Republic of the Philippines
PHILIPPINE PORTS AUTHORITY
PORT MANAGEMENT OFFICE – SOCSARGEN
Makar Wharf, General Santos City

CONTRACT

FOR

SUPPLY, INSTALLATION AND COMMISSIONING OF AIRCONDITIONING UNITS FOR THE ONE STOP SHOP (OSS) AND PASSENGER TERMINAL BUILDING AT TRANSIT SHED NO. 1 OF THE PORT MANAGEMENT OFFICE-SOCSARGEN, PHILIPPINE PORTS AUTHORITY, MAKAR WHARF, GENERAL SANTOS CITY

KNOW ALL MEN BY THESE PRESENTS:

This Contract made and entered into this 10 JUN 2016 day of June 2016, in the City of General Santos, Philippines, by and between:

PHILIPPINE PORTS AUTHORITY, a government instrumentality created under Presidential Decree No. 857, as amended, with principal office at Bonifacio Drive, South Harbor, Port Area, Manila, represented by its duly authorized Port Manager of the Port Management Office (PMO) for SOCSARGEN at Makar Wharf, General Santos City, **LUIS A. CUISON,** and hereinafter referred to as **PPA;**

- And -

EMCOR, INC. (GSC PENDATUN), a duly registered corporation, with business and postal address at Pendatun Avenue, Barangay Dadiangas North, General Santos City, represented herein by its authorized Store Manager Proprietor, **ROSELLE R. CUDAL**, and hereinafter referred to as **CONTRACTOR**.

W I T N E S S E T H:

WHEREAS, in accordance with Republic Act No. 9184 and its Revised Implementing Rules and Regulations (IRR), the Bids and Awards Committee for Procurement of Goods (BAC-PG) published at the Philippine Star on May 13, 2016 and posted at the PPA website, GEPS and at the PPA, PMO-

SOCSARGEN Bulletin Board from May 13-19, 2016, an Invitation to Bid for the project Supply, Installation and Commissioning of Airconditioning Units for the One Stop Shop (OSS) and Passenger Terminal Building at Transit Shed No. 1 of the Port Management Office-SOCSARGEN, Philippine Ports Authority, Makar Wharf, General Santos City;

WHEREAS, in addition to the said posting requirement and to encourage participation from more bidders, letters of invitation were sent to prospective bidders/suppliers;

WHEREAS, during the Opening of Bids on June 6, 2016, only one (1) bidder, the CONTRACTOR, dropped its bid on time. The CONTRACTOR, upon evaluation of its bid, was rated as passed in its Technical and Financial Proposals;

WHEREAS, after the said opening of bids and the corresponding 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 single calculated and responsive bid in the amount of **ONE MILLION NINE HUNDRED FIFTY FIVE THOUSAND FIVE HUNDRED PESOS (Php1,955,500.00)** Philippine Currency;

WHEREAS, the aforesaid bid of the CONTRACTOR is lower than the Approved Budget of the Contract which is **TWO MILLION ONE HUNDRED FIFTY ONE THOUSAND EIGHT HUNDRED EIGHTY FIVE PESOS AND TWENTY EIGHT CENTAVOS (Php 2,151,885.28)** Philippine Currency;

WHEREAS, pursuant to **BAC-EP Resolution No. 07 Series of 2016**, duly approved by the PPA Port Manager, award of the contract was made to the CONTRACTOR in a letter dated June 7, 2016, in the amount of **ONE MILLION NINE HUNDRED FIFTY FIVE THOUSAND FIVE HUNDRED PESOS (Php1,955,500.00)** Philippine Currency;

WHEREAS, the CONTRACTOR duly accepted the award by signing its Conformé on the said Notice of Award;

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual covenants, stipulations and agreement herein contained, the parties hereto have agreed as they do hereby agree, as follows:

ARTICLE I
CONTRACT DOCUMENTS

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

a. Terms of Reference
b. Invitation to Bid
c. Instruction to Bidders
d. Supplemental Bid Bulletin
e. Technical and Financial Bid Proposals

f. Notice of Award
g. Performance Security
h. Notice to Proceed; and
i. Other pertinent documents

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

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
CONTRACTOR'S UNDERTAKING
[SCOPE OF WORK]

