


**CONTRACT FOR THE
REHABILITATION OF 1-UNIT KONE ELEVATOR LOCATED AT THE VTMS
CONTROL CENTER BUILDING, MICT, TONDO, MANILA**

KNOW ALL MEN BY THESE PRESENTS

This Contract made and entered into on NOV 15 2022, in the City of Manila, Philippines, by and between:

PHILIPPINE PORTS AUTHORITY, PMO-NCR NORTH (PPA), a government instrumentality created under Presidential Decree No. 857, as amended, with principal office at PMO Admin. Building, Mel Lopez Blvd., North Harbor, Tondo, Manila, represented herein by its Port Manager, **ANNIE LEE F. MANESE**, and hereinafter referred to as "**PPA**".

Witness:

SALLY MUÑOZ
Sales Manager

-and-

KPI ELEVATORS, INC., a firm duly organized and existing under the laws of the Republic of the Philippine, with principal office address at **25/F BDO Equitable Tower 8751, Paseo de Roxas Avenue, Makati City** represented herein by its duly authorized Representative, **DAN EURE VITORILLO**, and hereinafter referred to as the "**CONTRACTOR**".

KPI ELEVATORS, INC.
BY: 
DAN EURE VITORILLO
Modernization Sales Engineer

WITNESSETH:

WHEREAS, PPA installed and has continuously operated the Vessel Traffic Management System (VTMS) in order to insure safe navigation for all vessels entering into and departing from both harbors including its channels;

WHEREAS, the VTMS, under the supervision of PMO-NCR North Vessel Traffic Services Division (VTSD) has been on operation since its construction in 2005;

WHEREAS, one the equipment maintained and operated by the VTSD is the 1-unit KONE Elevator which has been on operation since the construction of the said facilities;

WHEREAS, there is a need to repair, rehabilitate and maintain the 1-unit KONE Elevator to ensure its serviceability to its riding personnel and to guarantee its operations for twenty-four (24) hours a day, seven (7) days a week;

WHEREAS, pursuant to PMO-NCR North Bids and Awards Committee (PMO-NCR-NORTH-BAC), the procurement for the Rehabilitation of 1-unit KONE Elevator shall be undertaken through "Direct Contracting", an alternative method of procurement, in view of the proprietary nature of the elevator system;

WHEREAS, the Notice for Direct Contracting and the Request for Quotation (Annexes "1" and "2") for the Rehabilitation of 1-unit KONE Elevator were posted at PPA's Website and at the bulletin boards of PPA Head Office, PMO-NCR North & NCR-South for seven (7) days from October 4 to 11, 2022, and the Letter Request for Quotation, together with the Price for Quotation Form was sent to the CONTRACTOR through personal service on October 4, 2022 (Annex "3");

Witness:

JOSEPHINE F. SALASAGCOL
Acting RMD Manager

PHILIPPINE PORTS AUTHORITY
BY: 
ANNIE LEE F. MANESE
Port Manager

WHEREAS, on October 11, 2022, the CONTRACTOR submitted its quotation for the Rehabilitation of 1-unit KONE Elevator (Annex "4") in the amount of **One Million Four Hundred Eighty Thousand Pesos Only (Php1,480,000.00)**;

WHEREAS, the PMO-NCR-NORTH-BAC in its Resolution No. 01-2022 dated October 19, 2022 considered said quotation as acceptable and recommended the award of Contract to the CONTRACTOR (Annex "5");

WHEREAS, the contract was awarded to the CONTRACTOR through a Notice of Award dated October 26, 2022 in the amount of One Million Four Hundred Eighty Thousand Pesos Only (Php1,480,000.00) to which the CONTRACTOR signifies its Conformance thereto (Annex "6");

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

ARTICLE I CONTRACT DOCUMENTS

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

- a. Request for Quotation (RFQ);
- b. Terms of Reference (TOR) for the Rehabilitation of 1-unit KONE Elevator at the Vessel Traffic Management System (VTMS);
- c. Performance Bond;
- d. Notice of Award of Contract bearing the CONTRACTOR's "Conforme" thereto;
- e. All of the abovementioned Annexes and other Contract documents that may be required by existing laws and/or PPA such as:
 1. Abstract of Quotation;
 2. Approved BAC Resolution Recommending Award of the Contract; and
 3. Certificate of Availability of Funds (CAF).

