



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF CUSTOMS

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January 04, 2018

CUSTOMS MEMORANDUM CIRCULAR
NO. 06-2018


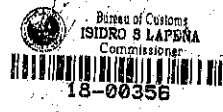
To: All Customs Officials and Employees Concerned

Subject: MOA BETWEEN BOC AND PROCUREMENT SERVICE-DBM

Attached is the Memorandum of Agreement entered into by this Bureau and the Procurement Service of the Department of Budget and Management regarding the conduct of procurement activities and contract implementation of the First Tranch of the BOC's Fuel Marking Program.

For your information and guidance.

For record purposes, please confirm the dissemination of this circular throughout your offices within fifteen (15) days from receipt hereof.



ISIDRO S LAPENA, PhD, CSEE
Commissioner
JAN 0 8 2018

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MEMORANDUM OF AGREEMENT

SO THAT THE PUBLIC MAY KNOW:

This **MEMORANDUM OF AGREEMENT** is made, entered into and executed this 28 of December 2017 in the City of Manila, Philippines, by and between:

The **BUREAU OF CUSTOMS**, a national government agency existing under the laws of the Philippines, with office address at G/F OCOM Bldg., BOC Port Area, represented by its **Commissioner, Isidro S. Lapeña**, hereinafter referred to as "**BOC**";

-and-

The **PROCUREMENT SERVICE**, an agency under the administrative supervision of the Department of Budget and Management, with office address at PS Complex, RR Road, Cristobal Street, Paco, Manila, represented by its **Executive Director, Bingle B. Gutierrez**, hereinafter referred to as "**PS**".

The **BOC** and the **PS** are collectively called "Parties" and individually called a "Party" to this Agreement.

ANTECEDENTS

The **BOC** intends to engage a firm who will assist the Government in the establishment and implementation of its Fuel Marking Program for a period of five (5) years, hereinafter referred to as the "Project".

The first tranche of the Project, which has a budget of Two Billion Pesos (P2,000,000,000), will be funded through the 2017 General Appropriations Act. The cost of the succeeding tranches, estimated between P0.07 and P0.09/liter, will be passed on to importers and oil refineries.

The **BOC** decides to tap the services of the **PS** to undertake all of the **BOC's** procurement activities for the Project and the implementation of the first tranche of the Project.

Republic Act No. 9184 (RA 9184), otherwise known as the "Government Procurement Reform Act," which became effective on 26 January 2003, including its associated revised Implementing Rules and Regulations (IRR), provide for the rules and procedures to be followed in the conduct of government procurement activities and contract implementation.

RA 9184, while authorizing procuring entities to conduct its own procurement activities, provides for certain instances where assistance from other government agencies may be sought. Section 7.3.3 of the 2016 IRR of RA 9184 provides:

7.3.3 In order to hasten project implementation, procuring Entities which may not have the proficiency or capability to

Isidro S. Lapeña

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MEMORANDUM OF AGREEMENT between the BOC and the PS

undertake a particular procurement, as determined by the HoPE concerned, may outsource the procurement tasks by:

- a) Requesting other GoP agencies to undertake such procurement for them, through the execution of a memorandum of agreement containing specific arrangements, stipulations and covenants, in accordance with government budgeting, accounting and auditing rules;

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The **PS** agrees to undertake the procurement activities of the Project on behalf of the **BOC** and the implementation of the first tranche of the Project, subject to the terms and conditions provided hereunder.

Accordingly, for and in consideration of the foregoing premises and the mutual obligations, stipulations, and agreements in this Agreement, the **BOC** and the **PS** agree as follows:

