Annex B

CONTRACT FOR THE PROCUREMENT OF TEMPORARY ADMINISTRATIVE AND TECHNICAL SUPPORT PERSONNEL AND JANITORIAL SERVICES THRU MANPOWER SERVICE PROVIDER FOR THE PERIOD JULY 01 TO DECEMBER 31, 2018

KNOW ALL MEN BY THESE PRESENTS:

This Contract made and entered into this _____, in the City of Manila, Philippines, by and between:

PHILIPPINE PORTS AUTHORITY, a government instrumentality created under Presidential Decree No. 857, as amended, with principal office at PPA Administrative Building, Km. 10, Sasa Port Area, Davao City, represented herein by the Acting Port Manager, **ANALEE G. AGUILA**, and herein referred to as "**PPA**";

-and-

_____, a private corporation duly organized and existing in accordance with Philippine laws, with principal office address at _____ _____, represented herein by its _____ _____, duly authorized for this purpose as evidenced by the Secretary's Certificate, dated _____, a copy of which is hereto attached and made as integral part hereof as Annex "A," and hereinafter referred to as "**CONTRACTOR**."

WITNESSETH:

WHEREAS, PPA is desirous to enter into a contract for the Provision of Temporary Administrative and Technical Support Personnel and Janitorial Services Through Manpower Service Provider for the Port Management Office of Davao for Six (6) months or from 01 July to 31 December 2018;

WHEREAS, in accordance with Republic Act No. 9184 and its 2016 Revised Implementing Rules and Regulations, the PPA Bids and Awards Committee for the Procurement of Goods (BAC-PG) posted in the PPA Website, PhilGEPS website, and at conspicuous place in the premises of the Port Management Office an Invitation to Bid for the Procurement of Temporary Administrative and Technical Support Personnel and Janitorial Services Through Manpower Services Provider for PMO-Davao for CY for the period July 01 to December 31, 2018;

WHEREAS, after the opening of bids on 18 June 2018, and the conduct of bid evaluation and the required post-qualification, the bid submitted by the CONTRACTOR was found to be the Single Calculated and Responsive Bid in the

amount of _____ **PESOS (Php_____)**, Philippine Currency per BAC Resolution No. ___-2018 dated _____, 2018;

WHEREAS, in a Notice of Award (NOA) dated _____, 2018, the contract therefore was awarded to the CONTRACTOR which signifies its "Conforme" in the same NOA;

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties hereby agree, as follows:

ARTICLE I
CONTRACT DOCUMENTS

1.01 The following documents shall constitute integral parts of this Contract, as fully as if the contents of the said documents are reproduced, incorporated and set forth herein, and shall govern and control in full force and effect the rights and obligations of the Parties, except as otherwise modified by the terms and conditions of this Contract, or by mutual agreement in writing of both parties, to wit:

a. Invitation to Bid;
b. Authority of the Signing Official;
c. Bid Documents consisting of the following:
    1. Instruction to Bidders
    2. Bid Data Sheet
    3. General Conditions of Contract
    4. Special Conditions of Contract
    5. Schedule of Manpower Requirements
    6. Terms of Reference and its Annexes
d. Addenda and/or Supplemental/Bid Bulletins;
e. CONTRACTOR's Bid Proposal consisting of two (2) envelopes, namely: 1st Envelope – Eligibility Requirements and Technical Proposal; 2nd Envelope – Financial Proposal, including all the documents/statements contained therein;
f. Performance Security;
g. Credit Line, if applicable;
h. Notice of Award of Contract dated _____, 2018 and the CONTRACTOR's "Conforme" thereto;
i. Notice to Proceed; and
j. Other pertinent documents as may be required by existing laws and/or of PPA (e. g. Certificate of Availability of Funds, Abstract of Bids, Resolution of Award)

1.02 All contract documents are and shall remain as the property of PPA.

1.03 The words and expressions of this Contract shall have the same meanings respectively assigned to them in the contract documents referred to above.

ARTICLE II
MANPOWER REQUIREMENTS

2.01 PPA hereby engages the CONTRACTOR to provide the former with manpower requirements as specified in the Terms of Reference of the Bid Documents hereto attached as Annex "A" which forms part of this contract.

2.02 The CONTRACTOR shall assign personnel who possess the required qualifications and experience suitable to the positions as specified in the Terms of Reference, having correct discipline for the function or duty to be performed, physically and mentally fit, and of good moral character, the number and the period of their assignment shall be based on the actual requirements of PPA.

