

CONTRACT FOR THE VARIOUS CIVIL WORKS (PACKAGE 2)
LOT 1

(020-12142021-0096)

This Contract is entered into this _____ day of _____, 2022 at Masterson Avenue, Upper Carmen, Cagayan de Oro City by and between:

DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT Field Office 10 with office address at Fr. Masterson Avenue, Upper Carmen, Cagayan de Oro City as represented by its Regional Director, **MARI-FLOR A. DOLLAGA-LIBANG**, hereinafter called the "OWNER".

- and -

ABAYCER CONSTRUCTION SUPPLIES AND GENERAL MERCHANDISE with address at Zone 4, Upper Bulua, Cagayan de Oro City, as represented by **CRESENTE Y. ABAYATA**, hereinafter called the "CONTRACTOR".

A. General

1. Definitions

- (a) **Owner** - means the Department of Social Welfare and Development as represented by the Regional Director.
- (b) **Project Engineer** - means a licensed Civil Engineer assigned to the Project.
- (c) **Contractor** - means the construction enterprise or organization.
- (d) **Contract** - is the agreement entered between the Owner and the Contractor for the execution of works.
- (f) **Works** - comprises all those items that are to be constructed or repaired as specified in the Technical Specifications of the contract.

2. Object of the Contract

The object of the contract is the Labor and Materials for the **Various Civil Works (Package 2)**:

Lot 1: Regional Reception and Study Center for Children (RSCC)	
I. Repair of 5 units comfort room	Php 874,048.77
II. Repair of storage room	
III. Repair of canopy beside the ECCD Room	
IV. Repair of infirmary room for children	

3. Location of Works

Works are to be executed in DSWD:

Lot 1: RSCC, DSWD -10 Masterson Avenue, Upper Carmen, Cagayan de Oro City
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MARI-FLOR A. DOLLAGA-LIBANG
Regional Director

CRESENTE Y. ABAYATA
Contractor

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4. **Type of Contract**

The present contract is for the whole Works based on a **Fixed Lump-Sum Price**. Under a Fixed Lump Sum Price contract, the total corrected bid price is the amount accepted by the Owner as the lump sum contract price required to complete all the works in accordance with Owner's designs, plans, and specifications.

5. **Documents Forming the Contract**

The following documents shall form as integral part of the contract and shall be interpreted in the following order of priority:

- Bid Form
- Site Visit Certificate
- Schedule of Construction
- Schedule of Plant and Equipment
- Schedule of Key Supervisory Staff
- Any addenda sent to the bidder
- Technical Specifications - detailed plans, designs, drawings, and specifications.
- Post-qualification Report

6. **Form of Agreement**

The present Contract results from the Notice of Award dated February 15, 2022.

7. **Supervision of Works**

The works, as described in detail in the Technical Specifications section of this Contract, shall be under the supervision of the Regional Director, with assistance from the Project Engineer. The Contractor will obey all written and verbal orders of the Regional Director and/or Project Engineer. If the Contractor is unable to follow or execute any of the Regional Director and/or Project Engineer's order or instruction he will notify the Regional Director in writing within 3 calendar days.

8. **Instructions/Orders**

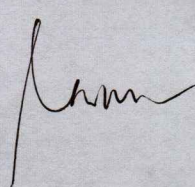
The Regional Director, with assistance from the Project Engineer, will supervise the works and administer the contract. The Contractor shall only take instructions from the Regional Director and/or Project Engineer.

9. **Possession of the Site**

The Contractor shall be given possession of portions of the site to enable him to execute the contract. If for any reason possession cannot be given in due time, this shall be taken into account by the Regional Director and Project Engineer in considering any time extension to the contract period and/or reasonable compensation that may be due.

MARI-FLOR A. DOLLAGALIBANG
Regional Director

CRESENTE Y. ABAYATA
Contractor



10. Contractor to Conform to Government Regulations

The contractor shall ascertain and conform in all respects with the provisions of national government laws and any and all pertinent orders, circulars, laws, and ordinances promulgated and enforced by the municipal and provincial governments that may be applicable to the Works. This shall in particular apply to the:

- (a) **Conditions of employment of local labor.** The Contractor is bound by the labor regulations and social legislation that are in force in the country. In particular, he shall comply with the following rules: Hours and conditions of works, wages and benefits, general health regulations, safety and health precautions.
- (b) **Traffic regulations**, including provision of adequate warning sign, and traffic barriers.
- (c) **Environmental protection.** The Contractor shall carefully plan and conduct his works in a manner which will minimize their effect on the environment. In particular the Contractor shall take care not to interfere with or pollute in any way irrigation channels or water courses. Borrow pits shall only be worked at the location and to the extent agreed by the Project Manager and, in particular, the pits shall be left in a condition that it is not a safety or a health hazard due to stagnant water collection.