**ARTICLE 1
SCOPE AND APPLICABILITY OF THIS AGREEMENT**

- 1.1. This Agreement shall govern the procurement activities and the contract implementation to be undertaken by the **PS** for the **BOC** pursuant to Section 7.3.3(a) of the 2016 IRR of RA 9184.
- 1.2. RA 9184 and its 2016 IRR shall govern the procurement activities under the Project. The relevant budgeting, accounting, and auditing rules and regulations, and other pertinent administrative issuances shall be applied in the execution of the Project under this Agreement.
- 1.3. This Agreement shall be effective at the time of its signing. The procurement activities will commence upon the **BOC's** submission of the following documentary requirements and funding requirements as mentioned in Article 4 of this Agreement:
 - 1.3.1. The **BOC** Annual Procurement Plan (APP) and approved Agency Procurement Request (APR) for the Project to be bid out;
 - 1.3.2. Technical Specifications, Terms of Reference (TOR), or Project Requirement for the Project with approved budget for the contract duly certified correct by the Head of the Procuring Entity (HOPE), as defined in this Agreement; and
 - 1.3.3. Other documentary requirements, as may be necessary, subject to additional conditions provided for under Article 2 of this Agreement.
- 1.4. The **PS** reserves the right to make changes to the Bidding Documents, which includes the Technical Specifications, TOR, or other Projects Requirements, as it may deem necessary to promote competition and to ensure compliance with RA 9184 and its IRR. Any change shall require the written consent of the **BOC**.

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ARTICLE 2
APPROVED BUDGET FOR THE CONTRACT (ABC) AND
PROJECT COST ESTIMATE (PCE)

- 2.1. The PCE is the amount reflected in the APP and/or other relevant documents. The ABC, which shall not exceed the PCE, shall be the amount to be reflected in the bidding documents for purposes of procurement activities for the Project. The contract award shall not exceed the ABC consistent with the provisions of the 2016 IRR of RA 9184.
- 2.2. Based on its price monitoring, the PS shall determine the ABC in consultation with the BOC.
- 2.3. The ABC shall be net of the **PS** Service Fee as provided under Article 3 hereof. The Service Fee shall be taken from the PCE.

ARTICLE 3
PS SERVICE FEE

- 3.1. A two percent (2%) Service Fee to be computed on the basis of the contract award price for the first tranche shall be imposed for services to be rendered by the **PS** and its BAC. The Service Fee shall be taken from the PCE and shall accrue to the **PS** after contract signing.

Immediately after contract signing, the **PS** may bill the **BOC** for the payment of Service Fee.

- 3.2. In case a Project is cancelled by the **BOC** pursuant to Article 9 of this Agreement and after the procurement process has already commenced, all attendant costs, *e.g.*, cost of publication, etc., shall be for the account of the **BOC**. In this case, the **PS** shall bill the **BOC** for the expenses incurred which shall be deductible from the PCE.

ARTICLE 4
FUNDING AND COMMENCEMENT OF PROCUREMENT ACTIVITIES

- 4.1. The BOC shall obligate the amount of Two Billion Pesos (Php 2,000,000,000), hereinafter referred to as the "Project Fund", in favor of the PS. The Parties understand that for purposes of this Agreement, funding obligation means to set aside the fund for future payment to the contractor or consultant. Actual transfer of the Project Fund to the PS by the BOC shall be made in accordance with Article 4.3 of this Agreement.
- 4.2. For the duration of the procurement activities up to the consummation of the contract, the **BOC** shall be solely responsible for the maintenance and availability of fund or appropriations to support the Project towards its full completion.
- 4.3. The **PS** shall pay the contractor or consultant in accord with the contract. The **BOC**, upon notice by the **PS**, shall transfer to the latter the amount billed by

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the contractor or consultant in accordance with the provisions of the resulting contract.

**ARTICLE 5
THE PS AND ITS BIDS AND AWARDS COMMITTEE (BAC)**

5.1. The **PS**, through its BAC, shall facilitate and conduct the procurement activities, *i.e.*, from procurement conference, advertisement, selection process, evaluation, post-qualification and recommendation of award of contract to the Head of the Procuring Entity (HOPE). It shall likewise implement and monitor the contract until accomplishment of Project milestones for the first tranche and corresponding payment to the contractor or consultant.

The **PS** and its BAC shall prepare the necessary documents related to these procurement activities and contract implementation.

5.2. The **PS** BAC shall be composed of five (5) members: Chairperson, Vice-Chairperson, a regular member, a technical member from the **PS**, and one (1) provisional member/end-user to be identified by the **BOC**.

5.3. The BAC shall create a Joint **PS-BOC** Technical Working Group (Joint TWG) for the Project. The Joint TWG shall be composed of at least three (3) technical personnel: one (1) representative from the **PS** as Joint TWG Head, and at least two (2) technical representatives from the **BOC**.

