

Contract of Agreement No. 2021-09-23

PURCHASE OF FOOD ITEMS FOR THE IMPLEMENTATION OF SUPPLEMENTAL FEEDING PROGRAM 11TH CYCLE FOR SEVEN (7) PROVINCES OF REGION III (LOT A)

This contract made on the 21ST day of OCTOBER 2021 between

DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT FIELD OFFICE III, a national government agency operating under the laws of the Republic of the Philippines, with office address at Diosdado Macapagal Regional Government Center, Barangay Maimpis, City of San Fernando, Pampanga represented by its Regional Director, Marites M. Maristela, hereinafter referred to as the **"PROCURING ENTITY"**;

- AND -

PHILIPPINE NUTRI-FOODS CORPORATION a company duly registered under SEC No. CS75826 with office address at Launchpad Coworking 214-215 Commercenter, East Asia Drive corner Commerce Avenue Filinvest Corporate City, Alabang, Muntinlupa City, Metro Manila, NCR represented by MR. PAUL HIPOLITO in his capacity as Sales & Marketing Manager, hereinafter referred to as the **"SUPPLIER"**; (collectively, the "Parties").

WHEREAS the Procuring Entity invited bids for certain goods, viz., **PURCHASE OF FOOD ITEMS FOR THE IMPLEMENTATION OF SUPPLEMENTAL FEEDING PROGRAM 11TH CYCLE FOR SEVEN (7) PROVINCES OF REGION III (LOT A)** and has accepted a bid by the **"SUPPLIER"** for the supply of those goods in the sum of SEVENTEEN MILLION FOUR HUNDRED FIFTY-NINE THOUSAND TWO HUNDRED EIGHTY PESOS ONLY (**P17,459,280.00**) (hereinafter called "the Contract Price").

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

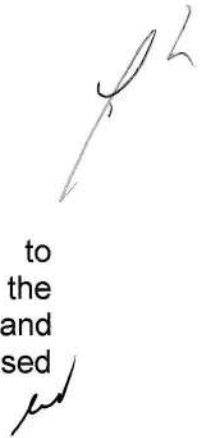
1. The words and expressions used in this agreement shall have the same meanings as are respectively assigned to them in the Conditions indicated in the Bidding Documents referred to.

2. The following documents shall be deemed to form and be read and construed as forming part of this Agreement, viz.:

- (a) the Bid Form and the Price Schedule submitted by the Bidder;
- (b) the Schedule of Requirements and the Technical Specifications;
- (c) the DSWD FO III Philgeps Posting with Reference No. 7988816;
- (d) the DSWD FO III BAC Resolution No. 2021-09-18 & 19;;
- (e) the TWG Reports;
- (f) the General Conditions of Contract;
- (g) the Special Conditions of Contract; and
- (h) the Procuring Entity's Notification of Award and Proceed

3. Goods Supplied

3.1 The **"SUPPLIER"** hereby agrees to supply the Goods to **"PROCURING ENTITY"** when requested by Purchase Request in the amounts outlined therein in strict accordance with the specifications, and at the price stated for each item in the Price Schedule in Annex "C", based



on the Technical Specifications outlined in Annex "B" and in line with the delivery schedule outlined by each Purchase Request;

3.2 The **"SUPPLIER"** shall supply and deliver such goods duly certified by regulating bodies (i.e. Food and Drug Administration (FDA) and Food and Nutrition Research Institute (FNRI) or whichever applies;

3.3 **"PROCURING ENTITY"** doesn't warrant that any quantity of Goods will be purchased during the term of this Agreement. Nothing in this Agreement shall be interpreted as creating an exclusive relationship between the Parties for the supply and delivery of Goods;

3.4 The terms and conditions of this Agreement shall apply to all Purchase Requests issued under this Agreement. In case of discrepancy between the terms and conditions of the Purchase Request and the terms and conditions outlined in this Agreement, the terms and conditions outlined in this Agreement shall prevail; and

3.5 The **"SUPPLIER"** shall keep all items outlined in the Purchase Order (Annex "F") in stock in ample/sufficient quantities at all times.

