



Republic of the Philippines
Department of Finance
Bureau of Customs
1099 Manila

BIDS AND AWARDS COMMITTEE RESOLUTION NO. 2015 – 61

WHEREAS, the Bureau of Customs (BOC), a government agency under the Department of Finance, pursuant to its desire to protect its information technology infrastructure and assets, sought to implement a **Cyber Security Project** (Project) with a total Approved Budget for the Contract (ABC) of Sixty Five Million Eight Hundred Eighty Eight One Hundred Twenty Three (₱65,888,123.00);

WHEREAS, the BOC through the End-User, Management Information Systems and Technology Group (MISTG) has determined that the DBP Data Center, Inc. (DBP DCI) offers a package that is the most favorable, advantageous, cost-efficient and beneficial for its intended Project;

WHEREAS, the DBP DCI is a Government Owned and Controlled Corporation (GOCC), incorporated under Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines and a wholly-owned subsidiary of the Development Bank of the Philippines, provides information technology services to government and/ or private entities;

WHEREAS, the DBP DCI has the mandate to deliver the goods and services required to be procured by the BOC;

WHEREAS, the DBP DCI owns or has access to the necessary tools and equipment required for the Project;

WHEREAS, the IMPLEMENTING GUIDELINES ON AGENCY-TO-AGENCY AGREEMENTS Negotiated Procurement under Section 53.5 of the Revised Implementing Rules and Regulations has been amended per GPPB Resolution 12-2013 (APPROVING THE AMENDMENTS OF SECTIONS 23.6, 24.6, AND 53.5 OF THE REVISED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9184, AND ITS ASSOCIATED PROVISIONS IN THE IMPLEMENTING GUIDELINES ON AGENCY-TO-AGENCY AGREEMENTS) as follows:

"1. **AMEND** Sections 23.6 and 24.6 of the IRR of RA 9184 to use the term GOCCs instead of GCEs, delete the reference to GOP in item (c) thereof, and replace the term "dependent" with "attached", to wit: *GOCCs may be eligible to participate in Competitive Bidding only if they can establish that they (a) are legally and financially autonomous, (b) operate under commercial law, and (c) are not attached agencies of the procuring entity.*

2. **AMEND** Section 53.5 of the IRR of RA 9184 and DELETE the second paragraph thereof to read as follows: *Procurement of infrastructure projects, consulting services, and goods from another agency of the GOP, such as the PS-DBM, which is tasked with a centralized procurement of Common-Use Supplies for the GOP in accordance with Letters of Instruction No. 755 and Executive Order No. 359, series of 1989.*

3. **AMEND** Section 4(c) of the Implementing Guidelines on Agency-to-Agency Agreements (Guidelines) and **DELETE the second paragraph that excludes non-chartered GOCCs as Servicing Agencies**, to wit: *Servicing Agency shall refer to the agency which delivers the goods, undertakes the infrastructure project, or provide consulting services.* (Italics and emphasis supplied)

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WHEREAS, the Project is not among those excluded by the present guidelines;

WHEREAS, pursuant to afore-quoted Resolution No. 12-2013, the BOC as the PROCURING AGENCY may enter into an Agency to Agency Agreement with the DBP DCI as the SERVICING AGENCY;

WHEREAS, the BOC has determined that the total amount of goods and services to be procured under the Project does not exceed twenty-five percent (25%) of its total procurement budget for goods and services as reflected in its approved Annual Procurement Plan (APP);

WHEREAS, the BOC, through the MISTG (End-User), after the conduct of a Cost-Benefit Analysis, has determined that entering into an Agency to Agency Agreement with the DBP DCI, in accordance with Section 53.5 of the Revised IRR of RA 9184, as amended, is more efficient and economical for the government than an open and competitive public bidding given the highly exceptional demands of the Project;

WHEREAS, the Cyber Security Project's purpose is to protect the BOC network, system, files, information and data from hacking and other forms of cyber-invasion and internet intrusion such that the secrecy and confidentiality of the specifications of the goods and services must be protected zealously lest the purpose be defeated;

