

CONTRACT AND AGREEMENT

FOR THE PROJECT:

Construction of Perimeter Fence, 1-Hectare Portion of TUPV Sagay Lot

KNOW ALL MEN BY THESE PRESENTS:

This Agreement made and entered into this 2nd day of JUNE, 2014 at the City of Talisay, Negros Occidental, by and between:

The TECHNOLOGICAL UNIVERSITY OF THE PHILIPPINES VISAYAS, duly represented by DRA. MA. LEONOR F. VALIDOR, Campus Director, with office address at Capt. Sabi Street, City of Talisay, Negros Occidental, hereinafter referred to as the OWNER;

- and -

KENBE CONSTRUCTION AND SUPPLY, existing under and by virtue of the laws of the Republic of the Philippines, duly represented by its Owner, BEA BERN F. GILBOR, with business address at Boston Finance and Investment Corporation Building, 6th Street, Bacolod City, Negros Occidental, hereinafter referred to as the CONTRACTOR.

WITNESSETH

WHEREAS, in accordance with the advertisement through the TUPV BAC, for and in behalf of the OWNER published/posted in accordance with the Revised Implementing Rules and Regulations of RA 9184 through the PHILGEPS, the CONTRACTOR and other contractors/bidders submitted bid for the construction of perimeter fence of 1-hectare portion of the TUPV Sagay lot located at Sitio Kinalumsan, Poblacion I, Sagay City, Negros Occidental in accordance with the plan and specifications and requirement thereof;

WHEREAS, after evaluating the bids submitted following the published requirements and project specifications in the public bidding held on May 6, 2014, for the above mentioned project, it was determined that the CONTRACTOR'S bid is the lowest calculated responsive bid; and is most advantageous to the Government;

WHEREAS, the CONTRACTOR has agreed and accepted the award to undertake the construction work of the project under the plans, specifications and scope of works and the terms and conditions herein set forth;

NOW, THEREFORE, for and in considerations of the above premises and covenants herein stipulated, the parties hereto hereby agree as follows:

ARTICLE I. CONTRACT DOCUMENTS

1.1 The Contract Documents consists of this Agreement and the following documents, all of which are attached hereto, shall form part of this Agreement:

- A. Contract Agreement
- B. Bidding Documents
- C. Drawings/Plans
- D. Scope of Works and Technical Specifications
- E. Invitation to Bid

Financial Proposals, and all other documents/statement submitted including:

- 1.f.1 Duly signed Bid Breakdown
- 1.f.2 Duly signed Detailed Cost Estimates & Program of Works

G. Annexes to the Bid;

- 1.g.1 Authority of the Signing Official
- 1.g.2 Construction Schedule
- 1.g.3 Manpower Schedule
- 1.g.4 Construction Methods
- 1.g.5 Organizational Chart
- 1.g.6 Equipment Utilization Schedule pledged to this Contract supported with contract of lease or Proof of Ownership.
- 1.g.7 Affidavit of Site Inspection
- 1.g.8 Construction Safety and Health Program
- 1.g.9 Certificate of Compliance of Labor Laws

H. Performance Security

I. Notice of Award and Contractor's "Conform" thereto

J. Supplemental Notices/Addenda (if any)

K. Others:

- 1.k.1 Program of Works
- 1.k.2 BAC Resolution recommending the award of contract

1.2 In case of conflict between the contract documents, this Agreement shall be deemed controlling with reference to Republic Act (RA) 9184, its Implementing Rules and Regulations (IRR) and Annexes thereto.

ARTICLE II. SCOPE OF WORK

2.1 The works to be done by the CONTRACTOR under this Agreement is understood to be the construction of perimeter fence for the TUPV Sagay located at the Sitio Kinalumsan, Poblacion 1, Sagay City.

2.2 The CONTRACTOR shall furnish all labour, materials, equipment, supplies and the performance of the CONTRACTOR of all operations necessary for the completion of the project in accordance with the plans, scope of works and specifications as prescribed in the Contract Documents; and the scope of works and technical specifications hereto attached as "Annex D";

2.3 Any items mentioned in either the plans or specifications and not included in the other, shall be deemed included and covered by this Agreement. In case of doubt or conflict of some items or provisions in the plans, specifications and general conditions, and this Agreement, the matter shall be formally referred to the OWNER or its Project Manager for interpretation and resolution, opinions/decisions of which shall be given Ten (10) Calendar Days from receipt thereof.

2.3 Clearing and cleaning of the premises before and after the completion of all works.

2.4 The CONTRACTOR shall procure at the expense of the OWNER all the necessary licenses, building permits, certifications and sanctions of the proper authorities in respect of the said work, and generally comply with the building and other regulations of such authorities, to the satisfaction of the OWNER and his representative, and shall keep the OWNER indemnified against all fines and penalties and losses incurred by reason of any breach of this stipulation.

