



Republic of the Philippines
DEPARTMENT OF HEALTH
OFFICE OF THE SECRETARY

ORIGINAL

CONTRACT AGREEMENT NO. GOP-C-2018-006

CONTRACT FOR THE PROCUREMENT OF CENTRALIZE ENTERPRISE ANTI-VIRUS
under IB NO. 2018-035

SO THE PUBLIC MAY KNOW:

This Contract made and entered into by and between:

LORICA C. RABAGO, CPA, MM
OIC, Accounting Division
Financial and Management Service, Department of Health
#03-10101-2018-07-027529
2,772,900
4PF 347

The DEPARTMENT OF HEALTH, an executive department of the Republic of the Philippines created pursuant to Executive Order (E.O.) No. 94, s. 1947, transformed under E.O. 102, s. 1999, with postal address at San Lazaro Compound, Rizal Avenue, Sta. Cruz, Manila, Philippines, duly represented by ENRIQUE A. TAYAG, MD, PHSAE, FPSMID, CESO III, Director IV, Knowledge Management and Information Technology Service (KMITS), herein referred to as "DOH".

- AND -

POWERCRAFT SOLUTIONS AND DATA INFRASTRUCTURE, INC. a private entity duly organized and existing under the laws of the Republic of the Philippines, with business address at Unit 1706 17F raffles Corporate Center F. Ortigas Jr. Avenue Ortigas Center, Pasig City, represented by MS. MABELLE M. ESTIPULAR, Sales Manager, hereinafter referred to as "SERVICE PROVIDER"

- ANTECEDENTS -

A Competitive Bidding was conducted on 28 February 2018 by DOH through Central Office Bids and Award Committee - B for the Procurement of Centralize Enterprise Anti - Virus under IB No. 2018-035. The Powercraft Solutions and Data Infrastructure, Inc. was awarded the project in the sum of Two Million Seven Hundred Seventy-Two Thousand Nine Hundred Philippine Pesos (PhP2,772,900.00) inclusive of local taxes and the DOH has accepted the bid for the following particulars:

Lot No.	Description	Amount (Php)
1	Centralize Enterprise Anti-Virus	2,772,900.00

SERVICE PROVIDER, having the necessary resources and expertise, is willing and competent to provide the Goods and Services.

ACCORDINGLY, the parties agree as follows:

ARTICLE 1 – SCOPE OF CONTRACT

This Contract shall include all items that can be reasonably inferred as a necessary component for the completion of this service agreement as if such items were expressly mentioned herein. The Goods and Services to be provided shall be as specified in the following documents:

1. COBAC Resolution to Award No. 2018-161 (Annex 1)
2. Notice of Award (Annex 2)
3. Performance Security (Annex 3)
4. Term of Reference (TOR) / Purchase Request (PR) No. 2018-G-165B (Annex 4)
5. Certificate of Availability of Fund No. 347 (CAF) dated 12 April 2018 (Annex 5)
6. Bidding Documents IB No. 2018-035 (Annex 6)
7. Technical and Financial Proposal (Annex 7)
8. Project Procurement Management Plan 2018 (Annex 8)

ENRIQUE A. TAYAG, MD, PHSAE, FPSMID, CESO III
Director IV
Knowledge Management and Information Technology Service

MABELLE M. ESTIPULAR
Sales Manager
Powercraft Solutions and Data Infrastructure, Inc.

LORICA C. RABAGO, CPA, MM
OIC, Accounting Division

ARTICLE 2 – EFFECTIVITY OF CONTRACT

The effectivity of this Contract is the date of the receipt of Notice to Proceed (NTP) by the **SERVICE PROVIDER** unless a different date is stipulated therein.

ARTICLE 3 - DURATION OF ENGAGEMENT

The project is expected to be completed within thirty (30) calendar days upon receipt of the approved Notice to Proceed (NTP).

ARTICLE 4 – TERMS OF PAYMENT

1. Billing shall be one time or hundred percent (100%) or full payment of the total amount of the project upon completion of the project.
2. To cover for the warranty, the Service Provider has the option to either have retention money in an amount equivalent to at least one percent (1%) but not to exceed five percent (5%) of every progress payment, or a special bank guarantee equivalent to at least one (1%) but not to exceed five percent (5%) of the total contract price which shall only be released after the ~~three (3)~~ ^{one (1)} year warranty period.

