



NOTICE OF AWARD AND CONTRACT AGREEMENT
Supply and Delivery of N95 Masks for the Procurement Service

Contract No.: PS-CP-MDC-20-03-89

Date: 24 June 2020

RENE F. RECINTO

Authorized Representative

**JOINT VENTURE of Sunwest Construction & Development Corporation
 and DKCAR Trading**

U 1108 West Tower, PSE Centre,
 Exchange Rd., Ortigas Center,
 Pasig, Metro Manila

rene@sunwest.ph

0917-8621863

After conducting evaluation of the proposal, the **Procurement Service** has determined your proposal as the Best and Most Responsive Proposal for the **Supply and Delivery of N95 for the Procurement Service** based on your **Best and Final Offer** as submitted in response to **RFO No. MDC-RFO-20-03-93** received and evaluated on **23 June 2020** thus, this Notice of Award and Contract Agreement:

Quantity	Unit of Measurement	Item/Description	Unit Price	Total Price
3,000,000	pieces	N95 Mask	95.00	P285,000,000.00

Delivery Instructions:

Lot	Quantity	Item/Description	Agency's Delivery Schedule	
1	3,000,000 pieces	N95 Mask	Must comply to the following tranches of delivery:	
			July 15, 2020	500,000 pieces
			August 15, 2020	500,000 pieces
			September 15, 2020	500,000 pieces
			October 15, 2020	500,000 pieces
			November 15, 2020	500,000 pieces
			December 15, 2020	500,000 pieces



Standard warranty provisions apply:

1. The Supplier warrants that the Goods supplied under the Contract are new (unused), and that they incorporate all recent improvements in design and materials (latest models), except when the technical specifications required by the Procuring Entity provide otherwise. The Supplier warrants the timely delivery of the items. Any delay or failure to deliver may result in termination of the contract and blacklisting of the entity.
2. The Supplier further warrants that all Goods supplied under this Contract shall have no issue or defect arising from the design, materials, or workmanship or from any act or omission of the Supplier that may develop under normal use of the supplied Goods in the conditions prevailing in the country of final destination.
3. In order to ensure that any manufacturing defects shall be corrected by the Supplier, a warranty shall be required from the Supplier for a minimum period of three (3) months. The obligation for the warranty shall be covered by, at the Supplier's option, either retention money or a bank guaranty in an amount equivalent to at least one percent (1%) of every progress payment. If the latter is opted, the same shall be submitted three days upon the conclusion of negotiations and before the issuance of the Notice of Award and Contract Agreement. Failure to submit the stated warranty security shall automatically revert the warranty security to the option of retention money.
4. The Procuring Entity shall promptly notify the Supplier in writing of any claims arising under this warranty. Upon receipt of such notice, the Supplier shall, within the period specified and with all reasonable speed, replace the defective Goods without cost to the Procuring Entity.
5. The Procuring Entity shall be allowed to deduct Twelve Percent (12%) Value Added Tax (VAT) charged by the Philippine Government from the purchase price. In the event that the Supplier or the Procuring Entity shall be deemed to be exempt from the payment of VAT on the purchased items to the Republic of the Philippines, the amount will not be refunded to the Supplier.

OTHER TERMS AND CONDITIONS:

1. **PRODUCT** – The SUPPLIER agrees to manufacture and sell to PS-DBM N95 Surgical Mask per requirement under "A. Technical Specifications" of the Terms of Reference.
2. **QUANTITY** – PS-DBM hereby procures THREE MILLION (3,000,000) pieces, subject to the delivery schedule indicated in the "B. Schedule of Delivery" of the Terms of Reference.



