bank and the Borrower” in the existing third paragraph:

“, which are defined in the Appendix 1 “Eligible Source Country(ies) of Japanese ODA Loans” attached herewith.”

Add the following paragraph at the end of the existing third paragraph;

“In accordance with the agreement between the Bank and the Borrower, all equipment, materials and services to be supplied under the Contract shall have their origin in any eligible source countries indicated in the Loan Agreement and the Appendix 1 “Eligible Source Country(ies) of Japanese ODA Loans” attached herewith.”

Add the following paragraph at the end of Sub-clause 4.1:

The contractor shall not impede or interfere with the normal operations and maintenance of the Philippines National Railway (PNR) and/or the Operator of North-South Commuter Railway (NSCR), activities of the PNR personnel and/or the personnel of NSCR’s Operator, and/or normal movement of the PNR passengers and/or the NSCR’s passengers.

**4.2
Performance Security**

Add the following Paragraph after the existing second paragraph:

In case the Contractor is a joint venture, the Performance Security issued by it will be in the name(s) of one of the followings:

- (a) in the name of the joint venture, in case of a legally incorporated joint venture at the time of award of contract;
- (b) in the names of all members of the joint venture in case that the joint venture has not been legally constituted into a legally enforceable joint venture at the time of award of contract.”

Add the following paragraph after the existing fifth paragraph:

“After the expiry of the Defect Notification for each Section for which the Taking-Over Certificate has been issued (for the definition of ‘Section’ refer to Contract Data, Sub-Clause 14.9), the value of the Performance Security will be reduced by the relevant percentage shown below;”

Section	Number of Trainsets	Percentage (cumulative)
KD 6	First 5 trainsets	12.5%
KD 7	Trainsets 6-10	25%
KD 8	Trainsets 11-15	37.5%
KD 9	Trainsets 16-20	50%
KD 10	Trainsets 21-25	62.5%
KD 11	Trainsets 26-30	75%
KD 12	Trainsets 31-35	87.5%
KD 13	Trainsets 36-38	100%

**4.8
Safety Procedure**

At the end of Sub-Clause 4.8, add the following:

“The Contractor shall comply with all applicable regulations, manuals and rules published by the Philippines National Railway (PNR) and/or the operator of the North-South Commuter Railway (Tutuban – Malolos) (NSCR), when established, to the extent that the Contractor’s activities will relate. The regulations, manuals and rules published by the Philippines National Railway (PNR) or the operator of the North-South Commuter Railway (NSCR) are available for inspection at its office.

Health and Safety

In the event that work needs to be carried out outside the normal working hours, as described in CD 6.5, the Contractor shall at all times take all reasonable precautions, including providing additional safety and security measures as necessary.

GBV Prevention. The Contractor shall prevent and address all acts of SEAH and other forms of GBV committed by its personnel against co-workers, or against the community. This includes, at minimum, undertaking a GBV awareness program as stated in the project GAP—and shall undertake such measures as necessary, including as are specified in this contract, to reduce the risk of GBV between and among the Contractor’s personnel and the local community, to promote zero tolerance on GBV, and to assist affected individuals.

The Contractor shall comply with and implement Department of Public Works and Highways (DPWH) Directive no. 39, Series of 2020 (Subject: Revised Construction Safety Guidelines for the Implementation of Infrastructure Project During the COVID-19 Public Health Crisis, repealing Department Order No. 35, Series of 2020) unless superseded.”

**4.19
Electricity, Water and
Gas**

Delete the existing Sub-Clause entirely and replace with following:

“The Employer will not provide the Contractor with any power, water or other services for the Contractor’s construction activities and the static tests. The Contractor shall be responsible for the provision of all power, water and other services he may require for his construction and assembly activities and the static tests.

The Employer will be responsible for the provision of and payment for electricity for Traction Power for Test Running and Performance Proving both in the depots and on the mainline.”

**4.21
Progress Reports**

Add the following sentence at the end of the first Paragraph:

“Two electronic files in addition to six copies of the monthly progress report shall be submitted to the Engineer.”

4.22
**Record of Contractor's
Personnel and
Equipment**

Add the following sentence at the as a new subclause:

Record of Contractor's Personnel and Equipment

“The Contractor shall submit, to the Engineer, details showing the sex-disaggregated number of each class of Contractor’s Personnel (include sex, gender, age, and other classifiers in their data sheets for personnel) and number of each type of Contractor’s Equipment on the Site. Details shall be submitted each calendar month, in a form given Notice of No Objection by the Engineer, until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.”

6.2
**Rates of Wages and
Conditions of Labour**

Add the following Paragraph at the end of the Sub-Clause:

“Notwithstanding the provision of second Paragraph,

(1) The Government of the Republic of the Philippines shall, by itself or through its executing agency, assume all fiscal, levies and taxes imposed in the Republic of the Philippines on the Japanese employees engaged in the implementation of the Project with respect to their personal income derived from the Japanese companies operating as suppliers and contractors for the implementation of the Project.

(2) In connection with such tax assumption, the Government of the Republic of the Philippines or its executing agency shall be responsible for the liquidation or settlement of such fiscal levies, duties, taxes and other similar charges.

Engagement of Staff and Labor

The Contractor shall take pro-active measures to encourage employment of women and PWDs with the aim to achieve at least 20% women and 5% PWDs in skilled and unskilled positions in all stages of construction.

In accordance with Republic Act 7658, children below the age of 15 shall not be employed by the Contractor. Children between the ages of 15 to 18 years old shall be employed with proper consent from a parent and/or legal guardian and shall not be employed in dangerous work. The Contractor shall also observe and comply with the core labor standards.”

