

GENERAL CONSTRUCTION CONTRACT

For the "Supply of Labor and Materials for the Renovation of MIRDC Mechanical Workshop II (Phase 2)"

KNOW ALL MEN BY THESE PRESENTS:

This CONTRACT made and executed by and between:

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

--- and ---

B.P. CRUZ BUILDERS & TRADING, a sole proprietor duly existing and organized under and by virtue of the laws of the Republic of the Philippines, with office at 29 Narra, Sto. Domingo, Angeles City Pampanga, represented herein by its General Manager, **Mr. BERNARDO P. CRUZ** hereinafter referred to as the "CONTRACTOR;"

WITNESSETH:

WHEREAS, MIRDC conducted a public bidding on March 14, 2016 in accordance with the Government Procurement Reform Act (R.A. 9184) and its Implementing Rules and Regulations and, after evaluating all the Bid proposals, determined that herein **CONTRACTOR** submitted the Lowest Calculated Responsive Bid;

WHEREAS, a Notice of Award was issued to the **CONTRACTOR** who has accepted 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 WORK

1.1 The **CONTRACTOR** shall:

a. Supply and provide all labor, materials, tools, and equipment, including power and water, transportation and other facilities, services, and all related work for the **PROJECT**, in accordance with the issued plans, drawings, schedule, technical specifications and other related contract documents necessary to prosecute the work to completion.

b. At its own expenses, be responsible for the unloading, unpacking, and inspection of all contract-furnished materials, machinery, and equipment delivered to the

construction site, and shall also be responsible for the storage, control, transportation, safekeeping, and any other necessary arrangement for such materials, machinery, and equipment within the site.

c. Ensure adequate protection at all times of all materials, machinery, and equipment in the construction site against damage, robbery, and pilferage, and shall be responsible for any damage or loss.

d. Render warranty services on all work performed in accordance with the provisions of this Agreement and the Contract Documents incorporated hereto.

1.2 The detailed tasks involved for each individual item of work set forth in the immediately preceding paragraph are enumerated in the Scope of Work and Technical Specifications attached with related papers which form part of this Agreement.

- i Repair Works
- ii Formworks
- iii Masonry Works
- iv. Painting Works
- v. Steel Works
- vi. Architectural works
- vii. Plumbing Works
- viii. Carpentry Works
- ix. Clearing / Cleaning of Site Area

1.2 The detailed tasks involved for each individual item of work set forth in the immediately preceding paragraph are enumerated in the Scope of Work and Technical Specifications attached with related papers which form part of this Agreement.

ARTICLE II

CONTRACT DOCUMENTS

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

- (a) General and Special Conditions of Contract;
- (b) Drawings/Plans;
- (c) Specifications or Terms of Reference;
- (d) Invitation to Apply for Eligibility and to Bid;
- (e) Instructions to Bidders;
- (f) Bid Data Sheet;

- (g) Addenda and/or Supplemental/Bid Bulletins, if any;
- (h) Bid form, including all the documents/statements contained in the Bidder's bidding envelopes, as annexes;
- (i) Eligibility requirements, documents and/or statements;
- (j) Performance Security;
- (k) Credit line issued by a licensed bank, if any;
- (l) Notice of Award of Contract and the Bidder's conforme thereto;
- (m) 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, **CONTRACTOR** shall refer the same in writing to **MIRDC** for clarification and guidance. The clarification or determination made by **MIRDC** shall be binding and conclusive upon the Parties.

2.3 The **CONTRACTOR** shall not make any changes or alteration in the plans, conditions, and specifications of 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 the **CONTRACTOR** the total amount of **TWENTY FOUR MILLION FOUR HUNDRED NINETY FIVE THOUSAND NINE HUNDRED SEVENTY FOUR PESOS AND 85/100 only (PhP24,495,974.85)**, subject to pertinent laws on government contracts and auditing procedures.



3.2 The Contract Price is inclusive of all duties, taxes and levies, licenses and permits payable by **CONTRACTOR** under the Contract, or for any other cause.



3.3 No changes shall be made on the Contract Price by reason of escalation in currency, the price of materials, tools, equipment, or labor arising during the course of the **PROJECT**, 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 the **CONTRACTOR** may be compensated against liquidated damages payable to **MIRDC** under this Agreement.

ARTICLE IV

TIME OF COMPLETION AND LIQUIDATED DAMAGES FOR DELAY

4.1 The **CONTRACTOR** shall perform and complete the **PROJECT** to the satisfaction of **MIRDC** within **ONE HUNDRED TWENTY (120) CALENDAR DAYS** reckoned from the date of receipt of the Notice to Proceed.