1.2 All Contract documents except Annex 4 are and shall remain as the property of PPA.

1.3 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 SCOPE OF WORK

2.1 The works to be performed and undertaken by the CONTRACTOR under this Contract shall be those specified in the Terms of Reference (TOR) for the Rehabilitation of 1-unit KONE Elevator of the VTMS (Annex "7") its Annexes, and other pertinent Contract Documents which form parts of this Contract.

2.2 The works to be performed by the CONTRACTOR shall include, but not limited to the following:

Witness:

SAKY MUNOZ
Sales Manager

KPI ELEVATORS, INC.
BY: 
DAN BURE VITORILLO
Modernization Sales Engineer

Witness:

JOSEPHINE S. SALOSAGCOL
Acting RMD Manager

PHILIPPINE PORTS AUTHORITY
BY: 
ANNIE LEE F. MANESE
Port Manager

1. Delivery of imported parts and materials as replacement for the unserviceable components;
2. Dismantling of defective parts and materials to give way for the rehabilitation of the elevator;
3. Installation of the delivered parts and materials including cabling and wiring in accordance to the installation plan;
4. Initiate, facilitate and conduct system testing and commissioning on all parts and components and witnessed by PPA representatives. Submission of test result to PPA shall be done together with photos taken during the conduct of actual tests.

**ARTICLE III
CONSIDERATION**

3.1 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 the Contract Documents, PPA agrees to pay the CONTRACTOR the total amount not exceeding **One Million Four Hundred Eighty Thousand Pesos Only (Php1,480,000.00), Philippine Currency**, inclusive of the twelve percent (12%) Value-Added-Tax (VAT), as provided in the Financial Proposal of the CONTRACTOR (Annex "8")

3.2 The stipulated contract price shall not be subject to upward adjustment for any cause or reason, except if otherwise agreed in the Contract documents or under extraordinary circumstances and upon prior approval of the GPPB.

3.3 Payment shall be made within thirty (30) days upon receipt of the billing statement/invoice with complete documentary requirements for payment and subject to existing government auditing rules and regulations.

3.4 Any payment due and payable to the CONTRACTOR may be set off against liquidated damages and other liabilities payable to PPA by the CONTRACTOR.

**ARTICLE IV
PERFORMANCE SECURITY**

4.1 To guarantee the faithful performance by the CONTRACTOR of its obligation under this Contract, it shall post, prior to the signing of this Contract, a Performance Security in the form of a bond, callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security, corresponding to the amount of thirty percent (30%) of the total contract price.

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


4.3 In the execution of the performance security, the following conditions shall be complied with:

- a. It shall be executed in accordance with the form as prescribe in Section 4.1.
- b. It shall be at least co-terminus with the final completion of the project.

Witness:

SALLY M. SOTO
Sales Manager

KPI ELEVATORS, INC.
BY: 
DAN E. VITORILLO
Modernization Sales Engineer

Witness:

JOSEPHINE S. SALASAGCOL
Acting RMD Manager

PHILIPPINE PORTS AUTHORITY
BY: 
ANNIE LEE F. MANESE
Port Manager

4.4 Subject to the condition of the Contract, the performance security may be released by PPA after the issuance of the Certificate of Completion and Acceptance of the project, provided that there are no claims filed against the CONTRACTOR or the surety company.

4.5 Should the security bond posted 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 security.

ARTICLE V COMPLETION TIME: LIQUIDATED DAMAGES


5.1 The CONTRACTOR agrees and obligates itself to perform and complete all works provided for in this Contract within the period stated in the Coverage and Scope of Work of the Terms of Reference (TOR). The CONTRACTOR shall complete the repair and rehabilitation for 150-calendar days. The work shall commence within 7-calendar days from the Contractor's receipt of the Notice to Proceed and initial payments issued by PPA. Notice to Proceed shall be issued after this Contract has been signed by the Parties hereof.