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3.1 The OWNER shall pay the CONTRACTOR for the faithful and complete performance of the work called for in this Agreement a fixed lump sum total of PESOS: ONE MILLION THREE HUNDRED NINETY SIX THOUSAND EIGHT HUNDRED TWELVE PESOS AND FIVE CENTAVOS (Php 1,396,812.05) inclusive of value added tax and other pertinent taxes, subject to the availability of funds and to the usual accounting and auditing rules and regulations.

ARTICLE IV. TERMS OF PAYMENT

4.1 The OWNER shall pay the CONTRACTOR the Contract Price stipulated in this Agreement thru progress billing based on the computed progress of work for a specific period. Such progress billing shall be subjected to Ten Percent (10%) retention money.

4.2 Progress payments on account of this Agreement will be made at the CONTRACTOR's request. Such request for payment shall be checked, evaluated, certified and endorsed by the Project Manager within Seven (7) days from receipt thereof to the OWNER for payment.

4.3 Payments made by the OWNER to the CONTRACTOR for any part of the work accomplishment shall not be considered acceptance of work.

4.4 Retention Money: The amount equivalent to ten Percent (10%) of each progress payment shall be retained by the OWNER until 50% of the value of the works has been completed, after which no additional retention shall be made provided that the work is on schedule. The total retention money shall be due for release upon final acceptance of the works. The CONTRACTOR may, however, request the substitution of the retention money for each progress billing with irrevocable standby letters of credit from a commercial bank, bank guarantees or surety bonds callable on demand, of amount equivalent to the retention money substituted for, provided that the works is on schedule and is satisfactorily undertaken. Otherwise, the ten Percent (10%) retention shall be made.

ARTICLE V. COMMENCEMENT AND COMPLETION OF WORK

5.1 The CONTRACTOR shall commence execution of the PROJECT within seven (7) calendar days after receipt of written Notice to Proceed from the OWNER. He must complete the project within Ninety (90) Calendar Days.

ARTICLE VI. CONTRACTOR'S LIABILITIES

6.1 That the CONTRACTOR shall employ QUALIFIED and COMPETENT labour force in the project.

6.2 That the CONTRACTOR shall be responsible for any damages and/or losses of all materials before, during and after installations up to the time of acceptance by the OWNER, except when such damages and/or losses are caused by or attributable to others.

6.3 That the CONTRACTOR shall make no change or alteration in the plans and specifications whatsoever without the prior written approval of the OWNER.

6.4 That it is hereby agreed and understood that no employer-employee relationship exists between the OWNER and the CONTRACTOR and that the CONTRACTOR shall be responsible for and shall hold the OWNER free and harmless from any liability of claim for workmen's compensation and other employee benefits of its labourers, workers or employees as well as claims for damages by third party persons.

assign, convey or otherwise transfer his rights over this Agreement to any person or party without the written consent of the OWNER.

5.7 Should any provision herein be declared invalid, illegal or void all other provisions shall remain in force.

ARTICLE VI PERFORMANCE BOND

6.1 That the CONTRACTOR shall secure at its own expense, before the execution of this Agreement, and deliver to the OWNER a Performance and Liability Bond in the form and the amount of which shall be in accordance with the schedule in the Notice of Award as a guarantee of the CONTRACTOR'S satisfactory performance of the contract works and to cover possible deductions and obligations arising from this Agreement.

Such performance bond shall remain and continue to be in full force and effect until final completion and acceptance of works, provided the CONTRACTOR has submitted to the OWNER the Warranty Bond stipulated under Article VII of this Agreement.

6.2 That the CONTRACTOR shall upon OWNER acceptance of the works and prior to final payment, obtain at its own expense a Guarantee Bond equivalent to TEN PER CENT (10%) of the total contract price including all awarded additional amount to answer for faulty and/or defective materials or workmanship for a period of One (1) Year starting from date of final acceptance of the work.

All such defects shall be made good by the CONTRACTOR within Fifteen (15) Days after they have been brought to attention. Failure of the CONTRACTOR to do so will entitle the OWNER to undertake such repairs without prior notice to the CONTRACTOR and/or surety, the expenses to be charged against the CONTRACTOR and/or surety.

6.3 The above bonds and insurance requirements shall be secured from GSIS or other reliable bonding company acceptable to the OWNER.