4.2 Time being of the essence, 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**.

4.3 Should there arise any circumstance provided in 4.2 above which affects the performance of its obligations, the party concerned shall notify the other in writing setting forth such facts and circumstances within five (5) days from its occurrence. Should there be need to extend the period of compliance with its obligations, both parties shall agree on a reasonable period within which to comply with the undertaking. Any other request for extension by the **CONTRACTOR** may be granted or denied by **MIRDC** at its sole discretion.

4.5 Upon the occurrence of any circumstance of *force majeure*, the **CONTRACTOR** shall endeavor to continue in the performance of its obligations so far as reasonably practicable. In such cases, the **CONTRACTOR** shall give **MIRDC** written notice of the steps it proposes to take, including any reasonable alternative means for the performance of its obligations. The **CONTRACTOR** shall not make any such steps unless authorized in writing by **MIRDC**.

4.6 Where the **CONTRACTOR** refuses or fails to satisfactorily complete the work within the specified contract time, plus any time extension duly granted and is in default under the contract, the **CONTRACTOR** shall pay **MIRDC** liquidated damages at the rate of one-tenth of one percent of the cost of unperformed portion of the works for every day of delay. **MIRDC** may deduct liquidated damages from payments due to the **CONTRACTOR**.

4.7 In case the delay in the completion of the works exceeds a time duration equivalent to ten percent (10%) of the specified contract time plus any time extension granted to the **CONTRACTOR**, or the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of this Agreement, **MIRDC** shall rescind this Agreement and forfeit the performance security, without prejudice to other courses of action and remedies open to it.

ARTICLE V

PERFORMANCE and WARRANTY SECURITY

5.1 The Performance Bond submitted by **CONTRACTOR** shall remain valid until the issuance of the Certificate of Final Acceptance. It may be released after the issuance of the Certificate of Final Acceptance subject to conditions mandated by law. It shall be in the form and amount prescribed under the Contract Documents or applicable laws, rules and regulations.

5.2 The **CONTRACTOR** shall post an additional performance security to cover any cumulative increase of more than ten percent (10%) over the original value of the contract as a result of amendments to order or change orders, extra work orders and supplemental agreements, as the case may be.

5.3 If the **CONTRACTOR** cannot complete the **PROJECT** within the period prescribed under Section 4.1, the **CONTRACTOR** shall cause the extension of the validity of the Performance Security to cover contract time extensions until final acceptance of the **PROJECT**.

5.4 Until and unless the **CONTRACTOR** shall have complied with Section 5.2 and/or 5.3 hereof, as the case may be, **MIRDC** shall withhold all payments due the **CONTRACTOR**.

5.5 The Performance Security posted in favor of **MIRDC** shall be forfeited in the event it is established that **CONTRACTOR** is in default in any of its obligations under this Agreement.

5.6 The **CONTRACTOR** shall likewise put a Warranty Security in the form and amount prescribed by law effective for one year reckoned from the date of issuance of the Certificate of Final Acceptance and shall be returned after the lapse of said one-year period.

ARTICLE VI

PAYMENTS

6.1 **MIRDC** shall, upon a written request of the **CONTRACTOR** which shall be submitted as a contract document, make an advance payment to the **CONTRACTOR** in an amount not exceeding fifteen percent (15%) of the total contract price, to be made in lump sum or, at the most, two installments according to a schedule specified in the General Conditions of Contract and other relevant Tender Documents.

6.2 The advance payment shall be made only upon the submission to and acceptance by **MIRDC** 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 **MIRDC**.

6.3 The advance payment shall be repaid by the **CONTRACTOR** 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 applied.

6.4 **MIRDC** shall pay the **CONTRACTOR** progress payments based on billings for actual Work accomplished as verified and certified by **MIRDC** representative / Technical Working Group.

6.5 In no case shall progress billings be made more than once every thirty (30) calendar days. Materials or equipment delivered on the site but not completely put in place or used in the **PROJECT** shall not be included for payment.

6.6 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 the **CONTRACTOR** prior to any deduction and shall be retained from every progress payment until fifty percent (50%) of the value of Works, as determined by **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 therefor.

6.7 The total "retention money" shall be due for release upon final acceptance of the Work. The **CONTRACTOR** may, however, request the substitution of the retention money subject to the guidelines set forth under the Contract Documents and applicable law, rules and regulations.

