

SUPPLIER'S CONTRACT

For the "SUPPLY OF LABOR, TOOLS AND EQUIPMENT FOR THE MOBILIZATION AND SHIPMENT OF FIVE-COACH CENTRALLY POWERED HYBRID ELECTRIC ROAD TRAIN FROM DOST-MIRDC, BICUTAN, TAGUIG CITY TO CEBU CITY-REBIDDING"

KNOW ALL MEN BY THESE PRESENTS:

This SUPPLIER'S CONTRACT made and executed by and between:

METALS INDUSTRY RESEARCH AND DEVELOPMENT CENTER, an attached agency under the DEPARTMENT OF SCIENCE AND TECHNOLOGY, with office address at Gen. Santos Avenue, Bicutan, Taguig, represented herein by its Executive Director, **Engr. ROBERT O. DIZON**, hereinafter referred to as "**MIRDC**";

--- and ---

TRANSMODAL INTERNATIONAL, INC., a corporation duly existing and organized under and by virtue of the Republic of the Philippines, with office address G/F TMI Centre Bldg., Arzobispo St., Intramuros, Manila represented herein by its President, **Ms. DENIRENE M. CASIPIT**, hereinafter referred to as **TRANSMODAL**;

WITNESSETH:

WHEREAS, MIRDC is undertaking the procurement for the "SUPPLY OF LABOR, TOOLS AND EQUIPMENT FOR THE MOBILIZATION AND SHIPMENT OF FIVE-COACH CENTRALLY POWERED HYBRID ELECTRIC ROAD TRAIN FROM DOST-MIRDC, BICUTAN, TAGUIG CITY TO CEBU CITY-REBIDDING", hereinafter referred to as the **PROJECT**;

WHEREAS, MIRDC conducted Bid Opening on October 24, 2016 in accordance with the Government Procurement Reform Act (R.A. 9184) and, after evaluating all the Bid proposals submitted, determined that herein **TRANSMODAL** is single calculated responsive bidder;

WHEREAS, a Notice of Award was issued to **TRANSMODAL** who has accepted to supply the labor and materials for the **PROJECT** under set terms and conditions and warrants itself to be competent and fully equipped with the necessary materials, manpower and equipment necessary for undertaking the **PROJECT**;

NOW, THEREFORE, for and in consideration of the foregoing premises the PARTIES have agreed as follows:

ARTICLE I

SCOPE OF CONTRACT

1.1 The Goods and Related Services to be provided shall be as specified in the Schedule of Requirements/Terms of Reference.

1.2 This Contract shall include all such items, although not specifically mentioned, that can be reasonably inferred as being required for its completion as if such items were expressly mentioned herein.

ARTICLE II

CONTRACT DOCUMENTS

2.1 The following documents are incorporated hereto and made an integral part of this Agreement, to wit:

- (a) Bid Documents, including the General and Special Conditions of Contract, if any;
- (b) Specifications/Terms of Reference;
- (c) Invitation to Apply for Eligibility and to Bid;
- (d) Instructions to Bidders;
- (e) Bid Data Sheet;
- (f) Addenda and/or Supplemental/Bid Bulletins, if any;
- (g) Bid form, including all the documents/statements contained in the Bidder's bidding envelopes, as annexes;
- (h) Eligibility requirements, documents and/or statements;
- (i) Performance Security;
- (j) Credit line issued by a licensed bank, if any;
- (k) Notice of Award of Contract and the Bidder's *conforme* thereto;
- (l) Other contract documents that may be required by existing laws and/or by MIRDC.

2.2 In case of doubt or conflict between and among any items or provisions of the Contract Documents, and/or between and among any of the Contract Documents and this Agreement, **TRANSMODAL** shall refer the same in writing to **MIRDC** for clarification and guidance. The clarification or determination made by **MIRDC** in writing shall be binding and conclusive upon the Parties.

2.3 **TRANSMODAL** shall not make any changes or alteration in the drawings, designs, or specifications in the **PROJECT** without prior written approval by **MIRDC**.

2.4 The parties may, in writing, agree to any revision, alteration, or

addition to the terms and conditions of this Agreement or the Contract Documents.