2.01 The CONTRACTOR, in consideration of the payment to be made by PPA as stated in the Contract Documents and in this Contract, hereby agrees to execute the Supply, Installation and Commissioning of Airconditioning Units for the One Stop Shop (OSS) and Passenger Terminal Building at Transit Shed No. 1 of the Port Management Office-SOCSARGEN, Philippine Ports Authority, Makar Wharf, General Santos City;

2.02 The CONTRACTOR agrees to complete the delivery, installation and commissioning of the following within thirty (30) days from issuance of the Notice to Proceed in accordance with the layout marked as Annex "A" of the Terms of Reference (TOR):

Item Number	Description	Quantity	Total	Delivery, Installation and Commissioning Weeks/Months
1	Air-conditioning unit, 2 HP, single phase, 220V split type inverter type – power saver	10 units	10 units	Within thirty (30) days from issuance of Notice To Proceed
2	Air-conditioning units, 5 Tonner, Package Type, 3phase, 220V cooling capacity of 83,300kJ/H, inverter type – power saver.	9 units	9 units	Within thirty (30) days from issuance of Notice To Proceed
3	Copper Tubing and Drain Pipe	1 lot	1 lot	Within thirty (30) days from issuance of Notice To Proceed

2.03 The CONTRACTOR agrees to deliver as part of this Contract and at its cost and expense, all materials pertinent the project as cited above including accessories such as but not limited to manufacturer's claimed performance data, operations and maintenance manuals, technical specifications and descriptions and guarantee certificates. It is understood that the aforecited materials shall be in English.

2.04 The CONTRACTOR shall execute this Contract in such a manner as to fully prevent any defects on any and all of the units of electrical parts covered in this contract or any part thereof. The CONTRACTOR shall warrant the quality of the units and its installation for a period of one (1) year reckoned from the date of acceptance by PPA of such units. The period for correction of defects, replacement or repair in the warranty period shall be THIRTY (30) calendar days.

If for any reason, the CONTRACTOR cannot replace or repair the defective electrical part or accessories thereof within the prescribed period, it shall be liable to pay PPA the amount of Five Hundred Pesos [P500.00] for each day of delay until the defective unit or its accessories is either replaced or repaired by the CONTRACTOR, and the same is accepted by PPA. Corollary to the said situation, the running of the warranty period of the defective unit or its accessories is deemed suspended in the meantime.

2.05 The CONTRACTOR shall hold and save PPA, its officers and employees harmless from liability of any nature or kind, including costs and expenses, for or on account of infringement of any copyrighted compositions, secret processes, patented or unpatented inventions, or articles manufactured or used in the performance of this Contract, including their use by the PPA, unless otherwise specifically stipulated in this Contract.

2.06 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 skills and good judgment, always act in good faith, and carry out the execution of this Contract in the most sound, expeditious and economical manner consistent with the interest of PPA.

ARTICLE III
CONSIDERATION

3.01 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 Contract Documents, PPA agrees to issue a Certificate of Completion and/or Acceptance and pay the CONTRACTOR a sum certain in money equivalent to the contract price in the amount not exceeding **ONE MILLION NINE HUNDRED FIFTY FIVE THOUSAND FIVE HUNDRED PESOS (Php1,955,500.00)** Philippine Currency in accordance with the manner, schedule and procedure specified hereunder.

3.02 It is agreed and understood that the consideration mentioned above is inclusive of the 12% value-added-tax (VAT).

It is hereby expressly agreed upon and understood that the stipulated contract price shall not be subject to upward adjustment for any cause or reason whatsoever.

3.03 It is agreed that acceptance of payments made under this Contract, except the final payment upon issuance of Certificate of Completion, shall not be understood as performance of this Contract, neither wholly or in part, nor shall any payment be construed to be an acceptance of defective unit.

3.04 Ninety percent [90%] of the stipulated contract price shall be paid to the CONTRACTOR within a reasonable time from the issuance of PPA of the Certificate of Completion and/or Acceptance.

3.05 The Ten percent [10%] balance of the stipulated contract price shall be retained by PPA as guarantee that the CONTRACTOR shall comply with the warranty as specified in Section 2.04 hereof. The CONTRACTOR may, however, request for the substitution of the aforesaid retention money with a special bank guarantee of the same amount which shall serve the purpose for which the retention money is being intended.