6.8 In addition to the ten percent (10%) retention mentioned above, **MIRDC** reserves the right to deduct from the progress billing of the **CONTRACTOR** such amount as may be necessary to cover third party liabilities, as well as uncorrected discovered defects in the **PROJECT** in the event that the costs of such liabilities, as well as, uncorrected defects in the **PROJECT** exceed the 10% already retained by **MIRDC**.

6.9 **MIRDC** shall issue a Certificate of Final Acceptance to the **CONTRACTOR** upon satisfactory completion of the **PROJECT**. Before such certificate is issued, the **CONTRACTOR** shall submit a sworn statement certifying that all taxes due from it, and all obligations for materials used and labor employed in connection with the **PROJECT** have been fully and duly paid. Any claim submitted to **MIRDC** at any time by any party arising from this Agreement shall be sufficient reason for **MIRDC** to withhold any payment due the **CONTRACTOR**. In any event, however, before any deduction from **CONTRACTOR**'s billing or withholding of payment is made under this or the immediately preceding section, **MIRDC** shall promptly notify **CONTRACTOR**, in writing, of any such liability, defect or claim and the parties shall immediately meet in good faith to settle such issue.

6.10 No payments made by **MIRDC** shall be construed as a waiver of any claim for defects in the work, materials, or breach of obligations under this Agreement. Acceptance by the **CONTRACTOR** of final payment shall be deemed a waiver of all its claims except those previously made in writing that remain unsettled at the time of Final Acceptance.

ARTICLE VII

ASSIGNMENTS AND SUB-CONTRACTING

7.1 The **CONTRACTOR** 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 the **CONTRACTOR** 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**.

7.2 In case of sub-contracting, the **CONTRACTOR** 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 the **CONTRACTOR** for the materials furnished and the labor performed under the sub-contract.

ARTICLE VIII
WARRANTY AND OBLIGATIONS/RESPONSIBILITIES
OF THE CONTRACTOR

8.1 The **CONTRACTOR** shall secure all pertinent permits required by any government office or agency in connection with the **PROJECT**.

8.2 The **CONTRACTOR** 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. The **CONTRACTOR** shall be solely liable for any violation of the same.

8.3 In case of pre-termination, the **CONTRACTOR**, its representatives, personnel, or sub-contractors shall voluntarily turn over the **PROJECT** to **MIRDC** and in no case shall continue occupying the premises and its surroundings. The **CONTRACTOR** hereby constitutes **MIRDC** as Attorney-in-Fact to take possession of the **PROJECT** to protect the interest of **MIRDC**. Expenses arising from the pre-termination shall be charged against the **CONTRACTOR** until the **PROJECT** is properly turned over to **MIRDC**.

8.4 The **CONTRACTOR** shall leave the work in good order upon completion.

8.5 The **CONTRACTOR** assumes full responsibility for the acts, omissions or negligence of its employees, workers, agents and those of its sub-contractors and their employees, as well as for all other persons doing work under this Agreement.

8.6 The **CONTRACTOR** shall hold **MIRDC** free and harmless from, and hereby binds and obligates itself to indemnify **MIRDC** for liabilities, losses, damages, injuries including death, claims, demands, suits, proceedings, judgments, awards, fines, penalties and all expenses of whatever kind and nature arising from and by reason of this Agreement, due to its negligence, act, omission, delay, conduct, breach of trust or non-observance or violation of this Agreement, or those of its employees, agents, representatives or sub-contractors.

ARTICLE IX
LIABILITY OF THE CONTRACTOR

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


ARTICLE X
CONTRACT EFFECTIVITY

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

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


**METALS INDUSTRY RESEARCH
AND DEVELOPMENT CENTER**

By:

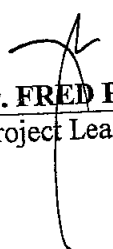

ROBERT O. DIZON
Executive Director

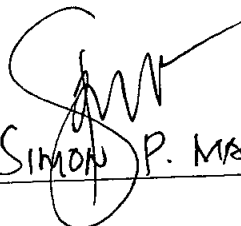
B.P. CRUZ BUILDERS & TRADING

By:

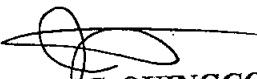

BERNARDO P. CRUZ
General Manager/Contractor

SIGNED IN THE PRESENCE OF:


Engr. FRED P. LIZA
Project Leader


Arch't. SIMON P. MANGIO

CERTIFIED FUNDS AVAILABLE:


JOHNNY G. QUINGCO
Accountant IV

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
CITY OF **TAGUIG CITY**) S.S.

