



Republic of the Philippines
DEPARTMENT OF AGRICULTURE
Regional Field Office No. 1
Agulla Road, Sevilla, San Fernando City, La Union
Telephone Nos. (072) 242 1045/1046



TOC-2020-004

CONSTRUCTION CONTRACT

#21-09-475

CY 2018 REHABILITATION/ IMPROVEMENT OF ANNAM COMMUNAL IRRIGATION SYSTEM (CIS), IN SITIO ANNAM, BRGY. CAMANDINGAN, BATAK CITY, ILOCOS NORTE

KNOW ALL MEN BY THESE PRESENTS:

This "CONTRACTOR", made and entered into in the City of San Fernando, La Union, on the 4th day of August 2021, by and between:

The **DEPARTMENT OF AGRICULTURE REGIONAL FIELD OFFICE 1**, herein referred to as "DA-RFO 1", a national government agency duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Agulla Road, Sevilla Norte, San Fernando City, La Union, and herein represented by **NESTOR D. DOMENDEN, CESO IV** in his capacity as OIC -Regional Executive Director;

-and-

REMAR CONSTRUCTION, herein referred to as the "CONTRACTOR", a domestic company duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Brgy. 21 Malampa Vintar, Ilocos Norte represented by **ENGR. REMY G. CADIENTE** in his capacity as Owner/Manager;

-WITNESSETH-

WHEREAS, in a letter dated January 29, 2019, an Order was issued by the Regional Executive Director to KIN JOY CONSTRUCTION AND SUPPLY terminating the contract for the subject project on the ground of default and incurrence of 81.66% negative slippage pursuant to the provisions of Annex "I" Item III.A.2.a, in relation to Item IV.3 of the 2016 Revised Implementing Rules and Regulations (IRR) of RA 9184;

WHEREAS, a Memorandum on the assessment relative to the implementation of the project, CY 2018 Rehabilitation/Improvement of Communal Irrigation Canal (CIS) at Brgy. Camandingan, Batak City, Ilocos Norte, after it was duly terminated, was submitted by the Chief of the Regional Agricultural Engineering Division and thereby recommending that the project be negotiated to the second lowest calculated bidder in the procurement thereof;

WHEREAS, aforesaid recommendation was duly approved by the Regional Executive Director;

WHEREAS, immediate action is necessary to restore infrastructure facilities as the canal lining is imperative in the efficient conveyance of water from the water source to the service area;

WHEREAS, the project cost for the take-over of contract for the subject project is the same as the amount in the original contract as the Contractor therein was not able to accomplish any of its contractual obligations;





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Signature over Printed name
Contractor's Witness

WHEREAS, REMAR CONSTRUCTION submitted the documents required in Appendix A of Annex "H" of the 2016 Revised Implementing Rules and Regulations of RA 9184, namely, its Mayor's/Business Permit, PhilGEPS Certificate of Registration and Membership, PCAB License, and its computation of its Net Financial Contracting Capacity (NFCC) including its Audited Financial Statement and Income Tax Return, all of which were attached and made an integral part of this document;

WHEREAS, the Bids and Awards Committee (BAC) has conducted post-qualification and negotiation with the second lowest calculated bidder in the original bidding (competitive) for the project, REMAR CONSTRUCTION, pursuant to Annex "H" of the 2016 Revised IRR of RA 9184, in relation to Section 53.3 of the same Rule;

WHEREAS, the BAC has recommended the award of contract to the "CONTRACTOR" to the Head of the Procuring Entity (HoPE) which was duly approved, the "CONTRACTOR" having been declared as responsive to all the requirements of the project;

WHEREAS, the CONTRACTOR agreed and accepted the award to undertake foregoing project under the terms and conditions herein set forth and in accordance with the approved plan and scope of work/Design Data and specifications of the "DA-RFO 1" in the amount of EIGHT HUNDRED SIXTY-FOUR THOUSAND TWO HUNDRED THIRTY-ONE PESOS AND TWENTY-FIVE CENTAVOS (Php864,231.25), with the Bill of Quantities (BOQ) of the "CONTRACTOR" for the one (1) lot herewith attached and marked as Annex "A" and made an integral part of this Agreement;

NOW, THEREFORE, in view of the foregoing premises, and for and in consideration of the mutual covenants and undertakings herein provided, the PARTIES hereto have agreed as follows:

ARTICLE I CONTRACT DOCUMENTS

The following documents, hereinafter referred to as **CONTRACT DOCUMENTS**, shall be deemed integral parts of this **CONTRACT**, as fully as hereto attached, and shall continue to govern and control in full force and effect, the rights and obligations of the parties as the documents were set forth in full, except as otherwise modified by mutual agreement in writing of both parties, to wit;

1. Approved Program of Works/Cost Estimates;
2. Approved Budget for Contract (ABC);
3. Approved Drawings/Plans;
4. Specifications as stated in the Plans or Drawing;
5. Scope of Work and Specifications;
6. Legal and Technical Requirements submitted by the "CONTRACTOR" for this Project;
7. Financial Proposal submitted by the "CONTRACTOR" for this Project;
8. Resolution of the "DA-RFO 1" BAC recommending for award;
9. Notice of Award of Contract with "CONTRACTOR'S" "Conforme"
10. Notice To Proceed;
11. Performance Security;

In case of any discrepancy between, or of any defective prescription, errors, omissions, or ambiguity in any of the Contract Documents, the "CONTRACTOR" shall promptly submit the matter in writing. The determination of such by the "DA-RFO 1" shall be final and binding upon the "CONTRACTOR" and the latter shall accordingly proceed with the work strictly in accordance with such determination.





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ARTICLE II CONTRACTOR'S UNDERTAKING

The "CONTRACTOR" shall, in accordance with the provision and subject to the terms and conditions contained in the Contract Documents supplied by the "DA-RFO 1" including the written corrective determination mentioned in Article I hereof, if any, fully and faithfully furnish to the satisfaction of the "DA-RFO 1" all necessary labor, equipment, materials, tools, supplies, machinery and perform all operations (including mobilization, supervision and other similar or necessary acts) required to complete the Contract as per plans and specifications.

ARTICLE III CONTRACT PRICE

In consideration of the Works to be performed by the "CONTRACTOR" as specified in Article II, the "DA-RFO 1" shall pay the CONTRACTOR the fixed sum in the amount of **EIGHT HUNDRED SIXTY-FOUR THOUSAND TWO HUNDRED THIRTY-ONE PESOS AND TWENTY-FIVE CENTAVOS (Php864,231.25)**, in the manner herein prescribed. It is understood that all billings shall be based on work actually performed as verified by the "DA-RFO 1" Regional Agricultural Engineering Group/"DA-RFO 1" Inspection Team.

This amount is deemed full compensation for everything furnished and done by the "CONTRACTOR" under this Contract, including all works required but not specifically mentioned and also for all losses or damages arising out of the aforesaid work from the action of the elements or from any obstruction or difficulty encountered in the prosecution of this Contract, for all expenses incurred by or in consequence of the suspension or discontinuance of the Contract and the whole thereof, at the time and in the manner provided in this Contract Documents and shall be at all times subject to the usual government accounting and auditing procedures and requirements.

ARTICLE IV MANNER OF PAYMENT

The "DA-RFO 1" shall pay the CONTRACTOR the Contract Price stated in Article III hereof subject to the following terms and conditions:

1. The "DA-RFO 1" shall, upon written request of the "CONTRACTOR" which shall be submitted as a contract document, make an advance payment to the "CONTRACTOR" in an amount equal to 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 as mobilization in the ITB and other relevant tender documents.
2. The advance payment shall be made only upon mobilization of equipment/manpower and the submission to and acceptance by the "DA-RFO 1" 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 the "DA-RFO 1".
3. The advance payment shall be repaid by the "CONTRACTOR" by deducting fifteen percent (15%) from his periodic progress payments a percentage equal to the percentage of the total contract price used for the advance payment.
4. The "CONTRACTOR" may submit once a month a statement of work accomplished (SWA) or progress billing and corresponding request for progress payment for work accomplished.





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The SWA should show the amounts which the contractor consider itself to be entitled to up to the end of the month, to cover (a) the cumulative value of the works it executed to date, based on the items in the Bill of Quantities, and (b) adjustment made for approved variation orders executed.