11. Responsibilities

The Contractor is responsible for the following risks that he may encounter during the implementation of the works:

- (a) Third party liability (including any employee of the Owner present on the site), and covering injuries to persons and damage to property, losses and any prejudice which might result from the execution of works;
- (b) Work accidents and injuries which might befall his own staff.
- (c) Wearing of PPE or uniform the entire work period or in construction site of the RSCC compound; and
- (d) Provision of manpower as stipulated in the cost estimate;
- (e) Wearing of identification card for identity check during entry at the guard house.

12. Equipment/Machinery/Personnel

The contractor shall make available to the project its set of tools, equipment, machineries, and personnel as declared in its current/latest annual PCAB application for renewal.

13. Settlement of Dispute

- (a) In the course of the execution of the works, if any conflict or difference of any kind whatsoever arises between the Project Engineer and the Contractor, the latter shall submit a memorandum to the Regional Director within 3 calendar days that explains the reasons for the disagreement and, possibly the amount in dispute. It should be accompanied by any supporting documents needed to

MARI-FLOR A. DOLLAGA-LIBANG
Regional Director

CRESENTE Y. ABAYATA
Contractor

examine the case. The Regional Director shall resolve the conflict at his/her level.

- (b) If no solution can be found at that level, the Regional Director and the Contractor shall submit themselves to arbitration with the Construction Industry Arbitration Commission for resolution.

B. Time Control

1. Commencement of Works/Contract Completion Period

The commencement of works shall be the date as specified in the Notice to Proceed. The contract completion period is **One Hundred Fifty (150) calendar days**.

2. Planning of Works

(a) Within 3 calendar days after the date of Notice to Proceed, the Contractor will present to the Regional Director for her review and acceptance the detailed implementation plan for the works including site organization, deployment of construction personnel and equipment, securing of necessary mayor's building permits and environmental clearances and other clearances. The implementation plan shall indicate in detail the breakdown of works, the schedule of physical accomplishments based on the breakdown of works on a week-by-week basis, and other construction milestones.

(b) A record book or sometimes referred to as "construction log book" will be maintained by the Contractor on-site to record on a daily basis what is happening on the site such as verbal or written orders given by the Regional Director and Project Engineer, climatic or weather condition, site-work incident, visits of representatives of DSWD, or other authorities, and any other relevant facts related to the works.

C. Quality Control

1. Drawings

Drawings and other engineering documentations are indicative of the scope of work. Field alterations may be decided by the Regional Director, upon recommendation of the Project Engineer, and communicated to the Contractor through change orders, as conditions may warrant and as dictated by acceptable engineering practice, without altering the object of the contract.

2. Quality of Works

Works shall comply with the Technical Specifications, which describe the particular technical requirements of the works to be performed under each activity. These Technical Specifications are to be followed by the Contractor unless modified by the Regional Director, upon recommendation of the Project Engineer. The Project Engineer shall decide as to the quality and acceptability of materials to be used and work to be performed.

MARI-FLOR A. DOLLAGA-LIBANG
Regional Director

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3. **Variations**

- (a) Variation shall not be allowed except for those works that need to be executed that were not and cannot be reasonably foreseen during site investigation and detailed engineering.
- (b) The amount of variation that *may* be allowed is subject to availability of funds and should not exceed 10% of total contract price. Requests for variation shall be subject to evaluation and approval in writing by the Regional Director of the Department of Social Welfare and Development.
- (c) Variations shall be valued at the rates indicated in the details and bill of quantities supporting the summary of breakdown of lump-sum price.
- (d) Upon request of the Contractor, and upon recommendation of the Project Engineer, the Regional Director *may* agree to extend the completion date as a result of such variation.

