



Bid Bulletin No. 10

August 27, 2020

Public Bidding No. 19-341-7

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

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

A. AMENDMENTS

AMENDMENTS/INCLUSION	BASES FOR AMENDMENT/INCLUSION
<ul style="list-style-type: none"> Section II. INSTRUCTIONS TO BIDDERS <p style="text-align: center;"><i>INSTRUCTIONS TO BIDDERS</i></p> <hr/> <ul style="list-style-type: none"> The sentence added to ITB 33 in pages 7-9 of Bid Bulletin No. 5 dated 06 May 2020 is amended as follows: <i>"The above notwithstanding, the Procuring Entity shall issue a Partial NTP for Advance Works together with a copy or copies of the approved contract to the successful Bidder within seven (7) calendar days from the date of approval of the Contract by the appropriate government approving authority. Advance works shall include the following: (1) geotechnical, soil, and topographic investigations and surveys, and other investigations and surveys that may be necessary for purposes of Preliminary, Concept, and other Design Works for the Project; (2) Preliminary, Concept, and other Design Works, to the extent agreed by the Employer and Contractor; (3) clearing, grubbing, and tree cutting works; (4) fencing and other</i> 	<ul style="list-style-type: none"> <i>To clarify the applicable clause/s in the GCC for the implementation of the Advance Works.</i>



site security works; (5) construction of roadways and other temporary access infrastructure; (6) construction of site offices and other related temporary facilities for the Employer and Contractor; and (7) establishment of construction yards, batching plants, and other temporary facilities, which are among the Works in Section VI: Employer's Requirements, Sub-clause 2.1.7 of the Bidding Documents, subject to GCC 13 (Variations and Adjustments) and/or GCC 20 (Employer's and Contractor's Claims), as may be applicable."

B. CLARIFICATIONS

ITEM	BIDDING DOCS	CLARIFICATION	BASES FOR AMENDMENT/INCLUSION
CHINA HARBOUR ENGINEERING COMPANY LIMITED¹			
1	Contract Data 14.8 Financing Charges for Delayed Payments: Not applicable	As the international and ODA project, we would like to request to follow the international practice to delete Contract Data 14.8 to keep in line with the standard FIDIC condition.	<ul style="list-style-type: none"> <i>Original requirement shall be retained to align with §40.3 of the Philippine Bidding Documents (Infrastructure). As answered in Bid Bulletin No. 5 dated 06 May 2020 and Bid Bulletin No. 9 dated 05 August 2020.</i>
2	PCC 2.1 If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall give Notice to the Employer within seven (7) days of the expiration of the time stated in the schedule of right of access produced under the Advance Contract	<p>It is quite possible that the Site, or part thereof, will be delivered to the Contractor late, or in inconvenient sections. The Contractor would like emphasis that if additional costs are incurred arising out of the late delivery of any part of the Site, such costs shall be compensated by the Employer - as the said costs are beyond the control of and not foreseeable by the Contractor.</p> <p>Additionally, even under GCC Clause 5.1of <i>PBD for Infrastructure Projects</i> prepared by the Government of the</p>	<ul style="list-style-type: none"> <i>The third paragraph of PCC 2.1 is amended as follows: "If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall give Notice to the Employer within</i>