2.03 PPA reserves the right to increase or decrease the number of personnel as the need arises at anytime during the term of this Contract and that increase in personnel may be effected upon execution of a supplemental agreement thereto.

2.04 The Contractor shall assign personnel who possess the required qualifications and experience suitable to the positions as specified in the Terms of Reference.

ARTICLE III
OTHER TERMS AND CONDITIONS

3.01 Consideration – For and in consideration of the service/s rendered, PPA hereby agrees to pay the CONTRACTOR an amount not exceeding _____ _____ Pesos (Php_____) as provided in the Financial Proposal of the CONTRACTOR hereto attached as Annex "C" subject to the actual number of personnel assigned and their period of assignment to PPA. The rates quoted are based on eight (8) hours work per day per individual and include payment due to the personnel, i. e. basic pay, service incentive leave, 13th month pay, etc.; and to the government, i. e. contributions to Pag-IBIG, SSS, PhilHealth, ECC, etc. including the value added tax of twelve percent (12%). Except as provided for under existing laws, it is hereby expressly agreed upon and understood that the stipulated rates shall not be subject to upward adjustment for any cause or reason.

Payment of the aforesaid consideration shall be subject to the following conditions:

a. Tardiness, undertime, half-days and absences incurred by the personnel assigned to PPA shall be deducted accordingly from the monthly billing of the CONTRACTOR.

b. The payment shall be subject to the CONTRACTOR's presentation of its semi-monthly personnel payroll and affidavit or sworn certification that it has paid the salaries and benefits of its personnel for the period covered, per submitted payroll and remitted the corresponding premiums to Pag-IBIG, SSS, PhilHealth, ECC, etc. as well as the withholding taxes to BIR.

c. Any payment due and payable to the CONTRACTOR may be set off against liquidated damages payable to PPA by the CONTRACTOR under this Contract.

d. All payments shall be subject to existing government accounting and auditing rules and regulations.

The CONTRACTOR agrees to pay the salaries of its personnel assigned with PPA in accordance with the rates indicated in the Terms of Reference, including the cost of living allowances, overtime pay, night shift differential pay, 13th month pay, 5-day incentive pay, uniform/clothing allowance, and such other benefits and emoluments as may be applicable, and as may be granted by law, wage orders, and rules and regulations issued by the Department of Labor and Employment. For this purpose, CONTRACTOR shall provide its personnel with pay slips evidencing the amount of their salaries, benefits and deductions thereof, should there be any, in at least two (2) days before the scheduled payment of their salaries which shall be in every fifteenth (15th) and thirtieth (30th) day of each month.

3.02 Duration – This Contract shall be for a period of six (6) months, 01 July until 31 December 2018.

3.03 Performance Security – To guarantee the faithful performance of the CONTRACTOR under this Contract, it shall post upon signing of this Contract a performance security in accordance with the following schedule.

1. Cash or cashier's/manager's check, issued by a Universal or Commercial bank; five percent (5%) of the total contract price

2. Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank; provided, however, that it shall be confirmed or authenticated by a Universal/Commercial Bank, if issued by a foreign bank; five percent (5%) of the total contract price

3. Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security; thirty percent (30%) of the total contract price

This performance security shall be posted in favor of PPA, and shall be forfeited in favor of PPA in the event it is established that the CONTRACTOR is in default in any of its obligations under this Contract.

In the execution of the performance security, the following conditions shall be complied with:

a. It shall be executed in accordance with the form prescribed in this Section.

b. It shall be at least co-terminus with the contract.

Should any security posted for the performance of this Contract become unacceptable to PPA, the CONTRACTOR shall promptly furnish such replacement security as may be required from time to time up to the sum equal to the amount of the original security.

3.04 Assignment of Personnel – The CONTRACTOR shall assign its personnel as PPA may deem proper under this Contract. The CONTRACTOR maintains administrative control and supervision over its personnel, however, it hereby authorizes PPA to give direct instructions to the personnel assigned during their term of duty and such exercise of power by PPA shall not be deemed as relinquishment of power by the CONTRACTOR as the Employer of the said personnel. Corollary to this, PPA shall evaluate the performance of each personnel using the PPA Performance Appraisal System.