D. Cost Control

1. **Contract Price**

The total contract amount of the project is as follows:

Lot 1: Regional Reception and Study Center for Children	Php 874,048.77
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2. **Procedure for Payment**

- (a) Payment(s) will be made by the DSWD Field Office 10 to the Contractor, upon recommendation of the Regional Director, on the basis of the following payment schedule:
 - i. Fifteen (15%) percent advance payment;
 - ii. 1st progress billing: between 31 - 50% work accomplishment;
 - iii. 2nd progress billing: between 51- 70% work accomplishment;
 - iv. 3rd and final billing: upon 100% work accomplishment.
- (b) All claims indicated in the progress billings will be validated and confirmed by the Project Engineer.
- (c) The contractor's progress billing shall be supported by a Statement of Works Accomplished (SWA) that shows an itemized breakdown of physical accomplishments to date.

3. **Place of Payment**

Amounts due to the contractor shall be paid into the following bank account at:

Account Number:
in the name of:

4. Time for Payment

Payment to the contractor shall be made within 15-30 calendar days after confirmation and signature by the Project Engineer of the Statement of Works Accomplished.

5. Advance

- a) The Owner may agree to pay the Contractor an advance for mobilization corresponding to fifteen percent (15%) of the Total Contract Price against provision by the Contractor of an unconditional bank guarantee (see pro-forma sample in Annex B) and by a bank acceptable to the Owner in the amount equal to the advance payment.
- b) This Advance will be made within 15 calendar days after approval of request by the Regional Director.
- c) The advance payment shall be recouped based on the schedule of progress payments indicated in Clause D.2 (a) (ii) to (a) (IV) above.

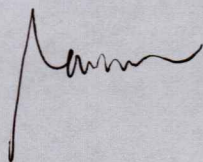
6. Release of Retention Money

Retention money shall be released as follows:

- a) Upon satisfactory compliance to requirements of Certificate of Completion, retention money shall be released to the Contractor upon posting of Surety Bond acceptable to the Owner (in exchange for retention money;
- b) The Surety Bond shall be submitted by the Contractor with the exact wordings of the original form. Any changes, alterations modifications or deviations made by the Contractor on the original form shall constitute as non-compliance and shall be a ground for the cancellation of award. If for some reason Surety Bond form was varied by the contract awardees and was accepted by the Owner through inadvertence or negligence. It shall in no way constitute as waiver by the Owner for said requirement of the exact wordings of the form.
- c) Upon Owner's issuance of the Certificate of Final Acceptance and Turnover, which comes one (1) year after issuance of the Certificate of Completion, the Surety Bond posted in lieu of retention money, shall be released;
- d) The remaining half of the 10% retention shall be used by the owner if the contractor, after given due notice by the Owner, fails to rectify. Money remaining after rectification of defects shall be forfeited in full favor of the government.

7. Performance Security

- i. The performance Security is contractor's guarantee for the performance of the works. Failure of the contractor to complete the works shall entitle the Owner to forfeit the whole amount in accordance with the provisions of the performance Security submitted by the contractor for this purpose.
- ii. The Performance Security shall be provided to the Owner no later than ten (10) calendar days after receipt of the Notice of Award in the form of:



MARI-FLOR A. DOLLAGA-LIBANG
Regional Director

CRESENTE Y. ABAYATA
Contractor

MARI-FLOR A. DOLLAGA-LIBANG
Regional Director

Form of Bid Performance Security	Amount of Bid Security (Equal to Percentage of the Total Contract Price)
a) Cash, cashiers/manager's check, bank draft/guarantee confirmed by a Universal or Commercial Bank	Infrastructure Projects – Ten percent (10%)
b) 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.	
c.) 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%)

- iii. The Performance Security in the form of Surety Bond shall be submitted by the contract awardees with the exact wordings of the original form. Any changes, alterations, modifications or deviations made by the contract awardees on the original form shall constitute as non-compliance and shall be a ground for the cancellation of award. If for some reason the Surety Bond form was varied by the contract awardees and was accepted by the Owner through inadvertence or negligence, it shall in no way constitute as waiver by the Owner for said requirement of the exact wordings of the form.
- iv. The Performance Security shall remain valid until issuance by the Procuring Entity of the Certificate of Final Acceptance.

