

CONTRACT FOR THE HYDROGRAPHIC, TOPOGRAPHIC & PORT ZONE DELINEATION SURVEY OF THE PORTS OF PADRE BURGOS, LIMASAWA, SAN ISIDRO, MARIPIPI, CALUBIAN & NAVAL (D150030)

KNOW ALL MEN BY THESE PRESENTS:

This CONTRACT made and entered into by and between:

PHILIPPINE PORTS AUTHORITY, PORT MANAGEMENT OFFICE – WESTERN LEYTE/BILIRAN, a government instrumentality created under Presidential Decree No. 857, as amended with office address at Lot 2, Block 13, Doña Feliza Mejia Subdivision, D. Veloso St., Ormoc City, represented herein by its Port Manager, **MANUEL A. BOHOLANO**, and hereinafter referred to as “**PPA**”;

-and-

HIPOLITO O. NOVELOSO, conducting business under the firm name and style of **H.O. NOVELOSO SURVEYING**, an independent contractor, with principal office address at Blk. 2, Lot 15, Mary Town Circle, Greenfields 1 Subdivision, Brgy. Kaligayahan, Novaliches, Quezon City, represented herein by himself, hereinafter referred to as “**CONTRACTOR**.”

WITNESSETH:

WHEREAS, in accordance with Republic Act No. 9184 and its Revised Implementing Rules and Regulations, the Bids and Award Committee for Engineering Projects of PMO Western Leyte/Biliran advertised in the PPA Website, Phil G-EPS Website, reference no.3364074, as well as in the bulletin boards of PPA PMO Western Leyte/Biliran, Baseport Ormoc, Office of the City Government Ormoc and Ormoc City Engineering Office an Invitation to Bid for the **Hydrographic, Topographic & Port Zone Delineation Survey, Ports of Padre Burgos, Limasawa, San Isidro, Maripipi, Calubian & Naval (D150030)**;

WHEREAS, the **CONTRACTOR** and other prospective bidders submitted their respective bids for the foregoing project;


WHEREAS, after the opening of bids on September 14, 2015, and the conduct of bid evaluation and the required post-qualification, the bid submitted by the **CONTRACTOR** was found to be the Lowest Calculated Responsive Bid in the amount of **ONE MILLION THREE HUNDRED THIRTY NINE THOUSAND NINE HUNDRED TWELVE (Php1,339,912.00), Philippine Currency**.

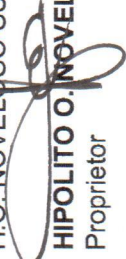
WHEREAS, pursuant to **BAC Resolution No. 2015-129E** dated **October 13, 2015**, award of the contract was made to the **CONTRACTOR** in a Notice of Award (NOA) dated **October 14, 2015**, in the amount of **ONE MILLION THREE HUNDRED THIRTY NINE THOUSAND NINE HUNDRED TWELVE PESOS (Php1,339,912.00)**, after submission of the required documents within the prescribed period and compliance to the conditions stipulated in the IRR;

WHEREAS, the **CONTRACTOR** duly accepted the award by signing its Conforme on the said Notice of Award;

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual covenants, stipulations and agreements, the **PPA** and the **CONTRACTOR** have agreed, as they do hereby agree, and contract as follows:

**ARTICLE I
CONTRACT DOCUMENTS**

WITNESS:

GERRY D. LIQUIDO
ESD Manager

H.O. NOVELOSO SURVEYING BY:

HIPOLITO O. NOVELOSO
Proprietor

WITNESS:

BERNARD C. CALLEDO
PSD Manager

PHILIPPINE PORTS AUTHORITY,
PMO-WESTERN LEYTE/BILIRAN BY:

MANUEL A. BOHOLANO
Port Manager

1.01 The following documents shall constitute integral parts of this Contract, as fully as if the contents of said documents are reproduced, incorporated and set forth herein, 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. Drawings/Plans
 - 4. General Conditions of Contract
 - 5. Special Conditions of Contract
 - 6. Terms of Reference
- d. Addenda and/or Supplemental/Bid Bulletins, if any;
 - e. CONTRACTOR's Bid Proposal consisting of two (2) envelopes, namely: 1st Envelope- Eligibility and Technical Requirements; and 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 October 14, 2015 and the CONTRACTOR's "Conforme" thereto;
- i. Notice to Proceed; and
- j. Other pertinent documents as may be required by existing laws and/or by PPA.