4. Charges and Payment

4.1 The total price for each supply and delivery of Goods and under this Agreement is determined by each Purchase Order in accordance with the Price Schedule in Annex "C" which prices quoted shall be inclusive of all cost including transportation, freight and handling and other incidental expenses maybe incurred to the indicated delivery site;

4.2 In connection with this Agreement, **"PROCURING ENTITY"** shall not be charged for the cost of previous storage of any Goods or related costs.

4.3 The **"SUPPLIER"** shall issue pertinent delivery receipt to **"PROCURING ENTITY"** upon completion of each delivery and the corresponding invoice in accordance with this Agreement and the relevant Purchase Order;

4.4 Billings shall be made for every completed delivery of the minimum required quantity per month per Local government Unit (LGU) during the implementation of the project;

4.5 Payment shall be processed within **15-21** working days upon submission of complete documents in accordance to RA 11032 or the Ease of Doing Business and Efficient Government Service Delivery Act of 2018 except on fortuitous event or situations beyond the control of the **"PROCURING ENTITY"** (such as Availability of Notice of Cash Allocation etc.);

4.6 The **"SUPPLIER"** agrees that payment shall be through CHECK/Advice to Debit Account (ADA) and shall be tendered on a monthly basis in relation to paragraph 4.4 hereof and after acceptance of goods and reconciliation of pertinent documents. The **"SUPPLIER"** must have an account at Landbank of the Philippines (LBP) since it is a universal bank in the Philippines owned by the Philippine government.

4.7 All duties, excise tax and other taxes and revenue charges, if any, shall be for the **SUPPLIER'S** account. All transactions are subject to withholding of creditable Value Added Tax (VAT) per Revenue Regulation No. 10-93 and local tax regulations adopted by the LGU per SP Ordinance No. 2235-2000.

5. Delivery/Transportation Terms

5.1 The **"SUPPLIER"** shall complete the delivery of the items as stipulated in the provided delivery schedule and food requirements in conformity with paragraph 3.2 hereof;

5.1.1 All goods are to be delivered and inspected at the Provincial Social Welfare and Development Offices (PSWDOs) of the Province concerned/Provincial Warehouse/Drop Off Point (subject to change depending on the availability and issuance of notice of change by **"PROCURING ENTITY"** to the **"SUPPLIER"** within 3 days maximum);

5.2 The **"SUPPLIER"** shall guarantee its deliveries to be free from defects in conjunction to paragraph 7 on Warranty. Any defective/undesirable items thereof that may be discovered by the **"PROCURING ENTITY"** and/or Representative from LGU within the day of Inspection/Acceptance shall be replaced by the **"SUPPLIER"** on the same day of Inspection/Acceptance;

5.3 The **"SUPPLIER"** agrees to bring quality buffer items as ready replacement in case of damages/defects incurred during transportation and/or rejects upon Inspection equivalent to at least five percent (5%) of total quantity PER ITEM REQUEST or more in order to prevent delay on the operation of the Supplemental Feeding Program;

5.3.1 In case the **"SUPPLIER"** failed to bring the required quantity of buffer items, he/she shall provide a service unit to immediately secure the replacement of the rejected items and shall cover all the expenses for such in relation to paragraph 7.3 hereof;

5.3.2 The **"SUPPLIER"** shall ensure no disruption of deliveries to prevent gap in the feeding implementation so the nutritional improvement of beneficiaries will be attained.

5.4 All goods are to be jointly inspected by the Inspection and Acceptance Committee- designated Inspectorate Officer for Goods/Food Commodities (or any Inspectorate Officer, in case of the absence of the latter), Representative(s) of the Requisitioning Unit/End-user, Technical Working Group - Goods/Food Commodities, Procurement/Supply Office Representative and COA Auditor/Representative(s). Additional inspection and acceptance committee members may be sent to the area upon discretion of the **"PROCURING ENTITY"**;

5.5 All goods are to be **PRELIMINARY ACCEPTED** by the Representative of the Requisitioning Unit/End-User, only upon approval of the Inspection and Acceptance Committee - Inspectorate Officer for Goods/Food Commodities and Technical working Group - Goods/Food Commodities, prior dissemination to identified LGUs as per provided delivery schedule and food requirements;

