

**CONTRACT FOR THE CONSTRUCTION OF FRONTHAUL OF THE CABLE
NETWORK CORRIDOR FOR THE LUZON BYPASS INFRASTRUCTURE
PROJECT**

THE PUBLIC IS INFORMED:

This Contract is executed between:

BASES CONVERSION AND DEVELOPMENT AUTHORITY, a government instrumentality vested with corporate powers created and existing under Republic Act No. 7227, as amended, with principal office and place of business at BCDA Corporate Center, 2/F Bonifacio Technology Center, 31st Street, corner 2nd Avenue, Bonifacio Global City, Taguig City, represented herein by its President and CEO, **VIVENCIO B. DIZON**, who is duly authorized for this purpose under Item No. 159, Page 25, Issue No. 22 of the BCDA's Manual of Approval approved by the BCDA Board of Directors on 22 November 2017, as evidenced by the Secretary's Certificate dated MAR 14 2018, a certified true copy of which is hereto attached as *Annex "A"* and made an integral part hereof, hereinafter referred to as "**BCDA**";

-and-

E.M. CUERPO, INC., a corporation organized and existing under the laws of the Republic of the Philippines, with office address at E.M. Cuerpo, Inc. Building, No. 3 Metropoli Drive, Metropoli Residenza, Bagumbayan, Quezon City, represented herein by its President, **ARCH. CELERINO S. CUERPO**, who is duly authorized for this purpose, as evidenced by a duly Notarized Sworn Statement dated 30 January 2018, a certified true copy of which is hereto attached as *Annex "B"* and made an integral part hereof, hereinafter referred to as the "**CONTRACTOR**".

Each referred to individually as "Party" and collectively as "Parties".

ANTECEDENTS

BCDA was created under Republic Act No. 7227, as amended, primarily to carry out the declared policy of the government to accelerate the sound and balanced conversion of the former U.S. Military Bases and their extensions, and to enhance the benefits to be delivered from said properties in order to promote the economic and social development of Central Luzon in particular and the country in general.

BCDA is a major force in creating and expanding economic opportunities in the Philippines through its establishment of integrated development areas, dynamic business centers and vibrant communities.

BCDA, in collaboration with the Department of Information and Communications Technology (DICT), intends to establish and develop a cable network corridor connecting government information and technology (IT) facilities, or the Luzon Bypass Infrastructure.

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It is the initial phase of government's overall ICT Roadmap Plan with the primary focus of creating technology-innovated economic hubs at par with global standards.

The BCDA-administered economic hubs in Metro Manila, Central and Northern Luzon in the Philippines will directly benefit in the vision and recognition of the DICT of the importance of providing reliable Internet service in the communities under its jurisdiction and supervision.

In order to proceed with the above-mentioned works, **BCDA** invited eligible general engineering contractors to submit proposals through competitive public bidding for the purpose.

On 31 January 2018, the **BCDA** Bids and Awards Committee for Infrastructure (BAC for Infrastructure) opened the bids of participating contractors for the Project. After evaluation and review of the technical and financial proposals, the **BCDA** BAC for Infrastructure found that the **CONTRACTOR** offered the lowest calculated responsive bid for the Project.

In its Resolution of Award dated 13 February 2018, the **BCDA** BAC for Infrastructure resolved to recommend to the **BCDA** Board the award of the Contract to the **CONTRACTOR** in the amount of **Pesos: Thirty Million Three Hundred Thirty-Three Thousand Three Hundred Thirty-Three and 36/100 (₱30,333,333.36)**, inclusive of all applicable taxes and fees, being the lowest and most advantageous bid to **BCDA**. The Resolution of Award dated 13 February 2018 is attached hereto as *Annex "C"*.

The **BCDA** President and CEO approved the recommendation of **BCDA** BAC for Infrastructure to award to the **CONTRACTOR** the Contract for the Construction of Fronthaul of the Cable Network Corridor for the Luzon Bypass Infrastructure Project. Accordingly, the Notice of Award dated 13 February 2018 was issued by **BCDA** BAC for Infrastructure attached hereto as *Annex "D."*

ACCORDINGLY, the Parties hereby agree as follows:

ARTICLE I DEFINITION OF TERMS

- 1.1 **Project** refers to the Construction of the Fronthaul of the Cable Network Corridor for the Luzon Bypass Infrastructure Project located in Baler, Aurora and San Fernando, La Union.
- 1.2 **Project Manager** refers to the representative of **BCDA** to the Project.
- 1.3 **Contract** refers to this agreement including the contract documents.
- 1.4 **Contract Documents** refer to the documents specified in Article IV of this Contract.
- 1.5 **Contract Price** refers to the consideration which the **CONTRACTOR** shall be entitled to receive from **BCDA** under Article VI of this Contract.
- 1.6 **CONTRACTOR** refers to **E.M. CUERPO, INC..**

- 1.7 **Construction Period** refers to the period specified in Section 5.1 within which the **CONTRACTOR** shall complete the Project.
- 1.8 **Force Majeure** refers to strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, landslides, earthquakes, storms, floods, civil disturbances, explosions or the issuance of any government policy, rule or regulation, and other similar events, which are beyond the control of either party and which, with the exercise of due diligence, neither party is able to overcome.
- 1.9 **Works** refer to the services to be performed by the **CONTRACTOR** in accordance with the terms and conditions of this Contract and the Contract Documents.

ARTICLE II PROJECT

- 2.1 The Project refers to the Construction of the Fronthaul of the Cable Network Corridor for the Luzon Bypass Infrastructure Project located in Baler, Aurora and San Fernando, La Union.

ARTICLE III SCOPE OF WORKS

- 3.1 The **CONTRACTOR** shall, at its own expense and with the use of its own resources and equipment, undertake the construction of the structures/facilities in accordance with the approved plans, specifications and other contract documents, as well as relevant government laws, codes, and other applicable rules and regulations, as well as ordinances.
- 3.2 The **CONTRACTOR** shall for its own account, secure the necessary permits, licenses and documentary approvals required by concerned government agencies such as those prescribed by national agencies, local government units and utility companies.
- 3.3 For any decrease or increase in the Scope of Works, the provisions of Annex E of the Revised IRR of RA 9184 shall apply.

