

NOTICE TO PROCEED

April 26, 2017

Mr. ARNOLD T. ESPINOZA
President
ARN Builders, Inc.
2/F Rm. 204 Northgate Centre,
Gov. Cuenco Ave., Kasambagan,
Cebu City, Cebu

Dear **Mr. Espinoza:**

The attached Contract Agreement having been approved, notice is hereby given to **ARN BUILDERS, INC.**, that work may proceed on the project for the **“Supply of Labor and Materials for the Retrofitting of MIRDC Gold Building (Formerly Administrative and Testing Division Building) Phase II: To include COA, GMU, Library, ATD-DHO, Instrumentation Lab. At ground floor, Silver Auditorium, Chem. Lab and Chapel at 2nd Floor”**, 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 the Metals Industry Research and Development Center.

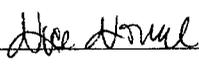
Thank you.

Very truly yours,


ROBERT O. DIZON
Executive Director

I acknowledge receipt of this Notice on May 04, 2018 (date of receipt)

Name of Bidder's Representative: NICE J. NUNZ

Authorized 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.

GENERAL CONSTRUCTION CONTRACT

For the "Supply of Labor and Materials for the Retrofitting of MIRDC Gold Building (Formerly Administrative and Testing Division Building) Phase II: To include COA, GMU, Library, ATD-DHO, Instrumentation Lab. At ground floor, Silver Auditorium, Chem. Lab and Chapel at 2nd Floor"

KNOW ALL MEN BY THESE PRESENTS:

This AGREEMENT made and executed by and between:

See above

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 its Executive Director, **ROBERT O. DIZON**, hereinafter referred to as "MIRDC";

--- and ---

Am

ARN BUILDERS, INC., a corporation duly existing and organized under and by virtue of the laws of the Republic of the Philippines, with office at 2/F Rm. 204 Northgate Centre, Gov. Cuenco Ave., Kasambagan, Cebu City, Cebu, represented herein by its President, **ARNOLD T. ESPINOZA**, hereinafter referred to as the "CONTRACTOR;"

WITNESSETH:

WHEREAS, MIRDC conducted a public bidding on March 20, 2017 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**;

WHEREAS, MIRDC is undertaking the "Supply of Labor and Materials for the Retrofitting of MIRDC Gold Building (Formerly Administrative and Testing Division Building) Phase II: To include COA, GMU, Library, ATD-DHO, Instrumentation Lab. At ground floor, Silver Auditorium, Chem. Lab and Chapel at 2nd Floor" hereinafter referred to as 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.

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/ Purchase Order;
- (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 **SIX MILLION ONE HUNDRED ONE THOUSAND EIGHT HUNDRED EIGHTY ONE AND 52/100 only (Php6,101,881.52)**, 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 EIGHTY (180) CALENDAR DAYS** reckoned after (3) days 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 One 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**.

See above

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.

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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

ARN BUILDERS, INC.

By:


ROBERT O. DIZON
Executive Director

By:


ARNOLD T. ESPINOZA
President

SIGNED IN THE PRESENCE OF:

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 TAGUIG CITY this
4 MAY 2017, personally appeared:

NAME	I.D. NO.	DATE/PLACE ISSUED
<u>ROBERT O. DIZON</u>	<u>2016002</u>	<u>MAIAC/DOST, Bicutan, Taguig City</u> <u>January 08, 2016</u>
<u>ARNOLD T. ESPINOZA</u>	<u>0051885</u>	<u>PRC - Cebu 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 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. 407 ;
Page No. 03 ;
Book No. III ;
Series of 2017.