ARTICLE III

CONTRACT PRICE

3.1 For and in consideration of the performance and accomplishment of the **PROJECT**, **MIRDC** shall pay **TRANSMODAL** the total amount of **One Million Six Hundred Thousand Pesos only (Php1,600,000.00)** subject to pertinent laws on government contracts and auditing procedures.

3.2 The Contract Price is inclusive of all taxes, stamp duties, license fees, and other such levies imposed for the completion of this Contract.

3.3 The Contract Price shall be fixed and not subject to variation or price escalation on any account except under conditions specified by law. Any adjustments in Contract Price shall be done in accordance with the guidelines provided by law.

3.4 Any amount payable to **TRANSMODAL** may be compensated against liquidated damages payable to **MIRDC** under this Agreement.

ARTICLE IV

PAYMENTS and WARRANTY

4.1 **MIRDC** shall, upon a written request of **TRANSMODAL** which shall be submitted as a contract document, make an advance payment to **TRANSMODAL** in an amount not exceeding fifteen percent (15%) of the total contract price, to be made in lump sum.

4.2 The advance payment shall be made only upon the submission to and acceptance by **MIRDC** of an irrevocable letter of credit or from a bank guarantee issued by a universal or commercial Bank. The irrevocable letter of credit or bank guarantee shall remain valid until the goods are delivered.

4.3 The advance payment shall be repaid by **TRANSMODAL** by deducting fifteen percent (15%) from his periodic progress payments or in an amount equal to the percentage of the total contract price used for the advance payment until the amount of advance payment is fully liquidated.

4.4 **MIRDC** shall pay **TRANSMODAL** progress payments based on billings or invoice describing, as appropriate, the actual works accomplished as verified and certified by the Executive Director of **MIRDC** or his representative.

4.5 All progress payments shall be subject to a retention fee of ten percent (10%). Such retention shall be based on the total amount due to **TRANSMODAL** prior to any deduction and shall be retained from every progress payment until fifty percent (50%) of the value of work, as determined by **MIRDC**, 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 again be imposed using the rate specified therefore.

4.6 The total "retention money" shall be due for release after the lapse of the warranty period (minimum of 3 months for expendable goods or until consumption; minimum of 1 year for non-expendable goods); provided, however, that the Goods delivered are free from patent and latent defects and all the conditions imposed under this Contract have been fully met.

4.7 **TRANSMODAL** warrants that the materials used for the **PROJECT** are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials, except when the technical specifications required by **MIRDC** provides otherwise.

4.8 **TRANSMODAL** further warrants that the Goods shall have no defect, arising from materials or workmanship or from any act or omission of that may develop under normal use of the supplied Goods in the conditions currently prevailing.

ARTICLE V

TIME OF COMPLETION AND LIQUIDATED DAMAGES FOR DELAY

5.1 **TRANSMODAL** shall perform and complete the **PROJECT** to the satisfaction of **MIRDC** within **Twenty (20) calendar days** reckoned from the date of receipt of the Notice to Proceed.

5.2 Time being of the essence of the **PROJECT**, delay in the completion of the **PROJECT** may be excusable only if the same is due to *force majeure*, additional work approved by **MIRDC**, or for any other special circumstances as may be determined by **MIRDC**.

5.3 *Force majeure* shall be interpreted to mean an event that the Contractor could not have foreseen, or which though foreseen, was inevitable. It shall not include ordinary unfavorable weather conditions except for typhoons; and any other cause the effects of which could have been avoided with the exercise of reasonable diligence by **TRANSMODAL**.

5.4 If a *force majeure* situation arises, **TRANSMODAL** shall promptly notify **MIRDC** in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of **TRANSMODAL**'s notice, **MIRDC** shall evaluate the situation and may extend **TRANSMODAL**'s time for performance, in which case the extension shall be ratified by the Parties by amending this Contract.

5.5 If **TRANSMODAL** fails to satisfactorily deliver any or all of the Goods and/or to perform the Services within the period(s) specified under Section 5.1 of this Contract inclusive of duly granted time extensions, if any, **MIRDC** shall,

without prejudice to its other remedies under this Contract and under the applicable law, deduct from the Contract Price, as liquidated damages, the applicable rate of **one tenth (1/10) of one (1) percent** of the cost of the delayed goods scheduled for delivery for every day of delay until such goods are finally delivered and accepted by **MIRDC**.