ARTICLE IV CONTRACT DOCUMENTS

- 4.1 The following documents shall be made integral parts of this Contract, as fully as if the contents of the said documents were 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 of both Parties in writing:
- A. **BCDA's** Secretary's Certificate;
 - B. **CONTRACTOR's** duly Notarized Sworn Statement;
 - C. **BCDA BAC** for Infrastructure Resolution of Award;

- D. Notice of Award of Contract and **CONTRACTORS**'s conformity thereto;
- E. Approved Contract Drawings;
- F. Project Organizational Chart;
- G. Prices in the Bill of Quantities;
- H. Unit Price Analyses;
- I. Construction Schedule and S-Curve;
- J. Construction Method;
- K. Manpower Schedule;
- L. Equipment Utilization Schedule;
- M. Construction Safety and Health Program;
- N. Performance Security;
- O. **BCDA**'s Certificate of Availability of Funds;
- P. Contract Review No. 085 of the OGCC, dated 20 February 2018; and
- Q. All other documents as may be agreed upon by the parties.

4.2 All contract documents are and shall remain the properties of **BCDA**.

4.3 The Contract Documents shall be complementary to each other and what is called for or prescribed by one shall be considered as if called for or prescribed by all. In case of discrepancy between any of the Contract Documents or any defective or erroneous description, omission or ambiguity in any of the Contract Documents, the **CONTRACTOR** shall, within thirty (30) calendar days, submit the matter in writing to **BCDA** through **BCDA**'s Project Manager. **BCDA** shall, within a reasonable time, make a decision thereon in writing, after taking into consideration the intent and purpose of this Project.

4.4 **BCDA** shall have the right to furnish the **CONTRACTOR** during the progress of the work such additional drawings, instructions and documents as **BCDA** may deem necessary for the proper accomplishment of the work. All such additional drawings, instructions and documents, as well as any decision made by **BCDA** shall form integral parts of this Contract.

4.5 The provisions of the Contract and the Contract Documents should be harmonized and effected as far as practicable. However, in case of an irreconcilable conflict between this Contract and the provisions of any of the Contract Documents, the former shall prevail.

ARTICLE V CONSTRUCTION PERIOD

5.1 **Completion Period**

The **CONTRACTOR** shall complete the Project to **BCDA**'s satisfaction within **Ninety (90) Calendar Days** from the date indicated in the Notice to Proceed in accordance with the Contract Schedules submitted by the **CONTRACTOR** as approved by **BCDA**.

5.2 **Extension of Completion Period**

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- 5.2.1 No extension of contract time shall be granted to the **CONTRACTOR** due to ordinary unfavorable weather conditions, non-availability of equipment or materials to be furnished thereby, labor problems and such causes for which **BCDA** is not directly responsible, or when time-affected activities do not fall within the critical path of the network. However, extension of time may be granted in case of delay occasioned by force majeure or such other reasons as **BCDA** may find acceptable and justified; provided, that, the extension may only be granted on favorable recommendation of **BCDA**'s Project Manager after due notice has been given to **BCDA** as provided below; and provided further that, said extension shall in no case exceed the actual period of delay as confirmed by and determined by **BCDA**.
- 5.2.2 The pertinent provisions of Republic Act No. 9184 (RA 9184) and its Revised Implementing Rules and Regulations (IRR), particularly Section 10 of Annex E of the IRR, shall be applicable to any request made by the **CONTRACTOR** for extension of the period of completion of the Project.
- 5.2.3 **BCDA** shall not take into account any request for contract extension unless the **CONTRACTOR** has given notice thereof in writing to **BCDA** within thirty (30) calendar days after the circumstances leading to such request have arisen or such additional work affecting the critical path of the Project schedule has been commenced, in order that **BCDA** could have them investigated. Failure to provide such notice shall constitute a waiver by the **CONTRACTOR** of any claim.

5.3 Slippage

- 5.3.1 Order for Acceleration – Should the **CONTRACTOR** incur a negative slippage of at least five percent (5%) but less than fifteen percent (15%) on the critical path, **BCDA** through its Project Manager shall notify the **CONTRACTOR** in writing to submit a catch-up schedule and a crash program. The **CONTRACTOR** shall, thereupon, take immediate steps as are necessary, with the approval of **BCDA** as recommended by its Project Manager, in order to expedite the work. The **CONTRACTOR** shall not be entitled to any additional payment for taking such remedial steps. Any difference or increase in cost under subsequent work by administration or award to another contractor shall be paid for by the **CONTRACTOR**.
- 5.3.2 Slippage of Fifteen Percent (15%) - Should the **CONTRACTOR** incur a negative slippage of at least fifteen percent (15%) on the critical path based on the approved PERT/CPM or Bar Chart/S-Curve schedule, **BCDA** shall have the following rights:
- 5.3.2.1 To terminate or rescind this Contract without need of judicial action by giving the **CONTRACTOR** a ten (10)-day prior written notice;
- 5.3.2.2 To forfeit the **CONTRACTOR**'s Performance Security; and
- 5.3.2.3 To take over the work by administration, or award the Project to another qualified contractor through negotiation.

5.3.3 The rights mentioned in the immediately preceding paragraphs may be availed of without prejudice to any of **BCDA's** rights under other laws, including, but not limited to compensation for damages.

5.4 **Liquidated Damages**

5.4.1 The **CONTRACTOR** shall complete the Project within the completion period stipulated in Section 5.1 hereof, exclusive of such extensions of time as may be mutually agreed upon by the Parties. In the event that the **CONTRACTOR** fails or refuses to satisfactorily complete the work within the stipulated period, the **CONTRACTOR** shall pay **BCDA** for liquidated damages, and not by way of penalty, an amount equivalent to one-tenth of one percent (1/10 of 1%) of the total Contract Price as stated in Section 6.1 hereof less the value of the work satisfactorily completed, as certified by the **BCDA** for each calendar day of delay.