WHEREAS, to protect the Project's integrity and to achieve its purpose, there is a need for confidentiality to maintain the highest level of security which can be compromised once the project specifications is published openly in an open and competitive public bidding;

WHEREAS, engaging with the DBP DCI for the Project adds a layer of security not otherwise available in an open and competitive public bidding;

NOW, THEREFORE, for and in consideration of the foregoing premises, the Bids and Awards Committee **RESOLVES**, as it is hereby **RESOLVED**, to recommend to the Commissioner of the Bureau of Customs that the Cyber Security Project be implemented thru Agency to Agency Agreement in accordance with Section 53.5 of the Revised IRR of RA 9184, as amended.

ADOPTED this 1st day of December 2015 at the BAC Conference Room, BOC, Port Area, Manila, Philippines.



JAIME TABORDA
MISTG – End User



ATTY. MARY GRACE T. MALABED
Legal Service – Member

RAFAEL CRISOL, JR.
FMO - Member




JONATHAN SORIANO
MISTG – End User



ATTY. ERWIN MENDOZA
Vice – Chairperson



VLADIMIR DENNIS REYES
MISTG – Member (End-User)



DIMPNA O. LEJOS
Officer-In-Charge, IAG
BOC-BAC, Chairperson

APPROVED
DISAPPROVED

ALBERTO D. LINA
Commissioner

Date: 10/15/15



MEMORANDUM OF AGREEMENT

This Memorandum of Agreement, entered into on this 11th day of December 2015 between:

The **BUREAU OF CUSTOMS**, a government revenue generating agency existing under the Law of the Philippines with principal office at South Harbor, Gate 3, Port Area, City of Manila, duly represented herein by its **Commissioner Alberto D. Lina**, hereinafter referred to as "**BOC**";

- and -

The **DBP DATA CENTER, INC.**, a wholly-owned subsidiary of the Development Bank of the Philippines and a government owned and controlled corporation (GOCC) registered with the Securities and Exchange Commission, with principal office at the 4th Floor, DBP Building, Sen. Gil Puyat Avenue, Makati City, Philippines, represented by its President, **Mr. Nilo S. Cruz**, hereinafter referred to as "**DCI**";

WITNESSETH:

WHEREAS, BOC, in its desire to able to address current threat landscape in cyber security, protect BoC's IT infrastructure and assets, and to elevate the security posture of BOC is initiating a CYBER SECURITY PROJECT ("Project");

WHEREAS, DCI is a GOCC, incorporated under Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines and a wholly-owned subsidiary of the Development Bank of the Philippines and provides information technology services to government and/ or private entities;

WHEREAS, BOC has determined that DCI offers a Cyber Security package that is the most favorable, advantageous, cost-efficient and beneficial for its intended project;

WHEREAS, on 10 May 2013, the Government Procurement and Policy Board ("GPPB"), through its Resolution No. 12-2013 (the "Resolution"), approved, among others, the amendment to Section 53.5 of the Revised Implementing Rules and Regulations ("IRR-A") of Republic Act No. 9184, otherwise known as the "Government Procurement Reform Act" ("GPRA");

WHEREAS, by virtue of the Resolution, BOC as the PROCURING AGENCY may now enter into an Agency-to-Agency Agreement with DCI as the SERVICING AGENCY, provided that the conditions and requirements in the *Implementing Guidelines On Agency-To-Agency Agreements (Negotiated Procurement under Section 53 (e) of IRR-A) ("Guidelines") of GPPB Resolution No 18-2007, dated 31 May 2007 are complied with;*

WHEREAS, BOC after the conduct of a Cost-Benefit Analysis and based on the assessment and upon the recommendation of its Bids and Awards Committee ("BAC") in its Resolution **2015-61** attached as **Annex "A"**, has determined that entering into an Agency-to-Agency Agreement with DCI, in accordance with Section 53(e) of the GPRA and Section 53.5 of its IRR, is more efficient and economical for the government than an open and competitive public bidding given the highly exceptional demands of the Project;

WHEREAS, the Head of BOC has approved the recommendation of the BAC to resort to said Agency-to-Agency Agreement.