5.2 Time is the essence of this Contract. Should the CONTRACTOR refuse or fail to satisfactorily complete the work/project within the specified contract time, plus any time extension duly granted and is hereby in default under the contract, the CONTRACTOR shall pay PPA for liquidated damages, and not by way of penalty, an amount equal to one-tenth (1/10) of one percent (1%) of the cost or value of the delayed and/or uncompleted portion of the work/project for every day of delay until such portion is completed and accepted by PPA. Such liquidated damages are PPA's exclusive remedy for the CONTRACTOR'S delay.

5.3 The damages herein provide are fixed, and to be entitled to such damages, PP need not prove that it has incurred actual damages. Such amount shall be deducted from any money due the CONTRACTOR under this Contract and/or collect such liquidated damages from the retention money or other securities posted by the CONTRACTOR, whichever is convenient to PPA. In no case shall the total sum of the liquidated damages exceed ten percent (10%) of the total contract price in which event PPA shall automatically terminate this Contract and impose appropriate sanctions on the CONTRACTOR aside from the liquidated damages to be paid.

ARTICLE VI CONTRACTOR'S LIABILITIES AND WARRANTIES


6.1 The employees of the CONTRACTOR are not employees of PPA, hence, PPA shall not be liable for injuries, including death sustained or caused by any of the employees of the CONTRACTOR whether or not occurring during the performance of their duties. The CONTRACTOR shall indemnify PPA for damages caused or contributed to by the failure, negligence or conduct of the CONTRACTOR and/or its employees, in connection with the performance of the works under this Contract. The CONTRACTOR shall be liable for the compliance with laws, ruled and regulations; and binds itself to save PPA from any liability by reason of this Contract and its implementation.

Witness:

SALLY MUNOZ
Sales Manager

KPI ELEVATORS, INC.
BY: 
DAN EUSE VITORILLO
Modernization Sales Engineer

Witness:


JOSEPHINE S. SALASAGCOL
Acting RMD Manager

PHILIPPINE PORTS AUTHORITY
BY: 
ANNIE LEE F. MANESE
Port Manager

6.2 The CONTRACTOR guarantees and warrants the availability, quality and genuineness of the parts and materials it will supply, deliver and install under this Contract.

6.3 The CONTRACTOR 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 materials facts therein, which if known, could have disqualified the CONTRACTOR such that this Contract would not have been made and entered into, gives PPA the right to *motu proprio* terminate this Contract without the need of judicial action.

6.4 The CONTRACTOR warrants that it has not given nor promised to give money, gift or any material favor/consideration to any official or employee of PPA to secure this Contract; that any violation of this warranty shall be sufficient ground for PPA to terminate this Contract without the need for judicial action.

Witness:

SALLY MUNOZ
Sales Manager

ARTICLE VII INSPECTION OF CONTRACT WORK

7.1 Inspection of works shall be made by PPA while such contract work is in progress, to ascertain that the completed works comply in all respects, with the standards and requirements set forth in this Contract and in the Contract Documents.

ARTICLE VIII NON-ASSIGNMENT AND NO SUBCONTRACT

8.1 The CONTRACTOR shall not, without the written approval of PPA, assign, transfer, pledge, sub-contract or make any other disposition of interest in this Contract. Any unapproved assignment, transfer, pledge, sub-contract or any other disposition, shall be sufficient ground for PPA to terminate this Contract *motu proprio* without the need for judicial action.

ARTICLE IX REMEDY AND RELIEF

9.1 Should there be any dispute in connection with this Contract, the Parties shall, as far as practicable, settle the same amicably. If such dispute is not resolved to their mutual satisfaction, the matter shall be submitted to arbitration in the Philippines according to the provisions of the Republic Act No. 9285, or 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.

9.2 Should PPA be constrained to resort to court action to enforce or safeguard its rights and interest 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 in the City of Manila.

