

NOTICE TO PROCEED

June 06, 2012

MIESCOR BUILDERS, INC.
No. 2 Anonas Ext., Sikatuna Villagr, Quezon City**Mr. Edilberto F. Capacia**
Vice – President, Head - Operations

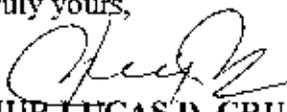
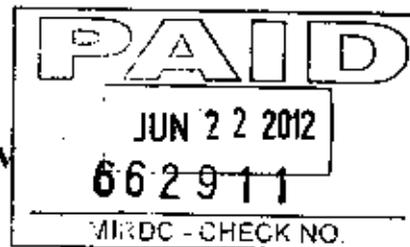
Dear Sir,

The attached Contract Agreement having been approved, notice is hereby given to **Miescor Builders, Inc.** that work may proceed on the project for “**Supply of Labor and Materials for the Development of Elevated Test Track for the Automated Guide-way Transit (AGT) System**”, effective upon signing of the Contract Agreement and posting of performance bond.

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,


ARTHUR LUCAS D. CRUZ, CESO IV
Executive DirectorI acknowledge receipt of this Notice on JUNE 11, 2012 (date of receipt)Name of the Representative of the Bidder: MAXIMA B. ASBALOGAuthorized Signature: M. B. ASBALOG

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



GENERAL CONSTRUCTION CONTRACT

For the Supply of Labor and Materials for the Development of Elevated Test Track for the Automated Guide-Way Transit (AGT) System Prototype of UP-Diliman

KNOW ALL MEN BY THESE PRESENTS:

This AGREEMENT made and executed by and between:

The **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, **ARTHUR LUCAS D. CRUZ**, hereinafter referred to as "**MIRDC**";

- and -

The **MIESCOR BUILDERS INC.**, a corporation duly existing and organized under and by virtue of the Republic of the Philippines, with office address at No. 2 Anonas Ext., Sikatuna Village, Quezon City, represented herein by its President, **JESUS P. FRANCISCO**, hereinafter referred to as the "**CONTRACTOR**";

WITNESSETH:

WHEREAS, **MIRDC** is undertaking the "Development of Elevated Test Track for the Automated Guide-way Transit (AGT) System Prototype for UP-Diliman" hereinafter referred to as the **PROJECT**;

WHEREAS, after two failed biddings, **MIRDC** entered into negotiated procurement, as mandated by law, and herein **CONTRACTOR** made the best offer that met **MIRDC**'s minimum technical and financial requirements;

WHEREAS, a Notice of Award was issued to the **CONTRACTOR** 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 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.

Handwritten signatures on the left margin: Arthur Lucas D. Cruz, Jesus P. Francisco, and another signature.

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.

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;
- (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 ONE MILLION SIX HUNDRED FORTY EIGHT THOUSAND THREE HUNDRED TWENTY FOUR and 47/100 only (Php 21,648,324.47)** 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 FIFTY (150) CALENDAR DAYS** reckoned from the date of receipt of the Notice to Proceed.

4.2 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**.

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 of 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 final Certificate of Acceptance. It may be released after the issuance of the Final Certificate of 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

**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 In addition to the warranties stated under the Contract Documents, the **CONTRACTOR** warrants that by the end of the 16th week of the Construction Schedule two hundred (200) meters of the elevated test track will be ready for the testing of the automated guide-way transit system prototype.

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

8.3 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.

8.4 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**.

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

8.6 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.

8.7 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, which date shall not be later than seven (7) calendar days from the issuance of the Notice to Proceed.

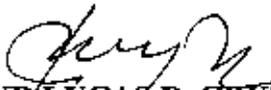
IN WITNESS whereof the parties thereto have caused this Agreement to be executed this _____ at _____.

**METALS INDUSTRY RESEARCH AND
DEVELOPMENT CENTER**

MIESCOR BUILDERS INC.

By:

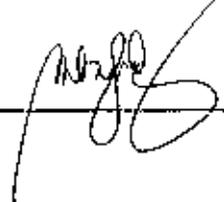
By:


ARTHUR LUCAS D. CRUZ, CESO IV
Executive Director


JESUS P. FRANCISCO
President

SIGNED IN THE PRESENCE OF:





ACKNOWLEDGMENT

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

Before me a Notary Public for and in the PASIG CITY this
June 8, 2012, personally appeared:

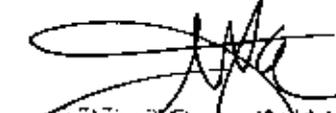
<u>NAME</u>	<u>I.D. NO.</u>	<u>DATE/PLACE ISSUED</u>
<u>ARTHUR LUCAS D. CRUZ</u>	<u>MIRDC No. 32</u> <u>SS# 03-0772968-6</u> <u>Community Tax</u>	<u>MIRDC, Bicutan, Taguig City</u> <u>19 April 1977</u>
<u>JESUS P. FRANCISCO</u>	<u>1119198</u>	<u>Feb. 14, 2012, Pasig City</u>

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 eight (8) 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.

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Page No. 26
Page No. XLIV
Series of 2012.


ANTONIO A. DELA CRUZ
NOTARY PUBLIC
1/31/12