WHEREAS, DCI has issued a certificate stating that it complies with all the conditions prescribed in Sections 5(a) of the Guidelines, attached as **Annex "B"**;

NOW, in view of the foregoing premises, the above-named parties hereby agree on the following terms and conditions:

ARTICLE 1 SCOPE OF WORK (SOW)

1.1 A detailed SOW and bill of quantities (BOQ) is attached in **Annex "C"**.

ARTICLE 2 PAYMENT AND FEE STRUCTURE

2.1 The total Project Price is Sixty Four Million Nine Hundred Ninety Nine Thousand Eight Hundred Seventy Two (Php 64,999,872.00), inclusive of Value Added Tax (VAT).

ARTICLE 3 BILLING AND PAYMENT

3.1 DCI shall bill BOC upon final completion of the delivery and installation of the equipment. Moreover, BOC commits to pay DCI within fifteen (15) days from receipt of billing invoice.

Payment Schedule: PHP **64,999,872.00**

3.2 Supporting documents shall include:

- i. Billing Invoice
- ii. Delivery Receipt
- iii. Acceptance Document

ARTICLE 4 IMPLEMENTATION PLAN

4.1 DCI shall implement the Project as follows:

- Day 0 – Preparation (Kick-Off Meeting)
 - Deployment Planning
 - Pre-requisites
 - Review
- Day 1 to 7 - Deployment
 - Install & Configure FireEye Appliances (NX, EX, CM, FX & HX)
- Day 8 & 9 - Product Orientation
 - FireEye knowledge transfer (1/2 day)
 - Project Acceptance Sign-Off



**ARTICLE 5
PROJECT ORGANIZATION**

5.1 DCI Project Manager (DCI-PM)

DCI shall designate a Project Manager who shall have overall responsibility for delivering the contractual obligations in this Agreement. The DCI-PM shall acquire and assign DCI resources required to perform its function. He shall work closely hand-in-hand with his counterpart BOC Project Manager in resolving issues that might arise in the course of the work. The DCI-PM shall report regularly at the BOC Central Office or DCI Production Center to oversee the activities of the PROJECT.

5.2 BOC Project Manager (BOC-PM)

BOC shall designate a Project Manager (BOC-PM) to coordinate the responsibilities of BOC under this Agreement. The BOC-PM shall have the following responsibilities:

- i. Initiate the contact and coordination BOC offices and agencies involved in the project.
- ii. Assist in resolving issues regarding priority of work requests
- iii. Provide such requirements and information needed by DCI
- iv. Ensure that the logistical requirements of the project are met
- v. Ensure the availability of persons knowledgeable on BOC Network system and procedures. Review the status of the project and assess DCI performance

5.3 DCI Team

The DCI-PM shall form the DCI Team. This team shall be composed of skilled technical personnel with the following roles:

- i. Project Engineer
- ii. Hardware Installers
- iii. System Configurators
- iv. Network Administrator



**ARTICLE 6
BOC'S RESPONSIBILITIES**

6.1 BOC shall provide a safe and secure work area, electrical facilities, all necessary data, files, and documents that DCI needs or requires in order to perform and accomplish fully the scope of work defined in this Agreement. BOC may not oblige DCI, and DCI shall not be obliged, to perform and accomplish said scope of work without all such necessary work space, facilities, data, files, and documents, or when such necessary facilities, data, files, and documents are insufficient as determined by DCI.

6.2 If there is any delay on the part of BOC that affects DCI's work flow in accordance with the agreed schedule, all expenses incurred by DCI such as manpower cost, travel expenses, etc., for each day of delay shall be for the account of BOC.

BOC shall resolve project exceptions within forty-eight hours (48) upon the written request of DCI.



**ARTICLE 7
DCI'S OTHER RESPONSIBILITIES**

7.1 Manpower

DCI warrants that on-site and remote support personnel are properly supervised and technically competent to provide and conduct the required services and work.