5.4.2 To be entitled to such liquidated damages, **BCDA** does not have to prove that it has incurred actual damages. Such amount shall be deducted from the money due or which may become due the **CONTRACTOR** under the contract and/or collect such liquidated damages from retention money or other securities posted by the **CONTRACTOR** whichever is convenient to **BCDA**.

5.5 **Certificate of Completion and Preliminary Acceptance**

5.5.1 **Substantial Completion**

Once the Project reaches an accomplishment of **Ninety-Five Percent (95%)** of the total contract amount, **BCDA** may create an inspection team to undertake preliminary inspection and submit a punch-list to the **CONTRACTOR** in preparation for the final turnover of the Project. Said punch-list will contain, among others, the remaining works, work deficiencies for necessary corrections, and the specific duration/time to fully complete the Project considering the approved remaining contract time. This, however, shall not preclude **BCDA's** claim for liquidated damages or be deemed a waiver of its right under the Contract as well as applicable laws, rules and regulations.

5.5.2 **Final Completion**

Once the Project is completed in accordance with this Contract, the **CONTRACTOR** shall give a written notice to **BCDA** through its Project Manager, who may promptly deploy its inspection team to verify. **BCDA** shall issue a Certificate of Completion and Preliminary Acceptance of the Project through its Project Manager, stating the date of actual completion, within ten (10) days from completion of the Project to the satisfaction of **BCDA**; provided that the **CONTRACTOR** has submitted the following:

- 1) Five (5) sets of blue print copy of "As-Built" Drawings plus one (1) original set thereof, including the electronic files;

- 2) Summary of materials testing reports;
- 3) All other permits required relative to the Project; and
- 4) Such other documents as **BCDA** may reasonably require.

5.5.3 **BCDA's** issuance of the Certificate of Completion and Preliminary Acceptance shall mean the start and effectivity of the one (1) year Defects Liability Period as provided in Section 62.2.2 of the Revised IRR of RA 9184.

5.5.4 **BCDA's** issuance of the Certificate of Completion and Preliminary Acceptance of the project shall entitle the **CONTRACTOR** to the payment of final billing.

ARTICLE VI CONSIDERATION

6.1 Consideration

For and in consideration of the full, satisfactory and faithful performance by the **CONTRACTOR** of all its obligations under this Contract, **BCDA** shall pay the **CONTRACTOR** the total amount of **PESOS: THIRTY MILLION THREE HUNDRED THIRTY-THREE THOUSAND THREE HUNDRED THIRTY-THREE and 36/100 (₱30,333,333.36)**, inclusive of all applicable taxes and fees.

6.2 No escalation of price will be effected under this Contract even in the event of price increase of construction materials and equipment, except under extraordinary circumstances as defined and enumerated in RA 9184 and its Revised Implementing Rules and Regulations.

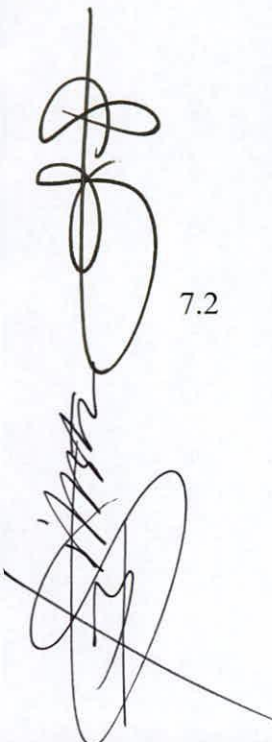
ARTICLE VII MANNER OF PAYMENT

7.1 Advance Payment

BCDA shall, upon written request of the **CONTRACTOR** and submission of the guarantee bond specified in Section 9.5, make an advance payment for mobilization to the **CONTRACTOR** in an amount equal to fifteen percent (15%) of the Contract Price. The advance payment shall be recouped in full and at one time through a deduction by **BCDA** of fifteen percent (15%) of the amount of progress payments due the **CONTRACTOR**.

7.2 Monthly Progress Billing

7.2.1 Payments for monthly progress billings submitted by the **CONTRACTOR** to **BCDA** shall be based on actual work satisfactorily completed by the **CONTRACTOR** for the period covered as certified by the Project Manager and on the agreed lump sum or unit price for each item of work. The following shall be deducted from the monthly progress billings:



- a) Fifteen percent (15%) of the amount of the progress billing to effect recoupment in full and at one time of the advance payment;
- b) Ten percent (10%) retention money as provided for in Section 7.4;
- c) Money(ies) paid by **BCDA** to settle unpaid valid third-party claims against the **CONTRACTOR**, or other obligations of the **CONTRACTOR** arising from this Contract, if any; and
- d) Other deductions prescribed by existing laws, government rules and regulations in the manner set forth under such laws, rules and regulations.

7.2.2 No progress payment shall be construed as an acceptance by the **BCDA** of the works or any portion thereof.

7.3 Final Payment

Final payment to the **CONTRACTOR** shall be made only after the issuance of a Certificate of Completion and Preliminary Acceptance of the Project by **BCDA**. **BCDA** shall effect the final payment to the **CONTRACTOR** upon proper endorsement to **BCDA** of the final payment billing; provided, however, that the **CONTRACTOR** has submitted the following documents:

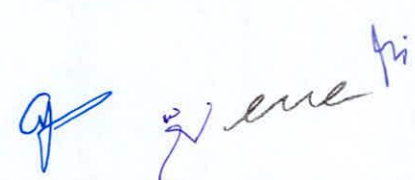
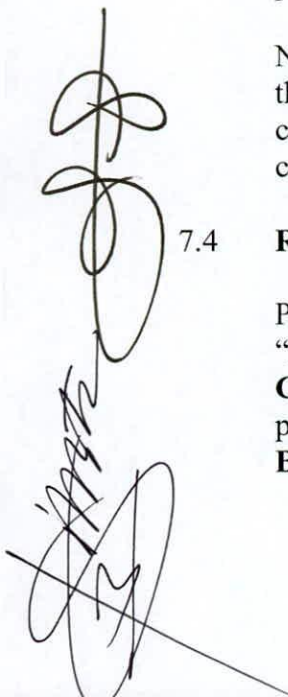
- a. Sworn statement, to be executed by a duly authorized representative of the **CONTRACTOR**, stating that all liabilities incurred have been paid and that there are no outstanding liens, garnishments, attachments or claims relative to the Project;
- b. Quitclaim and release to be executed by the **CONTRACTOR'S** duly authorized representative in a form satisfactory to **BCDA**, releasing **BCDA** from any further claim relating to the Contract; and
- c. Such other documents as **BCDA** may reasonably require.

