

**CONTRACT FOR THE
REPAIR, REHABILITATION, AND MAINTENANCE OF THE TWO (2)
EXISTING PPA VESSEL TRAFFIC MANAGEMENT SYSTEM (VTMS)
AT THE PORTS OF MANILA AND BATANGAS**

KNOW ALL MEN BY THESE PRESENTS:

This Contract made and entered into on MAR 5 2019, 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 the PPA Building, Bonifacio Drive, South Harbor, Port Area, Manila, represented herein by its General Manager, **JAY DANIEL R. SANTIAGO**, and hereinafter referred to as the **"PPA"**;

- and -

JAPAN RADIO COMPANY, LTD. (PHILIPPINE BRANCH OFFICE) (TIN 000-776-747-000), a firm duly organized and existing under the laws of the Republic of the Philippines with principal office address at Unit 603 Liberty Center, 104 HV dela Costa St., Salcedo Village, Makati City, represented herein by its duly authorized General Manager, **KOICHI MAKINO**, as evidenced by Special Power of Attorney dated January 23, 2019 and authenticated by Domini N. Fañgon-Kitade, Vice Consul of the Republic of the Philippines on January 29, 2019 (Annex "1"), and hereinafter referred to as the **"CONTRACTOR"**;

WITNESSETH:

WHEREAS, the Philippines is a signatory to the International Convention for the Safety of Life at Sea (SOLAS) of the International Maritime Organization (IMO) that requires the country to undertake measures and provide services in improving the safety and efficiency of vessel traffic, reducing the risk of vessel traffic accidents in the harbors and approaches thereof and protecting the environment;

WHEREAS, PPA has been operating the Vessel Traffic Management System (VTMS) for the Ports of Manila and Batangas since 2005 and 2008, respectively, which were procured from, installed, and thereafter maintained by the Contractor having proprietary rights thereto;

WHEREAS, regular maintenance of the VTMS equipment, its critical components and subsystems is important to ensure its continuous operation for the safety of vessels navigating in the waterways of the two (2) ports and prevent maritime accidents;

WHEREAS, there is a need to repair, rehabilitate and maintain the VTMS to prevent downtime and system failure and to guarantee its operations for twenty-four (24) hours a day, seven (7) days a week;

WHEREAS, pursuant to Head Office Bids and Awards Committee for the Procurement of Goods and Consultancy (HO-BAC-PGCS), the procurement for the Repair, Rehabilitation, and Maintenance of the two (2) existing VTMS at the Ports of

JAPAN RADIO COMPANY, LTD. (PHILIPPINE BRANCH OFFICE)

Witness:

PEDRITO T. MALUNHAO
Department Manager

BY:

KOICHI MAKINO
General Manager

Witness:

MARK JOHNS. PALOMAR
Chairperson, HO-BAC-PGCS

PHILIPPINE PORTS AUTHORITY

BY:

JAY DANIEL R. SANTIAGO
General Manager

Manila and Batangas shall be undertaken through Direct Contracting, an alternative method of procurement, in view of the proprietary nature of the VTMS equipment;

WHEREAS, the Notice for Direct Contracting and the Request for Quotation (Annexes "2" and "3") for the Repair, Rehabilitation, and Maintenance of the two (2) existing VTMS at the Ports of Manila and Batangas were posted at PPA's website and at the bulletin board of PPA Head Office for seven (7) days from December 12, 2018 and the Request for Quotation (RFQ) was sent to the CONTRACTOR through personal service on December 17, 2018 (Annex "3-A");

WHEREAS, on December 18, 2018, the CONTRACTOR submitted its quotation for the Repair, Rehabilitation, and Maintenance of the two (2) existing VTMS at the Ports of Manila and Batangas, (Annex "4") in the amount of **THREE HUNDRED TWENTY NINE MILLION EIGHT HUNDRED TWENTY SEVEN THOUSAND SIX HUNDRED EIGHTY PESOS (P 329,827,680.00)**;

WHEREAS, HO-BAC-PGCS in its Resolution No. 001-2019 dated January 18, 2019 considered said quotation as acceptable and recommended award of the Contract to the CONTRACTOR, (Annex "5");

WHEREAS, the contract was awarded to the CONTRACTOR through a Notice of Award dated February 07, 2019 in the amount of **THREE HUNDRED TWENTY NINE MILLION EIGHT HUNDRED TWENTY SEVEN THOUSAND SIX HUNDRED EIGHTY PESOS (P 329,827,680.00)** to which the CONTRACTOR signified its Conforme thereto (Annex "6");

NOW, THEREFORE, for and in consideration of the foregoing premises, PPA and CONTRACTOR agree as follows:

ARTICLE I CONTRACT DOCUMENTS

- 1.1 The following documents shall constitute integral parts of this Contract:
- a. Request for Quotation (RFQ);
 - b. Terms of Reference (TOR) the Repair, Rehabilitation and Maintenance of the existing Vessel Traffic Management System (VTMS) at the Ports of Manila and Batangas;
 - c. Performance Bond;
 - d. Notice of Award of Contract bearing the CONTRACTOR's "Conforme" thereto;
 - e. Other Contract documents that may be required by existing law and/or PPA such as:
 1. Abstract of Quotation;
 2. Approved BAC Resolution Recommending Award of the Contract; and
 3. Certificate of Availability of Funds (CAF).

1.2 All Contract documents are and shall remain as the property of PPA.

1.3 The words and expressions in this Contract shall have the same meanings respectively assigned to them in the Contract Documents referred to above.

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MARK JON S. PALOMAR
Chairperson, HO-BAC-PGCS

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JAY DANIEL R. SANTAGO
General Manager

**ARTICLE II
SCOPE OF WORK**

2.1 The works to be performed and undertaken by the CONTRACTOR under this Contract shall be those specified in the Terms of Reference (TOR) for the Repair, Rehabilitation and Maintenance of the existing Vessel Traffic Management System (VTMS) at the Ports of Manila and Batangas, (Annex "7") its Annexes, and other pertinent Contract Documents which form parts of this Contract.

2.2 The works to be performed by the CONTRACTOR shall include, but not limited to the following:

1. Delivery of the brand-new equipment and software components as replacement for outdated parts and equipment;
2. Ensure availability of spare parts for the major equipment for 15 years;
3. Ensure that all software and hardware have been tested and inspected prior to their delivery;
4. Ensure that all software components are licensed for PPA;
5. installation of Head Office Central Monitoring and Information System (HO CMIS);
6. Installation of the delivered hardware components including the cabling and wiring in accordance to the installation plan as provided for in the respective specification of the manufacturer and existing installation standards and regulations;
7. Ensure that system components are standard equipment and have been proven as successful operation as in foreign ports;
8. Organization and delivery of the Training Program for operators and maintenance personnel particularly those who will operate the HO CMIS. The training courses shall take place in Manila; and
9. Conduct Site Acceptance Test (SAT).

**ARTICLE III
CONSIDERATION**

3.1 For and in consideration of the full, satisfactory and faithful performance by the CONTRACTOR of all its undertakings defined and provided for under this Contract and the Contract Documents, PPA agrees to pay the CONTRACTOR the total amount not exceeding **THREE HUNDRED TWENTY NINE MILLION EIGHT HUNDRED TWENTY SEVEN THOUSAND SIX HUNDRED EIGHTY PESOS (P 329,827,680.00), Philippine Currency**, inclusive of the twelve percent (12%) Value-Added-Tax (VAT), as provided in the Financial Proposal of the CONTRACTOR (Annex "8").

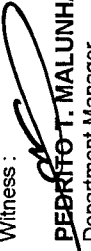
3.2 The stipulated contract price shall not be subject to upward adjustment for any cause or reason, except under extraordinary circumstances and upon prior approval of the GPPB.

3.3 Payment shall be made in accordance with the Payment Schedule (Annex "9"), and subject to existing government auditing rules and regulations.


3.4 Payment shall be made upon certification by the PPA General Manager or his duly authorized representative, that the item/phase covered by the billing of the CONTRACTOR has been duly completed and accepted by PPA.

JAPAN RADIO COMPANY, LTD. (PHILIPPINE BRANCH OFFICE)

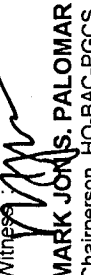
Witness :


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Department Manager

BY :



KOICHI MAKINO
General Manager

Witness :


MARK JOSE S. PALOMAR
Chairperson, HO-BAC-PGCS

PHILIPPINE PORTS AUTHORITY

BY :


JAY DANIEL R. SANTIAGO
General Manager

3.5 Any payment due and payable to the CONTRACTOR may be set off against liquidated damages and other liabilities payable to PPA by the CONTRACTOR.

ARTICLE IV PERFORMANCE SECURITY

4.1 To guarantee the faithful performance by the CONTRACTOR of its obligations under this Contract, it shall post, prior to the signing of this Contract, a Performance Security in the form of a bond, callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security, corresponding to the amount of thirty percent (30%) of the total contract price.

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

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

- a. It shall be executed in accordance with the form as prescribed in Section 4.1.
- b. It shall be at least co-terminus with the final completion of the project.