Before me a Notary Public for and in the _____ this
 FEB 30 2016 , personally appeared:

NAME	I.D. NO.	DATE/PLACE ISSUED
<u> ROBERT O. DIZON </u>	<u> 2016002 </u>	<u> DOST, Bicutan, Taguig City January 08, 2016 </u>
<u> BERNARDO P. CRUZ </u>	_____	_____

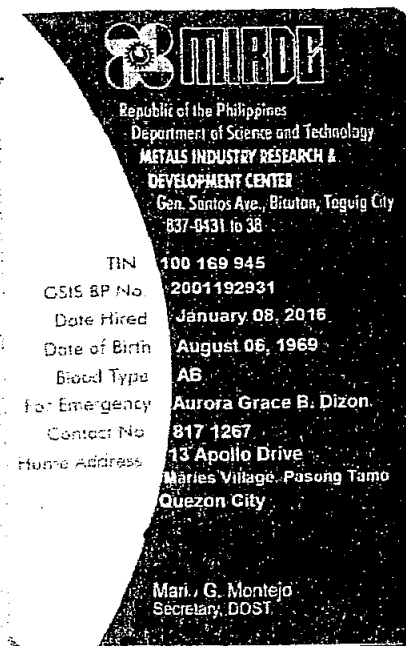
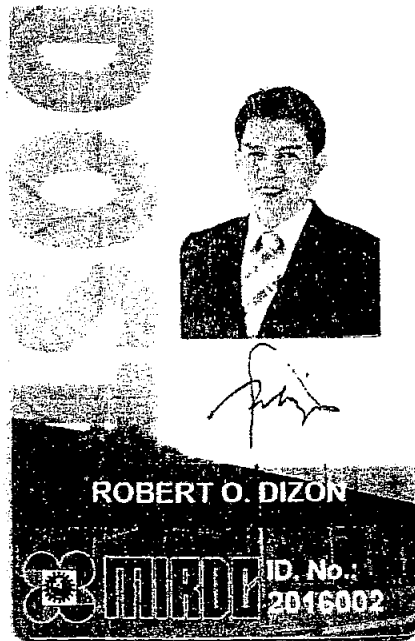
All known to me to be the same persons who executed the foregoing instrument and they acknowledged to me that the same is their free act and deed as well as of the principal they represent.

This instrument refers to the General Construction Agreement 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. **236** ;
Page No. **50** ;
Book No. **X/** ;
Series of 2016.

ATTY. MARION IVY DE LA CRUZ-DECENA
NOTARY PUBLIC
For the Cities of Pasig, San Juan, Pateros & Taguig
Appointment No. 46 (2016-2017)
DOST-TAPI, Gen. Santos Ave., Bicutan, Taguig City
Roll of Attorneys 52998
PTR No. A-2601002; 01/05/2016; Taguig City
IBP No. 1010004; 10/21/2015; Pasig City



NOTICE OF AWARD

March 22, 2016

MR. BERNARDO PARAS CRUZ
President/General Manager
B.P. CRUZ BUILDERS AND TRADING
29 Narra Road, L & S Subdivision
Sto. Domingo, Angeles City

Dear Mr. Cruz:


You are advised that the Purchase Order for the procurement for the **"Supply of labor and Materials for the Renovation of Mechanical Workshop II (Phase 2)"** of the Metals Industry Research and Development Center has been awarded to your firm in the amount of **Twenty Four Million Four Hundred Ninety Five Thousand Nine Hundred Seventy Four Pesos and 85/100 (Php24,495,974.85)** only, subject to the approval of the concerned authorities.

You are therefore requested to accept the award in writing 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 – 10% of the total contract price;
- b. Bank Guarantee/ Draft/ Irrevocable Letter of Credit – 10% 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

NOTICE TO PROCEED

March 22, 2016

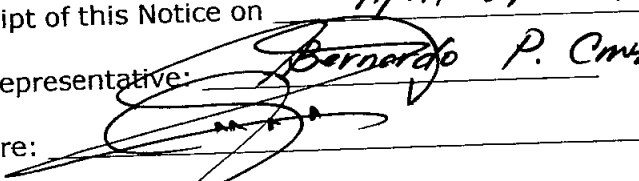
MR. BERNARDO PARAS CRUZ
President/General Manager
B.P. CRUZ BUILDERS AND TRADING
29 Narra Road, L & S Subdivision
Sto. Domingo, Angeles City

Dear Mr. Cruz:

The attached Contract Agreement having been approved, notice is hereby given to **B.P. CRUZ BUILDERS & TRADING**, that work may proceed on the project for the **"SUPPLY OF LABOR AND MATERIALS FOR THE RENOVATION OF MECHANICAL WORKSHOP II (PHASE 2)"**, 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 DirectorI acknowledge receipt of this Notice on April 1, 2016 (date of receipt)Name of Bidder's Representative: Bernardo P. CruzAuthorized 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.

