

**CONTRACT FOR THE PROCUREMENT OF TEMPORARY ADMINISTRATIVE
AND TECHNICAL SUPPORT PERSONNEL OF THE PHILIPPINE PORTS
AUTHORITY PORT MANAGEMENT OFFICE OF PALAWAN
(PPA, PMO PALAWAN)**

BE IT KNOWN TO ALL:

This Contract made and entered into on 01 July 2018, in the City of Puerto Princesa, Palawan, Philippines by and between:

PHILIPPINE PORTS AUTHORITY, a government instrumentality created under Presidential Decree No. 857, as amended, with office at Port Area, Barangay Bagong Pag-asa, Puerto Princesa City, Palawan, represented herein by its Port Manager, **ELVIS R. MEDALLA**, and hereinafter referred to as "**PPA**";

-and-

DBP SERVICE CORPORATION, a private corporation duly organized and existing in accordance with Philippine laws, with principal office address at 2nd Floor, Executive Building Center, Sen. Gil Puyat Avenue cor. Makati Avenue, Makati City, represented herein by its First Senior Vice President, **RAUL LUIS D. MANALIGOD**, per Secretary's Certificate, dated May 31, 2018 (Annex "A"), and hereinafter referred to as the "**CONTRACTOR**".

WITNESSETH:

WHEREAS, PPA is desirous to enter into this contract for the PMO-Palawan and its Terminal Management Offices covering the period - **July 1, 2018 to December 31, 2018**;

WHEREAS, in accordance with Republic Act No. 9184 and its 2016 Revised Implementing Rules and Regulations, the PMO-Palawan Bids and Awards Committee for the Procurement of Goods and Consultancy Services and for Engineering Projects (PMO-Palawan BAC) posted on PPA and PhilGEPS websites as well as on its bulletin board an Invitation to Bid for the Procurement of Temporary Administrative and Technical Support Personnel of the Philippine Ports Authority, Port Management Office of Palawan;

WHEREAS, after the opening of bids on June 6, 2018, and the conduct of bid evaluation and the required post-qualification, the bid submitted by the CONTRACTOR was found as the Single Calculated and Responsive Bid in the amount of **FOUR MILLION NINE HUNDRED EIGHTY THREE THOUSAND ONE HUNDRED NINETY TWO & 48/100 (Php 4,983,192.48)**, Philippine Currency, per PMO-Palawan BAC Resolution No. 03A-2018 dated October 08, 2018 amending PMO-Palawan BAC Resolution No. 03-2018 dated June 11, 2018;

WHEREAS, in the amended Notice of Award dated October 8, 2018, the contract was awarded to the CONTRACTOR in the amount of **FOUR MILLION NINE HUNDRED EIGHTY THREE THOUSAND ONE HUNDRED NINETY TWO & 48/100 (Php 4,983,192.48)**, which the CONTRACTOR duly accepted as shown by its "Conforme";

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

ARTICLE 1
CONTRACT DOCUMENTS

1.01 The following documents shall constitute integral parts of this Contract:

- a. Bidding Documents issued by PPA

b. Winning Bidder's Bid, including the eligibility requirements, technical and financial proposals and all other documents/statements submitted;

c. Performance Security

d. Notice of Award of Contract bearing the Contractor's "Conforme" thereto; and

e. Other pertinent documents as may be required by existing laws and/or of PPA such as:
1. Abstract of Bids;

2. Approved BAC Resolution Recommending Award of the Contract; and

3. Certificate of Availability of Funds (CAF)

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
PERSONNEL REQUIREMENTS

2.01 The **CONTRACTOR** shall provide the personnel requirements as follows and as specified in the Terms of Reference (Annex "B").

Offices	Positions	No.
Office of the Port Manager	Legal Researcher	1
	Data Encoder	1
	Utility Worker A	2
Finance Division	Corporate Accounts Analyst	1
	Data Encoder	2
Admin. Division	Sr. Management Info. System Analyst	1
	Mechanic B	2
	Data Encoder	3
	Driver Mechanic B	2
	Electrician II	1
	Plumber B	1
	Utility Worker A	1
Port Services Division	Data Encoder	2
	Management Specialist 1	1
Baseport	Cash Clerk	4
Terminal Management Offices	Cash Clerk	4
	Mechanic B	4
Total No.		33

2.02 PPA reserves the right to increase or decrease the number of personnel as the need arises at any time, provided that the increase in the number of personnel shall not exceed the Approved Budget for the Contract (ABC). Any increase in the number of personnel shall be effective upon execution of a supplemental agreement for the purpose.

2.03 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 period of their assignment shall be based on the actual requirements of PPA.

2.04 The **CONTRACTOR** shall bond the cash clerks and/or those outsourced personnel who may be assigned to perform collection function so as to protect the assets of PPA.

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** the amount not exceeding in the amount of **FOUR MILLION NINE HUNDRED EIGHTY THREE THOUSAND ONE HUNDRED NINETY TWO PESOS & 48/100 (P 4,983,192.48)** and as specifically provided in the Financial Proposal (Annex "C"). The rates quoted are based on eight (8) hours work per day or 48 hours per week, 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. The **CONTRACTOR's** personnel assigned to PPA shall not be allowed to travel except for those performing technical and administrative functions provided however the necessary prior written approval and/or Travel Authority are duly issued by PMO-Palawan pursuant to the existing PPA policies. The **CONTRACTOR** shall advance the travelling expenses that will be incurred by its personnel during the approved official travel subject to reimbursement by PMO-Palawan upon submission of the complete supporting travel documents.
- d. Any payment due and payable to the **CONTRACTOR** may be set off against liquidated damages payable to **PPA** by the **CONTRACTOR** under this Contract.
- e. 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 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 and **PPA** policies. For this purpose, the **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 at least once every two weeks or twice a month at intervals not exceeding sixteen (16) days.