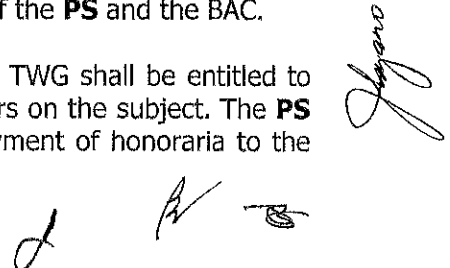
The **PS** and the **BOC**, however, may send additional technical representative/s during bid evaluation and post-qualification. For purposes of preparing the necessary reports, recommendations, and honoraria, if any, all officially designated representatives to the Joint TWG shall be accountable, responsible, and entitled to honoraria.

5.4. The **PS** and its BAC shall ensure that the evaluation and post-qualification of bids shall be limited to those documents and papers specifically provided in the bid documents and Terms of Reference (TOR) submitted by the **BOC**. No other parameters shall be considered unless it is contained in the aforementioned documents.

5.5. The **PS** shall be liable for all costs that may be incurred during the conduct of bidding, *e.g.*, publication fees including costs that may be incurred during the conduct of post-qualification, except in case a Project is cancelled as provided for under Article 3.2 of this Agreement.

5.6. It shall be the primary responsibility of the **PS** and its BAC to ensure that the rules and regulations prescribed under RA 9184 and its IRR are strictly observed and followed in the conduct of procurement activities. All issues relative to the rules and procedure, including interpretations of the procurement rules, shall be under the sole authority of the **PS** and the BAC.

5.7. The designated provisional members of the BAC and TWG shall be entitled to honoraria, as authorized under pertinent DBM Circulars on the subject. The **PS** shall be responsible, on its own account, for the payment of honoraria to the members of the BAC and the Joint TWG.



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- 5.8. It is understood that the Procuring Entity as defined under Section 5(bb) of the revised IRR of RA 9184 is the **PS**, and the HOPE as defined under Section 5(t) of the same IRR is the **PS** Head or her authorized representative.

**ARTICLE 6
THE BOC**

- 6.1. After the signing of this Agreement but before the pre-procurement conference, the **BOC** shall provide the **PS** and certify as to the breakdown of its cost estimate for the Project.
- 6.2. The **BOC** shall be responsible for the preparation of the Technical Specifications, TOR, Projects Requirements, and any other document as may be deemed necessary for the conduct of the procurement activities in accordance with Article 1.3 of this Agreement.
- 6.3. Subject to the provisions under item Article 5.2 of this Agreement, the **BOC's** representative or its designated alternate is entitled to one (1) voting seat in the BAC and serves as a provisional member thereof. The designated **BOC** provisional BAC member shall participate in all deliberations and meetings of the BAC.
- 6.4. The **BOC** shall designate two (2) technical personnel to serve as members of the Joint TWG as provided in Article 5.3 of this Agreement.
- 6.5. The **BOC's** provisional BAC member and Joint TWG members shall sign all the required documents/reports.
- 6.6. The **BOC** shall strictly adhere to the Technical Specifications, TOR, Feasibility Study, Detailed Engineering and Design, Delivery Schedule, and such other related procurement documents forming part of the Bidding Documents alongside award of contract to the winning bidder.
- 6.7. The decisions and commitments relative to the Project made by the **BOC's** provisional BAC member and designated TWG members shall bind the **BOC**.

**ARTICLE 7
CONTRACT IMPLEMENTATION**

- 7.1. Contract implementation until accomplishment of the Project milestones for the first tranche shall be the primary responsibility of the **PS**. The **PS** may call upon the **BOC** to assist in the resolution of issues during contract implementation and the **BOC** shall provide such assistance.
- 7.2. In case of default on the part of the contractor or consultant, or failure of bidding, the **PS** guarantees to immediately commence the re-bidding or procurement process at no additional cost to the **BOC**.
- 7.3. **PS** shall issue the Notice of Award, the Contract / Purchase Order, the Notice to Proceed, and such other relative documents on behalf of BOC.

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- 7.4. The **BOC**, as end-user, shall review the deliverables and conduct the necessary tests, inspections and validation of the goods delivered and services performed by the contractor or consultant. Review and acceptance of the deliverables, goods or services shall be in accordance with the contract. The acceptance by the BOC shall be submitted to the **PS** who shall issue the Inspection Certification and Acceptance Report or Rejection Notice, whichever is applicable.
- 7.5. **PS** shall then bill the **BOC** for the actual goods received and/or consultancy services rendered in accordance with the billing statement issued by the contractor or consultant. **BOC** shall, within two (2) weeks from receipt of the billing statement from **PS**, settle the same.