7.2 Programming and Documentation Standards

DCI shall use its own methodology for programming and documentation standards. These will include naming conventions, programming standards, documentation guidelines and other computer operations procedures. DCI software tools, standard methodologies, and solution systems shall be proprietary to DCI and shall be governed by standard industry practice for intellectual property. Ownership of DCI software tools, standard methodologies, and solution systems shall remain with DCI.

7.3 Project Management and Administrative Standards

All DCI personnel assigned under this Agreement shall be under the technical supervision and management of DCI. DCI personnel working at the BOC offices shall adhere to all administrative policies of BOC such as office hours, work decorum/conduct, inter-office correspondence, use of office space and equipment, security, confidentiality and other policies.

**ARTICLE 8
INTELLECTUAL PROPERTY OWNERSHIP**

- 8.1 Title and ownership rights to DCI software tools, standard methodologies, solution systems/processes, software, source codes and documentation, and other materials specifically identified by DCI as proprietary shall remain with DCI.



**ARTICLE 9
CONFIDENTIALITY**

- 9.1 BOC agrees that it will hold any Confidential Information in strict confidence for a period of two years after the conclusion of all services provided under this Agreement. Confidential Information shall include, but not be limited to, technical and business information relating to DCI's inventions or products, research and development, production and engineering processes, computer software, costs, profit or margin information, finances, customers, marketing, operations, future business plans, and all related documentation. BOC will not make any disclosure of the Confidential Information to anyone without the written consent of DCI, except to employees or agents of BOC to whom disclosure is necessary for the performance of this Agreement. For this purpose, BOC, its partners, directors, officers, employees, contractors, affiliates, agents and volunteers may, at any time during the effectivity of this Agreement, be required by DCI to execute confidentiality agreement containing such terms and conditions as DCI may reasonably deem necessary to ensure protection of any Confidential Information.



- 9.2 DCI acknowledges that all information provided to, or obtained by it in connection with its services under this Agreement (collectively referred to as "Information Resource") shall be the property of BOC, and DCI acquires no right, title or interest therein. DCI covenants that it shall not use, copy, disclose,



distribute, store, retrieve or destroy any such information for any purpose without the express prior written consent of BOC. DCI acknowledges that this obligation will be strictly interpreted and shall survive the termination of this Agreement.

ARTICLE 10 REPRESENTATION AND WARRANTIES

With respect to its authority to execute and implement this Agreement, DCI represents and warrants that:

- 10.1 DCI is a corporation duly incorporated and validly existing under the laws of the Philippines, and has all the necessary power and authority to own its properties and carry on its business as presently carried on and has obtained all necessary licenses and permits to engage in business and perform its obligations under this Agreement and, generally, complied with all applicable laws.
- 10.2 DCI has full power, legal right and authority to enter into and perform this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with its terms.
- 10.3 BOC represents and warrants that it has full power, legal right and authority to enter into and perform this Agreement and to do all acts and things and execute and deliver all other documents as are required hereunder to be done, observed or performed by it in accordance with its terms.
- 10.4 BOC further warrants that it has already secured the requisite permit, approval, consent of the national government agencies, GOCCs, and banks, if any to scan all the relevant source documents in support of financial transactions and to deliver the same to BOC at real time.
- 10.5 The representations and warranties contained in this Section shall survive the termination of this Agreement.

ARTICLE 11 EFFECTIVITY OF AGREEMENT

- 11.1 This Agreement shall take effect upon signing and shall remain in effect for Three (3) years from date of signing unless otherwise specified or terminated in accordance with *Article 12*.

ARTICLE 12 TERMINATION OF AGREEMENT

- 12.1 Without prejudice to the collection of such accrued charges and fees for services already rendered by DCI to BOC, DCI may terminate this Agreement for non-payment by BOC of any of the charges and fees due to DCI or for BOC's failure to comply substantially with any of its obligations under this Agreement, which is not remedied within thirty (30) days after DCI's notice to BOC of such non-compliance and intent to terminate this Agreement.
- 12.2 BOC may terminate this Agreement, without prejudice to any other remedy it may have, if DCI fails to comply substantially with any of its obligations under this Agreement, which is not remedied within thirty (30) days after BOC's notice to DCI of such breach and intent to terminate the Agreement.