5.6 Upon Inspection and Acceptance, the Representative of the Requisitioning Unit/End-User will release the goods to the LGUs authorized representative. The accepted RIS Forms will constitute as the FINAL ACCEPTANCE of the goods requested by the agency;

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5.7 The **"SUPPLIER"** shall formulate a substantial **Delivery Plan** for each Province, in accordance with the provided delivery schedule and food distribution plan; estimate time for each delivery (calculating the distance to the warehouse, travel time per warehouse inclusive of traffic, the unloading time and receiving/checking time of Inspectors shall be presented to the agency upon issuance of Notice of Award (NOA).

5.8 In case of unforeseen circumstances/situations arising on the part of the **"SUPPLIER"** causing delay in the fulfillment of its contractual duty, the latter shall provide a formal request letter of extension addressed to the HOPE thru the Procurement Section for their approval to grant said request. However, **"BOTH PARTIES"** agree that it shall not exceed seven (7) calendar days *for the whole duration of the contract*;

5.9 The **"PROCURING ENTITY"** accepts no liability for whatever damage the items incurred during transit. The entitlement of the items will only be bestowed to the Agency upon their receipt and FINAL ACCEPTANCE at the FINAL DESTINATION in relation to paragraph 7.2 hereof;

5.10 The **"PROCURING ENTITY"** reserves the right to accept or reject any or all deliveries and impose additional terms and conditions as it may deem proper.

6. Breach and Default

6.1 In case the **"SUPPLIER"** subject to the provisions of the preceding section has accepted a contract agreement but fails to deliver the required product(s) within the time called for in the same order and no approved extension of agreement granted by the **"PROCURING ENTITY"**, there shall be a penalty of one-tenth of one percent (0.001) of the cost of the unperformed portion for every day of delay. Once the cost of undelivered goods or the amount of liquidated damages reaches ten percent (10%) whichever comes first, the **"PROCURING ENTITY"** may rescind or terminate the Contract pursuant to GCC Clause 23 without prejudice to other courses of action and remedies open to it.

6.2 Thereafter, if the **"SUPPLIER"** has not completed delivery within the approved extended period, herein agreement shall be cancelled together with the award for the undelivered balance from such other source(s) as it may determine, with the difference in price to be charged against the **"SUPPLIER"** in **default**.

6.3 Refusal by the **"SUPPLIER"** in **default** to shoulder the price difference shall be a ground for his disqualification from future bids of the same or all items, without prejudice to the imposition of other sanctions as prescribed under RA 9184 and its IRR:

6.4 Force Majeure - In the event of inclement weather conditions (i.e. typhoon, flood and other weather disturbances) and other fortuitous events, the **"PROCURING ENTITY"** shall notify the **"SUPPLIER"** immediately prior to the intended delivery of the goods for its postponement. No extra cost of prolonged storage of goods shall be charged to the **"PROCURING ENTITY"** due to such reschedule of delivery.



7. Warranty

7.1 The **"SUPPLIER"** agrees that all delivered items (non-perishable) must come with a warranty period of an amount equivalent to 1% of the total contract price for non-perishable goods from the date therefrom inclusive of all hidden defects from production/manufacturing applicable for goods such as processed food and those food items that have undergone mechanical and chemical operations after the preliminary and final acceptance of the **"PROCURING ENTITY"**.

7.2 The **"SUPPLIER"** shall guarantee that the goods supplied and delivered to be free from defects. Any defective/undesirable items thereof that may be discovered by the **"PROCURING ENTITY"**, and representative from LGU within the DAY OF INSPECTION shall be replaced by the **"SUPPLIER" ON THE SAME DAY OF ACCEPTANCE** in relation to paragraph 5.2 hereof;

7.3 The **"SUPPLIER"** shall bring buffer food items in case of rejects upon inspection under such terms provided for in paragraph 5.3 hereof;

7.4 In consideration of the payments to be made by the **"PROCURING ENTITY"** to the **"SUPPLIER"** as hereinafter mentioned, the **"SUPPLIER"** hereby covenants with the **"PROCURING ENTITY"** to provide the goods as specified and to remedy defects therein in conformity in all respects with the provisions of this agreement.