**6.4
Labour Laws**

Add the following Paragraph at the end of the Sub-Clause:

“The contractor shall not make employment decisions based upon personal characteristics unrelated to job requirements. The Contractor shall base the relationship upon equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment or retirement, and discipline. The Contractor shall provide equal wages and benefits to men and women for work of equal value or type.”

**6.5
Working Hours**

Add the following Paragraph at the end of the Sub-Clause:

“In the event of the Engineer consenting to work being carried out outside normal working hours, with a multiple shift system and/or during locally recognized days of rest, the Contractor shall be responsible for payment of any additional costs incurred by the Engineer and/or the Employer for supervision, inspection or other related activities.”

**6.7
Health and Safety**

Add the following Paragraph at the end of the Sub-Clause:

“The Contractor shall throughout the contract (including the Defects Notification Period):

(i) conduct Information, Education and Communication or Information Education Campaign (IEC) campaigns in regular intervals as agreed with the Employer addressed to all site staffs and labour (including all the Contractor’s personnel employees, all Subcontractors and any other Contractor’s personnel and all truck drivers and crew making deliveries to site for construction activities) and to the immediate local communities concerning the risks, dangers, impact, and penalties, and appropriate avoidance behavior with respect to GBV.

The Contractor shall conduct health and safety programs for workers employed under the project, and shall include information on the trafficking of women and the risk of sexually transmitted diseases, including HIV/AIDs in such programs.

The Contractor shall submit and implement a COVID-19 Risk Management Plan to safeguard all people on Site through a monitoring, education, and PPE approach. Public access to the Site shall be restricted to designated access corridors for access to and egress from the PNR Stations which the Contractor shall police. Monitoring the health of the public shall not be within the Contractor’s scope of works.”

**6.24
Non-Discrimination and
Equal Opportunity**

Add the following Paragraph at the end of the Sub-Clause:

“The Contractor shall ensure that its employees and sub-contractors observe the highest ethical standards and refrain from any form of bullying, discrimination, misconduct and harassment, including

sexual harassment and shall, at all times, behave in a manner that creates an environment free of unethical behavior, bullying, misconduct and harassment, including sexual harassment. The Contractor shall take appropriate action against any employees or sub-contractors, including suspension or termination of employment or sub-contract, if any form of unethical or inappropriate behavior is identified.

The Contractor shall conduct training programs for its employees and sub-contractors to raise awareness on and prevent any form of bullying, discrimination, misconduct and harassment including sexual harassment, and to promote a respectful work environment. The Contractor shall keep an up to date record of its employees and subcontractors who have attended and completed such training programs and provide such records to the Employer or the Engineer at their first written request.”

**14.1
The Contract Price**

Add the following paragraphs after the existing second paragraph;

“Notwithstanding the provision of subparagraph (b);

- (1) The Government of the Republic of the Philippines shall, by itself or through its executing agency, assume:
 - i. all duties and related fiscal charges imposed in the Republic of the Philippines on the Japanese companies operating as suppliers and contractors with respect to the import and re-export of their own materials and equipment needed for the implementation of the Project; and
 - ii. all fiscal, levies and taxes imposed in the Republic of the Philippines on the Japanese companies operating as suppliers and contractors with respect to the payment carried out for and the income accruing from the supply of products and/or services required for the implementation of the Project; and
- (2) The government of the Republic of the Philippines shall assume the value added tax to the Contractor in accordance with the Law of the Country.
- (3) In connection with such tax assumption, the Government of the Republic of the Philippines or its executing agency shall be responsible for the liquidation or settlement of such fiscal levies, duties, taxes and other similar charges.

**14.7
Payment**

Add the following Paragraphs after the existing second paragraph:

Payments to the Contractor in both Local Currency and Foreign Currency will be made under the Transfer Procedure, detailed

explanation of which could be found on JICA’s web site shown below:

https://www.jica.go.jp/english/our_work/types_of_assistance/oda_loans/oda_op_info/procedure/index.html

All bank charges shall be borne by the Employer except the bank charges/commissions of Contractor’s banks, which shall be borne by the Contractor.”

Payment will be made to suit the design, manufacturing, supply, delivery, installation, testing and commissioning, performance testing and acceptance of each system whether originating onshore or offshore. The Contractor shall submit sufficient detail for approval to enable the payment schedule mechanism to function and be auditable.

**18.1
General Requirements
for Insurances**

Add the following sentence at the end of the existing 4th paragraph:

“All insurer’s right of subrogation against such joint insured or additional joint insured for losses or claims arising out of the execution of the Contract, shall be waived under such policies. The waiver of subrogation right, however, shall not apply to any insured in respect of loss or damage caused by willful act or gross negligence of the insured.”

Delete the last paragraph and replace with the following:

“All insurance shall be designated to insurers operating and licensed to do business in the Country, except marine insurances which may be designated to insurers located outside the Country.”

**APPENDIX:
General Conditions
Of Dispute Board
Agreement**

Delete the Appendix: General Conditions of Dispute Board Agreement (standing DB) and its associated **Annex:** Procedural Rules, both as attached to the General Conditions of Contract, **and replace with** the Appendix 2 General Conditions of Dispute Board Agreement (ad-hoc DB) and the Annex to General Conditions of Dispute Board Agreement - Procedural Rules, **as attached to these Particular Conditions.**

Appendix 1:

Eligible Source Countries of Japanese ODA Loans (Refer Sub-Clause 4.1 of the Particular Conditions-Part B.)