Provided further that the gross amount for final billing shall not be below five percent (5%) of the final cost of the Project.

Nothing herein contained shall be construed as a waiver of **BCDA's** right to reject the whole or any portion of the work should the same be found to have been constructed in violation of the plans and specifications of any of the conditions or covenants of this Contract.

7.4 Retention Money

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 by **BCDA** from every progress payment until fifty percent (50%) of the value of works, as determined by **BCDA**, 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. The total retention money retained shall not bear interest and shall be due for release upon BCDA's final acceptance of the works.

7.5 **Compliance with Executive Order No. 398, Series of 2005.**

Pursuant to Executive Order No. 398, Series of 2005, and its Implementing Rules, the **CONTRACTOR** shall pay taxes in full and on time and that failure to do so shall entitle **BCDA** to suspend payment for Works accomplished. In this regard, the **CONTRACTOR** shall regularly submit to **BCDA** its latest valid tax clearance from the Bureau of Internal Revenue (BIR), as well as a copy of its latest income and business tax returns duly stamped and received by the BIR and duly validated tax payments made thereon.

**ARTICLE VIII
COVENANTS OF BCDA AND THE CONTRACTOR**

8.1 **BCDA covenants to do and perform the following:**

- 8.1.1 Make available the amount representing total construction cost for all Works stipulated in Article III for payment in accordance with Article VI hereof;
- 8.1.2 Review, evaluate and approve or disapprove (as applicable) proposals and recommendations submitted by the **CONTRACTOR**;
- 8.1.3 Evaluate and approve or revise the plans, detailed engineering, technical specifications and adjustments to the construction schedule;
- 8.1.4 Assign a Project Manager who shall supervise and monitor the execution of the work by the **CONTRACTOR**. **BCDA** may stop the execution of the work or any portion thereof, if in its judgment, the work is not being pursued in accordance with the requirements of this Contract and the Contract Documents, without liability whatsoever for downtime costs. **BCDA** shall consider the effect a possible revision of the work upon its construction may have on the Project's timetable. If the revision of the work was due to **CONTRACTOR's** fault, the projected completion date shall not be changed or extended.
- 8.1.5 Assist the **CONTRACTOR**, on a best-effort basis, in securing the permits, clearances, approvals and licenses from the concerned government agencies;
- 8.1.6 Free the **CONTRACTOR** from any and all liabilities pertaining to claims for ownership;
- 8.1.7 Make available all existing titles/documents pertaining to the property to the **CONTRACTOR** for reference; and
- 8.1.8 Coordinate with the government agency concerned for the smooth entry of workers, equipment and materials needed to implement the Project.

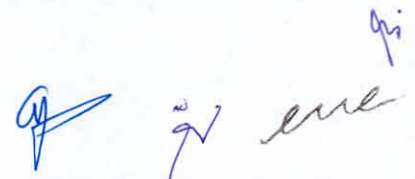
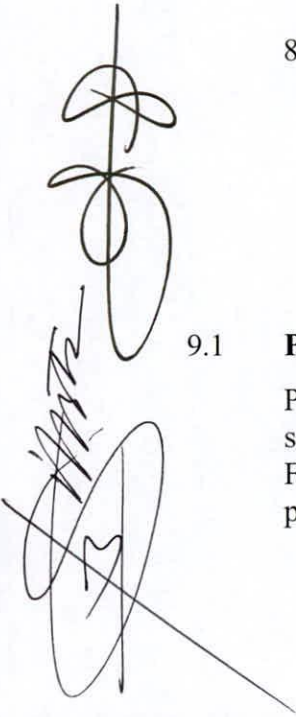
8.2 **CONTRACTOR covenants to do and perform the following:**

- 8.2.1 Answer for the quality and workmanship of the Project consistent with sound engineering, administrative and financial practices and strictly in accordance with the approved plans, specifications and other contract documents. In the event **BCDA** finds that the materials, equipment and/or workmanship are not in conformity with the contract documents, these shall be removed or corrected by the **CONTRACTOR** at its own expense;
- 8.2.2 Act in a manner that will protect the interests of **BCDA** at all times and take all reasonable steps to complete the Project within schedule and within the contract cost, consistent with best accepted sound engineering practices;
- 8.2.3 Set-up a Quality Control (QC) System & Plan at the Project site consistent with Article XIV hereof;
- 8.2.4 Furnish **BCDA** Monthly Periodic Reports on the progress of the work including information relating to the work and the Project as **BCDA** may, from time to time, reasonably request. For this purpose, the **CONTRACTOR** shall keep all records, calculation sheets, estimates, back-up data, computer data files and other relevant data properly indexed, filed and readily available to **BCDA**. It shall also use the Systems International (SI) standards and the English language in the preparation thereof;
- 8.2.5 Submit prior to the effectivity of the Contract a Construction Safety and Health Program consistent with Article XV hereof. The **CONTRACTOR** shall prepare and submit the PERT/CPM, Bar Chart and S-Curve that will be used and implemented during the actual Construction activities within the first fifteen (15) days of the effectivity of this Contract for **BCDA's** approval;
- 8.2.6 In compliance with RA 6685, the **CONTRACTOR** shall hire at least 50% of the unskilled and at least 30% of the skilled labor requirements from the available bonafide residents within the locality of the Project;
- 8.2.7 Secure the necessary construction building permits, application fees, licenses and taxes for the execution and completion of the Project; and
- 8.2.8 Nothing herein shall in any way be construed to limit the over-all responsibility of the **CONTRACTOR** for the performance of the obligations herein and **CONTRACTOR's** liability for any violation of this Contract.