KPI ELEVATORS, INC.
BY: 
DAN EJURE VITORILLO
Modernization Sales Engineer


Witness:

JOSEPHINE S. SALASAGCOL
Acting RMD Manager

PHILIPPINE PORTS AUTHORITY
BY: 
ANNIE LEE F. MANESE
Port Manager

**ARTICLE X
OTHER COVENANTS**

10.1 All taxes, duties, fees, or charges due to local government units or national government and/or its agencies/instrumentalities in connection with the completion of the works shall be paid for by the CONTRACTOR on its own account. The CONTRACTOR shall pay taxes in full and on time and that failure to do so shall entitle PPA to suspend payment. 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 validated with the tax payments made thereon.

Witness:

SALLY M. NOZ
Sales Manager

10.2 All expenses for the testing and inspection of the equipment, as well as the expenses for notarial fee of this Contract shall be paid for by the CONTRACTOR. Should PPA compelled to advance the same, PPA is authorized to deduct the amount advanced from whatever amount due the CONTRACTOR.

10.3 In case of irreconcilable conflict between the provisions of this Contract and that of the Contract Documents, the former shall be controlling.

10.4 The CONTRACTOR shall do everything necessary to perform its obligation under this Contract according to the true intent and meaning of all Contract Documents taken together. Should the CONTRACTOR find discrepancy in the specifications, it shall immediately refer the same to PPA, whose decision shall be followed.


10.5 No modification, alteration or waiver of any of these provisions shall be binding on the Parties hereto unless evidenced by a written agreement signed by the Parties hereof.


10.6 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 PPA shall not be construed as a waiver on the part of PPA for the enforcement of this Contract, nor shall it relieve the CONTRACTOR of any of its obligations.

10.7 Notwithstanding any provision to the contrary, in case of breach thereof by the CONTRACTOR and the CONTRACTOR fails to remedy such breach within a reasonable period after being requested to do so by PPA, PPA has the right to terminate this Contract *motu proprio*, without the need of judicial action by giving at least ten (10) days written Notice to that effect to the CONTRACTOR, which notice shall be final and binding on all the Parties. Within thirty (30) days after termination of this Contract, the Parties shall settle their respective accountabilities as of the date of termination.

**ARTICLE XI
AFFECTIVITY OF CONTRACT**

11.1 This Contract shall take effect upon signing by the Parties hereof.

KPI ELEVATORS, INC.
BY: 
DANIEURE VITORILLO
Modernization Sales Engineer

Witness:

JOSEPHINE S. SALASAGCOL
Acting RMD Manager

PHILIPPINE PORTS AUTHORITY
BY: 
ANNIE LEE F. MANESE
Port Manager

PHILIPPINE PORTS AUTHORITY

By:

ANNIE LEE F. MANESE
Port Manager

KPI ELEVATORS, INC

By:

DAN EURE VITORILLO
Modernization Sales Engineer

Signed in the Presence of:

JOSEPHINE S. SALOSAGCOL
Acting RMD Manager

SALLY MUÑOZ
Sales Manager

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)

City of Manila) S.S.

MAKATI CITY

NOV 15 2022

BEFORE ME, a Notary Public for and in the City of Manila, this _____ day of _____, 2022, personally appeared the following:

<u>Name</u>	<u>Identification Card</u>	<u>Date/Place Issued</u>
Annie Lee F. Manese	PPA ID No. 00441981	
Dan Eure Vitorillo	SSS ID No. 3425468282	

Known to me and to me known to be the same persons who executed the foregoing instrument and they acknowledged to me the same is their voluntary act and that they are the respective representatives of the entities represented.

The foregoing instrument refers to a Contract for the Rehabilitation of 1-unit KONE Elevator located at the VTMS Control Center Building, consisting of seven (7) pages, including this page where this Acknowledgment is written, signed by the Parties and their instrumental witnesses on all pages.

WITNESS MY HAND AND SEAL.

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Book No. 161
Series of 2022

ATTY. GERVACIO B. ORTIZ JR.
Notary Public City of Makati
Until December 31, 2022
IBP No. 05729-Lifetime Member
MCLE Compliance No. VI-0024312
Appointment No. M-82-(2021-2022)
PTR No. 8852511 Jan. 3, 2022
Makati City Roll No. 40091
101 Urbah Ave. Campos Rueda Bldg
Brgy. Pio Del Pilar, Makati City