

## **BAC RESOLUTION DECLARING A NEGOTIATED BIDDING**

### **R E S O L U T I O N N O . 2 0 1 6 - 0 4**

**Project: "PROCUREMENT OF ONE (1) LOT VACUUM CARBURIZING EQUIPMENT WITH ACCESSORIES- NEGOTIATED"**

**Approved Budget for the Contract (ABC):Php35,200,000.00**

**Opening of Bids: September 19, 2015 at 09:00A.M.**

**WHEREAS**, Republic Act No. 9184 provides for the modernization, standardization and regulation of the procurement activities of the government.

**WHEREAS**, with the prior approval of the MIRDC-DOST Executive Director, as the Head of the procuring entity, the BAC may, whenever justified by the conditions provided for in R.A. 9184, resort to any of the alternative methods of procurement provided for in the Implementing Rules and Regulations of R.A. No. 9184 (IRR).

**WHEREAS**, the Head of the Procuring Entity has approved "NEGOTIATED PROCUREMENT" as the particular alternative method of procurement for the "PROCUREMENT OF ONE (1) LOT VACUUM CARBURIZING EQUIPMENT WITH ACCESSORIES- NEGOTIATED" subject of this resolution, as per recommendation of the BIDS AND AWARDS COMMITTEE.

**WHEREAS**, Sec 53(b) of the IRR provides that "NEGOTIATED PROCUREMENT" shall be allowed *where there has been failure of bidding for the second time*.

**WHEREAS**, the submission and opening of bids was held on September 19, 2016 at 09:00 a.m. at the Mercury Conference Room, 3rd Floor, MIRDC Gold Building, MIRDC Compound, Gen. Santos Ave., Bicutan, Taguig City, where Gecar Machine Solutions, Inc. and ULVAC Singapore PTE LTD Philippines Branch submitted their bid proposal as bidders;

**WHEREAS**, Both suppliers (ie., Gecar and ULVAC) have met each and every technical requirement as presented in the TOR. However, Gecar has the offer that is more advantageous for the Center. For example, based on the evaluation of the Technical Working Group, Gecar offer has 280% bigger chamber size and can accommodate larger and heavier workpiece. The equipment uses graphite heater that is proven, since two of our existing MIRDC vacuum furnace utilize graphite heater. It offers 233% more by volume of quenching media which results to minimal effect on oil temperature due to high oil volume to metal weight ratio. Finally, Gecar included both type S for the control thermocouple and over temperature thermocouple which is superior than type N for the better monitoring stability at high temperature.

**WHEREAS**, after careful evaluation of the Technical and Financial Proposal, the BIDS AND AWARDS COMMITTEE found out that Gecar Machine Solutions, Inc. submitted the best offer which meets MIRDC's requirements;

**RESOLVED**, as it is hereby resolved, pursuant to Section 53 of R.A. 9184, to award the bid to Gecar Machine Solutions, Inc.

**RESOLVED FURTHER**, to recommend approval of the award.

**RESOLVED**, at Taguig City this 29<sup>th</sup> of September, 2016.

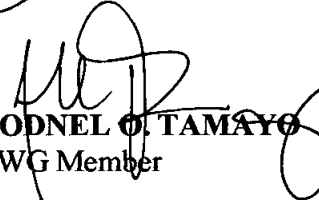
  
**AUREA T. MOTAS**  
Chairman


  
**MERCEDITA G. ABUTAL**  
Vice-Chairman

  
**TRIXIE HAZEL C. VELUZ**  
BAC Member

  
**GINA A. CATALAN**  
BAC Member

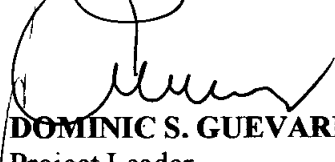
  
**ISIDRO D. MILLO**  
BAC Member

  
**RODNEL O. TAMAYO**  
TWG Member

  
**JOEY G. PANGILINAN**  
TWG Member

  
**NELSON L. TUMBAY**  
TWG Member

  
**JOJIT M. VELASCO**  
TWG Member

  
**DOMINIC S. GUEVARRA**  
Project Leader

Approved (✓) / Disapproved ( )

  
**ROBERT O. DIZON**  
Executive Director

Approved on 29 September 2016

**NOTICE OF AWARD**

September 29, 2016

**Mr. GEORGE T. LAO**  
General Manager  
**GECAR MACHINE SOLUTIONS, INC.**  
#17 Mars St., Congressional Subd. II,  
Tandang Sora, Quezon City

Dear Mr. Lao:

You are advised that the Purchase Order for the **"Procurement of One (1) Lot Vacuum Carburizing Equipment with Accessories"** of the Metals Industry Research and Development Center has been awarded to your firm in the amount of **Thirty Five Million One Hundred Ninety Nine Thousand Pesos (Php35,199,000.00)** 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