RACHEL GINAYA W. COPANUT-PANGWI
NOTARY PUBLIC UNTIL DEC. 31, 2017
12 Gen. Santos Ave., Lower Bicutan, Taguig City
Notarial Commission Appt. No. 031 (2016-2017)
PTR NO. A-3162172/1-3-17, Taguig City
IBP O.R. No. 1053677/12-13-16, RSM
MCLE Comp. No. V-0004480
ROLL NO. 61627

NOTICE OF AWARD

April 25, 2017

Mr. ARNOLD T. ESPINOZA
President
ARN Builders, Inc.
2/F Rm. 204 Northgate Centre,
Gov. Cuenco Ave., Kasambagan,
Cebu City, Cebu

Dear Mr. Espinoza:

You are advised that the Purchase Order for the **“Supply of Labor and Materials for the Retrofitting of MIRDC Gold Building (Formerly Administrative and Testing Division Building) Phase II: To include COA, GMU, Library, ATD-DHO, Instrumentation Lab. At ground floor, Silver Auditorium, Chem. Lab and Chapel at 2nd Floor”** of the Metals Industry Research and Development Center has been awarded to your firm in the amount of **Six Million One Hundred One Thousand Eight Hundred Eighty One and 52/100 (Php6,101,881.52)** 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 – 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 


May 4, 2017

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

RESOLUTION NO. 2017- 04

Project: "Supply of Labor and Materials for the Retrofitting of MIRDC Gold Building (Formerly Administrative and Testing Division Building) Phase II: To include COA, GMU, Library, ATD-DHO, Instrumentation Lab. At ground floor, Silver Auditorium, Chem. Lab and Chapel at 2nd Floor."

Approved Budget Contract (ABC): Php6, 500,000.00

Pre-procurement Conference: February 06, 2017

Pre-bid Conference: March 07, 2017

Opening of Bids: March 20, 2017

Whereas, the Metals Industry Research and Development Center (MIRDC) posted the Invitation to Bid for the above project on February 22, 2017 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 12 days;

Whereas, in response to the said advertisement, ARN Builders, Inc. and Wellbuilt Specialty Contractors, Inc., signified their intentions to join the bidding and purchased the bidding documents;

Whereas, a pre-bid conference was conducted on March 07, 2017 and attended by the aforementioned bidders and the BAC/TWG;

Whereas, the opening of bids was held on March 20, 2017 at the MIRDC Conference Room, 3rd Floor, Laboratories Building, MIRDC Compound, Gen. Santos Ave., Bicutan, Taguig City, and the aforementioned bidders submitted bid proposal and were found complying as ARN Builders, Inc. being the Lowest Calculated Bid such that;

Approved Budget of the Contract (ABC) –Six Million Five Hundred Thousand (PhP6,500,000.00) Only;

BID AMOUNT –Six Million One Hundred Ten Thousand (PhP6,110,000.00) only;

Whereas, upon careful examination, validation and verification of all the eligibility, technical and financial requirements during Post-Qualification on April 7, 2017, BAC and TWG found ARN Builders, Inc. as the lowest calculated and responsive bidder;

RESOLVED, as it is hereby resolved, pursuant to Section 53 of R.A. 9184, to recommend the approval of the award of contract to ARN Builders, Inc.;

SIGNED in Bicutan, Taguig City this 25th of April, 2017.

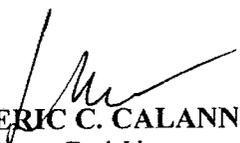

AUREA T. MOTAS
BAC Chairman

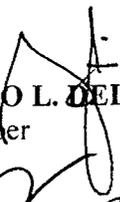

MERCEDITA G. ABUTAL
BAC Vice Chairperson


GINA A. CATALAN
BAC Member


ATTY. TRIXIE HAZEL C. VELUZ
BAC Member


ISIDRO D. MILLO
BAC Member


ERIC C. CALANNO
End-User


REYNALDO L. DELA CRUZ JR.
TWG Member


REYNALDO BAYOT
TWG Member


ROMMEL N. CORONA
TWG Member

Approved () / Disapproved ()

ROBERT O. DIZON
Executive Director

Approved on 27 April 2017