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

RESOLUTION NO. 2016- 05

Project: "Supply of Labor and Materials for the Renovation of MIRDC Mechanical Workshop II (Phase 2)"

Approved Budget Contract (ABC): Php25,000,000.00
Pre-Bid Conference: March 02, 2016 ; 01:00 p.m.
Opening of Bids : March 14, 2016 ; 01:00 p.m.

Whereas, the Metals Industry Research and Development Center (MIRDC) advertised the Invitation to Bid for the above project in one newspaper of nationwide general circulation on February 27, 2016 and posted on February 24, 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, two bidders, namely: Ritvit Construction & Development Corporation, B.P. Cruz Builders & Trading, signified their intention to join the bidding and purchased the bidding documents;

Whereas, a pre-bid conference was conducted on March 02, 2016 and attended by the aforementioned bidders and the BAC/TWG members;

Whereas, during the bid opening on March 14, 2016 for the "Supply of Labor and Materials for the renovation of MIRDC Mechanical Workshop II (Phase 2)", both Ritvit Construction & Development Corporation and B.P. Cruz Builders & Trading submitted their bid proposals;

Whereas, after a detailed evaluation of the bid proposal of the bidders, the TWG reported that the bid proposal of Ritvit Construction & Development Corporation failed to provide all the required items to their Bill of Quantities, resulting in their disqualification;

Whereas, after careful examination, validation and verification of all the eligibility, technical and financial requirement submitted by B.P. Cruz Builders & Trading, the TWG submitted its findings to the BAC in its report dated 16 March 2016;

Whereas, based on the said findings, the BAC found out the bid proposal of B.P. Cruz Builders & Trading to be complying and responsive, such that:

Approved Budget of the Contract (ABC) – Twenty Five Million Pesos
(Php25,000,000.00) Only;

BID AMOUNT – Twenty Four Million Four Hundred Ninety Five Thousand Nine Hundred Seventy Four Pesos and 85/100 (Php24,495,974.85) only;

Whereas, B.P. Cruz Builders & Trading, offered the Single Calculated and Responsive Bid, as stated under Section 36 (b) of RA 9184:

"if after advertisement, more than one prospective bidder submits an LOI and/or applies for eligibility check, in accordance with the provisions of this IRR, but only one bidder meets the eligibility requirements or criteria, after which it submits a bid which is found to be responsive to the bidding requirements."

NOW, THEREFORE, We, the Members of the Bids and Awards Committee, hereby RESOLVE as it is hereby RESOLVED:

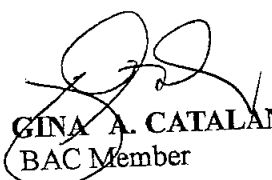
- a.) To declare B.P. Cruz Builders & Trading's bid proposal as the Single Calculated and Responsive Bid; and
- b.) To recommend to award the contract of the procurement for the "Supply of Labor and Materials for the renovation of MIRDC Mechanical Workshop II (Phase 2)" to B.P. Cruz Builders & Trading.

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

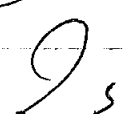
RESOLVED, at Taguig City this _____ 2016.

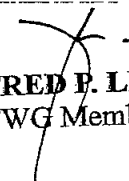

Ms. AUREA T. MOTAS
BAC Chairman/MIRDC


Ms. MERCEDITA G. ABUTAL
Vice Chairperson



GINA A. CATALAN
BAC Member

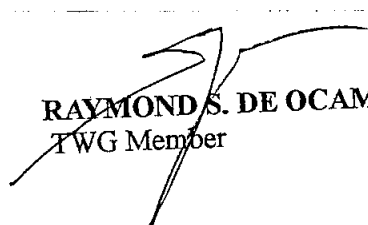

Atty. TRIXIE HAZEL C. VELUZ
BAC Member


ISIDRO D. MILLO
BAC Member



FRED P. LIZA
TWG Member


JAYSON P. ROGELIO
TWG Member


RONIE S. ALAMON
TWG Member


RAYMOND S. DE OCAMPO
TWG Member

Approved (✓) / Disapproved ()


ROBERT O. DIZON
Executive Director

Approved on _____