ARTICLE 5 – GROUNDS FOR TERMINATION OF THE CONTRACT

Termination for Default

The Procuring Entity shall terminate this Contract for default when any of the following conditions attends its implementation:

- (a) Outside of *force majeure*, the Service Provider fails to deliver or perform any or all of the Goods within the period(s) specified in the contract, or within any extension thereof granted by the Procuring Entity pursuant to a request made by the Service Provider prior to the delay, and such failure amounts to at least ten percent (10%) of the contract price;
- (b) As a result of *force majeure*, the Service Provider is unable to deliver or perform any or all of the Goods, amounting to at least ten percent (10%) of the contract price, for a period of not less than sixty (60) calendar days after receipt of the notice from the Procuring Entity stating that the circumstance of *force majeure* is deemed to have ceased; or
- (c) The Service Provider fails to perform any other obligation under the Contract.

In the event the Procuring Entity terminates this Contract in whole or in part, for any of the reasons provided under GCC Clauses, the Procuring Entity may procure, upon such terms and in such manner as it deems appropriate, Goods or Services similar to those undelivered, and the Service Provider shall be liable to the Procuring Entity for any excess costs for such similar Goods or Services. However, the Service Provider shall continue performance of this Contract to the extent not terminated.

In case the delay in the delivery of the Goods and/or performance of the Services exceeds a time duration equivalent to ten percent (10%) of the specified contract time plus any time extension duly granted to the Service Provider, the Procuring Entity may terminate this Contract, forfeit the Service Provider's performance security and award the same to a qualified Service Provider.

Termination for Insolvency

The Procuring Entity shall terminate this Contract if the Service Provider is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction. In this event, termination will be without compensation to the Service Provider, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Procuring Entity and/or the Service Provider.

ENRIQUE A. TAYAG, MD, PHSAE, FPSMID, CESO III
Director IV
Knowledge Management and Information Technology Service

MABELLE M. ESTIPULAR
Sales Manager
Powercraft Solutions and Data Infrastructure, Inc.

LORICA C. RABAGO, CPA, MM
OIC, Accounting Division
Financial and Management Service, Department of Health

ENRIQUE A. TAYAG, MD, PHSAE, FPSMID, CESO III
Director IV
Knowledge Management and Information Technology Service

MABELLE M. ESTIPULAR
Sales Manager
Powercraft Solutions and Data Infrastructure, Inc.

LORICA C. RABAGO, CPA, MM
OIC, Accounting Division
Financial and Management Service, Department of Health

Termination for Convenience

The Procuring Entity may terminate this Contract, in whole or in part, at any time for its convenience. The Head of the Procuring Entity may terminate a contract for the convenience of the Government if he has determined the existence of conditions that make Project Implementation economically, financially or technically impractical and/or unnecessary, such as, but not limited to, fortuitous event(s) or changes in law and national government policies.

The Goods/Services that have been delivered and/or performed or are ready for delivery or performance within thirty (30) calendar days after the Service Provider's receipt of Notice to Terminate shall be accepted by the Procuring Entity at the contract terms and prices. For Goods/Services not yet performed and/or ready for delivery, the Procuring Entity may elect:

- (a) to have any portion delivered and/or performed and paid at the contract terms and prices; and/or
- (b) to cancel the remainder and pay to the Service Provider an agreed amount for partially completed and/or performed goods and for materials and parts previously procured by the Service Provider.

If the Service Provider suffers loss in its initial performance of the terminated contract, such as purchase of raw materials for goods specially manufactured for the Procuring Entity which cannot be sold in open market, it shall be allowed to recover partially from this Contract, on a *quantum meruit* basis. Before recovery may be made, the fact of loss must be established under oath by the Service Provider to the satisfaction of the Procuring Entity before recovery may be made.

Termination for Unlawful Acts

The Procuring Entity may terminate this Contract in case it is determined *prima facie* that the Service Provider has engaged, before or during the implementation of this Contract, in unlawful deeds and behaviors relative to contract acquisition and implementation. Unlawful acts include, but are not limited to, the following:

- (a) Corrupt, fraudulent, and coercive practices as defined in ITB Clause
- (b) Drawing up or using forged documents;
- (c) Using adulterated materials, means or methods, or engaging in production contrary to rules of science or the trade; and
- (d) Any other act analogous to the foregoing.