8. Liquidated Damages

- (a) Failure by the contractor to complete the works within the contract completion period established by B.1 above, or any extended period granted by the Regional Director, shall render the Contractor liable to forfeit 1/10 of 1% of the cost of the unperformed portion for everyday of delay; and
- (b) The maximum sum which will be forfeited will be 10% of the original value of the Contract, after which, the Owner may rescind the contract.

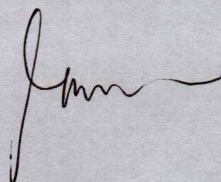
9. Owner's Default

If payment to the contractor is delayed for more than 30 calendar days after confirmation of the Statement of Works Accomplished (SWA) by the Project Engineer, the Contractor may suspend work and withdraw its equipment and personnel from the project site until such time as the payments are normalized and return to work agreement satisfactory to both parties is agreed upon.

E. Contract Completion

1. Certificate of Completion

- a. When the Contractor shall consider that the whole of the Works has been substantially completed – i.e. works has reached ninety-eight (98%) completion – he shall give notice to that effect to the Regional Director.
- b. The notice must be accompanied by an undertaking to finish any outstanding work as expeditiously as possible and to rectify any defects which might become apparent



CRESENTE Y. ABAYATA
Contractor

for the period shown in Contract E. 2 (a) following the date of issuance of the Certificate of Completion.

- c. The Regional Director shall, within five (5) calendar days of receiving the Contractor's notice, either issue a Certificate of Completion stating the actual date of completion of the works, or may choose not to issue the Certificate, but instead give instructions to the Contractor stating all further work that need to be done before a Completion Certificate may be issued. The Completion Certificate shall not be issued until all defects are corrected to the Regional Director satisfaction.
- d. Upon issuance of the Certificate of Completion, the final billing shall be paid to the contractor within 30 calendar days. In making this payment, the Regional Director shall hold half of the retention money until the Defects Liability Period mentioned in Contract E.2 expires. The Contractor is given the option to substitute the retention money by a Surety Bond acceptable to the Owner.

Defects Liability Period

(a) The Contractor shall be responsible for rectifying any defects in his works which become apparent for a period of twelve (12) months following the issuance of the Certificate of Completion.

(b) The Contractor is not to be held liable for any deterioration in the condition of the work due to weather or fair wear and tear, and the Regional Director, with assistance from the Project Engineer, shall adjudicate in this matter.

3. Certificate of Acceptance

(a) Upon expiration of the Defects Liability Period and when all outstanding and defective work has been completed or rectified, the Regional Director, upon recommendation of the Project Engineer, shall issue a Certificate of Acceptance which shall state the date on which the Contractor shall have completed his obligation to the Owner's satisfaction.

(b) The Project Engineer will inspect the works 14 calendar days before the expiry of the Defect Liability Period and will issue at this time a list of any defects required to be rectified prior to issuance of the Certificate of Acceptance.

4. Termination of Contract

- a) The contract is terminated automatically and without compensation in the following cases:
- Death or legal incapacity of the Contractor;
 - Bankruptcy or judicial liquidation of the Contractor's business;
 - When progress of works has reached fifteen percent (15%) negative time slippage against projected milestones indicated in the latest agreed/approved construction schedule;
- b) If the Contractor does not comply either with the clauses of the Contract or the notices received, particularly notices regarding poor quality of workmanship, the Owner, shall issue a formal notice requesting compliance within 15 calendar days, or less in case of emergency. Beyond that period of time, if the Contractor has not complied with the

request, the Owner may declare the contract as terminated at the Contractor's expenses.

- c) If in the judgment of DSWD the Contractor has engaged in corrupt or fraudulent practices, in competing for or in executing the Contract, then DSWD may, after having given 14 days' notice to the Contractor, terminate the Contractor's Contract and expel him from the Site;

For the purpose of this sub-clause:

"Corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.

"Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the DSWD and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive DSWD of the benefits of free and open competition.

- d) In case of termination, the Owner shall, in the Contractor's presence, draw up a list of all works carried out and inspect the materials supplied. The Contractor shall vacate the site within the time indicated by the Owner. An account will be drawn up for payment of the works completed and materials supplied by the Contractor. Deduction will be made for accounts already settled, advances made, retention money paid, and for additional expenses to be incurred in preparing a new bid and awarding a new contract for the remaining works.