4.4 Subject to the conditions of the 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 the surety company.

4.5 Should the security bond 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 V COMPLETION TIME: LIQUIDATED DAMAGES

5.1 The CONTRACTOR agrees and obligates itself to perform and complete all works provided for in this Contract within the period stated in the Coverage and Scope of Works of the Terms of Reference (TOR). The CONTRACTOR shall complete the rehabilitation of the two (2) existing VTMS at the Ports of Manila and Batangas which includes the establishment of the PPA Head Office Central Monitoring and Information System (HO CMIS) for three hundred sixty-five (365) calendar days, the extended warranty period for three (3) years (equivalent to one thousand ninety-five (1,095) calendar days) which shall commence after the 365 calendar days for the rehabilitation/upgrading period, and the maintenance services for two (2) years (equivalent to seven hundred thirty (730) calendar days) which shall commence after the extended warranty period, the period stated includes Sundays and Holidays, the work shall commence within fifteen (15) calendar days from the Contractor's receipt of the Notice to Proceed issued by PPA. Notice to Proceed shall be issued after this Contract has been signed by the Parties hereof.

5.2 Time is of the essence of this Contract. Should the CONTRACTOR refuse or fail to satisfactorily complete the work/project within the specified contract time, plus

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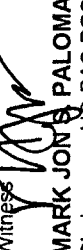
Witness :


PEDRO T. MALUNHAO
Department Manager

BY :


KOICHI MAKINO
General Manager

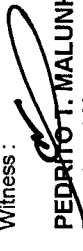
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BY :


JAY DANIEL R. SANTIAGO
General Manager

Witness :

PEDRO T. MALUNHAO
Department Manager

any time extension duly granted and is hereby in default under the contract, the CONTRACTOR shall pay PPA for liquidated damages, and not by way of penalty, an amount equal to one-tenth (1/10) of one percent (1%) of the cost or value of the delayed and/or uncompleted portion of the work/project for every day of delay until such portion is completed and accepted by PPA.

5.3 The damages herein provided are fixed, 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 the CONTRACTOR under this Contract and/or collect such liquidated damages from the retention money or other securities posted by the CONTRACTOR, whichever is convenient to PPA. In no case shall the total sum of the liquidated damages exceed ten percent (10%) of the total contract price in which event PPA shall automatically terminate this Contract and impose appropriate sanctions on the CONTRACTOR aside from the liquidated damages to be paid.

**ARTICLE VII
CONTRACTOR'S LIABILITIES AND WARRANTIES**

BY :

KOICHI MAKINO
General Manager

6.1 The employees of the CONTRACTOR are not employees of PPA; hence, PPA shall not be liable for injuries, including death sustained or caused by any of the employees of the CONTRACTOR whether or not occurring during the performance of their duties. The CONTRACTOR shall indemnify PPA for damages caused or contributed to by the failure, negligence or conduct of the CONTRACTOR and/or its employees, in connection with the performance of the works under this Contract. The CONTRACTOR shall be liable for the compliance with laws, rules and regulations; and binds itself to save PPA from any liability by reason of this Contract and its implementation.

Witness :

MARK J. S. PALOMAR
Chairperson, HO-BAC-PGCS

6.2 The CONTRACTOR guarantees and warrants the availability, quality and genuineness of the equipment parts, and accessories it will supply, deliver and install under this Contract.

6.3 The CONTRACTOR 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 PPA the right to *motu proprio* terminate this Contract without the need of judicial action.

6.4 The CONTRACTOR warrants that it has not given nor promised to give money, gift or any material favor/consideration to any official or employee of PPA to secure this Contract; that any violation of this warranty shall be sufficient ground for PPA to terminate this Contract without the need of judicial action.

BY :

JAY DANIEL R. SANTIAGO
General Manager

**ARTICLE VII
INSPECTION OF CONTRACT WORK**

7.1 Inspection of works shall be made by PPA while such contract work is in progress, to ascertain that the completed works comply in all respects, with the standards and requirements set forth in this Contract and in the Contract Documents.

**ARTICLE VIII
NON-ASSIGNMENT AND NO SUBCONTRACT**

8.1 The CONTRACTOR shall not, without the written approval of PPA, assign, transfer, pledge, sub-contract or make any other disposition of interest in this Contract. Any unapproved assignment, transfer, pledge, sub-contract or any other disposition, shall be sufficient ground for PPA to terminate this Contract *motu proprio* without the need of judicial action.

**ARTICLE IX
REMEDY AND RELIEF**

9.1 Should there be any dispute in connection with this Contract, the Parties shall, as far as practicable, settle the same amicably. If such dispute is 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, or the "Alternative Dispute Resolution Act of 2004". Provided, that the arbitration proceeding shall be without prejudice to the right of PPA to terminate this Contract.