ARTICLE VII WARRANTIES AND RESPONSIBILITIES OF THE CONTRACTOR

7.1 In case of defect or defects in workmanship which may become apparent in the course of the construction the CONTRACTOR, upon request of the OWNER, shall at its own expense, tear down and replace such portion of the work done, as in the OWNER reasonable opinion, are unsound or defective, or not in accordance with plans and specifications, without prejudice to the provisions in Article VI Section 6.2.

7.2 That the CONTRACTOR shall comply with the entire guarantee and warranty and other requirements of this Contract Specifications imposed by the Project Manager that are in relation and may be applicable to the work covered by this Agreement.

7.3 That the CONTRACTOR shall at all time furnish and maintain an adequate and sufficient supply of tools, equipment and skilled/unskilled workmen at the jobsite. The CONTRACTOR shall diligently supervise the construction until completion and it shall have on a full-time, competent and licensed construction engineer who shall act as Project Supervisor.

In addition, the CONTRACTOR shall also employ competent foremen on full-time duty to supervise the workmen under this Agreement. The OWNER and/or its Project Manager reserve the right to reject for reasonable causes any person or persons employed by the CONTRACTOR in the CONSTRUCTION work and the omission of the OWNER to exercise such right shall not in any way relieve the CONTRACTOR from its responsibility to fulfil its undertakings.

supervise the work of other trades in direct contract with the OWNER. However, the CONTRACTOR shall not work independently; rather, the CONTRACTOR shall coordinate with Constructors of all other trades.

7.5 The CONTRACTOR shall be responsible for maintaining the general cleanliness and sanitation of the site and shall undertake clearing of site and removal of his construction debris during the entire contract period. After final completion but before acceptance of the work and final settlement had been made between the parties, the CONTRACTOR shall forthwith remove all surplus apparatus, machinery, scaffolding, tools and equipment not a part of the work furnished or supplied by it and shall remove all debris and leave the work free and clean of all obstruction and hindrances.

7.6 The CONTRACTOR shall guarantee the completed works against latent defects for a period of one (1) year from the date of the Certification of Acceptance of the works. This guarantee shall be secured by a Warranty Security in form and amount stipulated in Section 62.2 of the IRR of R.A. 9184.

ARTICLE VIII. COMPLETION AND FINAL ACCEPTANCE

8.1. If the work done by the CONTRACTOR is fully completed and in accordance with this Agreement, as certified by the Project Manager, the OWNER shall within Thirty (30) days then issue a written certificate of acceptance thereof.

8.2 After completion of works, clean-up and demobilization of the CONTRACTOR, a working crew consisting of at least a Project Engineer or Supervisor, Finishing Carpenter, Finishing Mason and other trades as may deem necessary with an adequate stock of materials, tools and equipment shall be available at Eight (8) hours working schedule at the project site until the final acceptance of the OWNER.

8.3 Before issuance of the certificate of acceptance, the CONTRACTOR shall submit evidence satisfactorily to the OWNER that all payrolls, bills and other indebtedness of the work have been paid. Any claim filed by any party arising from this Agreement will be sufficient reason for the OWNER to withhold as payment due to the CONTRACTOR such amount of the claim.

ARTICLE IX. DEFAULT OF THE CONTRACTOR

9.1 If the CONTRACTOR shall assign the Contract, without the consent in writing of the OWNER first obtained or shall have an execution levied on its goods, or if the Project Manager shall certify in writing to the OWNER that in his opinion, the CONTRACTOR:

- a. has abandoned the contract; or
- b. without reasonable excuse has failed to commence the work; or
- c. has suspended progress of the work for Seven (7) days; or
- d. in case of workmanship, rejected by the OWNER, the CONTRACTOR fails to undertake corresponding corrective measures within Fifteen (15) days after receiving from the OWNER a written order that the said work had been condemned and rejected by the OWNER under these conditions; or
- e. despite previous warning by the OWNER in writing, the CONTRACTOR is not executing the works in accordance with the Contract or is persistently or flagrantly neglecting to carry out its obligations under the Contract; or

than Fifteen (15) days; or

g. has, to the detriment of good workmanship or in defiance of the OWNER's instruction to the contrary, sublet any part of the Contract;

h. in any case, actions taken by the CONTRACTOR, at any time, putting the OWNER in a bad light (ex. Repetitive non-payment wages of the CONTRACTOR to its workers) and failed to properly address the issues.

Then the OWNER may, after giving Seven (7) days' notice in writing to the CONTRACTOR and without the necessity of any judicial process or action in law, enter upon the site and the work and expel the CONTRACTOR there from immediately without voiding the Contract, or releasing the CONTRACTOR permits obligation or liabilities under the contract or affecting the rights and power conferred on the OWNER by the Contract, and may itself complete the work. All essential equipment belonging to the CONTRACTOR as may be needed for the completion of the Project in accordance with the plans thereon shall, at the option of the OWNER, remain in place of work until completed, and shall be rented at such price as may be considered reasonable under the circumstance.