3.02 Duration – This Contract shall be for a period of six (6) months or from **July 1, 2018 until December 31, 2018.**

3.03 PERFORMANCE SECURITY – To guarantee the faithful performance of the **CONTRACTOR**, it shall post prior to the signing of this Contract a performance security in accordance with the following schedule:

- (a) Cash, or cashier's/manager's check, Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial bank; five percent (5%) of the total contract price;
- (b) 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.
- (c) 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.

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 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, and this includes the conduct of regular inspection, monitoring and supervision of its personnel daily, by a working supervisor from their Main Office, not from among the pool of personnel, to ensure performance efficiency.

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.

Before actual assignment of its personnel to **PPA**, the **CONTRACTOR** shall provide them an orientation on PPA-Human Resource Management policies, and other relevant PPA rules and regulations.

3.05 HOURS OF WORK – The personnel assigned to PPA shall work for **eight (8) hours a day from Monday to Saturday or per shift schedule for those at frontline service to complete the 48-hour per week requirement.** 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 is limited to forty (40) hours only per month, subject to prior PPA approval, and shall be charged to the savings generated from this procurement, and shall be 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 TERMINATION OF CONTRACT – **PPA** has the right to terminate this contract without the need of judicial action on reasonable grounds, such as, but not limited to 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 of this Contract, the Parties shall settle their respective accountabilities as of the date of termination.

3.09 WARRANTIES – The **CONTRACTOR** hereby warrants compliance with the requirements of 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, including the grant of retirement benefits as mandated by existing labor laws to its personnel.

The **CONTRACTOR**, further warrants the capabilities and technical competence of its support personnel to be assigned in **PPA** based on individual work and experience qualifications.

To ensure thereof, the **CONTRACTOR** shall evaluate the performance of its personnel, semi-annually, using the prescribed instrument to determine if they still meet the required standards for performance, including attendance, punctuality and attitude towards work. The **CONTRACTOR**, at his own expense, shall also conduct drug testing among its employees at least once during the term of the Contract.

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 – 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 **PPA**, 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 for any personal injury or damage including death sustained or caused by any of the personnel of the **CONTRACTOR** during the lawful performance of their duties.

ARTICLE IV MISCELLANEOUS PROVISIONS

4.01 Failure of **PPA** to demand strict compliance with any of the terms of this Contract or any act of liberality on the part of the **PPA**, shall not be 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 In case of conflict between the provisions of the Contract and that of the contract documents, 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 which may be due to the local government units or national government 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, 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 duly validated with the tax payments made thereon.

4.06 Should there be any dispute or controversy in connection with this Contract, the Parties as far as practicable, settle amicably. In the event that such dispute 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". Provided, that the arbitration proceeding shall be without prejudice to the right of **PPA** to 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 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 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**'s General 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; and has not yet reached the age of compulsory retirement age of sixty-five (65).

4.09 The **CONTRACTOR** hereby represents that all documents it submitted which form integral parts thereof 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 right to motu proprio terminate the Contract in accordance with Section 3.08.

4.10 Pursuant to Section 47 of the 2016 Revised IRR of R.A. 9184, the **CONTRACTOR** further represents 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**'s General Manager, Port Manager of **PPA-PMO-Palawan**, the Chairperson and Members of the **PMO-Palawan Bids and Awards Committee** for the Procurement of Goods and Consultancy Services and for Engineering Projects, including the Technical Working Group and Secretariat. In case of violation, **PPA** has the right to cancel or terminate this contract without the need of judicial action pursuant to Section 3.08.

ARTICLE V
EFFECTIVITY

5.01 This Contract shall be effective upon signing of both parties.

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

PHILIPPINE PORTS AUTHORITY
By:


ELVIS R. MEDALLA
Port Manager, PMO-Palawan

DBP SERVICE CORPORATION
By:


RAUL LUIS D. MANALIGOD
First Senior Vice President

Signed in the presence of:


FRASY M. DE GUZMAN
Manager, Admin. Division


GERRY A.C. ARELLANO
Vice President, Marketing Department

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
CITY OF PUERTO PRINCESA) S.S.
MAKATI CITY


BEFORE ME, a Notary Public, for and in the City of Puerto Princesa, Philippines, on
26 NOV 2018 personally appeared:

Name	Identification Document Presented	No./Place/Date Issued
ELVIS R. MEDALLA in his official capacity as the Port Manager of PMO Palawan of the Philippine Ports Authority	Company ID	0412-1988/Manila/12-14-2016
RAUL LUIS D. MANALIGOD in his official capacity as the First Senior Vice President of DBP Service Corporation	SSS ID	No. 33 - 7092339-4

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 representatives of the entities herein represented. The foregoing instrument refers to a Contract for the Procurement of Temporary Administrative and Technical Support Personnel of the Philippine Ports Authority, Port Management Office of Palawan consisting of eight (8) pages including the page on which this acknowledgement is written, signed by the parties and their witnesses all pages.

WITNESS MY HAND AND SEAL.

Doc No. 345 ;
Page No. 70 ;
Book No. X ;
Series of 2018.


EDGAR F. CHAVEZ
NOTARY PUBLIC
Notarial Commission No. M-362
2nd/F Exec. Bldg. Ctr., Sen. Gil J. Puyat Ave. cor
Makati Ave., Makati City
IBP No. 1051076 / Nov. 9, 2015 / Makati City Chap.
PTR No. MKT 5912687 / Jan. 5, 2017 / Makati City
Attorney's Roll No. 13038
MCLE Compliance No. V - 0012754