5. Based on the General Condition Clause (GCC) 40.1 Special Condition of Contract of the Bidding Documents of the projects, materials and equipment delivered on the site but not completely put in place shall not be included in the payment.
6. The value of which will be based on the cost of materials, labor and other expenses incurred during said period as verified and certified by the DA RFO 1- Regional Agricultural Engineering Group, subject to the usual auditing and accounting requirements.
7. The "DA-RFO 1" requires the "CONTRACTOR" a minimum of thirty percent (30%) work accomplished for first partial payment and at least fifteen percent (15%) work accomplished for every progress billing, upon request.
8. The remaining balance of the Contract shall be paid to the "CONTRACTOR" after deducting all payments made. However, no payments shall be made to the "CONTRACTOR" unless a certificate of accomplishment fully supported with a contractor's affidavit that all labor and materials within the period are fully paid by the "CONTRACTOR" is submitted
9. If the Contract is terminated because of a fundamental breach of Contract by the "CONTRACTOR", the "DA-RFO 1"-Regional Agricultural Engineering Group shall issue a certificate for the value of the work done and materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed. If the total amount paid by the "DA-RFO 1" exceeds the aggregate payments received by the "CONTRACTOR" the difference shall be payable by the "CONTRACTOR" to the "DA-RFO 1".

ARTICLE V WORK COMPLETION

That, the "CONTRACTOR" shall commence work as stated in the Notice to Proceed and expressly warrants to complete the project within the period as stated in the Terms and Conditions attached to the Letter of Negotiation.

ARTICLE VI PERFORMANCE SECURITY

Before the signing of this Contract, the "CONTRACTOR" shall post a performance security in the following form, viz:

Options	Form of Performance Security	Amount of Performance Security (Not less than the Percentage of the Total Contract Price)	Required Percentage	Amount (Php)
1	Cash or cashier's/manager's check issued by a Universal or Commercial Bank	Five percent (10%)	100%	86,423.13





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2	Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank; Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank	Five percent (10%)	100%	86,423.13
3	Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security.	Thirty percent (30%)	100%	259,269.38

Signature over Printed name
Contractor's Witness

MARY HARRY G. PASTOR
End-user
DA, RFO 1

This performance security shall be posted in favor of "DA-RFO 1" and shall guarantee the payment of the amount of the security as penalty in the event that it is established that the "CONTRACTOR" is in default of its obligations in this Contract. It shall include the following provision: "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 execution of the work is hereby acknowledged and confirmed."

The "CONTRACTOR" shall post an additional performance security following the schedule herein cited 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. The "CONTRACTOR" shall cause the extension of the validity of the Performance Security to cover approved contract time extensions.

In case of a reduction in the contract value, or in the case of procurement of infrastructure projects, for partially completed works under the contract which are usable and accepted by the "DA-RFO 1", and the use of which is in its judgment, will not affect the structural integrity of the entire project, the "DA-RFO 1" shall allow a proportional reduction in the original Performance Security, provided that any such reduction is more than ten percent (10%) and that the aggregate of such reduction is not more than fifty percent (50%) of the original Performance Security.

ARTICLE VII LIABILITY TO THIRD PERSONS

All damages and losses of whatever nature that may be suffered by third persons as a result, directly or indirectly, of the fault or negligence of the "CONTRACTOR" in the execution of its work or performance of its undertaking under this Contract shall be the sole responsibility of the "CONTRACTOR". The "CONTRACTOR" therefore shall save and hold the "DA-RFO 1" free and exempt from all claims for damages, losses, penalties and liabilities of whatever kind or nature including all causes of action, suits, judgments arising from death or injury to persons or damage to property resulting from the "CONTRACTOR'S" fault or failure to exercise the diligence required in the execution of its work and in the performance of its undertakings.

It is the duty of the "CONTRACTOR" in order to minimize if not eliminate the incidence of such damages or losses that may be inflicted upon third persons, to provide all necessary safeguards including the posting of warning signs at strategic points of the work area and its vicinity to the end that incidents that may result in injury or death to persons and damage to property may be avoided or prevented.





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ARTICLE VIII WARRANTY

The "CONTRACTOR" shall assume full responsibility for the contract work from the time the construction commences up to the final acceptance by the "DA-RFO 1" and shall be held responsible for any damage or destruction of the works except those occasioned by *force majeure*. The "CONTRACTOR" shall be fully responsible for the safety, protection, security and convenience of its personnel, third parties and the public at large, as well as the works, equipment, installation and the like to be affected by its construction work and shall be required to put up a warranty security in accordance with the following schedule.

1. Cash deposit, cash bond or letter of credit – five percent (5%) of the contract price
2. Bank guarantee – ten percent (10%) of the contract price
3. Surety Bond Callable upon demand – thirty percent (30%) of the contract price

The warranty security shall remain effective during the applicable warranty period provided in Section 62 of the 2016 Revised IRR of R.A. 9184 and shall be returned only after the lapse of the said warranty period.