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

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

ARTICLE II SCOPE OF SERVICES

2.01 In consideration of the contract fee hereinafter stipulated, the CONTRACTOR agrees and obligates itself to conduct the Hydrographic, Topographic & Port Zone Delineation Survey of the Ports of Padre Burgos, Limasawa, San Isidro, Maripipi, Calubian and Naval as provided for in the Terms of Reference (TOR).

2.02 CAD Plotting & Printing

All survey data gathered in the field shall be reflected in the plotting of final hydro-topo plan in accordance with the requirements specified in the TOR.

Upon completion of the survey, the prospective contractor shall submit to PPA, PMO-WLB, the following:

- 1. 2 copies per port - Original plan duly certified by the contractor's authorized geodetic engineer.
- 2. 4 copies per port - Blueprint copy of original plan
- 3. 2 CD copies - CD containing the softcopies of all plotted Hydro-topo surveys in CAD format (preferably ACAD 2010)
- 4. 2 copies per port - Narrative survey report to include pictorials of actual site surveys conducted and other relevant information.

All submittals shall be addressed to PPA, PMO-WLB.

WITNESS:

GERRY D. LIQUIDO
ESD Manager

H.G. NOVELOSO SURVEYING BY:

HIPOLITO NOVELOSO
Proprietor

WITNESS:

BERNARD C. CALLEDO
PSD Manager

PHILIPPINE PORTS AUTHORITY,
PMO-WESTERN LEYTE/BILIRAN BY:

MANUEL A. BOHOLANO
Port Manager

**ARTICLE III
CONSIDERATION**

3.01 For and in consideration of the full, satisfactory and faithful performance by the CONTRACTOR of all its undertakings defined in and provided for under this Contract and Contract Documents, PPA agrees to pay the CONTRACTOR the total amount of not exceeding **ONE MILLION THREE HUNDRED THIRTY NINE THOUSAND NINE HUNDRED TWELVE PESOS (Php1,339,912.00), Philippine Currency**, inclusive of the 12% Value Added Tax, professional fee, travelling expenses to the subject Ports, per diem, and all other expenses necessary to accomplish the project, as full compensation for everything furnished and done by the CONTRACTOR under this Contract, including all works required but not specifically mentioned, and also for all losses and damages to the CONTRACTOR arising out of the work aforesaid, or for all expenses incurred by or in consequence of the suspension or discontinuance of the contract herein specified and for faithfully completing the contract and the whole thereof. Payment of the aforesaid consideration shall be in accordance with the manner, procedure, and schedule prescribed in the Bid Documents.

It is agreed and understood that the consideration specified in this Contract shall be considered as fixed price, and therefore not subject to price escalation during the contract implementation except under extraordinary circumstances and upon prior approval of the Government Procurement Policy Board (GPPB). Any request for price escalation under extraordinary circumstances shall be submitted by PPA to the National Economic Development Authority (NEDA). Extraordinary circumstances shall refer to events that may be determined by the NEDA in accordance with the Civil Code of the Philippines and upon recommendation of the PPA.

3.02 It is agreed that acceptance of payments made under this Contract, except the final payment upon issuance of Certificate of Completion, shall not be understood as performance of this Contract, neither wholly or in part, nor shall any payment be construed to be an acceptance of defective work.

3.03 Payment to the CONTRACTOR shall be subject to retention of ten percent (10%) of the contract price thereof which shall be referred to as "retention money". The retention money shall serve as guarantee that the CONTRACTOR shall make good or correct any defect/deficiency that may be discovered in the work/report within the warranty period specified in the Bid Documents. The CONTRACTOR may, however, request for the substitution of the aforesaid retention money with a special bank guarantee of the same amount which shall serve the purpose of which the retention money is being intended.

The retention money or special bank guarantee, as the case may be, shall be released only after expiration of the warranty period, provided that the work subject of the contract is free from defect and that all the conditions imposed under this Contract are met or complied with.

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

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

**ARTICLE IV
COMPLETION TIME; LIQUIDATED DAMAGES**

4.01 The CONTRACTOR, shall perform and complete the work called for and defined in this Contract not later than **Eighty (80) Calendar Days** after effective start date and shall submit/deliver to PPA the prescribed survey reports strictly in accordance with the **Terms of Reference** in the Bid Documents.

