

Republic of the Philippines  
**PHILIPPINE PORTS AUTHORITY**  
PPA Building, Bonifacio Drive, South Harbor,  
Port Area, Manila, Philippines

**CONTRACT**  
**FOR THE CONSTRUCTION OF BACK-UP AREA,**  
**PORT OF LIPATA, LIPATA, ANTIQUE**

KNOW ALL MEN BY THESE PRESENTS:

JAN 24 2012

This Contract made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2011, in Manila, Philippines, by and between:

**PHILIPPINE PORTS AUTHORITY**, a government instrumentality created under Presidential Decree No. 857, as amended, with principal office at PPA Building, Bonifacio Drive, South Harbor, Port Area, Manila, represented herein by its duly authorized General Manager, **JUAN C. STA. ANA**, and hereinafter referred to as "**PPA**";

- and -

**J.S. LAYSON & COMPANY INCORPORATED**, a corporation duly organized and existing in accordance with Philippine laws, with office and business address at 113-B Saint Elizabeth Center, Valeria Street, Iloilo City, represented in this act by its Executive Vice President, **JOSE V. LAYSON, JR.** duly authorized for this purpose, as evidenced by Secretary's Certificate dated 14 October 2011, a copy of which is hereto attached and made an integral part hereof as Annex "A", and hereinafter referred to as "**CONTRACTOR**"

**WITNESSETH:**

WHEREAS, in accordance with Republic Act No. 9184 and its Revised Implementing Rules and Regulations, PPA advertised and published in a newspaper of general nationwide circulation and posted on the PPA website and PhilGEPS as well as in its bulletin board, an Invitation to Bid for the Construction of Back-Up Area, Port of Lipata, Lipata, Antique;

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


WHEREAS, after the opening of bids on 08 November 2011, and the conduct of bid evaluation and required post-qualification, the bid submitted by the CONTRACTOR at its unit and lump sum prices set forth in its proposal was found to be the Lowest Calculated Responsive Bid in the amount of **FORTY ONE MILLION SIX HUNDRED SEVEN THOUSAND TWO HUNDRED FIFTY ONE PESOS (P 41,607,251.00)** Philippine Currency;

WHEREAS, pursuant to Head Office BAC Resolution No. 021-2011 Series of 2011, award of the contract was made to the CONTRACTOR in a Notice of Award dated 05 December 2011, in the amount of **FORTY ONE MILLION SIX HUNDRED SEVEN THOUSAND TWO HUNDRED FIFTY ONE PESOS (P 41,607,251.00)**, 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 herein contained, the PPA and the CONTRACTOR have agreed, as they do hereby agree, and contract as follows:

Witness:

  
MA. ASCUNCION I. BONDOC  
Vp. General Manager


J.S. LAYSON & COMPANY INCORPORATED  
BY:

  
JOSE V. LAYSON, JR.  
Executive Vice President

Witness:

  
TOMAS R. CARLOS  
AGM - Engineering Office

PHILIPPINE PORTS AUTHORITY  
BY:

  
JUAN C. STA. ANA  
General Manager

ARTICLE I

CONTRACT DOCUMENTS

1.01 The following documents shall constitute integral parts of this Contract, as fully as if the contents of the said documents are reproduced, incorporated and set forth herein, and shall govern and control in full force and effect the rights and obligations of the Parties, except as otherwise modified by the terms and conditions of this Contract, or by mutual agreement in writing of both parties, to wit

- a. Contract Agreement
- b. Bidding Documents
- c. Winning bidder's bid, including the Eligibility requirements, Technical and Financial Proposals and all other documents / statements submitted
- d. Performance Security
- e. Credit line in accordance with the provisions of the Revised IRR, if applicable
- f. Notice of Award of Contract; and
- g. Other contract documents that may be required by existing laws and the PPA in the Bidding Documents, such as:
  - (1) Construction Schedule and S-Curve
  - (2) Manpower Schedule
  - (3) Construction Methods
  - (4) Equipment Utilization Schedule
  - (5) Construction Safety and Health Program approved by the DOLE
  - (6) Pert / CPM
  - (7) Duly Approved Program of Work and Cost Estimates
  - (8) Certificate of Availability of Funds
  - (9) Abstract of Bids
  - (10) Resolution of award