5.6 This Contract is automatically rescinded once the total sum of liquidated damages exceed ten percent (10%) of the total contract price, without prejudice to imposition of appropriate sanctions over and above the liquidated damages.

ARTICLE VI

PERFORMANCE SECURITY

6.1 The Performance Security shall be posted in favor of **MIRDC** in the form and amount prescribed under the Contract Documents or applicable laws, rules and regulations. It shall remain valid until the issuance of the Certificate of Acceptance and may be released after the issuance of the Certificate of Acceptance subject to conditions mandated by law.

6.2 The Performance Security shall be forfeited in the event it is established that **TRANSMODAL** is in default in any of its obligations under this Agreement.

ARTICLE VII

INSPECTION AND TESTS

7.1 **MIRDC** or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract specifications at no extra cost to **MIRDC**.

7.2 **MIRDC** may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. **TRANSMODAL** shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to **MIRDC**, and shall repeat the test and/or inspection, at no cost to **MIRDC**.

7.3 **TRANSMODAL** agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by **MIRDC** or its representative, shall release **TRANSMODAL** from any warranties or other obligations under this Contract.

ARTICLE VIII

ASSIGNMENTS AND SUB-CONTRACTING

8.1 **TRANSMODAL** cannot assign, transfer, pledge, sub-contract, or otherwise dispose of this Agreement or any part or interest herein without the prior written approval of **MIRDC**. Any such approval shall not relieve **TRANSMODAL** from any liability or obligation under the law or this Agreement, nor shall it create any contractual relation between the sub-contractor, pledgee, transferee, or assignee, and **MIRDC**.

8.2 **TRANSMODAL** will be responsible for the acts, defaults, and negligence of any sub-contractor, its agents, servants or workmen as fully as if these were **TRANSMODAL's** own acts, defaults, or negligence, or those of its agents, servants or workmen.

8.3 In case of sub-contracting, **TRANSMODAL** shall submit, before Final Acceptance, a sworn statement executed by the sub-contractor attesting to the fact that the latter has been fully paid by **TRANSMODAL** for the materials furnished and the labor performed under the sub-contract.

ARTICLE IX

OBLIGATIONS/RESPONSIBILITIES OF TRANSMODAL

9.1 **TRANSMODAL** shall comply with all laws, rules and regulations promulgated by the government of the Republic of the Philippines, including those on labor, environment, safety and sanitation and other pertinent laws. **TRANSMODAL** shall be solely liable for any violation of the same.

9.2 **TRANSMODAL** shall, with all reasonable speed, repair or replace the defective Goods or parts thereof, without cost to **MIRDC**. If **TRANSMODAL**, having been notified, fails to remedy the defect(s) within a reasonable period, **MIRDC** may proceed to take such remedial action as may be necessary, at **TRANSMODAL's** risk and expense and without prejudice to any other rights which **MIRDC** may have against **TRANSMODAL** under this Contract and applicable law.

ARTICLE X

SETTLEMENT OF DISPUTES

10.1. Any dispute or difference arising between the Parties hereto in connection with or arising out of this Contract shall be resolved amicably through mutual consultation. Unresolved issues remaining after thirty (30) days shall be settled in accordance with Republic Act 9285 ("R.A. 9285"), otherwise known as the "Alternative Dispute Resolution Act of 2004."

10.2 Notwithstanding any reference to arbitration herein, the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and **MIRDC** shall pay **TRANSMODAL** any monies due them.

ARTICLE XI

LIABILITY OF TRANSMODAL

11.1 Subject to additional provisions, if any, set forth in the Contract Documents, **TRANSMODAL's** liability under this Agreement shall be provided by the laws of the Republic of the Philippines.

ARTICLE XII

CONFIDENTIAL INFORMATION

12.1 **TRANSMODAL** shall not, except for purposes of performing the obligations in this Contract, without **MIRDC's** prior written consent, disclose this Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of **MIRDC**. Any such disclosure shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.