If the OWNER shall enter and expel the CONTRACTOR under this clause, the OWNER shall be entitled to confiscate the Performance Bond of the CONTRACTOR to compensate for all kinds of damages it may suffer without prejudice to other remedies and courses of action available the OWNER in law or equity. All expenses incurred to finish the project shall be charged to the CONTRACTOR and/or its bond. Further, the OWNER shall not be liable to the CONTRACTOR for any amount until the cost of execution, damages for delay in completion, if any, and all other expenses incurred by the OWNER shall have ascertained, which amount shall be deducted from any money due the CONTRACTOR on account of the Contract.

ARTICLE X. TERMINATION OF AGREEMENT

If any time the CONTRACTOR violates any terms of this Agreement and the work of the CONTRACTOR is suspended or delayed through no fault or act of the Project Manager, and the Project Manager has reasonable doubt that the unfinished work cannot be finished according to schedule of work, or if the work is not completed in Ninety (90) Calendar Days, the CONTRACTOR shall pay the OWNER liquidated damages equivalent to One Tenth of One Per Cent (0.1%) of the total contract amount per working day of delay but not to exceed Ten Per Cent (10%) of the Total Price.

The Liquidated Damages Charges shall commence on the NIENTY FIRST (91st) Working Day unless moved to a later date due to Approved Time Extensions. Also, if the CONTRACTOR cannot comply with the standard of workmanship required by the Project Manager and/or OWNER, the Project Manager and/or OWNER may terminate this Agreement upon three (3) days notice and the CONTRACTOR shall be liable for whatever damages or losses which the latter might suffer or incur on account of the work suspension or delay and/or violation.

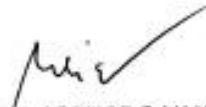
Upon termination, the CONTRACTOR shall be entitled only to payment due to him based on the actual accomplished works as approved by the Project Manager at the time of the termination, less whatever accounts or claims payable to the CONTRACTOR to others. Completed items of works shall mean items in the concerned scope of work are all completed/accomplished and approved by the Project Manager. Also all retention amounts of terminated contracts will be forfeited in favour of the OWNER.

signatures on the date and place herein before written.

By:

By:


BEA BERN F. GILBOR
Owner, KENBE Construction


DR. MA. LEONOR F. VALIDOR
Campus Director, TUP-Visayas

SIGNED IN THE PRESENCE OF:





APPROVED:



President
Technological University of the Philippines

ACKNOWLEDGEMENT

REPUBLIC OF THE PHILIPPINES)
City of _____)S.S.

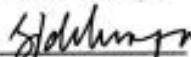
BEFORE ME, A Notary Public for and in the City of _____ personally came and appeared this 30 JUL 2014, 2014, DR. MA. LEONOR F. VALIDOR, Campus Director of the TECHNOLOGICAL UNIVERSITY OF THE PHILIPPINES VISAYAS, City of Talisay, Negros Occidental with Community Tax Certificate No. 20026848 issued at the City of Talisay on January 24, 2014 and BEA BERN F. GILBOR, Owner of KENBE CONSTRUCTION AND SUPPLY located at Boston Finance and Investment Corporation Building, 6th Street, Bacolod City, Negros Occidental with TIN No. 280-269-418 issued at the City of Bacolod on August 14, 2009; known to be the same persons who executed the foregoing contract for the construction of perimeter fence of 1 hectare portion of TUPV Sagay campus in the City of Sagay, Negros Occidental, acknowledge to me that the same is their free and voluntary act and deed.

This instrument consists of seven (7) pages including this page wherein the acknowledgement is written, signed by the parties, their instrument witness on each and every page thereon.

WITNESS MY HAND AND NOTARIAL SEAL at the place and date written.

Doc. No. 44
Page No. 174
Book No. XX
Series of 2014.


AUGUSTUS F. RALLOS
NOTARIAL PUBLIC
APPOINTED AND COMMISSIONED FOR
IN THE CITIES OF BACOLOD, TALISAY
AND MUNICIPALITIES OF MURCIA
AND DON SAN RAFAEL BENEDECIO.
UNTIL DECEMBER 31, 2014-15
SP. D.R. NO. 98127 - J.O. NO. 2014
SP. NO. 501324-JULY 02, 2014
P.L. NO. 247616-JUNE 25, 1973
VLE COMPLIANCE NO. 0007695

Certified Funds Available:

CELESTE GRACE B. DELUMPA
Accountant III, TUPV