12.3 In the event that BOC opts to pre-terminate this contract for any reason whatsoever, other than for cause, BOC shall have no obligation to pay DCI other than the work that was previously done and accepted.

ARTICLE 13 GENERAL PROVISIONS

13.1 Notwithstanding the approval of this Agreement, it is understood that BOC may only be held liable for the payment of obligations incurred for that portion of the Agreement covered by authorized appropriations. BOC commits, however, to include the funding requirements for the remaining portions of the Agreement in its annual budget proposals until the Services are completed.

13.2 All provisions and covenants contained in this Agreement are severable, and in the event any of them shall be held to be invalid by any competent court, this Agreement shall be interpreted as if such invalid provisions or covenants were not contained within the Agreement.

13.3 DCI shall have no authority or right to make or undertake any promise, warranty, or representation, to enter into or execute any contract, or otherwise to assume any obligation or responsibility in the name or on behalf of BOC, except as may be specifically approved in writing by BOC.

13.4 For a period of one year after the conclusion of all services provided under this Agreement, BOC agrees not to hire or retain as an employee, consultant or in any other capacity, solicit for such purposes, any person who is an employee or officer or Consultant or agent of DCI, or its affiliate companies without the written consent of DCI.

13.5 Nothing in this Agreement shall be construed to create an employer-employee relationship between BOC and DCI employees, officer, consultant or agent. DCI is and will be treated as an independent contractor.

13.6 This Agreement constitutes the entire agreement between DCI and BOC with respect to the Services set forth herein and the compensation to be paid for such Services. No agreements, understandings, commitments, discussions, representations, warranties, or other covenants, whether oral or written, between DCI and BOC, are included in this Agreement except as set forth herein.

13.7 Neither party may assign any of its rights or obligations under this Agreement without the written consent of the other party.

13.8 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 proper court of the City of Makati.

13.9 Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof shall be by arbitration in accordance with the Philippine Dispute Resolution Center Incorporated (PDRCI) Arbitration Rules as at present in force.



IN WITNESS HEREOF, the parties have signed this Agreement at the City of _____ on _____ 2015.

BUREAU OF CUSTOMS

By:

MR. ALBERTO D. LINA
Commissioner
15-03182
DEC 28 2015

DBP DATA CENTER, INC.

By:

NILO S. CRUZ
President

Witnesses:

DR. VALDIMIR DENNIS REYES
Deputy Commissioner, BoC

MR. ARNEL F. CELIS
Senior Business Development Manager, DCI

ACKNOWLEDGMENT

Republic of the Philippines)
MAKATI CITY) S. S.

BEFORE ME, a Notary Public for MAKATI CITY this DEC 28 2015 day
_____ 2015 personally appeared:

Name	Government Issued ID No.	Date	Place Issued
MR. ALBERTO D. LINA	Driver's License No. N1470040042	valid till	April 23, 2017
MR. NILO S. CRUZ	Passport EC0636393	Mar. 22, 2014	MANILA

both known to me, and to me known, to be the same persons who executed the foregoing instrument, and having acknowledged before me that the same are their free and voluntary acts and deeds, as well as the free and voluntary acts and deeds of the principals herein presented.

This instrument consists of _____ () pages, including this page wherein the Acknowledgement is written which has been signed by the Parties together with this instrumental witnesses at the bottom of the instrument and on each and every page thereof.

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

Doc. No. 344
Page No. 70
Book No. 178
Series of 2015.

ATTY. VIRGILIO R. BATALLA
NOTARY PUBLIC FOR MAKATI CITY
APPOINTMENT NO. 1533
UNTIL DECEMBER 31, 2016
ROLL OF ATTY. NO. 49543
MCLE COMPLIANCE NO. 15-CEC-123/1-10-2013
IBP NO. 705762 - LIFETIME MEMBER
PTR. NO. 474 - 3510 JAN 05, 2016
EXECUTIVE BLDG. CENTER
MAKATI AVE., COR., JUPITER