¹E-mail received on August 17, 2020



	<p>or by BCDA for giving such right or possession.</p> <p>Notwithstanding other terms in this Contract, in the event of any failure or delay by the Employer to hand over the Contractor possession of the lands necessary for the execution of the Works or to give the necessary notice to commence the Works or to provide the necessary drawings or instructions or any other delay caused by the consultant of the Advance Contract or BCDA or the Employer due to any other cause whatsoever, then such failure or delay shall in no way affect or vitiate the Contract or alter the character thereof or entitle the Contractor to damages or compensation therefor, but in any such case, the Employer may grant such extension or extensions of the completion date in accordance with Clause 20 [Employer's and Contractor's Claims] as may be considered reasonable.</p>	<p>Philippines, if the Contractor suffers delay or incurs cost from failure on the part of the Procuring Entity to give possession in accordance with the terms of this clause, the Procuring Entity's Representative shall give the Contractor a Contract Time Extension and certify such sum as fair to cover the cost incurred, which sum shall be paid by Procuring Entity.</p> <p>Therefore, we would like to suggest amending this paragraph as follow to keep in line with the standard FIDIC condition and infrastructure project's common practice: <i>If the Contractor suffers delay and/or incurs Costs as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT and/or payment of such Cost</i></p>	<p><i>seven (7) days of the expiration of the time stated in the schedule of right of access produced under the Advance Contract or by BCDA for giving such right or possession. Notwithstanding other terms in this Contract, in the Contractor suffers delay or incurs cost from any failure or delay by the Employer to hand over the Contractor possession of the lands necessary for the execution of the Works or to give the necessary notice to commence the Works or to provide the necessary drawings or instructions or any other delay caused by the consultant of the Advance Contract or BCDA or the Employer due to any other cause whatsoever, then such failure shall in no way affect or vitiate the Contract or alter the character thereof, but in any such case, the Employer may grant the Contractor a Contract Time Extension and/or certify such sum as fair to cover the cost incurred, which sum shall be paid by the Procuring Entity, in accordance with</i></p>
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			<p>Clause 20 [Employer's and Contractor's Claims] as may be considered reasonable.[PBD Infra GCC §5.1]</p>
3	<p>PCC 8.10</p> <p>Amend the first paragraph of Sub-Clause 8.10 by deleting the phrase "and/or payment of such Cost Plus Profit".</p>	<p>Sub-Clause 8.10 refers to a suspension order issued by the Employer, which may not have been anticipated by the Contractor. Prior to the issue of the suspension order, the Contractor may have incurred and/or committed a certain amount of money in relation to the implementation of the Project, e.g. commitment to rent of equipment, commitment to payment of salaries of workers. In addition, under Sub-Clause 8.9, the Contractor is obligated during the period of suspension to protect, store and secure such part or all of the Works (as the case may be) against any deterioration, loss or damage, which will also entail cost.</p> <p>In the interest of fairness, we respectfully request the Procuring Entity, to delete PCC 8.10 to keep in line with the standard FIDIC condition and allow the Contractor to claim for payment of costs incurred during the suspension period, subject to verification by the Employer.</p>	<ul style="list-style-type: none"> Original requirement shall be retained. GPPB required the deletion during the Bidding Documents approval process to align with §45 of the Philippine Bidding Documents (Infrastructure) considering that the payment of costs is only allowed where expressly permitted. As answered in Bid Bulletin No. 5 dated 06 May 2020 and Bid Bulletin No. 9 dated 05 August 2020.
4	<p>PCC 14.8</p> <p>Delete the text of Sub-Clause 14.8 and replace with the following: "The Employer shall not pay any interest for delayed payments and adjustments." [PBD Infra GCC §40.3]</p>	<p>Delete PCC 14.8 to keep in line with the standard FIDIC condition.</p>	<ul style="list-style-type: none"> Original requirement shall be retained to align with §40.3 of the Philippine Bidding Documents (Infrastructure). As answered in Bid Bulletin No. 5 dated 06 May 2020 and Bid Bulletin No. 9 dated 05 August 2020.
5	<p>PCC 8.11 and PCC 17.4</p> <p>Bulletin 5 accepted the suggested amendments but Bulletin 9 rejected them</p>	<p>Please confirm that Bulletin 5 accepted amendments stand</p>	<ul style="list-style-type: none"> It is confirmed that the Bid Bulletin 5 accepted amendments stand. The requests to delete PCC 8.11 and



			PCC 17.4 are accepted as answered in Bid Bulletin No. 5 dated 06 May 2020.
CHINA RAILWAY INTERNATIONAL GROUP CO., LTD.²			
1	Contract Data 14.8 Financing Charges for Delayed Payments: Not applicable	We suggest to maintain the Original FIDIC Clause of Description.	<ul style="list-style-type: none"> Original requirement shall be retained to align with §40.3 of the Philippine Bidding Documents (Infrastructure). As answered in Bid Bulletin No. 5 dated 06 May 2020 and Bid Bulletin No. 9 dated 05 August 2020.
2	PCC 2.1 If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall give Notice to the Employer within seven (7) days of the expiration of the time stated in the schedule of right of access produced under the Advance Contract or by BCDA for giving such right or possession. Notwithstanding other terms in this Contract, in the event of any failure or delay by the Employer to hand over the Contractor possession of the lands necessary for the execution of the Works or to give the necessary notice to commence the Works or to provide the necessary drawings or instructions or any other delay caused by the consultant of the	Recommendation: The owner should compensate the contractor for the loss of construction period and cost for the delay in the transfer of the right of way caused by the owner;	<ul style="list-style-type: none"> The third paragraph of PCC 2.1 is amended as follows: "If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall give Notice to the Employer within seven (7) days of the expiration of the time stated in the schedule of right of access produced under the Advance Contract or by BCDA for giving such right or possession. Notwithstanding other terms in this Contract, in the event the Contractor suffers delay or incurs cost from any failure or delay by the