**ARTICLE IX
BONDS AND INSURANCES**

9.1 **Performance Security**

Prior to the signing of the Contract, the **CONTRACTOR** shall provide performance security in favor of **BCDA** which shall be valid until issuance of the Certificate of Final Acceptance of the Project and which shall guarantee the faithful and complete performance by the **CONTRACTOR** of the Services as well as the other obligations

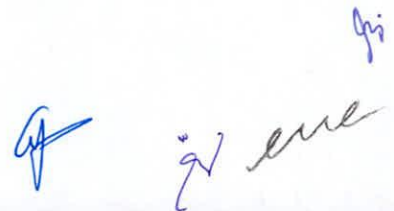
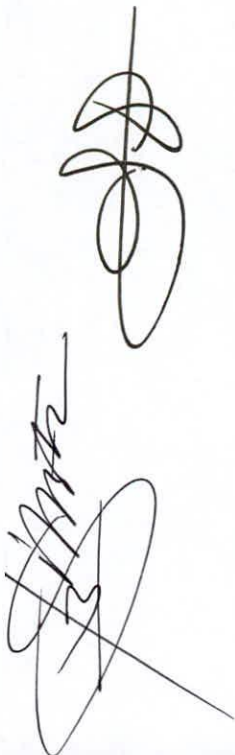


of the **CONTRACTOR** under this Contract. The performance security shall be in the manner, amount and form specified below:

- 9.1.1 Thirty percent (30%) of the Contract Amount, if in the form of a surety bond callable upon demand issued by a reputable surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.
- 9.1.2 Ten percent (10%) of the Contract Amount, if in the form of a Bank draft/guarantee or irrevocable letter of credit issued by a universal or commercial bank: Provided that, it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank.
- 9.1.3 The following provisions shall be deemed incorporated as a condition of the Performance Security in favor of **BCDA**: **“The right to institute action on the penal bond pursuant to Act No. 3688 of any individual, firm, partnership, corporation and association supplying the CONTRACTOR with labor and materials for the prosecution of the work is hereby acknowledged and confirmed.”**
- 9.1.4 **BCDA** may release the performance security and return it to the **CONTRACTOR** after the issuance of the Certificate of Final Acceptance subject to the following conditions:
1. **BCDA** filed no claims against the **CONTRACTOR**; and
 2. The **CONTRACTOR** has no pending claims for labor and materials filed against it.
- 9.1.5 The performance security posted in favor of **BCDA** shall be forfeited in the event it is established that the **CONTRACTOR** is in default in any of its obligations. The forfeiture of the performance security is in addition to other remedies that **BCDA** may have against the **CONTRACTOR** as may be provided by law and this Contract.

9.2 **All-Risk Insurance** – Prior to the signing of the Contract, the **CONTRACTOR** shall, at its own cost and expense, secure an All-Risk Insurance from any reputable insurance company duly licensed by the Insurance Commission to insure the Project (including permanent and temporary works, and equipment and materials delivered at site) against all risks and third-party liabilities from whatever causes other than Force Majeure, in an amount equal to the Contract Price. The **CONTRACTOR** shall submit to **BCDA** the insurance policy and the receipts for current premium payments. The insurance policy shall include minimum third-party liability as follows:

- | | | |
|-----|---------------------------|---|
| (a) | Bodily Injury Per Person- | Twenty-five Thousand Pesos
(₱25,000.00) |
| | Per Occurrence- | One Hundred Thousand Pesos
(₱100,000.00) |



- | | | | |
|-----|-------------------------------------|---|---|
| (b) | Property Damage
Per Occurrence | - | One Hundred Thousand Pesos
(₱100,000.00) |
| (c) | Aggregate limit
for (a) and (b)- | | One Million Pesos
(₱1,000,000.00) |

9.3 **Personal Accident Insurance** – Prior to the signing of the Contract, the **CONTRACTOR** shall, at its own cost and expense, secure a Personal Accident Insurance from a company acceptable to **BCDA** with a single limit of Ten Thousand Pesos (₱10,000.00) per worker, to answer for accidental injuries to or death of any worker or employee of the **CONTRACTOR** assigned to the Project, or the worker or employee of the **CONTRACTOR**'s sub-contractor. The Personal Accident Insurance shall be in force and effect during the Construction Period or any valid extension thereof. In this connection, the **CONTRACTOR** shall render **BCDA** free and harmless from any and all claims for damages, costs or compensation to be due by reason of any accidental injury to, or death of any worker or employee of the **CONTRACTOR** and its sub-contractor.

9.4 **Warranty Bond** – The **CONTRACTOR** shall, prior to the issuance of the Certificate of Final Acceptance, obtain at its own cost a Warranty Bond, callable on demand, with any of the following schedule:

9.4.1 Thirty percent (30%) of the Total Contract Price, if in the form of a surety bond callable upon demand issued by the Government Service Insurance System (GSIS) or a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.

9.4.2 Ten percent (10%) of the Total Contract Price, if in the form of a bank guarantee confirmed by a universal or commercial bank.

Such bond shall be in force and effect during the applicable warranty period provided in Section 62.2.3 of the IRR of RA 9184 starting from the issuance of the Certificate of Final Acceptance by **BCDA**. The warranty bond shall remain effective for one (1) year from the date of issuance of the Certificate of Final Acceptance by the **BCDA**, and returned only after the lapse of the said one (1) year period.

9.5 **Advance Payment Security** – The **CONTRACTOR** shall, prior to the release of the advance payment specified in Section 7.1, submit at its own cost and expense an Advance Payment Security acceptable to **BCDA** in the form of an irrevocable standby letter of credit of equivalent value from a commercial bank, a bank guarantee or a surety bond callable upon demand, issued by a surety or insurance company duly licensed by the Insurance Commission and confirmed by **BCDA** to guarantee the repayment to **BCDA** of the unliquidated portion of the advance payment. This bond shall be in force and effect until the advance payment shall be fully liquidated by the **CONTRACTOR**.

9.6 **Renewal of Bonds and Securities** – The **CONTRACTOR** shall also cause the renewal of any of the bonds and securities herein required whenever such renewal shall be necessary and applicable as determined by **BCDA**.