WITNESS:

GERRY D. LIQUIDO
ESD Manager

H.O. NOVELOSO SURVEYING BY:

HIPOLITO C. NOVELOSO
Proprietor

WITNESS:

BERNARD C. CALLEDO
P&S Manager

PHILIPPINE PORTS AUTHORITY,
PMO-WESTERN LEYTE/BILIRAN BY:

MANUEL A. BOHOLANO
Port Manager

4.02 Time is of the essence of this Contract. Should the CONTRACTOR refuse or fail to satisfactorily complete the work within the specified contract time, plus anytime extension duly granted, if any, and is hereby in default under the contract, the CONTRACTOR shall be liable for the 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 delayed survey report(s) for everyday of delay until the same is delivered and accepted by PPA.

4.03 It is understood that the damages herein provided are fixed and agreed liquidated damages, 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 to the CONTRACTOR under the contract and/or collect such liquidated damages from the retention money or securities or warranties posted by the CONTRACTOR, whichever is convenient to PPA.

4.04 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 Section 4.03 hereof and the other appropriate sanction that may be imposed to the former.

ARTICLE V PERFORMANCE SECURITY

5.01 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:

- (a) Cash, or cashier's/manager's check, issued by a Universal or Commercial bank; five percent (5%) of the total contract price
- (b) 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
- (c) 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
- (d) Any combination of the foregoing – proportionate to share of form with respect to total amount of security

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.

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

5.03 Subject to the conditions of this Contract, the performance security may be released by PPA after the issuance of the Certificate of Completion and Acceptance of the Project, provided that there are no claims filed against the CONTRACTOR or surety company.

WITNESS:

GERRY D. LIQUIDO
ESD Manager

H.O. NOVELOSO SURVEYING BY:

HIPOLITO O. NOVELOSO
Proprietor

WITNESS:

BERNARD C. CALLEDO
PSD Manager

PHILIPPINE PORTS AUTHORITY,
PMO-WESTERN LEYTE/BILIRAN BY:

MANUEL A. BOHOLANO
Port Manager

5.04 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.

**ARTICLE VI
EXTENSION OF CONTRACT TIME**

6.01 If at any time during the performance of this Contract the CONTRACTOR should encounter conditions impeding timely performance of works/services, the CONTRACTOR shall promptly notify PPA in writing of the fact of the delay, its likely duration and its cause/s. As soon as practicable after receipt of the CONTRACTOR's notice, PPA shall evaluate the situation and if it is determined that the cause thereof is due to force majeure or fortuitous events, PPA may grant an extension of contract time to complete the works/services, in which case the extension shall be ratified by the parties by amendment of contract.

**ARTICLE VII
ENTIRE CONTRACT**

7.01 Provisions to the contrary notwithstanding, it is agreed that this is an entire contract for one whole complete work and that partial payments on account by the PPA or the use of parts of the work or equivalent shall not constitute an acceptance or any part of the work before its entire completion and final acceptance in writing by the PPA.

**ARTICLE VIII
CONTRACTOR'S LIABILITY**

8.01 The Parties, likewise, hereby agree that the employees of the CONTRACTOR are not employees of PPA: Hence, PPA shall not in any way be liable or responsible for any personal injury or damages, including death sustained or caused by any of the employees of the CONTRACTOR and/or sub-contractor or agent whether or not occurring during the performance of their duties. The CONTRACTOR agrees and binds itself to indemnify PPA for whatever injuries or damages caused or occasioned or contributed to by the failure, negligence or conduct of the CONTRACTOR and/or employees, sub-contractors or agents arising out of or in connection with or on occasion of the performance of this Contract. The CONTRACTOR shall at all times, stand solely liable and/or responsible for the enforcement of, and compliance with all existing laws, rules and regulations and binds itself to save and hold PPA free and harmless from any and all liability in respect thereof and/or arising therefrom and/or by reason of this Contract and its implementation.

8.02 The CONTRACTOR agrees and binds itself to hold and save PPA free and harmless from any damage, claims and right to action arising out of or by reason of this Contract and all injuries that maybe suffered by PPA due to the failure, negligence, delay or conduct on the part of the CONTRACTOR and/or its employees in the performance of their obligations under this Contract.

**ARTICLE IX
REMEDY AND RELIEF**

9.01 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 in the Philippines according to the provisions of Republic Act No. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004".

