

NOTICE TO PROCEED

August 16, 2012

OPEN BUILDERS

14 Ilang-ilang St., Villa Leticia Subd.,
Imus, Cavite
Tel: (046) 4723894 Fax: (046) 472-3179

Mr. Aifeo B. Cabili
General Manager


Dear Sir,

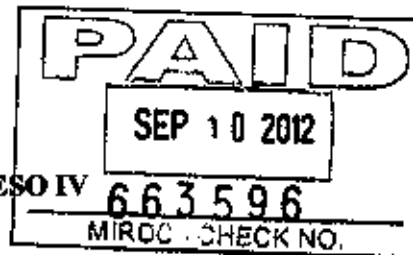
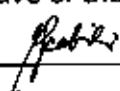
The attached Contract Agreement having been approved, notice is hereby given to **Open Builders**, that work may proceed on the project for "**Supply of Labor and Materials for the Construction of Perimeter Fence with a Land Area of 90,000 sq. m.**", effective upon signing of the Contract Agreement and 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 B. CRUZ, CESO IV
Executive Director

I acknowledge receipt of this Notice on Aug. 31, 2012 (date of receipt)Name of the Representative of the Bidder: Edna Jan CabiliAuthorized 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.

Molding the Future of Metal Industries

GENERAL CONSTRUCTION CONTRACT

For the "Supply of Labor and Materials for the Construction of Perimeter Fence with a Land Area of 90,000 sq.m."

KNOW ALL MEN BY THESE PRESENTS:

This AGREEMENT made and executed by and between:

METALS INDUSTRY RESEARCH AND DEVELOPMENT CENTER, an attached agency of 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 ---

ALFEO B. CABILI, of legal age, married, Filipino, doing business under the trade name of "OPEN BUILDERS & SUPPLY" with business and postal address at No. 14 Ilang-Ilang Street, Villa Letecia Subdivision, Imus, Cavite, hereinafter referred to as the "CONTRACTOR";

WITNESSETH:

WHEREAS, MIRDC is undertaking the "Construction of Perimeter Fence with a Land Area of 90,000 sq.m." hereinafter referred to as the PROJECT;

WHEREAS, MIRDC conducted a public bidding 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;

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 expense, 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.

e. Construct/perform and erect the Elevated Test Track and Construction of Test Frame for the Automated Guide-way Transit for Taguig City, which shall be monitored based on the milestone activities and outputs of the construction work program, to wit:

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 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;
- (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 **FOUR MILLION NINE HUNDRED NINETY-SEVEN THOUSAND SIXTY-SIX and 05/100 only (=P=4,997,066.05)**, 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 TWENTY DAYS (120) CALENDAR DAYS** reckoned 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 liquidated.

6.4 **MIRDC** shall pay the **CONTRACTOR** progress payments based on billings for actual work accomplished as verified and certified by the 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 ten 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**.

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**.

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.

[Handwritten signatures and initials in the left margin]

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this AUG 24 2012 at CITY OF MANILA

**METALS INDUSTRY RESEARCH AND
DEVELOPMENT CENTER**

By:


ARTHUR LUCAS D. CRUZ, CESO IV
Executive Director


ALFEO B. CABILI
Proprietor-Manager

SIGNED IN THE PRESENCE OF:

100

MATTHEW

CRUZ

Elda

Tan Cabili

CERTIFIED FUNDS AVAILABLE:

[Signature]
BLESILDA P. CABANA
OIC, FAD

ACKNOWLEDGMENT

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

Before me a Notary Public for and in the CITY OF MANILA this
AUG 24 2012, personally appeared:

NAME	I.D. NO.	DATE/PLACE ISSUED
ARTHUR LUCAS D. CRUZ	MIRDC No. 32	MIRDC, Bicutan, Taguig City 19 April 1977
ALFEO B. CABILI	LTD DRIVERS LIC # No 9-90-127957	EXPIRY: NOV. 17, 2013 CUBAO, 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 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.

Doc No. 28 ;
Page No. 7 ;
Book No. 5 ;
Series of 2012.

[Signature]
ATTY. ULPIANO S. MADAMBA
NOTARY PUBLIC
UNTIL DECEMBER 31, 2012
PTR NO. 0346059 01-06-12
IBP NO. 864194 MLA.IBP-IV
ROLL OF ATTY. NO. 51028