**ARTICLE X
COMPLIANCE WITH LABOR LAWS**

- 10.1 There is no employer-employee relationship between **BCDA** and the **CONTRACTOR**, its employees, agents and assigns. The **CONTRACTOR** alone is responsible for any death or injury caused to its own employees, agents or assigns in the performance of the work herein stipulated, or any liability arising from employer-employee relationship with its own employees. The **CONTRACTOR** shall strictly comply and observe all laws regarding workmen's health, welfare, compensation, minimum wages, incentive leaves, overtime pay, 13th month pay, night differentials, if applicable, hours of labor and other pertinent labor laws. Any violation thereof shall be the sole responsibility of the **CONTRACTOR**. Relative thereto, the **CONTRACTOR** shall submit a Certification, executed by its duly authorized representative, accompanying every progress billing that it has strictly complied and observed all laws regarding workmen's health, welfare, compensation, minimum wages, incentive leaves, overtime pay, 13th month pay, night differentials, hours of labor, and other pertinent labor laws. The **CONTRACTOR** shall at all times be personally and directly liable and shall hold **BCDA** free and harmless from any and all claims or liabilities arising from the acts or conduct of the **CONTRACTOR**'s representatives, employees and workers.

**ARTICLE XI
SUBCONTRACTING**

- 11.1 The **CONTRACTOR** shall not assign, transfer, pledge, subcontract or make other disposition of this Contract or any part thereof or interest therein except with the prior written consent of **BCDA** and **provided that the amount to be subcontracted shall not exceed fifty percent (50%) of the Consideration in this contract**. Such consent, if given, shall not relieve the **CONTRACTOR** from any liability or obligation under this Contract nor shall it create any contractual relation between the sub-contractor and **BCDA**.

**ARTICLE XII
WARRANTY PERIOD**

- 12.1 The **CONTRACTOR** guarantees its work against all structural defects and defects in workmanship and quality of materials supplied by the **CONTRACTOR** for the duration of the Project and maintains the same during the applicable warranty period provided in Section 62.2.3 of the IRR of RA 9184 after the issuance of the Certificate of Final Acceptance by **BCDA**. All defects made known to the **CONTRACTOR** shall be immediately corrected, repaired or replaced by the **CONTRACTOR** within fifteen (15) calendar days from receipt of notice of such defects. In the event that the **CONTRACTOR** fails to commence repair or replacement work within fifteen (15) calendar days after being informed of such defects, **BCDA** shall, at its option, undertake the corrective, repair or replacement work, or have the same undertaken by other contractors at the cost and expense of the **CONTRACTOR**, without prejudice to the filing of appropriate civil and/or criminal charges against it as well as the forfeiture of the Warranty Bond posted in favor of **BCDA**.

**ARTICLE XIII
DISPUTE RESOLUTION**

- 13.1 Any disagreement arising from this contract shall be discussed and settled amicably in good faith by the designated representatives of the Parties of equivalent ranks who shall serve as the Adjudication Committee. The number of representatives shall be four (4) – two (2) from **BCDA** and two (2) from the **CONTRACTOR**.

In the event that no agreement is reached by the Adjudication Committee within thirty (30) working days after the commencement of the discussion, such dispute, controversy or claim arising from, or relating to, this contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with the Philippine Dispute Resolution Center, Inc. (PDRI) Arbitration Rules in force at the time of commencement of the arbitration.

- a. The number of arbitrators shall be three – one to be appointed by **BCDA** and another by the **CONTRACTOR**. The third one shall be appointed by the two arbitrators appointed by the Parties.
- b. The seat of arbitration shall be in the Philippines and the place shall be Metro Manila.
- c. The language to be used in the arbitral proceedings shall be English.

Should it be inevitable for the Parties to avail the remedies in the court of law, all legal actions relating to, arising from, or in connection with, this Contract shall be filed exclusively with the appropriate court in Taguig City to the exclusion of other courts of equal jurisdiction.

**ARTICLE XIV
QUALITY CONTROL**

14.1 **CONTRACTOR's Quality Control System**

14.1.1 The **CONTRACTOR** shall at its own cost set up a quality control system at the Project site for the purpose of ensuring the following:

- (a) Materials and/or equipment to be purchased shall be in accordance with the Contract Documents;
- (b) Materials and/or equipment are properly tested at accredited laboratories; and
- (c) Workmanship conforms to specifications.

14.1.2 The **CONTRACTOR** shall set up a separate crew independent of operations with sufficient manpower and with the following responsibilities:



- (a) **Submittals** – List down in advance all the submittals required; secure the submittals and forward them to the Project Manager who will review and submit them for **BCDA** approval; and monitor the status of these submittals. Cost of samples and other submittals shall be for the **CONTRACTOR**'s account. Samples shall be returned to the **CONTRACTOR**.
- (b) **Inspection** – Coordinate with the Project Manager; conduct actual inspection works; require the construction group to submit construction methodology prior to implementation; see to it that approved methodology is properly implemented; and check that no materials and/or equipment are installed in the Project unless previously approved by **BCDA**.
- (c) **Testing** – List down in advance all the tests required for materials and equipment; conduct actual testing to be witnessed by the Project Manager; and report all test results to the Project Manager for appropriate action. The costs to be incurred for the conduct of the tests shall be borne by the **CONTRACTOR**.

14.2 **CONTRACTOR's Quality Control Plan**

The **CONTRACTOR** shall submit to **BCDA** within the first fifteen (15) calendar days of the effectivity of this Contract a Quality Control Plan, which shall include the personnel, procedures and forms to be used.

**ARTICLE XV
SAFETY and HEALTH, SANITATION AND SECURITY**

15.1 **CONTRACTOR's Responsibilities**

It shall be the responsibility of the **CONTRACTOR** to take all necessary and adequate precautions in order to prevent and avoid risk of bodily harm to persons or damage to any property including properties of third parties who may be affected by the construction activities of the **CONTRACTOR**. The **CONTRACTOR** shall render **BCDA** free and harmless from any and all damages or claims for compensation payable under the law in respect or as a consequence of any accident or injury to any employee of the **CONTRACTOR** or third persons, or of any damage to properties of **BCDA** and third persons, and shall fully satisfy all claims, demands, proceedings, costs, charges, and expenses whatsoever in respect thereof, or in relation thereto, whether or not covered by the appropriate insurance policies.