WITNESS:

GERRY D. LIQUIDO
ESD Manager

H.O. NOVELOSO SURVEYING BY:

HIPOLITO D. NOVELOSO
Proprietor

WITNESS:

BERNARD C. CALLEDO
PSD Manager

PHILIPPINE PORTS AUTHORITY,
PMO-WESTERN LEYTE/BILIRAN BY:

MANUEL A. BOHOLANO
Port Manager

9.02 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 contract price or 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 Ormoc.

WITNESS:

GERRY D. LIQUIDO
ESD Manager

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

10.2 It should be clearly understood that any payment or failure of PPA to demand compliance with any of the terms and conditions of this Contract of any act of liberality on the part of 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 provided hereunder.

10.3 Notwithstanding any provisions to the contrary, PPA has the right to terminate cancel and/or rescind this Contract *motu proprio*, in case of breach by the CONTRACTOR or upon failure of the CONTRACTOR to comply strictly with the terms of the contract without need of judicial action by giving at least fifteen (15) days written notice to that effect to the CONTRACTOR, which Notice shall be final and binding on all the parties.

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

10.05 No final payment of the contract shall be made to the CONTRACTOR without the Certificate of Completion and/or Acceptance from the Port Manager, Western Leyte/Biliran.

10.06 The CONTRACTOR obliges itself to comply with all existing laws, executive and administrative orders, rules and regulations, issued or to be issued by competent authorities.

10.07 All taxes, license, 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.

H.O. NOVELOSO SURVEYING BY:

HIPOLITO O. NOVELOSO
Proprietor

WITNESS:

BERNARD C. CALLEDO
PSD Manager

PHILIPPINE PORTS AUTHORITY,
PMO-WESTERN LEYTE/BILIRAN BY:

MANUEL A. BOHOLANO
Port Manager

ARTICLE XI SPECIAL REPRESENTATION

11.01 The CONTRACTOR hereby represent 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 PPA the immediate right or recourse to *motu proprio* rescind, abrogate or otherwise terminate the Contract without need of judicial intervention.

**ARTICLE XII
EFFECTIVITY**

12.01 This Contract shall become effective after the same shall have been signed by the parties.

WITNESS:

GERRY D. LIQUIDO
ESD Manager

H.O. NOVELOSO SURVEYING BY:
HIPOLITO O. NOVELOSO
Proprietor

IN WITNESS WHEREOF, the parties have hereunto affix their signatures this ____ day of _____ 2016 at ORMOC CITY, Philippines.

PHILIPPINE PORTS AUTHORITY (PPA)

By:

MANUEL A. BOHOLANO
Port Manager
PMO Western Leyte/Biliran

**HIPOLITO O. NOVELOSO/
H.O. NOVELOSO SURVEYING**

By:

HIPOLITO O. NOVELOSO
Proprietor

SIGNED IN THE PRESENCE OF:

BERNARD C. CALLEDO
PSD Manager

GERRY D. LIQUIDO
ESD Manager

ACKNOWLEDGEMENT

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

BEFORE ME, a Notary Public, for and in the City of Ormoc, Philippines, on this JAN 15 2016 day of _____ 2016 personally appeared:

Name	ID Presented	ID Number	Date/Place of Issue
Manuel A. Boholano	Company ID (PPA)	PPA 02441988	Manila
Hipolito O. Noveloso	PRC	3213	03-21-1975 / Manila

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 and voluntary act and deed, as well as the free and voluntary act of the legal entity represented.

The foregoing instrument refers to a Service Contract for the **Hydrographic, Topographic & Port Zone Delineation Survey, Ports of Padre Burgos, Limasawa, San Isidro, Maripipi, Calubian & Naval (D150030)** consisting of **seven (7) pages** including the page on which this acknowledgment is written, duly signed by the parties and their witnesses on each and every page thereof.

WITNESS MY HAND AND SEAL this ____ day of _____ 2016 at ORMOC CITY, Philippines.

Doc. No. 400 ;
Page No. 82 ;
Book No. XXVII ;
Series of 2016.

NOTARY PUBLIC
ATY. ARI G. LARRAZABAL
Notary Public
Until _____, 2016
PTR No. 4472916/01-10-15, Ormoc City
IBP No. 654776/01-10-00, Leyte
Roll No. 38667
Notarial Commission No. ORM-14-12-010
MCLE No. IV-0001088/Dec. 11, 2014