9.2 Should PPA be constrained to resort to court action to enforce or safeguard its rights and interests under its contract, the CONTRACTOR shall be liable to PPA for attorney's fee 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 in the City of Manila.

**ARTICLE X
OTHER COVENANTS**

10.1 All taxes, duties, fees, or charges due to local government units or national government and/or its agencies/instrumentalities in connection with the completion of the works shall be paid for by the CONTRACTOR on its own account. The CONTRACTOR shall pay taxes in full and on time and that failure to do so shall entitle PPA to suspend payment. Further, during the term of this Contract, the CONTRACTOR shall regularly present 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 validated with the tax payments made thereon.

10.2 All expenses for the testing and inspection of the equipment, as well as the expenses for notarial fee of this Contract shall be paid for by the CONTRACTOR. Should PPA be compelled to advance the same, PPA is authorized to deduct the amount advanced from whatever amount due the CONTRACTOR.

10.3 In case of irreconcilable conflict between the provisions of this Contract and that of the Contract Documents, the former shall be controlling.


10.4 The CONTRACTOR shall do everything necessary to perform its obligations under this Contract according to the true intent and meaning of all Contract Documents taken together. Should the CONTRACTOR find discrepancy in the specifications, it shall immediately refer the same to PPA, whose decision shall be followed.

JAPAN RADIO COMPANY, LTD. (PHILIPPINE BRANCH OFFICE)


Witness :


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Department Manager

BY :



KOICHI MAKINO
General Manager

Witness :


MARK JONES PALOMAR
Chairperson, HO-BAC-PGCS

PHILIPPINE PORTS AUTHORITY

BY :


JAY DANIEL R. SANTIAGO
General Manager

10.5 No modification, alteration, or waiver of any of these provisions shall be binding on the Parties hereto unless evidenced by a written agreement signed by the Parties hereof.

10.6 Payment or failure of PPA to demand compliance with any of the terms and conditions of this Contract or any act of liberality on the part of PPA shall not be construed as a waiver on the part of PPA for the enforcement of this Contract, nor shall it relieve the CONTRACTOR of any of its obligations.

10.7 Notwithstanding any provision to the contrary, in case of breach thereof by the CONTRACTOR, PPA has the right to terminate this Contract *motu proprio*, without the need of judicial action by giving at least ten (10) days written Notice to that effect to the CONTRACTOR, which notice shall be final and binding on all the Parties. Within thirty (30) days after termination of this Contract, the Parties shall settle their respective accountabilities as of the date of termination.

ARTICLE XI EFFECTIVITY OF CONTRACT

11.1 This Contract shall take effect upon signing by the Parties hereof.


PHILIPPINE PORTS AUTHORITY
By:


JAY DANIEL R. SANTIAGO
General Manager

JAPAN RADIO COMPANY, LTD.
(PHILIPPINE BRANCH OFFICE)
By:


KOICHI MAKINO
General Manager

Signed in the Presence of:


MARK JON S. PALOMAR
Chairperson, HO-BAC-PGCS


PEDRITO T. MALUNHAO
Department Manager

ACKNOWLEDGMENT

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

BEFORE ME, a Notary Public for and in the City of Manila, Philippines, on
MAR 15 2019, personally appeared the following:

| <u>Name</u> | <u>Identification Card</u> | <u>Date /Place Issued</u> |
|------------------------|----------------------------|-------------------------------------|
| JAY DANIEL R. SANTIAGO | PPA ID No. 00102016 | Manila |
| KOICHI MAKINO | PASSPORT NO. TZ1330533 | JAN. 2019, JAPAN EMBASSY, PHILS. |

known to me as the same persons who executed the foregoing instrument and acknowledged to me that the same is their voluntary act, and that they are the respective representatives of the entities represented.

The foregoing instrument refers to a Contract for the Repair, Rehabilitation, and Maintenance of two (2) existing PPA Vessel Traffic Management System (VTMS) at the Ports of Manila and Batangas consisting of eight (8) pages, including this page where this Acknowledgment is written, signed by the Parties and their instrumental witnesses on all pages.

WITNESS MY HAND AND SEAL.

Doc. No. 418 :
Page No. 4 :
Book No. 1 :
Series of 2019.

~~ATTY. AGUSTIN B. CABREDO~~
NOTARY PUBLIC
Until December 31, 2019
Notarial Commission No. 2019-109
Rm. 409, First United Bldg., Co.,
Escoto, Manila
Roll No. 20047
PTR No. 8033011 / 1-8-19 / Manila
IBP Lifetime Member 050970
MCLE No. V0003133-07-26-14

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