

GSIS Bids and Awards Committee
Office of the Secretariat

MEMORANDUM OF AGREEMENT

FOR THE SUPPLY OF POSTAGE AND METERED STAMPS

This Contract is made and entered on this 31 day of JAN 2020
at Pasay City by and between

The GOVERNMENT SERVICE INSURANCE SYSTEM, a social insurance institution created under Commonwealth Act No. 186 as amended and operating under its present Charter, Republic Act No. 8291 otherwise known as the GSIS Act of 1997 with principal office address at the GSIS Headquarters Building, Financial Center Area, Pasay City, represented herein by ISAGANI E. DEL ROSARIO, OIC Vice President, North Luzon Office, hereinafter referred to as the "GSIS";

and

The PHILIPPINE POSTAL CORPORATION, a government-owned corporation duly existing under the laws of the Philippines with principal office address at Liwasang Bonifacio, Manila, represented herein by JOEL L. OTARRA, Postmaster General and CEO and duly authorized for this purpose hereinafter referred to as the "PHLPost";

RECITALS

WHEREAS

1. The GSIS needs the supply of postage and metered stamps hereinafter referred to as the "Goods" for its various operating units at the GSIS Tuguegarao Branch Office.
2. The GSIS entered into a Contract with the PHLPost through Negotiated Procurement (Agency to Agency), as an alternative method of procurement inasmuch as the PHLPost is the only government agency tasked to supply the Goods.


NOW, THEREFORE, for and in consideration of the foregoing premises, the parties have agreed as follows:

ARTICLE I
CONTRACT DOCUMENTS

- 1.1 CONTRACT DOCUMENTS PHLPost shall perform its contractual obligations in accordance with this Contract and the Terms of Reference (TOR), attached as "Annex A" and made an integral part hereof.
- 1.2 COMPLEMENTARY NATURE This Contract and the TOR shall be complementary with each other, and what is prescribed by one shall be prescribed by all. In case of discrepancy between this Contract and the TOR, the TOR shall prevail.
- 1.3 INCIDENTAL ITEMS This Contract includes all such items although not specifically mentioned that can be reasonably inferred as being required for its completion as if such items were expressly mentioned herein.

ARTICLE II
SCOPE OF SERVICE

- 2.1 COVERAGE The PHLPost shall supply the Goods to the GSIS Tuguegarao Branch Office based on the approved monthly operating budget.



**ARTICLE III
EFFECTIVITY AND TERMS OF PAYMENT**

3.1 **EFFECTIVITY OF THE CONTRACT.** This Contract shall be for a period of three (3) years or from 01 January 2020 to 31 December 2022.

3.2 **TERMS OF PAYMENT.** For and in consideration of the Supply of Goods, the GSIS agrees and obligates itself to pay PHLPost, the Contract Price for the Goods procured based on the monthly operating budget, but not to exceed the approved budget in the amount of Three Hundred Ninety Six Thousand Pesos (Php 396,000.00) for 2020, Four Hundred Thirty Five Thousand Six Hundred Pesos (Php 435,600.00) for 2021 and Four Hundred Seventy Nine Thousand One Hundred Sixty Pesos (Php 479,160.00) for 2022. It is understood that all applicable taxes, including Documentary Stamp Tax (DST) if any, shall be borne by PHLPost. The PHLPost shall provide the GSIS with proof of such payment.

For this purpose, the PHLPOST acknowledges that the GSIS is not a withholding agent for DST and hereby undertakes and commits itself to make direct payments to the BIR of any DST that may be imposed on the execution and/or performance of this Contract.

Payment of postage and metered stamps for all registered mails including parcels, cargos and third class mails shall be made prior to delivery by PHLPost.

3.3 **AUDITING RULES.** All payments shall be subject to the usual accounting and auditing rules and regulations applicable to the GSIS.

**ARTICLE IV
TERMINATION**

4.1 **TERMINATION FOR DEFAULT.** Either party shall have the right to pre-terminate this Contract in whole or in part for default or breach or violation of the terms and conditions of this Contract and the TOR without need of judicial action or for just cause to be determined by the non-defaulting party, which determination shall be final and binding to both parties.

4.2 **TERMINATION FOR INSOLVENCY.** Either party shall have the right to terminate this Contract if the other party is declared bankrupt or insolvent as determined by a court of competent jurisdiction.

4.3 **TERMINATION FOR UNLAWFUL ACTS.** Either party shall have the right to terminate this Contract, which termination shall take effect immediately upon receipt of the Notice of Termination, in case it is determined prima facie that the other party has engaged, before or during the implementation of this Contract, in unlawful deeds and behavior relative to the acquisition and implementation thereof.

4.4 **TERMINATION FOR CONVENIENCE.** In any event, either party shall have the right to terminate this Contract in whole or in part, by serving a thirty-day written notice to the other party. The termination under this Section shall be resorted to by either party if it has determined the existence of conditions that make the performance of either party economically, financially or technically impractical and/or unnecessary, such as, but not limited to, fortuitous events or changes in law and national government policies.

4.5 **COMPLETED SERVICES.** In the event of pre-termination or termination of this Contract by the GSIS, the GSIS shall pay PHLPost for the Goods supplied up to the date of pre-termination or termination, unless such pre-termination or termination was due to the acts or omissions of PHLPost or a breach of this Contract by PHLPost.

- 4.6 **REMEDIAL RIGHTS.** Any rescission or termination of this Contract pursuant to this Article shall be without prejudice to any other rights or remedies the non-defaulting party may be entitled to hereunder or under any law. Neither shall it affect any accrual of rights of the latter nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue to be in force on or after such termination.