During the Defects Liability Period as defined in Article X hereof, the "CONTRACTOR" shall undertake the repair works at his own expense of any damage to the project on account of the use of materials of inferior quality **within ninety (90) days** from the time the "DA-RFO 1" has issued an order to undertake repair. In case of failure or refusal to comply with the mandate, the "DA-RFO 1" shall undertake such repair works and shall be entitled to full reimbursement of expenses incurred thereon upon demand.

Failure to comply with the preceding paragraph, the "CONTRACTOR" shall suffer *perpetual disqualification* from participating in any public bidding and his property or properties shall be subject to attachment or garnishment proceedings to recover the costs. All payables of the Government in his favors shall be offset to recover the costs.

After final acceptance of the project by the "DA-RFO 1", the "CONTRACTOR" shall be held responsible for structural defects and/or failure of the completed project within the following warranty periods from final acceptance, except those occasioned by *force majeure* and those caused by other parties.

ARTICLE IX SUPPLEMENTARY USE OF CONTRACT DOCUMENTS

The Contract Documents shall be supplementary to this Contract. Any and all deficiencies in the provision of this Contract intended to be covered hereby or otherwise connected with or related to the project covered hereby, but not expressly covered by the provision of this Contract, shall be supplied by the Contract Documents.

In case of irreconcilable conflict between the provisions of the Contract Documents and this Contract, the latter shall prevail.

ARTICLE X SUSPENSION OF WORK

The "DA-RFO 1", shall have the authority to suspend the work wholly or partly by written order for such period as may be deemed necessary, due to *force majeure* or any fortuitous events or for failure on the part of the "CONTRACTOR" to correct bad conditions which are unsafe for workers





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or for the general public to carry out valid orders given by the "DA-RFO 1", or to perform any provisions of the contract or due to adjustment of plans to suit field conditions as found necessary during construction. The "CONTRACTOR" shall immediately comply with such order to suspend the work wholly or partly.

The "CONTRACTOR" or its duly authorized representative shall have the right to suspend work operation on any or all projects/activities along the critical path of activities after fifteen (15) calendar days from the date of receipt of written notice from the "CONTRACTOR" to the "DA-RFO 1" through the Regional Agricultural Engineering Group, as the case may be.

In case of total suspension, or suspension of activities along the critical path, which is not due to any fault of the contractor, the elapsed time between the effective order of suspending operation and the order to resume work shall be allowed the "CONTRACTOR" by adjusting the contract time accordingly.

ARTICLE XI CONTRACT TERMINATION AND JURISDICTION

Should the "CONTRACTOR" fail to comply with any of its obligations and responsibilities or cause a fundamental breach of the Contract, the "DA-RFO 1" may terminate this Contract without need of judicial action or intervention by serving upon the "CONTRACTOR" a written notice pursuant to Annex "I" of the 2016 Revised Implementing Rules and Regulations of RA 9184; provided that such termination shall not relieve the "CONTRACTOR" of its liabilities and responsibilities under this Contract nor shall the "DA-RFO 1", by such termination be deemed to have waived any right that may have accrued in its favor and against the "CONTRACTOR".

- The "DA-RFO 1" through the Regional Agricultural Engineering Group gives notice that failure to correct a particular defect is a fundamental breach of Contract and the "CONTRACTOR" fails to correct it within a reasonable period of time determined by the DA RFO 1;
- The "CONTRACTOR" does not maintain a security, which is required;
- The "CONTRACTOR" has delayed the completion of the Works by the number of days from which the maximum amount of liquidated damages can be paid as defined in Article VIII hereof, and
- If the "CONTRACTOR" in the judgment of the "DA-RFO 1" has engaged in corrupt, coercive, collusive or fraudulent practices in competing for in executing the Contract.

If the contract is terminated, the CONTRACTOR shall stop work immediately, make the site safe and secure, and leave the site as soon as reasonably possible.

Proceedings on the Termination of Contract shall be governed by the provisions of Annex "I" of the 2016 Revised IRR of RA 9184.

ARTICLE XII ASSIGNMENT AND SUB-CONTRACTING

The "CONTRACTOR" shall not assign its rights or obligations under this Contract, nor subcontract any portion of the work covered by this Contract, without the prior written approval of the "DA-RFO 1". However, this consent does not relieve the "CONTRACTOR" of any liability or obligation under the contract. The "CONTRACTOR" will be responsible for the acts, defaults and neglects of any subcontractor, his agents, servants or workmen as fully as if these were its own acts, defaults or neglects of the contractor, or those of its agents, servants or workmen.