15.2 **Construction Safety and Health Program**

Prior to the signing of the Contract, the **CONTRACTOR** shall submit to **BCDA** a Construction Safety and Health Program which shall include Rules and Measures to be Taken, Facilities and Tools to be Installed, and Organization and Procedure.

**ARTICLE XVI
NON-WAIVER**

- 16.1 No failure or delay on the part of either Party to exercise any right, power or privilege hereunder shall operate as a waiver thereof, neither shall any single or partial exercise of any right, power or privilege hereunder preclude any other, or further exercise thereof, or the exercise of any other right, power or privilege.

**ARTICLE XVII
EFFECTIVITY**

- 17.1 This Contract shall take effect as indicated in the Notice to Proceed to be issued by **BCDA** upon the execution of this Contract, until the issuance by **BCDA** of a Certificate of Final Acceptance, unless sooner terminated by **BCDA** upon the occurrence of any of the grounds for termination specified under Article XIX hereof. The representations and warranties of the **CONTRACTOR** shall remain effective upon the termination or expiration of this Contract.

**ARTICLE XVIII
SUSPENSION, REDUCTION, STOPPAGE OF WORKS**

- 18.1 If at any time during the term of this Contract **BCDA** considers it impractical to commence or continue the performance by the **CONTRACTOR** of the Works or any portion thereof, **BCDA** may order the **CONTRACTOR** in writing to temporarily reduce, or suspend or stop the work in its entirety or any part thereof. The **CONTRACTOR** shall have no claim for damages against **BCDA** by reason of such suspension or stoppage of work; provided that, the **CONTRACTOR** shall be entitled to receive from **BCDA** payment corresponding to the work accomplished in accordance with this Contract as certified by **BCDA** as of the date the order of suspension or stoppage takes effect. Such payment shall be considered as full satisfaction of all claims of the **CONTRACTOR** against **BCDA** subject to the provision of Section 19.3 in case of permanent stoppage of work and/or termination of contract. **BCDA** shall serve the aforesaid order at least three (3) calendar days prior to the intended date of suspension or stoppage.

**ARTICLE XIX
RESCISSION, CANCELLATION, TERMINATION OF CONTRACT**

- 19.1 **BCDA** shall be entitled to terminate this Contract after giving a written notice to the **CONTRACTOR**, upon the occurrence of any, some or all of the following events:
- (a) The **CONTRACTOR** shall have incurred a negative slippage of fifteen percent (15%) based on the work schedule;
 - (b) The **CONTRACTOR** shall have refused to comply with the order of **BCDA** concerning the proper execution of the Works, or shall have committed a breach of any of the stipulations, clauses, terms and conditions specified in this Contract Documents as determined by **BCDA**;

- (c) The **CONTRACTOR** abandons the Project, or fails to deliver to the Project site equipment, materials or personnel required for the performance of the Works;
- (d) The **CONTRACTOR** fails to pay for its labor and materials;
- (e) The **CONTRACTOR** is adjudged bankrupt or insolvent, or makes a general assignment of its assets for the benefits of its creditors, or is placed under receivership or liquidation; or
- (f) **BCDA** considers the continued performance of the Works by the **CONTRACTOR** prejudicial to the interest of **BCDA**.

19.2 Upon the termination of this Contract due to the occurrence of any, some or all of the conditions specified in Section 19.1, **BCDA** shall, upon notice, immediately take over the performance of the Works and take possession of all materials, tools, equipment and supplies remaining on the Project site for the purpose of completing the Project. The **CONTRACTOR** shall be liable for any additional cost and expenses incurred by **BCDA** as a result of said takeover.

19.3 Should **BCDA** terminate this Contract for reasons not attributable to the **CONTRACTOR**, **BCDA** shall pay to the **CONTRACTOR** a sum that bears the same ratio as the cost of the works at the time of the termination, which shall include a reasonable estimated costs of any work satisfactorily completed as determined by **BCDA**. In addition, **BCDA** shall pay the **CONTRACTOR** fair compensation for any equipment of the **CONTRACTOR** retained by **BCDA** either by purchase or lease, at the option of **BCDA**. It is understood that the **CONTRACTOR** shall exercise due diligence to protect the property and interest of **BCDA**.

ARTICLE XX GENERAL PROVISION

20.1 **Separability** – If any stipulation, clause, term or condition of this Contract is held invalid or contrary to law, the validity of the other stipulations, clauses, terms and conditions hereof shall not be affected thereby.

20.2 **Modification** – The parties hereby agree to amend or modify any provision of this Contract, which might be declared invalid or contrary to law, to conform with the subject and objective thereof.

ARTICLE XXI MISCELLANEOUS PROVISIONS

21.1 The Parties represent that they have the requisite power, authority, and capacity to enter into this Contract and to perform their obligations and undertakings according to the terms and conditions hereof.

- 21.2 Nothing in this Contract shall be construed as establishing the relationship of an employer and an employee between the **CONTRACTOR** and **BCDA** or any of their respective staff. The **CONTRACTOR** shall at all times be personally and directly liable and shall hold **BCDA** free and harmless from any and all claims or liabilities arising from the acts or conduct of its employees.
- 21.3 This Agreement is subject to compliance with the provisions of RA 9184 and its revised implementing rules and regulations. Other pertinent laws, rules and regulations are deemed to have been included and made part of this Agreement.
- 21.4 This Contract has been reviewed and approved by the Office of the Government Corporate Counsel (OGCC), as specified in Contract Review No. 085, Series of 2018. This Contract shall be binding and inure to the benefits of the Parties, their heirs, successors, and assigns.
- 21.5 All notices called for by the terms of this Contract shall be effective only at the time of receipt thereof and only when received by the Parties to whom they are addressed at the following:

Notice to **BCDA**

Bases Conversion and Development Authority

BCDA Corporate Center
2/F Bonifacio Technology Center
31st Street, corner 2nd Avenue,
Bonifacio Global City, Taguig City

Attention:

VIVENCIO B. DIZON
President and Chief Executive Officer

Notice to **CONTRACTOR**

E.M. CUERPO, INC.
E.M. Cuerpo, Inc. Building
No. 3 Metropoli Drive, Metropoli Residenza
Bagumbayan, Quezon City

Attention:

ARCH. CELERINO S. CUERPO
President

A Party may change its address for notice hereunder by giving the other Party notice in writing.