The retention money or special bank guarantee, as the case may be, shall be released only after expiration of the warranty period, provided that the electrical part and accessories subject of the contract is free from defect and that all the conditions imposed under this Contract are met or complied with.

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

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

ARTICLE IV
PERFORMANCE SECURITY

4.01 To guarantee the faithful performance of the CONTRACTOR under this contract, the CONTRACTOR shall within ten (10) calendar days upon receipt of the Notice of Award, post a performance security in accordance with the following schedule:

a) Cash, manager's check, cashier's check – 5% of the total contract price

b) Bank guarantee – 5% of the total contract price

c) Surety Bond – 30% of the total contract price

d) Any combination of the following – proportionate to share of form with respect to total amount of security

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

4.03 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 Section 4.01 hereof.

b. It shall be at least co-terminus with the final acceptance of the equipment subject of this Contract.

4.04. Subject to the conditions of the Contract, the performance security may be released by PPA after the final acceptance by PPA of the electrical part subject of this Contract, provided there are no other claims against the CONTRACTOR or the surety company.

4.05. Should any surety upon the bond 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 surety.

ARTICLE V
LIQUIDATED DAMAGES

5.01 Should the CONTRACTOR refuse or fail to complete the delivery, testing and installation of the transformer and accessories thereof within the stipulated time, 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 amount or value of the undelivered, untested and unaccepted electrical part and accessories for each calendar day of delay [Saturdays, Sundays and holidays included] until such electrical part and/or accessories are finally delivered, tested, installed and accepted by PPA.

5.02 It is understood that the damages herein provided are fixed and agreed liquidated damages and that 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 the PPA.

5.03 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 aside from the amount of the liquidated

damages that the CONTRACTOR shall pay PPA under Section 5.01 hereof and the other appropriate sanctions that may be imposed to the former.

ARTICLE VI
CONTRACTOR'S LIABILITY

6.01 It is hereby agreed and understood that the employees of the CONTRACTOR are not employees of PPA; hence, the PPA shall not in any way be liable or responsible for any personal injury or damages, including death sustained or caused by any of the employees of the CONTRACTOR whether or nor occurring during the performance of their duties. The CONTRACTOR agrees and binds itself to indemnify the PPA for whatever injuries or damages caused or occasioned or contributed to by the failure, negligence or conduct of the CONTRACTOR's employees, arising out of or in connection with or on occasion of the performance of this Contract The CONTRACTOR shall at all times, stand solely liable and/or responsible for the enforcement of, and compliance with all existing laws, rules and regulations and binds itself to save and hold the PPA free and harmless from any and all liability in respect thereof and/or arising therefrom and/or by reason of this Contract and its implementation.

6.02 The CONTRACTOR agrees and binds itself to hold and save PPA free and harmless from any damage, claims and rights to action arising out of or by reason of this Contract and all injuries that maybe suffered by PPA due to the failure, negligence, delay or conduct on the part of the CONTRACTOR and/or its employees in the performance of their obligations under this Contract.

ARTICLE VII
REMEDY AND RELIEF

7.01 In the event that either party is constrained to litigate and/or resort to court action to enforce or safeguard their respective rights and interests under this Contract, the same shall be filed exclusively before the proper court in the City of General Santos.

7.02 Should either party resort to litigation, the prevailing party shall be liable to the other party for attorney's fees in an amount equivalent to twenty percent [20%] of the total sum claimed in the complaint but in no case less than Fifty Thousand Pesos [P50,000.00], exclusive of other damages and the expenses of litigation.

ARTICLE VIII
OTHER COVENANTS

8.01 It is expressly agreed and understood that in case of irreconcilable conflict between the provisions of this Contract and the Contract Documents, the former shall be controlling.

8.02 It is clearly understood that any 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 the PPA for the enforcement of this Contract, nor shall it relieve the CONTRACTOR of any of its obligations provided thereunder.

8.03 Notwithstanding any provision to the contrary, PPA has the right to terminate, cancel and/or rescind this Contract *motu proprio,* in case of breach by the CONTRACTOR or upon failure of the CONTRACTOR to comply strictly with the terms of the contract without need of judicial action by giving at least fifteen [15] days written notice to that effect to the CONTRACTOR, which Notice shall be final and binding on all the parties.