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

Witness:   
 MA. SUNCIONT BOMBOG  
 P. General Manager

J.S. LAYSON & COMPANY INCORPORATED  
 BY:   
 JOSE V. LAYSON, JR.  
 Executive Vice President

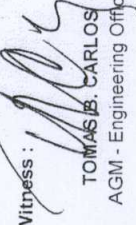
ARTICLE II

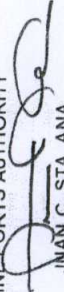
CONTRACTOR'S UNDERTAKING  
SCOPE OF WORK

2.01 The CONTRACTOR, in consideration of the payment to be made by the PPA to the CONTRACTOR, as stated in the Contract Documents and this Contract, the latter hereby covenants to execute and complete the Construction of Back-Up Area, Port of Lipata, Lipata, Antique, in conformity in all respects with the provisions of this Contract, as follows:

| ITEMS                   | TOTAL AMOUNT           |
|-------------------------|------------------------|
| 1. General Expenses     | P 2,361,822.92         |
| 2. Reclamation          | P 37,187,132.34        |
| 3. Port Lighting System | P 522,320.46           |
| 4. Reimbursable Items   | P 1,535,975.28         |
| <b>TOTAL AMOUNT</b>     | <b>P 41,607,251.00</b> |

2.02 The CONTRACTOR agrees to commence, perform and complete the work called for and defined in this Contract at its sole cost and expense, and to fully and faithfully furnish all materials, tools, labor supplies, equipment, services and superintendence for the implementation of this Contract in accordance with the schedule in the Contract Documents forming integral parts of this Contract.

Witness:   
 TOMAS B. CARLOS  
 AGM - Engineering Office


PHILIPPINE PORTS AUTHORITY  
 BY:   
 JUAN C. STA. ANA  
 General Manager

2.03 The CONTRACTOR guarantees, among others, that all tools, equipment, machineries, instruments, accessories and materials it will supply or deliver or install and/or use in the construction and workmanship of all his work under the Contract, shall be in accordance with the Contract Documents.


The CONTRACTOR further guarantees that all the office facilities, computer system, digital camera/video camera and service vehicle it will provide / supply in connection with this contract shall be brand new and in accordance with the specifications prescribed thereof in the Bid Document.

2.04 The CONTRACTOR recognizes the position of trust and confidence reposed in it under this Contract, and agrees to perform its obligations hereunder in the most efficient and competent manner, use its skill and good judgment, always set in good faith, and carry out the execution of this Contract in the most sound, expeditious and economical manner consistent with the interest of the PPA.

Witness:

  
MA. ASUNCION I. BONDOC  
P. General Manager

J.S. LAYSON & COMPANY INCORPORATED  
BY:

  
JOSE V. LAYSON, JR.  
Executive Vice President

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, the PPA agrees to pay the CONTRACTOR the total amount not exceeding **FORTY ONE MILLION SIX HUNDRED SEVEN THOUSAND TWO HUNDRED FIFTY ONE PESOS (P 41,607,251.00)** Philippine Currency, inclusive of the 12% value added tax, payment to be made and computed on the basis of final quantities at the unit bid price for each item of work actually performed and finished for each pay item as determined and accepted by PPA and in the manner set forth in the Contract Documents, 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, from the action of the elements, or from any obstruction or difficulty encountered in the prosecution of this Contract, 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, at the time and in the manner provided in the Contract Documents.

It is agreed and understood that all bid prices specified in this contract shall be considered as fixed prices, and therefore not subject to price adjustment and escalation during the contract implementation, except under extraordinary circumstances and upon prior approval of the Government Procurement Policy Board (GPPB) or when a Treaty or International or Executive Agreement Expressly allows it. Any request for price escalation under extraordinary circumstances shall be submitted by PPA to the National Economic and 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.