8. Insurance

8.1 The items supplied under this Agreement shall be fully insured by the **"SUPPLIER"** in a freely convertible currency against loss or damage incidental to production or acquisition, transportation, storage and delivery. The items remain at the risk and title of the **"SUPPLIER"** until the final acceptance of the **"PROCURING ENTITY"** as agreed under paragraph 5.9 hereof;

8.2 The **"SUPPLIER"** shall at all times defend, indemnify, and hold harmless the **"PROCURING ENTITY"**; its officers, employees, and agents from and against all losses, costs, damages and expenses (including legal fees and costs), claims, suits, proceedings, demands and liabilities of any kind or nature to the extent arising out of or resulting from acts or omissions of the **"SUPPLIER"** or its employees, officers, agents or subcontractors, in the performance of this Agreement. **"PROCURING ENTITY"**; shall promptly notify the **"SUPPLIER"** of any written claim, loss, or demand for which the **"SUPPLIER"** is responsible under this clause;

8.3 This indemnity shall survive the expiration or termination of this Agreement.

9. Performance Bond

9.1 The **"SUPPLIER"** agrees to post a Performance Bond to guarantee its faithful performance on its obligation under the Agreement;

9.2 The performance security shall be in an amount equal to the following percentage of the total contract price;

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9.2.1 If it is in the form of cash/manager's check, the amount of performance security is five percent (5%) of the total contract price; and

9.2.2 If it is in the form of a Surety Bond, the amount of performance security is thirty percent (30%) of the contract price.

10. Miscellaneous

10.1 The **"PROCURING ENTITY"** shall not assume any responsibility regarding erroneous interpretations or conclusions by the **"SUPPLIER"** out of the data it furnishes;

10.2 The **"SUPPLIER"** is deemed to have become familiar with all existing laws, decrees, ordinances, acts and regulations of the Philippines which may affect this Agreement in any way;

11. Term and Effectivity

This **Agreement** shall take effect upon signing hereof. The **"PROCURING ENTITY"** shall have the right to terminate this agreement if the **"SUPPLIER"** is willfully violating any of the material conditions, stipulations and covenants of this agreement. Unresolved issues or questions that will surface in the course of this procurement will be referred to IRR of RA 9184 and other pertinent laws and regulations.

IN WITNESS WHEREOF the **PARTIES** hereto have caused this **AGREEMENT**to be executed in accordance with the laws of the Republic of the Philippines on the day and year first above written.

For:

DEPARTMENT OF SOCIAL WELFARE
AND DEVELOPMENT FIELD OFFICE III


MARITES M. MARISTELA, CESO III
Regional Director

For:

PHILI-PPINE NUTRI-FOOD
CORPORATION


PAUL HIPOLITO
Sales and Marketing Manager

CERTIFIED AS TO AVAILABILITY OF FUNDS:


ANGELICA T. LAFUENTE
Regional Accountant

SIGNED IN THE PRESENCE OF:


CALAINE R. DE LEON
DC-Protective Division 

ACKNOWLEDGMENT

Republic of the Philippines
Province of _____) s.s
City of City of San Fernando, Pampanga

BEFORE ME this _____ day of OCT 21 2021 at the City of City of San Fernando, Pampanga in the Philippines personally appeared:

NAME	ID DETAILS	Place/Date Issued
MARITES M. MARISTELA, CESO III	90-0102	Quezon City/July 25, 2019
PAUL HIPOLITO		

Known to me to be the same persons who executed the foregoing contract consisting of seven (7) pages including this page, for the purpose set forth therein and they acknowledge to me that the same is their free act and deed.

WITNESS MY HAND AND NOTARIAL SEAL.

Doc. No. 210
Page No. 4
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ATTY. MICHAEL YABUT
NOTARY PUBLIC
UNITL DEC 30 2021
COMM. NO 19/CJCSFP
ROLL NO. 57362/RP LIFETIME NO. 010637
PTR NO. 0415423 01/04/21/PAMP.
MCLE COMP. NO. VI-0028796
GROUND FLR. ASF BLDG., DEL PILAR, CDO

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