Within fifteen [15] days after termination, cancellation or rescission of this Contract, the Parties shall settle their respective accountabilities as of the date of termination, cancellation or rescission.

8.04 The CONTRACTOR shall provide and do everything necessary to perform its obligations under this Contract according to the true intent and meaning of all the Contract Documents taken together.

8.05 The CONTRACTOR agrees and binds itself to hold and save PPA free and harmless from any damage, claims and rights of action by third parties arising out of or by reason of this Contract and all injuries that may be suffered by PPA due to failure, negligence, delay or conduct on the part of the CONTRACTOR and/or its employees in the performance of their obligations under this Contract.

8.06 No payment of the Contract shall be made to the CONTRACTOR without the Certificate of Completion and/or Acceptance from the Port Manager. The Certificate of Completion and/or Acceptance will be issued after all parts and accessories thereof are completely delivered, installed, tested, inspected and accepted by PPA and provided that the CONTRACTOR had submitted the required Guarantee Certificates therefor.

8.07 The parties undertake to comply with all existing laws, executive and administrative orders, rules and regulations, issued or to be issued by competent authorities.

8.08 The CONTRACTOR shall not assign, transfer, subcontract, or make any other disposition of its interest in this Contract. Any assignment, transfer, sub-contract, or any other disposition shall be sufficient ground for PPA to terminate or cancel this Contract, *motu proprio* without the need of judicial action pursuant to Article 8.03 hereof.

8.09 All taxes, licenses, permits, fees or charges of whatever form, kind or nature due or which may be due to the national or local government units and/or its instrumentalities/agencies in 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 the PPA.

8.10 The CONTRACTOR shall undergo Safety Orientation to be conducted by the Safety Office of PMO-SOCSARGEN. The said CONTRACTOR shall comply with all existing Philippine laws, regulations and policies of the PPA and PMO-SOCSARGEN on Safety, Health and Environment.

ARTICLE IX
SPECIAL REPRESENTATION

9.01 The CONTRACTOR hereby 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 the PPA the immediate right or recourse to *motu proprio* rescind, abrogate or otherwise terminate the Contract without need of judicial intervention.

ARTICLE X
BUDGETARY REQUIREMENT

10.01 The parties hereto hereby adopt and incorporate herein by reference, Letter of Instruction No. 767 dated 16 November 1978 issued by the Office of the President, as implemented by the Letter Circular dated 07 December 1978 of the Minister of Budget.

ARTICLE XI
EFFECTIVITY

11.01 This Contract shall be effective upon its signing by both parties.

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

PHILIPPINE PORTS AUTHORITY
By:

LUIS A. CUISON
Port Manager

EMCOR, INC. (GSC PENDATUN)
By:

ROSELLE R. CUDAL
Store Manager

WITNESSES:

_____ _____

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
CITY OF GENERAL SANTOS) S.S.

BEFORE ME, A Notary Public for and in the City of General Santos, Philippines, this 10 JUN 2016 day of June 2016 personally appeared the following:

NAME	**Identification Card**	**Number**
LUIS A. CUISON	PPA I.D.	0057-78
ROSELLE R. CUDAL	EMCOR I.D.	1770

Known to me to be the same persons who executed and signed the foregoing instrument as:

Position	Company	CTC No.	Date	Place
Port Manager	Philippine Ports Authority	34686496	1/13/16	GSC
Store Manager	EMCOR, INC.	34687311	6/8/16	GSC

The foregoing instrument is a contract agreement for the project Supply, Installation and Commissioning of Airconditioning Units for the One Stop Shop (OSS) and Passenger Terminal Building at Transit Shed No. 1 of the Port Management Office-SOCSARGEN, Philippine Ports Authority, Makar Wharf, General Santos City, consisting of ten (10) pages, including this page on which this Acknowledgment is written, signed by the parties and their instrumental witnesses on each and every page hereto.

IN WITNESS WHEREOF, I have hereunto affixed my hand and notarial seal on these presents at the place and on the date first above written.

Doc. No. 485;
Page No. 98;
Book No. 8;
Series of 2016

REMIGIO M. DELOS SANTOS, JR
NOTARY PUBLIC
UNTIL DECEMBER 31, 2017
ROLL NO. 42842
PTR NO. 6515483-10-20-15; GSC
IBP OR NO. 0993077-9-23-15; GSC