ARTICLE XIII

CONTRACT EFFECTIVITY

13.1 Contract effectivity date shall be provided in the Notice to Proceed.

ARTICLE XV

TERMINATION OF CONTRACT

14.1 **MIRDC** shall terminate this Contract on grounds stated under Republic Act No. 9184, otherwise known as the General Procurement Law, and its implementing rules and regulations:

IN WITNESS whereof the parties thereto have caused this Agreement to be executed this _____ at Bicutan, Taguig City.


**METALS INDUSTRY RESEARCH
AND DEVELOPMENT CENTER**

TRANSMODAL

By:


Engr. ROBERT O. DIZON
Executive Director

By:



Ms. DENIRENE M. CASIPIT
President

SIGNED IN THE PRESENCE OF:


Engr. ROMMEL N. CORONA
Project Leader


EVANGELINE Q. PANGANIBAN
Witness

CERTIFIED FUNDS AVAILABLE:


JOHNNY G. QUINGCO
Accountant IV

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
CITY OF ~~MANILA, PHILIPPINE~~ S.S.

Before me, a Notary Public for and in the MANILA, PHILIPPINE this
NOV 24 2015 2016, personally appeared:

NAME	LD. NO.	DATE/PLACE ISSUED
Engr. ROBERT O. DIZON	EC4028370	DFA, Manila April 24, 2015
Ms. DENIRENE M. CASIPIT		

all known to me to be the same persons who executed the foregoing instrument and they acknowledged to me that the same is their free act and deed as well as of the principal they represent.

This instrument refers to **SUPPLIER's** contract consisting of nine (9) pages, including this page in which the Acknowledgment is written, signed by the parties and their witnesses on each and every page and sealed with my notarial seal.

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

Doc No. 30
Page No. 6
Page No. 3
Series of 2016.

ATTY. AGUSTIN B. CABREDA
Notary Public for Manila
Notarial Commission No. 2015-109
Until December 31, 2016
Rm. 409, First United Bldg. Co.
Manila

**BAC RESOLUTION DECLARING NOTICE OF AWARD AND
RECOMMENDING FOR APPROVAL**

R E S O L U T I O N N O. 2016- 17

Project: "Supply of Labor, Tools and Equipment for the Mobilization and Shipment of Five-Coach Centrally Powered Hybrid Electric Road Train from DOST-MIRDC, Bicutan, Taguig City to Cebu City-Rebidding"

Approved Budget for the Contract (ABC):Php1,600,000.00

Pre-bid Conference: October 10, 2016 at 9:00 a.m.

Opening of Bids: October 24, 2016 at 9:00a.m.

Whereas, the Metals Industry Research and Development Center (MIRDC) posted the Invitation to Bid for the above project on September 23, 2016 in the Philippine Government Electronic Procurement System (PhilGEPS), Metals Industry Research and Development Center (MIRDC) websites and conspicuous places at the premises of the DOST Bicutan, Taguig City continuously for 19 days;

Whereas, in response to the said advertisement, Transmodal International Inc. and 2Go Express Inc., signified their intentions to join the bidding and purchased the bidding documents;

Whereas, a pre-bid conference was conducted on October 10, 2016 and attended by the aforementioned bidders and the BAC/TWG;

Whereas, the opening of bids was held on October 24, 2016 at 9:00 a.m. at the MIRDC Conference Room, 3rd Floor, Laboratories Building, MIRDC Compound, Gen. Santos Ave., Bicutan, Taguig City, where Transmodal International Inc. and 2Go Express Inc. submitted their bid proposals as bidders;

Whereas, The Transmodal International Inc. was rated passed and 2Go Express was disqualified because of its expired tax clearance;

Whereas, upon careful examination, validation and verification of all the eligibility, technical and financial requirements during Post-qualification Evaluation on November 3, 2016, BAC/TWG declared, Transmodal International Inc. as single calculated responsive bidder;

RESOLVED, as it is hereby resolved, pursuant to Section 53 of R.A. 9184, to award the bid to Transmodal International Inc.

RESOLVED FINALLY, that the MIRDC BAC assumes no responsibility whatsoever to compensate or indemnify bidders for any expense/s incurred in the preparation of their bids.