3.05 Hours of Work – The personnel assigned to PPA shall work for eight (8) hours from Monday to Saturday, except those who are on shifting schedules; and in case the need arises, said personnel may be required to render service beyond the eight (8) hour period or during Holiday or rest day, the payment for such overtime work shall be paid in accordance with the applicable government rules and regulations.

3.06 Removal or Replacement of Personnel – PPA hereby reserves the right to request the immediate replacement of any of the assigned personnel of the CONTRACTOR who, in its opinion, are found wanting in competency, honesty, and integrity or whose continued stay or service would be prejudicial to the best interest of PPA.

3.07 Liquidated Damages – Should the CONTRACTOR refuse or fail to satisfactorily comply with its undertaking, and is hereby in default under the Contract, the CONTRACTOR shall be liable for damages for the delay and shall pay PPA for liquidated damages and not by way of penalty, an amount equivalent to one-tenth (1/10) of one percent (1%) of the cost of the unperformed portion thereof, for every day of delay until the same is finally performed/completed and accepted by PPA.

It is understood that the damages herein provided are fixed and agreed liquidated damages and to be entitled to such damages, PPA need not prove that it has incurred actual damages. Such amount shall be deducted from any money due or which may become due the CONTRACTOR under the contract and/or collect such liquidated damages from the securities or warranties posted by the CONTRACTOR, whichever is convenient to PPA.

In no case, however, shall the total sum of liquidated damages exceed ten percent (10%) of the total contract price, in which event the Contract shall automatically be terminated by PPA and the erring CONTRACTOR's performance security shall be forfeited. The amount of the forfeited performance security shall be set aside from the amount of the liquidated damages that the CONTRACTOR

shall pay PPA under this section and the other appropriate sanctions that may be imposed to the former.

3.08 Cancellation/Termination of Contract – PPA has the right to terminate or cancel this Contract without the need of judicial action, at anytime before its expiration on reasonable grounds, such as, but not limited to: unsatisfactory service and performance or violation of the terms and conditions of this Contract, by giving the CONTRACTOR at least fifteen (15) calendar days written notice in advance to that effect, which Notice shall be final and binding on all the parties.

Within thirty (30) days after the termination, cancellation, or rescission of this Contract, the Parties shall settle their respective accountabilities as of the date of termination, cancellation or rescission.5

3.09 Warranties – The CONTRACTOR hereby warrants compliance with the requirements of Philippine Laws, the Social Security System Law, the Employees' Compensation Program, and Wage Orders governing payment to workers of at least the minimum wage, and other laws or decrees pertaining to employer-employee relationship.

CONTRACTOR further warrants the capabilities and technical competence of its support personnel to be assigned in PPA based on individual work and experience qualifications. Relative to this, PPA reserves the right to verify the CONTRACTOR's assigned personnel as to their qualifications and integrity and to require replacement thereof in case PPA upon its verification, is in opinion that the said personnel are found wanting in competency, honesty, and integrity or whose continued stay or service would be prejudicial to the best interest of PPA without additional cost to PPA.

3.10 CONTRACTOR's Liability – The CONTRACTOR shall assume full responsibility and agrees and binds itself to indemnify PPA for any loss, damage, destruction and/or injury that may be incurred by the latter and/or its employees which are attributable to the negligence, fault, misconduct or unlawful act of the former and its personnel.

3.11 No Employer – Employee Relationship – It is expressly agreed and understood that there is no employer-employee relationship between the CONTRACTOR and/or its personnel and PPA, such that the Contractor's personnel assigned in PPA are not employees of the latter, it being understood that the position of the CONTRACTOR and anyone else performing the services is that of an independent contractor. Accordingly, PPA shall not in any way be liable or responsible for any personal injury or damage including death sustained or cause by any of the personnel of the CONTRACTOR during the lawful performance of their duties.

ARTICLE IV
MISCELLANEOUS PROVISIONS

4.01 The failure of PPA to demand strict compliance with any of the terms, stipulations, and covenants of this Contract or any act of liberality on the part of the PPA, shall not be construed or considered as a waiver on the part of PPA for

enforcement of this Contract, nor shall it relieve the CONTRACTOR of any of its obligations as herein provided.

4.02 It is expressly agreed and understood that in case of conflict between the Contract and the provisions of the contract documents incorporated as forming part hereof, the former shall be controlling.

4.03 The CONTRACTOR shall provide and do anything necessary to perform its obligations under this contract according to the true intent and meaning of all the Contract Documents taken together.