3. PRICE - The unit price per mask must be equal or lower than the Approved Budget for the Contract of NINETY FIVE PESOS (Php 95.00) per piece.
4. PAYMENT TERMS – For each actual delivery, PS-DBM shall pay SUPPLIER within FIFTEEN (15) DAYS from delivery of product and submission of documentary requirements per payment terms indicated below:

Delivery Tranches	Schedule		Payment Terms (in % of the Total Contract Amount)
	Date	Quantity	
1 st Tranche	July 15, 2020	500,000 pieces	P 47,500,000.00
2 nd Tranche	August 15, 2020	500,000 pieces	P 47,500,000.00
3 rd Tranche	September 15, 2020	500,000 pieces	P 47,500,000.00
4 th Tranche	October 15, 2020	500,000 pieces	P 47,500,000.00
5 th Tranche	November 15, 2020	500,000 pieces	P 47,500,000.00
6 th Tranche	December 15, 2020	500,000 pieces	P 47,500,000.00
TOTAL:		3,000,000 pieces	P 285,000,000.00

5. TERMINATION – The Procuring Entity may terminate this contract under any of the following instances:
 - 5.1. Termination for Default – The Procuring Entity shall terminate a contract for default when any of the following conditions attend its implementation: a) Outside of force majeure, the Supplier fails to deliver or perform any or all of the Goods within the period(s) specified in the contract, or within any extension thereof granted by the Procuring Entity pursuant to a request made by the Supplier prior to the delay, and such failure amounts to at least ten percent (10%) of the contact price; b) As a result of force majeure, the Supplier is unable to deliver or perform any or all of the Goods, amounting to at least ten percent (10%) of the contract price, for a period of not less than sixty (60) calendar days after receipt of the notice from the Procuring Entity stating that the circumstance of force majeure is deemed to have ceased; or c) The Supplier fails to perform any other obligation under the Contract.
 - 5.2. Termination for Convenience - The Head of the Procuring Entity may terminate this contract, in whole or in part, for the convenience of the Government if he has determined the existence of conditions that make Project Implementation economically, financially or technically impractical and/or unnecessary, such as, but not limited to, fortuitous event(s) or changes in law and national government policies.
 - 5.3. Termination for Insolvency – The Procuring Entity shall terminate the contract if the Supplier is declared bankrupt or insolvent as determined with finality by a court of competent jurisdiction.
6. RIGHT OF FIRST REFUSAL/RIGHT TO MATCH – If at any time during the term of this contract, there is a bona fide offer from a third party to manufacture, supply and sell with the same specifications under more favorable terms and price as set forth in this contract or such other favorable terms to PS-DBM, the latter shall have the right to terminate the contract for convenience. PS-DBM shall however notify supplier in writing of such offer, and the supplier



shall, then, notify PS-DBM within thirty (30) days of its intent whether to exercise its right of first refusal or right to match the price of the third party supplier or terminate the contract with the PS-DBM.

7. SPECIAL REPEAT ORDER – Considering the urgent necessity of surgical masks as well as the difficulty in estimating the required quantity needed for such, and the available funding at the time of the original purchase, a Special Repeat Order may be availed by PS-DBM provided that the unit prices must be the same as or lower than those in the original contract. In the case of same unit price, the Procuring Entity must ensure that there is no lower price available in the market.
8. WARRANTY – The SUPPLIER warrants the quality of its product, and for which reason, it also warrants to answer and be held solely responsible and liable for whatever defect hidden or otherwise, which the said product has or may have before and after delivery up to three (3) months. The obligation for the warranty shall be covered by a retention money in an amount equivalent to at least one percent (1%) of every progress payment.
9. CONFLICT RESOLUTION - In the event that earnest efforts to settle any conflict amicably shall not be successful, any and all actions arising from such conflict shall be brought solely and exclusively before the appropriate courts of the City of Manila, to the exclusion of any and all other courts and/or tribunals.
10. SEVERABILITY - If any provision of this Contract is, for any reason, held to be invalid or unenforceable, the other provisions of this Contract will be unimpaired and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.
11. WAIVER - Any waiver or failure to enforce any provision of this Contract on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

INSTRUCTIONS:

If you have no corrections to the contents of this NOTICE OF AWARD AND CONTRACT AGREEMENT, please sign this instrument immediately upon receipt. Failure to sign this document and revert this document within two (2) days of receipt may result in the cancellation of the award and blacklisting for unjustified refusal of award.

Very truly yours,

Signature Redacted

USEC. LLOYD CHRISTOPHER A. LAO
Head of the Procuring Entity
 Procurement Service

The Sunwest Construction & Development Corporation JOINT VENTURE with DKCAR Trading, through its authorized representative hereby commits to deliver the requirements consistent with the terms above stated:

NAME	SIGNATURE	DATE
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