²E-mail received on August 18, 2020



	<p>Advance Contract or BCDA or the Employer due to any other cause whatsoever, then such failure or delay shall in no way affect or vitiate the Contract or alter the character thereof or entitle the Contractor to damages or compensation therefor, but in any such case, the Employer may grant such extension or extensions of the completion date in accordance with Clause 20 [Employer's and Contractor's Claims] as may be considered reasonable.</p>		<p><i>Employer to hand over the Contractor possession of the lands necessary for the execution of the Works or to give the necessary notice to commence the Works or to provide the necessary drawings or instructions or any other delay caused by the consultant of the Advance Contract or BCDA or the Employer due to any other cause whatsoever, then such failure shall in no way affect or vitiate the Contract or alter the character thereof, but in any such case, the Employer may grant the Contractor a Contract Time Extension and certify such sum as fair to cover the cost incurred, which sum shall be paid by the Procuring Entity in accordance with Clause 20 [Employer's and Contractor's Claims] as may be considered reasonable.[PBD Infra GCC §5.1]</i></p>
3	<p>PCC 8.10</p> <p>Amend the first paragraph of Sub-Clause 8.10 by deleting the phrase "and/or payment of such Cost Plus Profit".</p>	<p>recommendation: Suspending the project due to the owner's reasons should compensate the contractor's costs and losses.</p>	<ul style="list-style-type: none"> <i>Original requirement shall be retained. GPPB required the deletion during the Bidding Documents approval process to align with §45 of the Philippine Bidding Documents (Infrastructure)</i>



			<i>considering that the payment of costs is only allowed where expressly permitted. As answered in Bid Bulletin No. 5 dated 06 May 2020 and Bid Bulletin No. 9 dated 05 August 2020.</i>
4	PCC 14.8 Delete the text of Sub-Clause 14.8 and replace with the following: "The Employer shall not pay any interest for delayed payments and adjustments." [PBD Infra GCC §40.3]	We suggest to maintain the Original FIDIC Clause of Description.	<ul style="list-style-type: none">• <i>Original requirement shall be retained to align with §40.3 of the Philippine Bidding Documents (Infrastructure). As answered in Bid Bulletin No. 5 dated 06 May 2020 and Bid Bulletin No. 9 dated 05 August 2020.</i>
5	PCC 14.7 No timing is committed regarding how long the Employer's Representative will take to verify and certify payments;	Suggestion: Taking into account the monthly progress payment, it is recommended to change the payment time to 28 days after the bill is approved;	<ul style="list-style-type: none">• <i>The second paragraph of PCC 14.7 is amended as follows: "Replace the text of sub-paragraph (b)(i) of Sub-Clause 14.7 with the following text: "Sub-Clause 14.6 [Interim Payment], within the period stated in the Contract Data (if not stated, 56 days) after the Employer receives the Statement and supporting documents, provided that the Employer's Representative has verified and certified such Statement and supporting documents.</i>
6	Contract Data 21.6 Place of Arbitration: Philippines	Suggestion: The place of arbitration is recommended to choose a third place	<ul style="list-style-type: none">• <i>Original requirement shall be retained. As answered in Bid Bulletin No. 5 dated</i>



			06 May 2020 and Bid Bulletin No. 9 dated 05 August 2020.
7	<p>PCC 15.5</p> <p>Amend the first paragraph of Sub-Clause 15.5 by inserting: the phrase ", in whole or in part," after the term "the Contract"; and [PBD Infra GCC §18.1] the phrase "if it has determined the existence of conditions that make the implementation of the Project economically, financially or technically impractical or unnecessary, such as, but not limited to, fortuitous events or changes in the Law of the Country or the policies of the Country's national government," after the term "Employer's convenience". [IRR Annex I, §III.B] [PBD Infra GCC §18.1] Replace the third paragraph of Sub-Clause 15.5 with the following: "Termination under this Sub-Clause shall take effect 28 days after the Contractor receives this Notice."</p>	<p>Suggestion: We understand that the Employer has the right to terminate the Project under certain circumstances, but for a G2G project, it is suggested to amend PCC 15.5 by inserting a new paragraph:</p> <p><i>The Employer shall not terminate the Contract under this Sub-Clause in order to execute the Works himself or to arrange for the Works to be executed by another contractor.</i> so that the normal practice of EXIM bank will be followed.</p>	<ul style="list-style-type: none"> The first paragraph of PCC 15.5 is amended as follows: "Amend the first paragraph of Sub-Clause 15.5 by inserting: the phrase ", in whole or in part," after the term "the Contract"; and [PBD Infra GCC §18.1] the phrase "if it has determined the existence of conditions that make the implementation of the Project economically, financially or technically impractical or unnecessary, such as, but not limited to, fortuitous events or changes in the Law of the Country or the policies of the Country's national government, except if the sole reason for the termination is the Employer's desire to execute the Works itself or to arrange for the Works to be executed by another contractor," after the term "Employer's convenience". [IRR Annex I, §III.B] [PBD Infra GCC §18.1]
8	<p>PCC 15.6</p> <p>Delete sub-paragraph (b) in</p>	<p>Suggestion: Amend PCC 15.6 by deleting the words "<i>Delete sub-paragraph (b) in the first paragraph</i>"</p>	<ul style="list-style-type: none"> Original requirement shall be retained. As answered in Bid