4.04 All taxes, licenses, permits, fees or charges of whatever form, kind, or nature due or which may be due to the national or local government units and/or its instrumentalities/agencies on account of the performance and completion of the work stipulated herein, and all necessary and incidental expenses relative thereto, including the cost of notarization of this Contract shall be borne and paid for by the CONTRACTOR on its own account. Should PPA be compelled to advance the same, PPA is hereby authorized to deduct the amount advanced from whatever amount due the CONTRACTOR from PPA.

4.05 The CONTRACTOR shall pay taxes in full and on time and that failure to do so shall entitle PPA to suspend payment to the CONTRACTOR. Further, the CONTRACTOR shall during the term of this Contract regularly present to PPA a tax clearance from the Bureau of Internal Revenue (BIR) as well as a copy of its income and business tax returns duly stamped and received by the BIR and duly validated with the tax payments made thereon.

4.06 Should there be any dispute or controversy in connection with this contract or difference between the Parties arising from the interpretation of this Contract, the Parties hereto shall, as far as practicable, settle the same amicably. In the event that such dispute or disagreement be not resolved to their mutual satisfaction, the matter shall be submitted to arbitration according to the provisions of Republic Act 9285, otherwise known as the “Alternative Dispute Resolution Act of 2004.” Provided, that the arbitration proceeding shall be without prejudice to the right of PPA to rescind or terminate this Contract in accordance with Section 3.08 hereof.

4.07 Should PPA be constrained to resort to court action to enforce or safeguard its rights and interest under this Contract, the CONTRACTOR shall be liable to PPA for attorney’s fees in an amount equivalent to twenty percent (20%) of the total sum claimed in the complaint, exclusive of other damages and expenses of litigation. Venue of all court actions in connection with or arising out of this Contract shall be laid exclusively in the proper court of the City of Manila.

4.08 The personnel to be assigned to PPA must not be related within the third degree of consanguinity or affinity with the PPA PMO-Davao Port Manager, or the appointing and recommending authorities, or the immediate superior of the

assigned personnel; and that the said personnel has not been previously dismissed from the service by reason of an administrative or criminal case.

4.09 The CONTRACTOR hereby represents that all documents it submitted which form integral parts hereof are authentic and duly executed with all the required formalities for the same, and that the facts and/or data contained therein are true and correct. A breach of this representation including all misrepresentation in the documents or suppression of material facts therein, which if known, could have disqualified the CONTRACTOR such that this Contract would not have been made and entered into, gives the PPA the immediate right or recourse to *motu proprio* rescind, abrogate or otherwise terminate the Contract without need of judicial intervention.

4.10 Pursuant to Section 47 of the IRR of R. A. 9184,CONTRACTOR further represent that all its officers, directors, and controlling stockholders are not related to by consanguinity or affinity up to the third (3rd) civil degree to PPA PMO-Davao's Port Manager, including any of its officers or employees having direct access to the concluded bidding.

If in any event, it is found that the aforestated representation was violated, PPA, however, has the right to terminate or cancel this contract without the need of judicial action, at anytime before it expiration pursuant to Article 3.08 hereof.

ARTICLE V
EFFECTIVITY

5.01 This Contract shall be effective on 01 July 2018.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date and place above written.

PHILIPPINE PORTS AUTHORITY
(PPA)
By:

ANALEE G. AGUILA
Acting Port Manager

_____
(CONTRACTOR)
By:

_____
_____

Signed in the presence of:

_____ _____

A C K N O W L E D G E M E N T

REPUBLIC OF THE PHILIPPINES)
C I T Y O F _____) S. S.

BEFORE ME, a Notary Public, for and in the City of Manila, Philippines, on this _____ day of _____, 2018, personally appeared:

Name	**Identification Document**	
No./Place/Date		
	Presented	**Issued**

ANALEE G. AGUILA
In her official capacity as the
Acting Port Manager
_____
_____
_____

known to me and to me known to be the same persons who executed the foregoing instrument and acknowledged to me that the same is their free act and that they are the representatives of the legal entities represented.

The foregoing instrument refers to a Contract for the Provision of Temporary Administrative and Technical Support Personnel and Janitorial Services for CY 2018 for the Port Management Office of Davao consisting of eight (8) pages including the page on which this acknowledgement is written, duly signed by the parties and their witnesses on each and every page thereof.

WITNESS MY HAND AND SEAL.