Eligible Nationality

- (1) The Eligible Nationality of the Bidder(s) shall be the following:
 - (a) Japan in case of the prime contractor; and
 - (b) All countries and areas in the case of the subcontractor(s).
- (2) With regard to (1) above, in case where the prime contractor is a joint venture, such joint venture will be eligible provided that the nationality of the lead partner is Japan, that the nationality of the other partners is Japan and/or the Republic of the Philippines and that the total share of work of Japanese partners in the joint venture is more than fifty percent (50%) of the contract amount.
- (3) With regard to (1) and (2) above, for goods and services;
 - (i) The prime contractor or, in case of a joint venture, the lead partner and other partners regarded as the Japanese partners shall be nationals of Japan or juridical persons incorporated and registered in Japan, have their appropriate facilities for producing or providing the goods and services in Japan, and actually conduct their business there (hereinafter referred as the “Japanese Company”).
 - (ii) In case of a joint venture, the partners except Japanese partners shall be nationals of the Republic of the Philippines or juridical persons incorporated and registered in Japan or the Republic of the Philippines, and have their appropriate facilities for producing or providing the goods and services in Japan or the Republic of the Philippines, and actually conduct their business there.
 - (iii) Notwithstanding (3)(i) above, a juridical person incorporated in a country or area other than Japan that satisfies all of the following conditions can be regarded as the Japanese Company;
 - It is a subsidiary included in the scope of consolidation and factored into the aggregated accounting figure of a consolidated financial statement of the Japanese Company made in accordance with the Financial Instruments and Exchange Act of Japan and the related ministerial ordinances; and
 - It is registered in the country or area where it was incorporated, has its appropriate facilities for producing or providing goods and services there, and actually conducts its business therein.

Eligible Source Country(ies) for Procurement of Goods and Services

- (4) The total costs of goods and services procured from Japan shall not be less than *Thirty* percent (30 %)* of the Accepted Contract Amount less Value Added Tax
- for the total of the following:
- NS-02 – Rolling Stock – Commuter Trainsets
- (5) With regard to (4) above, the goods procured from the eligible local manufacturing company(ies) invested by the Japanese Companies (hereinafter referred to as the “Eligible Local Manufacturing Company(ies)”) can be regarded and counted as Japanese origin if such Eligible Local Manufacturing Company(ies) satisfy(ies) the all of the following conditions:
- (a) Juridical persons incorporated and registered in the Republic of the Philippines, and which have their appropriate facilities for producing or providing the goods and services in the Republic of the Philippines and actually conducted their business there;
 - (b) Not less than ten percent (10%) of shares are held by a single Japanese Company; and
 - (c) The proportion of the shares held by the Japanese Company mentioned in (b) above (or the company having the largest share among Japanese Companies if more than one Japanese Company meet the conditions stated in (b) above) is the same as or greater than that of the shares held by any company of a third country or area.
- (6) With regard to (4) above, the goods procured from the eligible development partners’ manufacturing company(ies) invested by Japanese Companies (hereinafter referred to as “the Eligible Development Partners’ Manufacturing Company(ies)”) can be regarded and counted as Japanese origin if such Eligible Development Partners’ Manufacturing Company(ies) satisfy(ies) all of the following conditions:
- (a) Juridical persons incorporated and registered in a country or area on Development Association Committee DAC List of ODA Recipients effective at the time of conclusion of the Loan Agreement (*[insert date]*) and which have their appropriate facilities for producing or providing the goods and services in the country or area and actually conduct their business there;
 - (b) Not less than one-third of shares are held by a single Japanese Company; and
 - (c) The proportion of the shares held by the Japanese Company mentioned in (b) above (or the company having the largest share among Japanese Companies if more than one Japanese Company meet the condition stated in (b) above) is the same as or greater than that of the shares held by any company of a third country or area.
- (7) With regard to (4) above, the goods procured from the eligible manufacturing company(ies) in developed countries invested by Japanese Companies (hereinafter referred to as “the Eligible Developed Countries’ Manufacturing Company(ies)”) can be regarded and counted as Japanese origin if such Eligible Developed Countries’ Manufacturing Company(ies) satisfy(ies) all of the following conditions:
- (a) It is a subsidiary in a country or area other than Japan included in the scope of consolidation and factored into the aggregated accounting figure of a consolidated financial statement of

- the Japanese Company made in accordance with the Financial Instruments and Exchange Act of Japan and the related ministerial ordinances;
- (b) It was incorporated and is registered in a country or area other than that on the DAC List of ODA Recipients effective at the time of conclusion of the Loan Agreement (*[insert date]*); and
 - (c) It has its appropriate facilities for producing or providing goods and services there, and actually conducts its business therein
- (8) With regard to (4) above, the services procured from the eligible foreign company(ies) invested by the Japanese Companies (hereinafter referred to as the “Eligible Foreign Company(ies)”) can be regarded and counted as Japanese origin if such Eligible Foreign Company(ies) satisfy (ies) all of the following conditions;
- (a) It is a subsidiary in a country or area other than Japan included in the scope of consolidation and factored into the aggregated accounting figure of a consolidated financial statement of the Japanese Company made in accordance with the Financial Instruments and Exchange Act of Japan and the related ministerial ordinances; and
 - (b) It is registered in the country or area where it was incorporated, has its appropriate facilities for producing or providing goods and services there, and actually conducts its business therein.

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APPENDIX 2

General Conditions of Dispute Board Agreement

1 Definitions

Each "Dispute Board Agreement" is a tripartite agreement by and between:

- (a) the "Employer";
- (b) the "Contractor"; and
- (c) the "Member" who is defined in the Dispute Agreement as being:
 - (i) the sole member of the "DB" and, where this is the case, all references to the "Other Members" do not apply,
 - or
 - (ii) one of the three persons who are jointly called the "DB" (or "dispute board") and, where this is the case, the other two persons are called the "Other Members".