- 21.6 No amendment, modification and alteration to this Contract shall be valid or binding on either Party unless stipulated in writing and executed with the same formality as this Contract.

21.7 **Confidentiality.** Except with the prior written consent of the **BCDA**, neither the **CONTRACTOR** nor its Personnel shall at any time communicate to any person or entity other than **BCDA**, any information which has been disclosed for the purpose of the works, nor shall the **CONTRACTOR** or its Personnel make public any information as to the recommendations and decisions formulated in the course of, or as a result of the works.

SIGNED BY THE PARTIES on MAR 23 2018 in Taguig City, Philippines.

BASES CONVERSION AND DEVELOPMENT AUTHORITY

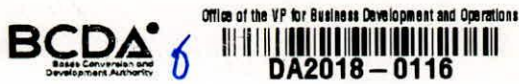
E.M. CUERPO, INC.

By:

By:

VIVENCIO B. DIZON
President and Chief Executive Officer

ARCH. CELERINO S. CUERPO
President



SIGNED IN THE PRESENCE OF:

AILEEN AN. R. ZOSA
Executive Vice President

LORENZ BENEDIK J. SILVESTRE

A C K N O W L E D G M E N T

Republic of the Philippines)
Taguig City) SS.

BEFORE ME, a Notary Public, personally appeared the following:

Name	Identification Document	Date/Place of Issuance
VIVENCIO B. DIZON	Passport No. S0011573A	31 August 2017 DFA Manila
CELERINO S. CUERPO	PRC ID NO. 0010173	17 JANUARY 1990 PRC MANILA

known to me to be the same persons who executed the foregoing instrument and they acknowledged to me that the signatures they affixed confirm their own free acts and the entities they represent.

APR 03 2018

SIGNED AND SEALED on _____ in Taguig City, Philippines.

Doc. No. 394
Book No. 80
Page No. 10
Series of 2018



GUALBERTO J. OYZON, JR.
Notary Public for Taguig City, Philippines
Appointment No. 22, Until 31 December 2019
2/F BTC 21st St., BGC, Taguig City, 1634
PTR No. A-3774071/Taguig City/16 January 2018
Roll of Attorneys No. 48062/IBP Lifetime Member No. 04862
MCLE Compliance No. V-0005517/14 January 2015



March 2018

ARCH. CELERINO S. CUERPO

President

E.M. CUERPO, INC.

E.M. Cuerpo, Inc. Building

No. 3 Metropoli Drive, Metropoli Residenza

Bagumbayan, Quezon City

Subject: **NOTICE TO PROCEED**

Construction of Fronthaul of the Cable Network Corridor for the
Luzon Bypass Infrastructure Project

Dear **Arch. Cuerpo**,

In connection with the Contract for the Construction of Fronthaul of the Cable Network Corridor for the Luzon Bypass Infrastructure Project, with a Contract amount of **Pesos: Thirty Million Three Hundred Thirty-Three Thousand Three Hundred Thirty-Three and 36/100 (P30,333,333.36)**, inclusive of all applicable taxes and fees, for the duration of Ninety (90) calendar days, **E.M. CUERPO, INC.** is hereby directed to commence construction activities in accordance with the terms and conditions stipulated in the Contract seven (7) calendar days from receipt hereof.

We trust that the personnel of E.M. CUERPO, INC. shall strictly observe safety precautionary measures during the construction and shall abide by the security rules and regulations within the premises at all times.

Please acknowledge receipt and return to us one (1) copy of the duly signed Notice within five (5) calendar days from receipt hereof.

For your information and guidance.

Very truly yours,



VIVENCIO B. DIZON

President and Chief Executive Officer

Conforme:



ARCH. CELERINO S. CUERPO

President

E.M. CUERPO, INC.

Date: 04 APRIL 2018

NOTICE OF AWARD

13 February 2018

Arch. Celerino S. Cuerpo
E.M. Cuerpo, Inc.
3 Metropoli Drive, Metropoli Residenza
Bagumbayan, Quezon City

**Subject: CONSTRUCTION OF FRONTHAUL OF THE CABLE NETWORK CORRIDOR FOR THE
LUZON BYPASS INFRASTRUCTURE PROJECT**

Dear **Arch. Cuerpo**:

We are pleased to notify you that the above-stated Contract is hereby awarded you as the Bidder with the Lowest Calculated and Responsive Bid at a Contract Price equivalent to P30,333,333.36, inclusive of all taxes and fees.

You are therefore required, within ten (10) calendar days from the receipt of this Notice of Award, to:

1. Formally enter into contract with BCDA provided that all documentary requirements are complied with;
2. Submit the Performance Security denominated in Philippine Pesos in the form and in the amount stipulated in the Instructions to Bidders, which shall be posted in favor of BCDA and with validity until the issuance of the final Certificate of Acceptance; and
3. Submit the All-Risk Insurance and Personal Accident Insurance as stipulated in the Contract.

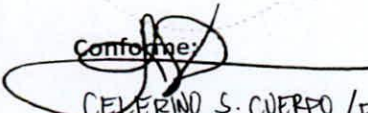
Failure to enter into the said contract or provide the Performance Security or the All-Risk Insurance and Personal Accident Insurance shall constitute a sufficient ground for cancellation of this award and forfeiture of your Bid Security.

Please indicate your concurrence by signing on the space below "Conforme" and return the same upon signing.

Very truly yours,


VIVENCIO B. DIZON
President and Chief Executive Officer

Conforme:


CELERINO S. CUERPO / PRESIDENT - E.M. CUERPO, INC.
Date: 21 FEBRUARY 2018