

**NOTICE OF AWARD**

November 21, 2012

**FIL-ASIA AUTOMOTIVE & INDUSTRIES CORP.**

Suite 1005, One Corporate Center, J. Vargas cor.  
Meralco Ave., Ortigas Center, Pasig City  
Tel: 635-9785 Fax: 635-6184

**Mr. Jose Antonio M. Aquino**  
Chairman

Dear Sir,

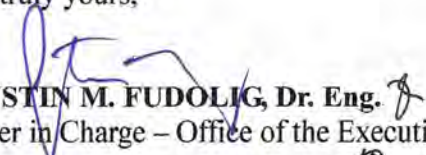
You are advised that the Purchase Order for “**Supply of Labor and Materials for the Installation of Air-Conditioning System for the Automated Guide-way Transit System Coach**” of the Metals Industry Research and Development Center has been awarded to your firm in the amount of One Million One Hundred Sixty Thousand Pesos (=P= 1,160,000.00), 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 – 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,

  
**AGUSTIN M. FUDOLIG, Dr. Eng.**  
Officer in Charge – Office of the Executive Director

Received by  
Dante Ang 11/21/12

**NOTICE TO PROCEED**

November 21, 2012

**FIL-ASIA AUTOMOTIVE & INDUSTRIES CORP.**

Suite 1005, One Corporate Center, J. Vargas cor.  
Meralco Ave., Ortigas Center, Pasig City  
Tel: 635-9785 Fax: 635-6184

**Mr. Jose Antonio M. Aquino**  
Chairman

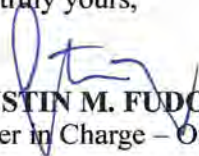
Dear Sir,

The attached Contract Agreement having been approved, notice is hereby given to **Fil-Asia Automotive & Industries Corporation**, that work may proceed on the project for “**Supply of Labor and Materials for the Installation of Air-Conditioning System for the Automated Guide-way Transit System Coach**”, effective upon receipt hereof.

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,



**AGUSTIN M. FUDOLIG, Dr. Eng.**  
Officer in Charge – Office of the Executive Director

I acknowledge receipt of this Notice on \_\_\_\_\_ (*date of receipt*)

Name of the Representative of the Bidder: \_\_\_\_\_

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.*

**SUPPLIER'S CONTRACT**

**For Supply of Labor and Materials for the Installation of Airconditioning System  
for the Automated Guideway Transit System Coach**

**KNOW ALL MEN BY THESE PRESENTS:**

This 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 Officer-in-Charge, **AGUSTIN M. FUDOLIG**, by  
virtue of Referendum No. 27 dated 09 October, hereinafter referred to as  
"**MIRDC**";

--- and ---

**FIL-ASIA AUTOMOTIVE & INDUSTRIES CORP.**, a corporation  
duly existing and organized under and by virtue of the Republic of the  
Philippines, with office address at Suite 1005, One Corporate Center, J.  
Vargas corner Meralco Avenue, Pasig City represented herein by its  
President, **JOSE ANTONIO M. AQUINO**, hereinafter referred to as "**FIL-  
ASIA**;"

WITNESSETH:

**WHEREAS, MIRDC** is undertaking the "Installation of Airconditioning System  
for the Automated Guideway Transit System Coach" hereinafter referred to as the  
**PROJECT**;

**WHEREAS, MIRDC** conducted a public bidding in accordance with the  
Government Procurement Reform Act (R.A. 9184) and **FIL-ASIA**, being the lone bidder,  
was considered for award under the Single Calculated Responsive Bid Submission;

**WHEREAS, after** determining that **FIL-ASIA** has complied with the eligibility  
and technical requirements of **MIRDC**, the Notice of Award is issued to **FIL-ASIA** 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) 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, **FIL-ASIA** 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 **FIL-ASIA** 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 **FIL-ASIA** the total amount of **ONE MILLION ONE HUNDRED SIXTY THOUSAND only (Php 1,160,000.00)**, 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 **FIL-ASIA** may be compensated against liquidated damages payable to **MIRDC** under this Agreement.

### ARTICLE IV PAYMENTS and WARRANTY

4.1 The terms of payment shall be as follows:

(a) On Contract Signature: Ten percent (10%) of the Contract Price shall be paid within sixty (60) days from signing of the Contract and upon submission and acceptance by **MIRDC** of an irrevocable standby letter of credit or bank guarantee of equivalent value from a commercial bank, or a surety bond callable upon demand, issued by a surety or insurance company duly licensed by the Insurance Commission and confirmed by **MIRDC** valid until the Goods are delivered.