SIGNED in Bicutan, Taguig City this 25 October 2016, 2016.



Ms. AUREA T. MOTAS
BAC Chairman/MIRDC



Ms. MERCEDITA G. ABUTAL
Vice Chairperson



GINA A. CATALAN
BAC Member



Atty. TRIXIE HAZEL C. VELUZ
BAC Member



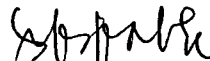
ISIDRO D. MILLO
BAC Member



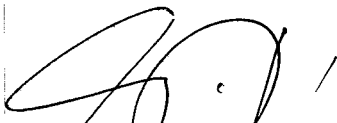
ROMMEL N. CORONA
End-User



FRANZ JOSEPH D. LIBAO
TWG Member




LINA B. AFABLE
TWG Member



ALEXANDER M. ARGAME, JR.
TWG Member

Approved (✓) / Disapproved ()



ROBERT O. DIZON
Executive Director

Approved on November 8, 2016

NOTICE OF AWARD

November 9, 2016

Ms. DENIRENE M. CASIPIT
President
TRANSMODAL INTERNATIONAL, INC.
G/F TMI Centre Bldg., Arzobispo St.,
Intramuros, Manila

Dear Ms. Casipit:

You are advised that the Purchase Order for the **"Supply of Labor, Tools and Equipment for the Mobilization and Shipment of Five-Coach Centrally Powered Hybrid Electric Road Train from DOST-MIRDC, Bicutan, Taguig City to Cebu City-Rebidding"** of the Metals Industry Research and Development Center has been awarded to your firm in the amount of **One Million Six Hundred Thousand Pesos (Php1,600,000.00)** only, subject to the approval of the concerned authorities.

You are therefore requested to acknowledge receipt of this notice within ten (10) calendar days from receipt hereof and post a performance security according to the following schedule:

- a. Cash, Manager's check or Cashier's check – 5% of the total contract price;
- b. Bank Guarantee/ Draft/ Irrevocable Letter of Credit – 5% of the total contract price;
- c. Surety Bond, callable on demand, valid for one year, issued by the Office of the Insurance Commissioner, or any combination thereof – 30% of the total contract price.

Thank you.

Very truly yours,


ROBERT O. DIZON
Executive Director 

 11/9
STEPHEN C. VILLAR
Molding the Future of Metal Industries



NOTICE TO PROCEED

November 9, 2016

Ms. DENIRENE M. CASIPIT

President

TRANSMODAL INTERNATIONAL, INC.G/F TMI Centre Bldg., Arzobispo St.,
Intramuros, Manila

Dear Ms. Casipit:


The attached Contract Agreement having been approved, notice is hereby given to **TRANSMODAL INTERNATIONAL INC.**, that work may proceed on the project for the **"Supply of Labor, Tools and Equipment for the Mobilization and Shipment of Five-Coach Centrally Powered Hybrid Electric Road Train from DOST-MIRDC, Bicutan, Taguig City to Cebu City-Rebidding"**, effective after Three (3) calendar days from receipt of this Notice to Proceed. Upon receipt of this notice, you are responsible for performing the services under the terms and conditions of the Agreement and in accordance with the Implementation Schedule.

Please acknowledge receipt and acceptance of this notice by signing both copies in the space provided below. Keep one copy and return the other to Metals Industry Research and Development Center.

Very truly yours,


ROBERT O. DIZON

Executive Director

I acknowledge receipt of this Notice on NOV. 17, 2016 (date of receipt)Name of Bidder's Representative: Stephen C. VillanuevaAuthorized Signature: 

The Head of the Procuring Entity or his duly authorized representative shall issue the Notice to Proceed within seven (7) calendar days from the date of the approval of the contract.



Molding the Future of Metal Industries

MIRDC Compound, Gen. Santos Avenue, Bicutan, Taguig City, 1631 Metro Manila
P.O. Box 2449 MCPO 1299 Makati City, Philippines • Tel. Nos.: 837-0431 to 38, 837-2071 to 82 loc. 2407
Fax. Nos.: 837-0430 and 838-7878 • E-mail Address: alcc@mirdc.dost.gov.ph • Website: <http://www.mirdc.dost.gov.ph>