The Employer and the Contractor have entered (or intend to enter) into a contract, which is called the "Contract" and is defined in the Dispute Agreement, which incorporates this Appendix. In the Dispute Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.

2 General Provisions

Unless otherwise stated in the Dispute Board Agreement, it shall take effect on the latest of the following dates:

- (a) the Commencement Date defined in the Contract,
- (b) when the Employer, the Contractor and the Member have each signed the Dispute Board Agreement, or
- (c) when the Employer, the Contractor and each of the Other Members (if any) have respectively each signed a dispute board agreement.

This employment of the Member is a personal appointment. At any time, the Member may give not less than 70 days' notice of resignation to the Employer and to the Contractor, and the Dispute Agreement shall terminate upon the expiry of this period.

3 Warranties

The Member warrants and agrees that he/she is and shall be impartial and independent of the Employer, the Contractor and the Engineer. The Member shall promptly disclose, to each of them and to the Other Members (if any), any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.

When appointing the Member, the Employer and the Contractor relied upon the Member's representations that he/she is:

- (a) experienced in the work which the Contractor is to carry out under the Contract,
- (b) experienced in the interpretation of contract documentation, and
- (c) fluent in the language for communications defined in the Contract.

4
General
Obligations of
the Member

The Member shall:

- (a) have no interest financial or otherwise in the Employer, the Contractor or the Engineer, nor any financial interest in the Contract except for payment under the Dispute Agreement;
- (b) not previously have been employed as a consultant or otherwise by the Employer, the Contractor or the Engineer, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Dispute Agreement;
- (c) have disclosed in writing to the Employer, the Contractor and the Other Members (if any), before entering into the Dispute Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Employer, the Contractor or the Engineer, and any previous involvement in the overall project of which the Contract forms part;
- (d) not, for the duration of the Dispute Agreement, be employed as a consultant or otherwise by the Employer, the Contractor or the Engineer, except as may be agreed in writing by the Employer, the Contractor and the Other Members (if any);
- (e) comply with the annexed procedural rules and with Sub-Clause 20.4 of the Conditions of Contract;
- (f) not give advice to the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural rules;
- (g) not while a Member enter into discussions or make any agreement with the Employer, the Contractor or the Engineer regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Agreement;
- (h) ensure his/her availability for any site visit and hearings as are necessary;
- (i) treat the details of the Contract and all the DB's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer, the Contractor and the Other Members (if any); and

- (j) be available to give advice and opinions, on any matter relevant to the Contract when requested by both the Employer and the Contractor, subject to the agreement of the Other Members (if any).

5 General Obligations of the Employer and the Contractor

The Employer, the Contractor, the Employer's Personnel and the Contractor's Personnel shall not request advice from or consultation with the Member regarding the Contract, otherwise than in the normal course of the DB's activities under the Contract and the Dispute Agreement, and except to the extent that prior agreement is given by the Employer, the Contractor and the Other Members (if any). The Employer and the Contractor shall be responsible for compliance with this provision, by the Employer's Personnel and the Contractor's Personnel respectively.

The Employer and the Contractor undertake to each other and to the Member that the Member shall not, except as otherwise agreed in writing by the Employer, the Contractor, the Member and the Other Members (if any):

- (a) be appointed as an arbitrator in any arbitration under the Contract;
- (b) be called as a witness to give evidence concerning any dispute before arbitrator(s) appointed for any arbitration under the Contract; or
- (c) be liable for any claims for anything done or omitted in the discharge or purported discharge of the Member's functions, unless the act or omission is shown to have been in bad faith.

The Employer and the Contractor hereby jointly and severally indemnify and hold the Member harmless against and from claims from which he/she is relieved from liability under the preceding paragraph.

6 Payment

The Member shall be paid as follows, in the currency named in the Dispute Board Agreement:

- (a) a daily fee shall be considered as payment in full for:
 - (i) each working day spent reading submissions, attending hearings (if any), preparing decisions, or making Site visits (if any), and
 - (ii) each day or part of a day up to a maximum of two days' travel time in each direction for the journey (if any) between the Member's home and site or another location of a meeting with Other Members (if any) and/or the Employer and the Contractor.
- (b) all reasonable expenses incurred in connection with the Member's duties, including the cost of secretarial services, telephone calls, courier charges, faxes and telexes, travel expenses, hotel and subsistence costs; a receipt shall be required for each item in excess of five percent of the daily fee referred to in sub-paragraph (a) of this Clause;

(c) any taxes properly levied in the Country on payments made to the Member (unless a national or permanent resident of the Country) under this Clause 6.

The daily fee shall be as specified in the Dispute Board Agreement.

Immediately after the Dispute Board Agreement takes effect, the Members shall, before engaging in any activities under the Dispute Board Agreement, submit to the Contractor, with a copy to the Employer, an invoice for (a) an advance of twenty-five (25) percent of the estimated total amount of daily fees to which he/she will be entitled and (b) an advance equal to the estimated total expenses that he/she shall incur in connection with his/her duties. Payment of such invoice shall be made by the Contractor upon his receipt of the invoice. The Member shall not be obliged to engage in activities under the Dispute Board Agreement until each of the Members has been paid in full for invoices submitted under this paragraph.

Thereafter, the Member shall submit to the Contractor, with a copy to the Employer, invoices for the balance of his/her daily fees and expenses, less the amounts advanced. The DB shall not be obliged to render its decision until invoices for all daily fees and expenses of each Member for making a decision shall have been paid in full.

Unless paid earlier in accordance with the above, the Contractor shall pay each of the Member's invoices in full within 28 calendar days after receiving each invoice and shall apply to the Employer (in the Statements under the Contract) for reimbursement of one-half of the amounts of these invoices. The Employer shall then pay the Contractor in accordance with the Contract.