(b) On Delivery: Seventy percent (70%) of the Contract Price shall be paid to the **FIL-ASIA** within sixty (60) days after the date of receipt of the Goods and upon submission of the documents as specified in the Special Conditions of Contract.

(c) On Acceptance: The remaining twenty percent (20%) of the Contract Price shall be paid to **FIL-ASIA** within sixty (60) days after the date of submission of the acceptance and inspection certificate for the respective delivery issued by **MIRDC's** authorized representative. In the event that no inspection or acceptance certificate is issued by **MIRDC's** authorized representative within forty five (45) days of the date

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shown on the delivery receipt, **FIL-ASIA** shall have the right to claim payment of the remaining twenty percent (20%) subject to the **MIRDC**'s own verification of the reason(s) for the failure to issue documents specified under the provisions on Delivery and Documents of the Special Conditions of Contract.

4.2 **FIL-ASIA** shall provide one year warranty to correct manufacturing defects, which shall be covered by, at **FIL-ASIA**'s option, either retention money in an amount equivalent to at least ten percent (10%) of the final payment, or a special bank guarantee equivalent to at least ten percent (10%) of the Contract Price.

4.4 The total "retention money" shall be due for release after the lapse of the warranty period; 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.

4.5 **FIL-ASIA** 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.

4.6 **FIL-ASIA** further warrants that the Goods shall have no defect, arising from materials, or workmanship or from any act or omission of **FIL-ASIA** 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 **FIL-ASIA** shall perform and complete the **PROJECT** to the satisfaction of **MIRDC** within **SIXTY (60) 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 **FIL-ASIA**.

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

5.5 If **FIL-ASIA** 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 Final Acceptance and may be released after the issuance of the Certificate of Final Acceptance subject to conditions mandated by law.

6.2 The Performance Security shall be forfeited in the event it is established that **FIL-ASIA** is in default in any of its obligations under this Agreement.

6.3 In case of a reduction of the contract value, **MIRDC** 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 reductions is not more than fifty percent (50%) of the original performance security.

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**.

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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. **FIL-ASIA** 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 **FIL-ASIA** 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 **FIL-ASIA** from any warranties or other obligations under this Contract.

ARTICLE VIII  
ASSIGNMENTS AND SUB-CONTRACTING

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

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

ARTICLE IX  
OBLIGATIONS/RESPONSIBILITIES OF SUPPLIER

9.1 **FIL-ASIA** 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. **FIL-ASIA** shall be solely liable for any violation of the same.

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

ARTICLE XI  
LIABILITY OF SUPPLIER

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

ARTICLE XII  
CONFIDENTIAL INFORMATION

12.1 **FIL-ASIA** 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 XIV  
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.

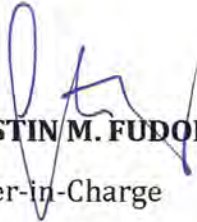
NOV 23 2012 MANILA



**METALS INDUSTRY RESEARCH AND  
DEVELOPMENT CENTER**

**FIL-ASIA AUTOMOTIVE &  
INDUSTRIES CORP.**

By:

By:

  
**AGUSTIN M. FUDOLIG**  
Officer-in-Charge


  
**JOSE ANTONIO M. AQUINO**  
President  


SIGNED IN THE PRESENCE OF:



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CERTIFIED FUNDS AVAILABLE:

  
**BLESILDA P. CABANA**  
Accountant IV

**ACKNOWLEDGMENT**

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

Before me a Notary Public for and in the MANILA this NOV 23 2012  
2012, personally appeared:

<b>NAME</b>	<b>I.D. NO.</b>	<b>DATE/PLACE ISSUED</b>
AGUSTIN M. FUDOLIG	Driver's License No. G03-86-007020	11 September 2011, Land Transportation Office, QC
JOSE ANTONIO M. AQUINO	SSS I.D. No. 03- 2634643-5	SSS, Quezon City

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 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. 197  
Page No. 20  
Page No. 449  
Series of 2012.

*Dele R. Agcaoili, Jr.*  
ATTY. DELE R. AGCAOILI, JR.  
NOTARY PUBLIC  
UNTIL DECEMBER 31, 2012  
PTR NO 0286334 / 2012-2013 MLA  
IBP NO 797299, 2012 MLA.  
ROLL NO 24655 / TIN -144-519-066  
MCLE III- 0013521