	<p>the first paragraph of Sub-Clause 15.6. Delete the phrase "without the need for the Contractor to submit a Statement" in the third paragraph of Sub-Clause 15.6. Insert the following as the fourth paragraph of Sub-Clause 15.6: "Notwithstanding any provision in the Contract to the contrary, if the Contract is terminated for the Employer's convenience under Sub-Clause 15.5, the Employer's Representative shall issue a certificate for (i) the value of the Works done and the Materials ordered, (ii) the reasonable Cost of removal of Equipment and repatriation of the Contractor's Personnel employed solely for the Works, and (iii) the Contractor's Cost in protecting and securing the Works, less any amount of advance payments received up to the date of the certificate." [PBD Infra GCC §46.2]</p>	<p><i>of Sub-Clause 15.6"</i> such that the Sub-paragraph (b) in the first paragraph of Sub-Clause 15.6 of GCC shall be retained.</p>	<p><i>Bulletin No. 5 dated 06 May 2020 and Bid Bulletin No. 9 dated 05 August 2020.</i></p>
<p>CHINA STATE CONSTRUCTION ENGRG. CORP. LTD³</p>			
<p>1</p>	<p>Contract Data 14.8 Financing Charges for Delayed Payments: Not applicable</p>	<p>We kindly request you to delete this Particular clause and keep the original FIDIC contract clause.</p>	<ul style="list-style-type: none"> <i>Original requirement shall be retained to align with §40.3 of the Philippine Bidding Documents (Infrastructure). As answered in Bid Bulletin No. 5 dated 06 May 2020 and Bid Bulletin No. 9 dated 05 August 2020.</i>
<p>2</p>	<p>PCC 2.1 If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall give Notice to the</p>	<p>We kindly request you to change the condition as "If the Contractor suffers delay and/or incurs Cost as result of a failure by the Employer to give any such right or possession within such time, the Contractor shall have the right to claim for the extension of completion date and cost."</p>	<ul style="list-style-type: none"> <i>The third paragraph of PCC 2.1 is amended as follows: "If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any</i>