Article 6 - Liquidated Damages

When **SERVICE PROVIDER** fails to perform its obligation within the period as set in the Contract, **SERVICE PROVIDER** shall be liable for damages for the delay and shall pay **DOH** liquidated damages in an amount of one-tenth of one percent (0.001) of the cost of the unperformed portion for every day of delay. Provided, that such delay is not attributable to **DOH's** failure to meet its obligation to **SERVICE PROVIDER** or due to *force majeure*. Provided further that, in the event the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of the contract, **DOH** shall have the right to rescind the Contract, without prejudice to other courses of action and remedies open to it

Article 7 - Additional Provisions

- a) It is understood that no employer-employee relationship exists between the **DOH** and **SERVICE PROVIDER** and/or the latter's staff or employees by reason of this **CONTRACT**.
- b) Should the **DOH** be constrained to resort to court action to protect its rights and interests hereunder, the **SERVICE PROVIDER** shall pay the **DOH** an amount equivalent to twenty percent (20%) of the total sum claimed in the complaint, as and by way of attorney's fees, plus expenses of litigation recoverable under pertinent laws; provided, that the attorney's fees shall in no case be less than Twenty Thousand Pesos (Php20,000.00). Venue of such court action shall be laid exclusively in the proper court of Manila, Philippines.

IN WITNESS WHEREOF, the parties hereto have signed this Contract to be executed in accordance with the laws of the Philippines, this NOV 06 2018 day of JUL 09 2013 2018

DEPARTMENT OF HEALTH POWERCRAFT SOLUTIONS AND DATA INFRASTRUCTURE, INC.

Enrique A. TAYAG
ENRIQUE A. TAYAG, MD, PHSAE, FPSPMID, CESO III
Director IV
Knowledge Management and Information Technology Service

Mabelle M. Estipular
MABELLE M. ESTIPULAR
Sales Manager

Signed in the presence of:

Lorica C. Rabago
LORICA C. RABAGO, CPA, MM
OIC, Accounting Division
Financial and Management Service
Department of Health
11/01/2018 - 07. 05452
2.772.900

Powercraft Solutions and Data Infrastructure, Inc.

ACKNOWLEDGMENT

Mabelle M. Estipular
Witness
MABELLE M. ESTIPULAR

REPUBLIC OF THE PHILIPPINES)
CITY OF PASAY) S.S.

BEFORE ME, the undersigned Notary Public, this NOV 06 2018 day of NOV 06 2018 in CITY OF PASAY, Philippines personally appeared the following persons with their respective Government I.D. No., to wit:

ENRIQUE A. TAYAG, MD, PHSAE, FPSPMID, CESO III
ID No. DOH ID 1999 - 0113
(SSS, TIN, GSIS etc.)

MABELLE M. ESTIPULAR
ID No. TIN No: 429-976-000-000
(SSS, TIN, GSIS etc.)

Known to me to be the same persons who executed the foregoing maintenance service contract and they acknowledged to me that the same is their own free and voluntary act and deed, individually and the institutions they represent.

This instrument consisting of **four (4) pages**, including this page on which this acknowledgment is written, are signed by the parties on the left hand margin of each and every page thereof.

WITNESS MY HAND AND NOTARIAL SEAL at the place and date above written.

Doc. No. 164
Page No. 34
Book No. 34
Series of 2018

Atty. Henry D. Adasa
ATTY. HENRY D. ADASA
NOTARY PUBLIC/CITY OF MANILA
UNTIL DECEMBER 31, 2018
NOTARIAL COMMISSION 17-23
KNIGHT OF RIZAL BLDG.,
GROUND FLOOR BESIDE PASAY CITY HALL
ISP NO. 022811 / 01/03/2018 PASIG
PTR NO. 582667 / 01/03/2018 P.C.
MCLE COMPLIANCE NO. V4-0002830 - 4/14/2022
ROLL OF ATTORNEYS NO. 29679
@TIN: 172-528-620-000

PS / COBAC
RELEASED: PO / CONTRACT

by: NOV 06 2018
Date: NOV 06 2018

PS / COBAC
APPROVED PO / CONTRACT
Received by: NOV 05 2018
Date: NOV 05 2018