IN WITNESS WHEREOF, the parties hereto, through the duly authorized representatives, have hereunto signed these presents, this _____ day of _____, 2022 at Cagayan de Oro City, Philippines.


**DEPARTMENT OF SOCIAL
WELFARE & DEVELOPMENT
FIELD OFFICE 10**

**ABAYCER CONSTRUCTION SUPPLIES
AND GENERAL MERCHANDISE**

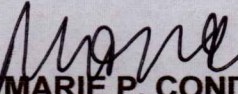
By:

By:


MARI-FLOR A. DOLLAGA-LIBANG
Regional Director

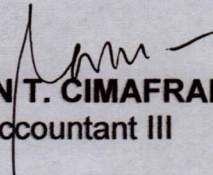

CRESENTE Y. ABAYATA
Contractor


SIGNED IN THE PRESENCE OF


ROSEMARIE P. CONDE
Asst. Regional Director for
Operation/SWO V

Supplier's Witness

Certificate of Availability of Funds:


HANILYN T. CIMAFRANCA

 Accountant III

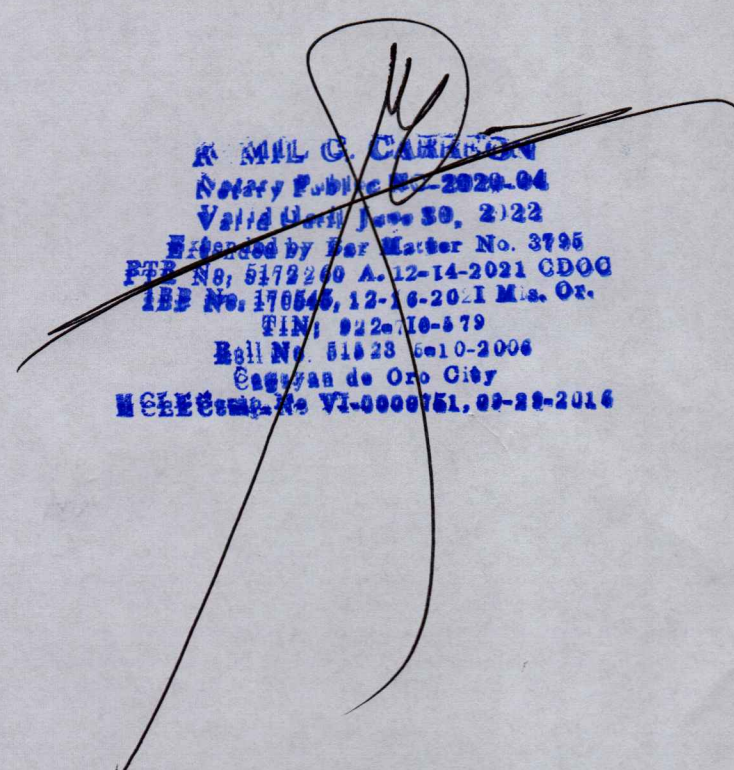
REPUBLIC OF THE PHILIPPINES

City of Cagayan de Oro City

ACKNOWLEDGEMENT

BEFORE ME, a Notary Public in and for the Province of Misamis Oriental on this _____ day of _____ 2022, personally appeared **MARI-FLOR A. DOLLAGA-LIBANG** in her capacity as Regional Director of DSWD Regional Field Office X with DSWD ID No. 10-1903049 issued on March 25, 2019 at Cagayan de Oro City and **CRESENTE Y. ABAYATA** in his capacity as Contractor of Abaycer Construction Supplies and General Merchandise of Zone 4, Upper Bulua, Cagayan de Oro City with Community Tax Certificate No. _____ issued on _____ at _____, known to me and known to be the same persons who executed the foregoing instrument and acknowledged to me that the same is an act of their own free will and deed and that of the firms they represent.

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Book No. CXXIV
Series of mm


R. MIL C. CARRERA
Notary Public 02-2020-04
Valid Until June 30, 2022
Extended by Bar Matter No. 3795
PTR No. 5172260 A. 12-14-2021 CDOG
IEP No. 170546, 12-16-2021 Mis. Or.
TIN: 022-10-879
Roll No. 51823 6-10-2006
Cagayan de Oro City
MCLE Comp. No. VI-0000751, 07-28-2016