**ARTICLE 8
PROCEEDS OF FINES AND PENALTIES**


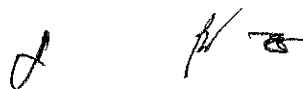
- 8.1. The proceeds of the forfeiture of the bid security, if any, and proceeds of the forfeiture of the performance bond, warranty bond, and liquidated damages for delayed deliveries, if any, shall be for the account of the **PS**.

**ARTICLE 9
TERMINATION/RESCISSION**

- 9.1. The Parties may rescind this Agreement, in whole or in part, under any of the following causes:
 - 9.1.1. If the implementation of the Project is economically, financially, or technically impractical, as determined and approved by the **PS** in consultation with BOC;
 - 9.1.2. A Party breaches or violates any of the provisions of the Agreement; and
 - 9.1.3. A Party causes unreasonable delay or official inaction in the implementation of the Project that will irretrievably prejudice the **BOC**. For this purpose, unreasonable delay shall mean a length of thirty (30) calendar days from the commencement of the procurement activities without justifiable reasons.
- 9.2. The right to terminate or rescind this Agreement by a Party not at fault may be made by serving a Notice of Termination at least thirty (30) days before the date of the intended termination.

**ARTICLE 10
GOOD FAITH**

The Parties undertake to act in good faith with respect to each other's rights under this Agreement and to adopt all reasonable measures to ensure the realization of the objectives of this Agreement.

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ARTICLE 11 DISPUTE RESOLUTION

All disputes, controversies or claims arising out of or relating to this Agreement shall first be mutually resolved. Unresolved disputes or issues shall be resolved before the Office of the Solicitor General pursuant to the Rules on Alternative Dispute Resolution for Disputes between National Government Agencies.

ARTICLE 12 GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Republic of the Philippines. Any action brought to enforce or interpret this Agreement shall be brought in the courts of the City of Manila to the exclusion of all other courts.

ARTICLE 13 ENTIRE AGREEMENT AND INTERPRETATION

This Agreement contains the entire agreement of the Parties with respect to its subject matter, and there are no other promises or conditions in any other agreement/s, whether oral or written. This Agreement supersedes any prior written or oral agreements between the Parties with respect to its subject matter.

The titles to the paragraphs of this Agreement are solely for the convenience of the Parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

ARTICLE 14 AMENDMENT

This Agreement may be modified or amended. Any amendment or modification must be in writing and signed by both Parties.

ARTICLE 15 SEVERABILITY

If any provision of this Agreement shall be declared invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but by limiting such provision it would become valid or enforceable, such provision shall be deemed to be written, construed, and enforced as so limited.

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**ARTICLE 16
NON-WAIVER OF RIGHT**

The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

IN WITNESS WHEREOF, the Parties to this Agreement have hereto set their hands on the date and place stated above.

Bureau of Customs

Procurement Service


By:

By:


ISIDRO S. LAPENA
Commissioner


BINGLE B. GUTIERREZ
Executive Director

SIGNED IN THE PRESENCE OF:


EDWARD JAMES A. DY BUCO
Deputy Commissioner, Assessment and
Operations Coordinating Group, BOC


JULIETA M. LOZANO
OIC- Director, Procurement Group II, PS

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ACKNOWLEDGMENT

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

BEFORE ME, a Notary Public for and in the City of Manila, this 28 day of December 2017 appeared the following persons presenting to me their respective identifications, to wit:

Table with 3 columns: Name, Competent Evidence of Identity, Date & Place of Issue. Rows include ISIDRO S. LAPEÑA and BINGLE B. GUTIERREZ with their respective driver's license details.

known to me and to me known to be the same persons who executed and voluntarily signed the foregoing Memorandum of Agreement, which they acknowledged before me as their own free and voluntary act and deed, and with full authority to sign in that capacity.

This instrument refers to the Memorandum of Agreement and consisting of nine (9) pages including this page where the Acknowledgment is written, duly signed by the parties and their instrumental witnesses thereof.

WITNESS MY HAND AND SEAL on the date and place above-written.

Doc. 77;
Page 21;
Book 1;
Series of 2017.

NOTARY PUBLIC
DATE: DECEMBER 28, 2017
PTR NO. 50626-10-0-2017
IBP NO. 00690 ROLI NO. 400