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the Dispute Board Agreement, the Employer shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DB; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in Sub-Clause 14.8 [Delayed Payment] of the Conditions of Contract.

If the Member does not receive payment of the amount due within 28 days after submitting a valid invoice, the Member may (i) suspend his/her services (without notice) until the payment is received, and/or (ii) resign his/her appointment by giving notice to the Employer and Contractor. The notice shall take effect when received by them both. Any such notice shall be final and binding on the Employer, the Contractor and the Member.

**7.
Default of the
Member**

If the Member fails to comply with any of his obligations under Clause 4, he/she shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses received by the Member and the Other Member (if any), for proceeding or decisions (if any) of the DB which are

rendered void or ineffective.

**8.
Disputes**

Any dispute or claim arising out of or in connection with this Dispute Board Agreement, or the breach, termination or invalidity thereof shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with these Rules of Arbitration.

APPENDIX 3

Gender Action Plan

[Malolos-Clark Railway Project \(RRP PHI 52083\)](#)

GENDER ACTION PLAN

DMF Outputs	GAP Actions & Targets
<p>Output 1: New railway line commissioned</p>	<p>Construction</p> <p>1.1. Seven stations constructed, integrating design features that make them friendly to and safe for elderly people, women, children, and people with disabilities (2019 baseline: 0).</p> <p>1.1.1. Ensure major gender-responsive and inclusive design features are integrated in the detailed engineering design of the 7 railway stations as per the <i>DOTr prepared Guidelines and Standards in Measuring the Gender Responsiveness of the Rail Sector Programs, Services and Facilities</i>¹ ["Guidelines"] and other best practices². Details of such design features are provided in Section VIII of the FAM.</p> <p>1.1.2 At detailed engineering design stage and at construction completion, the 7 stations constructed are rated 'gender-responsive' using the <i>DOTr Rail Sector Web-Based Gender and Development (GAD) Monitoring and Evaluation Checklist System</i> ["Monitoring Checklist"].</p> <ul style="list-style-type: none"> ➤ <i>The assessment and rating will use the client-focused checklist and focus only on physical designs in stations.</i> ➤ <i>Periodic monitoring during construction will be needed to ensure that the gender-responsive and inclusive design features included in the DED are effectively implemented and documented in contractors' performance reports.</i> <p>1.2. Develop and implement a program and mechanism (as part of the Grievance Redress Mechanism) to adequately prevent and respond to incidents of sexual harassment and other forms of gender-based violence occurring in the context of civil works (at work and in surrounding communities).</p> <ul style="list-style-type: none"> ➤ <i>This is meant to be applicable for all management, staff, skilled/unskilled workers and any other employees and consultants involved in civil works for construction of the railway stations under this project.</i> ➤ <i>This should include awareness-raising activities among staff, workers and consultants and in the surrounding communities, as well as capacity-building of GRM members.</i> <p>1.3. Bid documents for civil works shall require contractors to apply core labor standards; strongly encourage employment of women and PWDs with the aim to achieve at least 20% of women in skilled and unskilled positions in all stages of construction³ and 1% of PWDs; and comply with GAD-related legal mandates, including prevention and response to sexual harassment among workers and against members of the community consistent with 1.2.</p> <ul style="list-style-type: none"> ➤ <i>Achievement of the gender target in employment will require raising awareness in the communities, with special attention to women, about employment opportunities in construction.</i> <p>Livelihood Restoration and Improvement Program</p> <p>1.4. 5,800 project affected persons (including 2,800 women, 385 female-headed households, and vulnerable groups equipped with livelihood skills (Baseline: 0).</p> <p>1.5. Work in close collaboration with the safeguards team in DOTr to ensure that the livelihood skills programs are gender-responsive in line with the gender</p>

¹ These Guidelines were prepared by the DOTr Rail Sector GAD Focal Point System in 2016-2017, now awaiting Secretary's approval. The guidelines are the basis of the parameters indicated in the DOTr Rail Sector Web-based Gender and Development (GAD) Monitoring and Evaluation System. A copy of the guidelines is attached as Appendix to the FAM.

² Accessibility features complying with the Philippine Accessibility Law and its implementing Rules and Regulations; ASEAN Public Toilet Standard (2016) for toilet facilities.

³ Although not directly applicable to DOTr projects, DPWH Order No. 130, series of 2016.

[Malolos-Clark Railway Project \(RRP PHI 52083\)](#)