³E-mail received on August 21, 2020



	<p>Employer within seven (7) days of the expiration of the time stated in the schedule of right of access produced under the Advance Contract or by BCDA for giving such right or possession.</p> <p>Notwithstanding other terms in this Contract, in the event of any failure or delay by the Employer to hand over the Contractor possession of the lands necessary for the execution of the Works or to give the necessary notice to commence the Works or to provide the necessary drawings or instructions or any other delay caused by the consultant of the Advance Contract or BCDA or the Employer due to any other cause whatsoever, then such failure or delay shall in no way affect or vitiate the Contract or alter the character thereof or entitle the Contractor to damages or compensation therefor, but in any such case, the Employer may grant such extension or extensions of the completion date in accordance with Clause 20 [Employer's and Contractor's Claims] as may be considered reasonable.</p>		<p><i>such right or possession within such time, the Contractor shall give Notice to the Employer within seven (7) days of the expiration of the time stated in the schedule of right of access produced under the Advance Contract or by BCDA for giving such right or possession. Notwithstanding other terms in this Contract, in the event the Contractor suffers delay or incurs cost from any failure or delay by the Employer to hand over the Contractor possession of the lands necessary for the execution of the Works or to give the necessary notice to commence the Works or to provide the necessary drawings or instructions or any other delay caused by the consultant of the Advance Contract or BCDA or the Employer due to any other cause whatsoever, then such failure shall in no way affect or vitiate the Contract or alter the character thereof, but in any such case, the Employer may grant the Contractor a Contract Time Extension and certify such sum as fair to cover the cost incurred, which sum shall be paid by the Procuring Entity in accordance with Clause 20 [Employer's and Contractor's Claims] as may be considered reasonable.[PBD Infra GCC §5.1]</i></p>
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3	<p>PCC 8.10</p> <p>Consequences of Employer's Suspension</p>	<p>We kindly request you to delete this particular clause and keep the original FIDIC contract clause.</p>	<ul style="list-style-type: none">• Original requirement shall be retained. GPPB required the deletion during the Bidding Documents approval process to align with §45 of the Philippine Bidding Documents (Infrastructure) considering that the payment of costs is only allowed where expressly permitted. As answered in Bid Bulletin No. 5 dated 06 May 2020 and Bid Bulletin No. 9 dated 05 August 2020.
4	<p>PCC 14.8</p> <p>Delete the text of Sub-Clause 14.8 and replace with the following: "The Employer shall not pay any interest for delayed payments and adjustments." [PBD Infra GCC §40.3]</p>	<p>We kindly request you delete this particular clause and keep the original FIDIC contract clause.</p>	<ul style="list-style-type: none">• Original requirement shall be retained to align with §40.3 of the Philippine Bidding Documents (Infrastructure). As answered in Bid Bulletin No. 5 dated 06 May 2020 and Bid Bulletin No. 9 dated 05 August 2020.
5	<p>PCC 21.6</p> <p>Replace the text of Sub-Clause 21.6 with the following: "Unless settled amicably, any Dispute between the Parties shall be finally settled by arbitration in the Country according to the arbitration rules of the Construction Industry Arbitration Commission of the Philippines [RA §59] [IRR §59.2] [PBD Infra GCC §21.3]. "No Party may initiate arbitration proceedings except in any of the conditions below: "(a) the initiating Party has given a NOD with regard to such Dispute in accordance with the provisions of Sub-</p>	<p>We kindly request you adopt the International Arbitration Rules and third party arbitration organization.</p>	<ul style="list-style-type: none">• Original requirement shall be retained. As answered in Bid Bulletin No. 5 dated 06 May 2020 and Bid Bulletin No. 9 dated 05 August 2020.



	<p>Clause 3.5.5 [Dissatisfaction with Employer’s Representative’s determination] or Sub-Clause 21.4.4 [Dissatisfaction with DAAB’s decision]; “(b) the initiating Party is exercising its right under Sub-Clause 21.7 [Failure to Comply with DAAB’s Decision] against the other Party that failed to comply with a DAAB decision; “(c) Sub-Clause 21.8 [No DAAB in place] is applicable.” “The arbitral award shall be appealable by way of a petition for review to the Court of Appeals. The petition shall raise pure questions of law and shall be governed by the Rules of Court.” [RA §60].</p>		
6	<p>Bulletin No. 9</p> <p>As the Contract Changes covered within Bulletin No 9 and the attachment thereto (as well as other earlier bulletins)</p>	<p>Please advise if/how/when the modifications of the various bulletins (and particularly the attachment to Bulletin No 9) will be imported into the final Contract in contractual language to avoid any misunderstanding.</p>	<ul style="list-style-type: none"> • <i>The Contract shall use the template "Form of Contract Agreement", a copy of which is attached in the Bidding Forms, and all the Contract Documents, including Addenda and/or Supplemental/Bid Bulletins, shall be attached to that Contract Agreement in the form that they were published.</i>
7	<p>As the many bracketed references within the PCC to other documents such as IRR, PBD Infra, PBD Consulting, GPPB,</p>	<p>Please confirm that these references will be removed from the final Contract before signature – if not, please can the contractual intent of their retention be clarified – is the intent to import into the Contract all of the referenced documents?</p>	<ul style="list-style-type: none"> • <i>These references will not be removed. As noted above, the Contract shall use the template "Form of Contract Agreement", a copy of which is attached in the Bidding Forms, and all the Contract Documents, including Addenda and/or Supplemental/Bid Bulletins, shall be attached to that Contract Agreement</i>



			<i>in the form that they were published.</i>
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By Rules, all other related provisions in the Bidding Documents correspondingly affected by these amendments are likewise deemed amended to conform to this Bid Bulletin.

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

SGD.

JULIUS M. SANTOS
Chairperson, Bids and Awards Committee V