Witness:

  
TOMAS B. CARLOS  
AGM - Engineering Office

3.02 Final and full payment of the consideration herein above-mentioned shall be upon full completion of the project and fulfillment by the CONTRACTOR of all the terms and conditions set forth in this Contract.

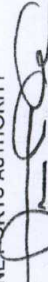
However, it is agreed that no payment or payments made under this Contract, except the final payment upon issuance of Certificate of Completion and Acceptance, shall be understood as performance of this Contract, either wholly or in part, and no payment shall be construed to be an acceptance of defective work or improper implementation thereof.

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

3.04 It is likewise understood that the CONTRACTOR shall show proof evidencing payments by the CONTRACTOR of labor, materials, supplies, insurance premiums, etc., used in the work, before any payment is made to it.

For this purpose, the CONTRACTOR shall, before payment is made on the works accomplished, submit an affidavit certifying to the fact of payments of said labor, materials, supplies, equipment, insurance premiums, etc.

PHILIPPINE PORTS AUTHORITY  
BY:

  
JUAN C. STA. ANA  
General Manager

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

3.06 Progress payments are subject to retention of ten percent (10%) referred to as the "retention money". Such retention shall be based on the total amount due to the contractor prior to any deduction and shall be retained from every progress payment until fifty percent (50%) of the value of works, as determined by the PPA are completed. If, after fifty percent (50%) completion, the work is satisfactorily done and on schedule, no additional retention shall be made; otherwise, the ten percent (10%) retention shall be imposed.

3.07 The total "retention money" shall be due for release upon final acceptance of the works. The CONTRACTOR may, however, request for the substitution of the retention money for each progress billing with irrevocable standby letters of credit from a commercial bank, bank guarantees or surety bonds callable on demand issued by any reputable surety or insurance company duly accredited by the Office of the Insurance Commission of amounts equivalent to the retention money substituted for and acceptable to PPA, provided that the project is on schedule and is satisfactorily undertaken. Otherwise, the ten percent (10%) retention shall be made. Said irrevocable standby letters of credit, bank guarantees and/or surety bonds, to be posted in favor of PPA shall be valid for a duration to be determined by PPA and will answer for the purpose for which the ten percent (10%) retention is intended, i.e., to cover uncorrected discovered defects and third party liabilities.

ARTICLE IV

PERFORMANCE SECURITY

4.01 To guarantee the faithful performance of the CONTRACTOR of its obligations under this Contract, it shall post prior to the signing of the Contract a performance security in the form of cash or cashier's / manager's check, bank draft/guarantee or irrevocable letter of credit issued by a Universal / or Commercial Bank, surety bond, callable on demand, issued by a surety or insurance company duly certified by the Office of the Insurance Commission as authorized to issue such security and acceptable to PPA or a combination thereof as may be required by PPA, in accordance with the following schedule:

- a. cash or cashier's / manager's check, bankdraft / guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank - Ten Percent (10%) 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

4.02 This performance security shall be denominated in Philippine Pesos and 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.

4.03 Subject to the conditions of the Contract, the performance security may be released by PPA after the issuance of the Certificate of Acceptance of the project, provided that PPA has no claims filed against the CONTRACTOR or the surety company and there are no claims for labor and materials filed against the contractor.

4.04 Should any surety upon the bond for the performance of this Contract become unacceptable to the 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 surety.

4.05 The CONTRACTOR shall post an additional performance security following the schedule above to cover any cumulative increase of more than ten percent (10%) over the original value of the contract as a result of amendments to order or change orders, extra work orders and supplemental agreements as the case may be. The CONTRACTOR shall cause the extension of the validity of the performance security to cover approved contract time extensions.

Witness:

MA. ASCUNCION I. BONDOC  
Vp. General Manager

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