DMF Outputs	GAP Actions & Targets
<p>Output 2: Institutional capacity strengthened</p>	<p>mainstreaming mandate of partner government agencies⁴.</p> <p>2.1. 50 DOTr staff (50% of them are women⁵) with increased knowledge in project and contract management (2019 baseline: 0)</p> <p>2.2. 50 DOTr PMO staff including the counterpart for the operation & maintenance (O&M) agreement and staff of the O&M-contractor (50% women) with increased knowledge on key gender and accessibility issues found in public transport and in the railway sector, the <i>Guidelines</i> and <i>Monitoring Checklist</i>.</p> <p>2.3. DOTr railway sector develops or integrates in its existing railway transport Management Information System GAD related information to ensure that relevant gender statistics and sex-disaggregated data is regularly collected, analyzed and used as inputs for planning, budgeting, programming and policy formulation in the sector.</p> <p>2.4. O&M contract signed by the Government provides for the following: (i) requirement to develop and implement a zero tolerance to sexual harassment program, including a mechanism to respond to incidents of sexual harassment and gender-based violence committed against commuters and rail-workers, training of staff, especially security personnel and front-line employees, and awareness-raising campaign for commuters; (ii) strict observance of legally mandated GAD-related employee benefits; (iii) strongly encourage employment of at least 40% women⁶ and at least 1% PWDs in its total O&M workforce; (iv) collection of sex-disaggregated and relevant gender data in its database/information system; (v) use of the <i>Monitoring Checklist</i> for periodic monitoring, and identification of remedial actions to ensure accessibility and functionality of the gender-responsive and inclusive physical design features/facilities. > <i>Key performance indicators related to the above aspects will be developed and integrated in the service contract.</i></p> <p>2.5. Develop and publish one knowledge product on gender and rail transport documenting good practices of the project.</p>
<p>Gender related project management activities</p>	<ul style="list-style-type: none"> • A national gender consultant is engaged for at least 15 person-months⁷ on an intermittent basis from project inception to completion for supporting GAP implementation, monitoring and reporting. • Orientation and capacity building on GAP implementation and related requirements for PMO, contractors and key implementing partners. • Collection of sex-disaggregated data and gender-related information is integrated in the overall project performance and monitoring system. • GAP implementation is integrated in the Annual GAD Plans and Budgets and Annual GAD Reports of DOTr. • The GAD TWG for Rail shall co-facilitate with the national gender consultant the conduct of all gender-related trainings in this project and shall be an integral part of the project planning, monitoring and evaluation team.

⁴ E.g. TESDA for TVET accredited training courses and LGU for PESO program.

⁵ Reference points: Current proportion of female technical staff: 50% among permanent technical staff in DOTr for the railway sector; 53% among technical assistants contracted (assigned at Usec for Railways).

⁶ Reference points: Current proportion of female personnel employed in existing railway: 39% in LRTA 2 (52% in depot, 35% in operations); 49% in MRT 3 (54% in depot, 49% in operations); 14% in PNR (33% in depot, 11% in operations). (Source: LRTA, MRT3 and PNR list of personnel). Labor force participation rate in Region III: 43% female representation in manufacturing; 33% female representation in administrative and support activities. (Source 2017 Gender Statistics on Labor and Employment).

⁷ To be recruited under ADB TRTA-9570-PHI: Railway Project Implementation Support and Institutional Strengthening.

Annex to General Conditions of Dispute Board Agreement

PROCEDURAL RULES

1. The Employer and the Contractor shall furnish to the DB one copy of all documents which the DB may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the matter in dispute. All communications between the DB and the Employer or the Contractor shall be copied to the other Party. If the DB comprises three persons, the Employer and the Contractor shall send copies of these requested documents and these communications to each of these persons.
2. The DB shall proceed in accordance with Sub-Clause 20.4 and these Rules. Subject to the time allowed to give notice of a decision and other relevant factors, the DB shall:
 - (a) act fairly and impartially as between the Employer and the Contractor, giving each of them a reasonable opportunity of putting his case and responding to the other's case, and
 - (b) adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.
3. The DB may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing.
4. Except as otherwise agreed in writing by the Employer and the Contractor, the DB shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Employer, the Contractor and the Engineer, and to proceed in the absence of any party who the DB is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.
5. The Employer and the Contractor empower the DB, among other things, to:
 - (a) establish the procedure to be applied in deciding a dispute,
 - (b) decide upon the DB's own jurisdiction, and as to the scope of any dispute referred to it,
 - (c) conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Rules,
 - (d) take the initiative in ascertaining the facts and matters required for a decision,
 - (e) make use of its own specialist knowledge, if any,
 - (f) decide upon the payment of financing charges in accordance with the Contract,
 - (g) decide upon any provisional relief such as interim or conservatory measures, and
 - (h) open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Engineer, relevant to the dispute.
6. The DB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DB shall make and give its decision in accordance with Sub-Clause 20.4, or as otherwise agreed by the Employer and the Contractor in

writing. If the DB comprises three persons:

- (a) it shall convene in private after a hearing, if any, in order to have discussions and prepare its decision;
- (b) it shall endeavour to reach a unanimous decision: if this proves impossible, the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the Employer and the Contractor; and
- (c) if a Member fails to attend a meeting or hearing, or to fulfil any required function, the other two Members may nevertheless proceed to make a decision, unless:
 - (i) either the Employer or the Contractor does not agree that they do so, or
 - (ii) the absent Member is the chairman and he/she instructs the other Members to not make a decision.

SECTION IX: ANNEXES and CONTRACT FORMS

Annexes - Table of Securities

(Standard Form of Contract Annex References)

- | | |
|---|-------------------------------------|
| A. Parent Company Guarantee: | <i>see Form of Contract Annex A</i> |
| B. Tender Security: | <i>see Form of Contract Annex B</i> |
| C. Performance Security – Demand Guarantee: | <i>see Contract Forms CF5</i> |
| D. <i>Not used</i> | |
| E. Advance Payment Security: | <i>see Contract Forms CF6</i> |
| F. Retention Money Guarantee: | <i>see Contract Forms CF7</i> |
| G. <i>Not used</i> | |

Contract Forms

- CF1. Letter of Acceptance
- CF2. Contract Agreement
- CF3. Schedules
- CF4. Contractor’s Proposal
- CF5. Performance Securities
- CF6. Advance Payment Securities
- CF7. Retention Money Security
- CF8. Dispute Board Agreement (for each member of a three-person DB)

Notes:

1. Forms attached to these Particular Conditions may be modified as considered necessary, and shall be completed at the time of finalizing the Contract.
2. Annexes A and B shall be submitted with the Tender – see Instructions for Bidders
3. Annexes C, E and F may be completed in conjunction with the Award of Contract

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Contract Form CF1

LETTER OF ACCEPTANCE

[Insert letterhead paper of the Employer]

[Insert date]

To: *[Insert name and address of the Contractor]*

This is to notify you that your Bid dated *[insert date]* for the execution of Contract Package ‘CP NS-02: Rolling Stock – Commuter Trainsets’ and *[insert identification number, as given in the Contract Data]* for the Accepted Contract Amount of the equivalent of *[insert amount in words and figures] [insert name of currency]*, as corrected and modified in accordance with the Instructions to Bidders, is hereby accepted by our Agency.