*Received original  
flyer  
9/30/16*



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>

## SUPPLIER'S CONTRACT

For the **"PROCUREMENT OF ONE (1) LOT VACUUM CARBURIZING EQUIPMENT WITH ACCESSORIES"**

### 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 ---

**GECAR MACHINE SOLUTIONS, INC.**, a corporation duly existing and organized under and by virtue of the Republic of the Philippines, with office address at #17 Mars St., Congressional Subd. II, Tandang Sora, Quezon City represented herein by its General Manager, **Mr. GEORGE T. LAO**, hereinafter referred to as **GECAR**;

### WITNESSETH:

**WHEREAS**, **MIRDC** is undertaking the procurement for the **"PROCUREMENT OF ONE (1) LOT VACUUM CARBURIZING EQUIPMENT WITH ACCESSORIES"**, hereinafter referred to as the **PROJECT**;

**WHEREAS**, **MIRDC** conducted Bid Negotiation Opening on September 19, 2016 in accordance with the Government Procurement Reform Act (R.A. 9184) and, after evaluating all the Bid proposals submitted, determined that herein **GECAR** submitted the best offer;

**WHEREAS**, a Notice of Award was issued to the 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, **GECAR** 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 **GECAR** 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 **GECAR** the total amount of **Thirty Five Million One Hundred Ninety Nine Thousand Pesos only (Php35,199,000.00)** 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 **GECAR** 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 **GECAR** which shall be submitted as a contract document, make an advance payment to **GECAR** 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 **GECAR** 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 **GECAR** 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 **GECAR** 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 **GECAR** 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 **GECAR** 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 **GECAR** shall perform and complete the **PROJECT** to the satisfaction of **MIRDC** within **Two Hundred Forty (240) 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 **GECAR** .

5.4 If a *force majeure* situation arises, **GECAR** 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 **GECAR** 's notice, **MIRDC** shall evaluate the situation and may extend **GECAR** 's time for performance, in which case the extension shall be ratified by the Parties by amending this Contract.

5.5 If **GECAR** 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 **GECAR** 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. **GECAR** 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 **GECAR** 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 **GECAR** from any warranties or other obligations under this Contract.



## ARTICLE VIII

### ASSIGNMENTS AND SUB-CONTRACTING

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

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

## ARTICLE IX

### OBLIGATIONS/RESPONSIBILITIES OF GECAR

9.1 **GECAR** 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. **GECAR** shall be solely liable for any violation of the same.

9.2 **GECAR** shall, with all reasonable speed, repair or replace the defective Goods or parts thereof, without cost to **MIRDC**. If **GECAR**, 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 **GECAR**'s risk and expense and without prejudice to any other rights which **MIRDC** may have against **GECAR** 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 **GECAR** any monies due them.

## ARTICLE XI

### LIABILITY OF GECAR

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

## ARTICLE XII

### CONFIDENTIAL INFORMATION

12.1 **GECAR** 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**

**GECAR**

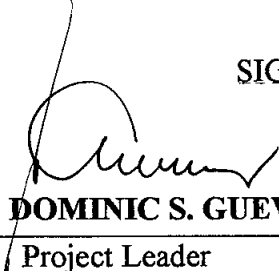
By:


By:

  
**Engr. ROBERT O. DIZON**  
Executive Director


  
**Mr. GEORGE T. LAO**  
Sales Manager

SIGNED IN THE PRESENCE OF:

  
**Engr. DOMINIC S. GUEVARRA**  
Project Leader

  
**Mr. LARRY LANZA**  
Witness

CERTIFIED FUNDS AVAILABLE:

  
**JOHNNY G. QUINGCO**  
Accountant IV

## ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)  
CITY OF MANILA ) S.S.

Before me, a Notary Public for and in the MANILA this  
OCT 17 2016, personally appeared:

NAME	I.D. NO.	DATE/PLACE ISSUED
Engr. ROBERT O. DIZON	EC4028370	DFA, Manila April 24, 2015
Mr. GEORGE T. LAO		

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. 122

Page No. 102

Page No. X

Series of 2016.

**ATTY. HENRY D. ADAS**  
NOTARY PUBLIC-CITY OF MANILA  
UNTIL DEC. 31, 2016  
S.C. ROLL NO. 29679  
852 SAN MARCELINO ST. MALATE ML  
BP NO. 939545 01/04/2016 Z.N  
PTR NO. 49747 01/04/2016 MLD  
"288" JIANCE NO. IX 0926557

**NOTICE TO PROCEED**

September 30, 2016

**Mr. GEORGE T. LAO**  
General Manager  
**GECAR MACHINE SOLUTIONS, INC.**  
#17 Mars St., Congressional Subd. II,  
Tandang Sora, Quezon City

Dear Mr. Lao:

The attached Contract Agreement having been approved, notice is hereby given to **GECAR MACHINE SOLUTIONS, INC.**, that work may proceed on the project for the **"Procurement of One (1) Lot Vacuum Carburizing Equipment with Accessories"**, 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 10/18/2016 (date of receipt)

Name of Bidder's Representative: HILARION E. LANZA

Authorized Signature: Hilary

*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.*