ARTICLE XIII NON-WAIVER OF RIGHTS

No document except the Certificate of final acceptance shall be accepted as evidence of the satisfactory completion of the project. No proof of payment shall be taken or construed as an acceptance of satisfactory performance of the work or the good quality of the materials used, whether in whole or in part as contemplated in the Contract.

ARTICLE XIV VALIDITY CAUSE

If any term or any condition of this Contract is held invalid or contrary to law, the validity of the other items and conditions hereof shall not be affected thereby.

ARTICLE XV ADDITIONAL PROVISIONS

1. The "DA-RFO 1" shall not be liable for any violation of labor laws relative to the employment and compensation committed by the "CONTRACTOR" in connection with the employee-employer relations between the latter and his workers and/or employees.
2. The Implementing Rules and Regulations (IRR) for government Infrastructure Projects pursuant to Revised R.A. 9184 and such other laws, decrees, letter of instructions, codes and memorandum circular affecting implementation of infrastructure projects shall form part of this Contract. Any provision and/or part of this Contract contrary to or inconsistent with the provisions of R.A 9184, its 2016 Revised IRR and other pertinent laws are hereby repealed, modified or amended accordingly.
3. The "CONTRACTOR" should secure a certification from the Public Employment and Service Office (PESO) of their compliance with R.A. 6685, which is pertinent to the hiring of the services of available labor in the city for at least fifty percent (50%) of the unskilled and at least thirty percent (30%) of skilled labor requirements.
4. To ensure the quality of materials being used in infrastructure projects, the "CONTRACTOR" shall have the materials tested in accordance with industry guidelines by testing laboratories whose services are engaged in infrastructure projects, duly accredited by the Bureau of Research Standards (BRS) of the Department of Public Works and Highways (DPWH) and the Department of Science and Technology (DOST). The "DA-RFO 1" will accept results of material test(s) coming only from DOST/BRS accredited laboratories.
5. The winning bidder shall turn-over to the Procuring Entity the materials demolished/removed from the existing building for proper disposal, if applicable;
6. This Construction Contract may be amended from time to time by mutual agreement of the parties in a written modification signed by both parties.
7. All suits arising out of this Contract shall be filed only and exclusively in the proper courts of San Fernando City, La Union.
8. The winning bidder/contractor must put a sign board (3ft. x 2ft) which contains the name of the project, amount, contractor's name, duration of the project and perspective during the construction of the project pursuant to a pertinent COA Circular;



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


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IN WITNESS WHEREOF, the PARTIES hereunto affixed their signatures this ____ day
of _____.

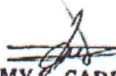
"DA-RFO 1"

By:



NESTOR D. DOMENDEN, CESO IV
OIC-Regional Executive Director
DEPARTMENT OF AGRICULTURE,
REGIONAL FIELD OFFICE NO. 1

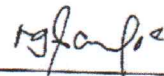
"CONTRACTOR"

By:

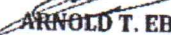

REMY G. CADIENTE
Owner/Manager
REMAR CONSTRUCTION

SIGNED IN THE PRESENCE OF:


MARK HARRY G. PASTOR
End-user


Signature over Printed name
Contractor's Witness

FUNDS AVAILABLE:


ARNOLD T. EBREO
Chief, Accounting Section





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ACKNOWLEDGMENT

Republic of the Philippines)
Done in the Province of La Union)
City of San Fernando) S.S.
X-----X

BEFORE ME, a Notary Public for and in _____, this _____ day
of _____ personally appeared with their Government-
issued Identification Card.

NAME	Government Issued ID	ISSUED ON	ISSUED AT
NESTOR D. DOMENDEN	_____	_____	_____
REMY G. CADIENTE	_____	_____	_____

Who represented to me to be the persons who executed the foregoing instrument and
acknowledged to me that the same is their free act and voluntary deed.

This instrument, consisting of ten (10) pages, including this page on which the
acknowledgment is written, has been signed on each and every page thereof by the parties and their
instrumental witnesses and sealed with my notarial seal.

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

NOTARY PUBLIC

ATTY. ERNESTO V. RAZON, Ph.D.
NOTARY PUBLIC
ROLL No. 50981; TIN # 172-170-614
IBP LIFETIME No. 562475; MCLE # W100230
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SAN FERNANDO CITY, LA UNION

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ARNOLD T. EBREO
Chief, Accounting Section
DA, RFO 1

NESTOR D. DOMENDEN, CESO IV
OIC-Regional Executive Director
DA, RFO 1