You are requested to furnish the Performance Security within twenty-eight (28) days in accordance with the Conditions of Contract, using for that purpose one of the Performance Security Forms included in Section IX, Annex to the Particular Conditions - Contract Forms, of the Bidding Documents.

Authorized Signature: _____
Name and Title of Signatory: _____
Name of Agency: _____

Attachment: Contract Agreement

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Contract Form CF2

CONTRACT AGREEMENT

(Refer Sub-Clause 1.6 of the Conditions of Contract)

THIS AGREEMENT made the *[insert day]* day of *[insert month]*, *[insert year]*, between Department of Transportation of Republic of the Philippines (hereinafter “the Employer”), of the one part, and *[insert name of the Contractor]* (hereinafter “the Contractor”), of the other part:

WHEREAS the Employer desires that the Works known as Package CP NS-02: Rolling Stock – Commuter for Malolos–Clark Railway Project and North South Railway Project-South Line (Commuter) should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
 - (i) the Letter of Acceptance;
 - (ii) the Letter of Technical Bid;
 - (iii) the Letter of Price Bid;
 - (iv) the addenda Nos. *[insert addenda numbers, if any]* (if any);
 - (v) the Particular Conditions;
 - (vi) the General Conditions;
 - (vii) the Employer’s Requirements;
 - (viii) the completed Schedules;
 - (ix) the Contractor’s Proposal and any other documents forming part of the Contract
 - (x) the Acknowledgement of Compliance with Guidelines for Procurement under Japanese ODA Loans.
 - (xi) the Declaration as to the Origin of Goods and Services and Eligibility of Subcontractor/Supplier
3. In consideration of the payments to be made by the Employer to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the

provisions of the Contract.

4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works 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 the Republic of the Philippines on the day, month and year specified above.

Signed by _____

Signed by _____

for and on behalf of the Employer
in the presence of

for and on behalf the Contractor
in the presence of

Witness: _____

Witness: _____

Name: _____

Name: _____

Signature: _____

Signature: _____

Address: _____

Address: _____

Date: _____

Date: _____

Contract Form CF3

SCHEDULES

SCH 1: Schedule of Prices

(Refer Sub-Clause 14.1 and 14.3 of the Conditions of Contract.)

Note: Insert Schedule of Prices submitted with the Letter of Price Bid and finalized at signing of the Contract

SCH 2: Schedule of Adjustment

(Refer Sub-Clause 13.8 of the Conditions of Contract.)

Note: Insert Schedule of Adjustment submitted with the Letter of Price Bid and finalized at signing of the Contract.

SCH 3: Schedule of Goods and Services Procured from Japan

(Refer Sub-Clause 4.1 of the Conditions of Contract.)

Note: Insert Schedule of Goods and Services procured from Japan submitted with the Letter of Price Bid and finalized at signing of the Contract.

SCH 4: Schedule of Approved Sub-Contractor

(Refer Sub-Clause 4.4 of the Conditions of Contract.)

Bidder is obliged to seek approval for any sub-contractors he proposes to use. Any sub-contractors proposed in the bid still need approval post contract award. Bidder shall provide lists of proposed sub-contractors by system and discipline if identified prior to submission of bid.

SCH 5: Schedule of Approved Contractor's Representative and Key Personnel

(Refer Sub-Clause 4.3 of the Conditions of Contract)

Note: Insert Schedule of Approved Contractor's Representative and Key Personnel proposed with the Letter of Technical Bid and given Notice of No Objection by the Employer, if any.

SCH 6: Schedule of Performance/Specific Guarantees in accordance with the Employer's Requirement

Note: Insert Schedule of Performance/Specific Guarantees submitted with the Letter of Technical Bid and finalized during contract discussion.

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Contract Form CF4

CONTRACTOR’S PROPOSAL

Note: List the item of Contractor’s Technical Proposal to be included in the Contract.

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Contract Form CF5

PERFORMANCE SECURITY (Refer Sub-Clause 4.2 of the Conditions of Contract)

Demand Guarantee

[Insert Guarantor letterhead or SWIFT identifier code]

Beneficiary: Department of Transportation
Pinatubo St. corner Sergio Osmeña Sr. St.
Clark Freeport Zone
Angeles City, Pampanga
2009 Philippines.

Date: *[Insert date of issue]*

PERFORMANCE 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 name of Contractor, 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 execution of the Package CP NS-02: Rolling Stock – Commuter for Malolos–Clark Railway Project and North South Railway Project-South Line (Commuter) (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

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]*),¹ such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for its demand or the sum specified therein.

¹ *The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency(cies) of the Contract or a freely convertible currency acceptable to the Beneficiary.*

This guarantee shall expire, no later than the *[insert the day]* day of *[insert month]*, *[insert year]*², and any demand for payment under it must be received by us at this office indicated above on or before that date.

In the event that a Taking-Over Certificate is issued in respect of a Section (all as defined under the Contract), the amount of the guarantee hereunder shall be reduced in the same proportion as the value of the Section taken over bears to the value of the Accepted Contract Amount, where the value of the Section shall be as evidenced by the payment certificate issued by or on behalf the Beneficiary to the Applicant in respect of the release of Retention Money relating to that Section.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

[signature(s)]

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

² *Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9.*

Contract Form CF6

ADVANCE PAYMENT SECURITY (Refer Sub-Clause 14.2 of the Conditions of Contract)

Demand Guarantee

[Insert Guarantor letterhead or SWIFT identifier code]

Beneficiary: Department of Transportation (DOTr)
Pinatubo St. corner Sergio Osmeña Sr. St.
Clark Freeport Zone
Angeles City, Pampanga
2009 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 name of Contractor, 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 of the contract]* with the Beneficiary, for the execution of the Package CP NS-02: Rolling Stock – Commuter for Malolos–Clark Railway Project and North South Railway Project-South Line (Commuter) (hereinafter called “the Contract”).

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum *[insert amount in figures]* (*[insert amount in words]*) 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]*)¹ upon receipt by us of the Beneficiary’s complying demand supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

- (a) has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or

¹ *The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.*

- (b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

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]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the *[insert day]* day of *[insert month]*, *[insert year]*,² whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

[signature(s)]

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

² *Insert the expected expiration date of the Time for Completion.*

Contract Form CF7

RETENTION MONEY SECURITY (Refer Sub-Clause 14.9 of the Conditions of Contract)

Demand Guarantee

[Insert Guarantor letterhead or SWIFT identifier code]

Beneficiary: Department of Transportation (DOTr)
Pinatubo St. corner Sergio Osmeña Sr. St.
Clark Freeport Zone
Angeles City, Pampanga
2009 Philippines.

Date: *[Insert date of issue]*

RETENTION MONEY 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 name of Contractor, 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 execution of the Package CP NS-02: Rolling Stock – Commuter for the Malolos–Clark Railway Project and North South Railway Project-South Line (Commuter) (hereinafter called the "Contract").

Furthermore, we understand that, according to the conditions of the Contract, the Beneficiary retains moneys up to the limit set forth in the Contract ("the Retention Money"), and that when the Taking-Over Certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, payment of *[insert the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security]* is to be made against a Retention Money 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]*)¹ upon receipt by us of the Beneficiary's complying demand

¹ *The Guarantor shall insert an amount representing the amount of the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and denominated either in the currency(ies) of the second half of*

supported by the Beneficiary’s statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or show grounds for its demand or the sum specified therein.

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 second half of the Retention Money as referred to above has been credited to the Applicant on its account number *[insert account’s number]* at *[insert name and address of Applicant’s bank]*.

This guarantee shall expire no later than the *[insert day]* day of *[insert month]*, *[insert year]*², and any demand for payment under it must be received by us at the office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

[signature(s)]

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

the Retention Money as specified in the Contract, or in a freely convertible currency acceptable to the Beneficiary.

² *Insert the same expiry date as set forth in the Performance Security, representing the date twenty-eight days after the completion date described in GC Clause 11.9.*

Contract Form CF8

DISPUTE BOARD AGREEMENT

(Refer Sub-Clause 20.2 of the Conditions of Contract)

[For each Member of a three-person DAB]

Package CP NS-02: Rolling Stock – Commuter for Malolos–Clark Railway Project and North South Railway Project-South Line (Commuter) (hereinafter called the “Contract”).

(1) **Department of Transportation (DOTr)**

Pinatubo St. corner Sergio Osmeña Sr. St.
Clark Freeport Zone
Angeles City, Pampanga
2009 Philippines
(hereinafter called the “Employer”)

(2) *[inset name and address of the Contractor]*

(hereinafter called the “Contractor”).

(3) *[insert name and address of member of Dispute Board]*

(hereinafter called the “Board Member”).

WHEREAS the Employer and the Contractor have entered into the Contract and desire jointly to appoint the Member to act as one of the three persons who are jointly called the “DB” *[and desire the Member to act as chairman of the DB],* [Delete if not applicable.]*

The Employer, Contractor and Member jointly agree as follows:

1. The conditions of this Dispute Board Agreement comprise the “General Conditions of Dispute Board Agreement”, which is appended to the Particular Conditions of the Contract (where the General Conditions governing the Contract are the Standard General Conditions of Contract set forth in Part 3, Section VII of the Standard Bidding Documents for Procurement of Electrical and Mechanical Plant, and for Building and Engineering Works, Designed by the Contractor (Trial Version) published by JICA in July 2015), and the following provisions. In these provisions, which include amendments and additions to the General Conditions of Dispute Board Agreement as stipulated below, words and expressions shall have the same meaning as are assigned to them in the General Conditions of Dispute Board Agreement.
2. *[Details amendments to the General Conditions of Dispute Board Agreement, if any.]*

3. In accordance with Clause 6 of the General Conditions of Dispute Board Agreement, the amount of the DB Member Monthly fee and daily fee shall be:
 - monthly retainer fee of [insert amount and currency], and
 - daily fee of [insert amount and currency] per day.
4. In consideration of these fees and other payments to be made by the Employer and the Contractor in accordance with Clause 6 of the General Conditions of Dispute Board Agreement, the Member undertakes to serve, as described in the Dispute Board Agreement, as one of the three persons who are jointly to act as the DB.
5. The Employer and the Contractor jointly and severally undertake to pay the Member, in consideration of the carrying out of these services, in accordance with Clause 6 of the General Conditions of Dispute Board Agreement.
6. This Dispute Board Agreement shall be governed by the law of *[insert name of the country]*.

.....
SIGNED by	SIGNED by	SIGNED by
.....
for and on behalf of the Employer in the presence of:	for and on behalf of the Contractor in the presence of:	by the Board Member in the presence of:
Witness	Witness	Witness
Name:	Name:	Name:
Address:	Address:	Address:
.....
Date:	Date:	Date:
.....