**ARTICLE V
CONFLICT RESOLUTION**

- 5.1 **DISPUTE RESOLUTION.** Any dispute or controversy arising out of or relating to this Contract shall be submitted to the Office of the Government Corporate Counsel for arbitration pursuant to Presidential Decree (P.D.) No. 242.
- 5.2 **OBLIGATIONS NOT SUSPENDED.** Notwithstanding any reference to arbitration, the parties shall continue to perform their respective obligations under this Contract unless they otherwise agree in writing.

**ARTICLE VI
INDEMNIFICATION**

- 6.1 **INDEMNITY.** The PHLPost agrees to defend, indemnify and hold harmless the GSIS, the members of its Board of Trustees, its officials, agents and employees, against all claims, losses, liabilities, and damages, and to pay all claims, judgments, awards, costs and expenses arising out of or in connection with PHLPost's acts or omissions, unless such claims are due solely to the fault or negligence of the GSIS. Costs inclusive of expert witness fees and other legal expenses shall be charged against the account of the PHLPost.

**ARTICLE VII
MISCELLANEOUS PROVISIONS**

- 7.1 **NON-DISCLOSURE.** The PHLPost shall not use or disclose to any person, firm or corporation any information concerning the affairs of the GSIS which its personnel may have acquired in the course of or as an incident to this Contract.
- 7.2 **PUBLICITY.** The PHLPost shall consult and obtain the prior written consent of the GSIS before issuing or disclosing any news release, public announcement, advertisement or other form of publicity in respect to any of the terms of this Contract or using it as a reference or part of any presentation.
- 7.3 **NON-ADVERSE WITNESS.** In no case shall the PHLPost and its personnel assist any party in any action, suit or proceeding against the GSIS, or any of its officials and employees sued or prosecuted in connection with the performance of its undertakings under this Contract.
- 7.4 **NON-TRANSFERABILITY.** The PHLPost shall not assign or transfer its contractual obligations covered by this Contract without the prior written consent of the GSIS. Any act in violation of this provision shall be sufficient ground for the termination of this Contract.
- 7.5 **FORCE MAJEURE.** Neither party will be held responsible for, and will be excused from any delay or failure in its performance hereunder when it is caused by any labor dispute, government requirement, act of God, or other causes beyond its control.
- 7.6 **NON-WAIVER.** The failure of the GSIS to demand strict compliance with any and all the terms of this Contract shall not be construed as a waiver and/or estoppel on the part of the GSIS for the enforcement of any of its rights or to subsequently demand compliance therewith during the subsistence of this Contract.

- 7.7 **FURTHER ASSURANCES.** The PHLPost shall execute and deliver such supplies and materials as the terms of this Contract may prescribe and other further assurances as the GSIS may require as necessary or appropriate to effect the purpose of this Contract or confirm the rights created or arising hereunder.
- 7.8 **WRITTEN NOTICES.** All notices, statements and requests hereunder shall be in writing and shall be personally delivered, or transmitted by registered mail, electronic mail or fax, to the other party at the address stated above, unless a party has informed the other in writing of its change of address, in which case said notices shall be sent to the new address.
- 7.9 **LIQUIDATED DAMAGES.** In the event that the PHLpost fails to perform its obligations within the agreed period as specified in this Contract, the GSIS shall, without prejudice to its other remedies under this Contract and other applicable laws, deduct from the Contract Price, as liquidated damages, a sum equivalent to one-tenth of one percent (0.1%) of the cost of the unperformed portion of the contract per day of delay but not to exceed ten percent (10%) of the Contract Price. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the Contract Price, the GSIS shall rescind the contract, without prejudice to other courses of action and remedies available to it under the law and equity. It is understood that the damages herein provided are fixed and that the GSIS shall not be required to adduce proof thereof.
- 7.10 **OTHER COSTS.** Should either party be constrained to file a suit to obtain relief against the other party, the latter shall be liable to pay an amount equivalent to twenty percent (20%) of that amount claimed in the complaint as attorney's fees, in addition to the costs of litigation and other expenses which the former is entitled to recover from the latter, provided however that in any action brought by either party for whatever cause arising under this Contract, should it be adjudged not to be entitled to the relief sought, the non-defaulting party shall be entitled to such reasonable attorney's fees, costs of litigation and other costs it may have incurred by reason of such action.
- 7.11 **FULL AGREEMENT.** This Contract and the TOR contain all the agreement of the parties, and replace and supersede any previous understanding, communications and representations whether verbal or written between the parties.
- 7.12 **AMENDMENTS.** No modifications of or amendments to the terms and conditions of this Contract shall be valid unless set out in writing and signed by the authorized representatives of each party, and which shall be annexed to this Contract and considered an integral part hereof.
- 7.13 **ANTI-GRAFT AND CORRUPTION CLAUSE.** The parties hereby warrant that they have not offered or paid, directly or indirectly, any government officials, agency or instrumentality, or employee thereof, any consideration, commission or graft to secure this Contract. Any violation of this warranty shall constitute a sufficient ground for the rescission or cancellation of this Contract without prejudice to the filing of a civil or criminal action under the Anti-Graft and Corrupt Practices Act and other applicable laws.
- 7.14 **SEPARABILITY.** If any term, clause or provision of this Contract is at any time determined to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall be severed from the remaining provisions, which shall continue to be valid and enforceable to the fullest extent permitted by law.
- 7.15 **SURVIVAL OF COVENANTS.** The covenants, agreements and obligations of the PHLPost which by their nature should continue beyond the expiration and termination of this Contract shall survive the expiration or termination hereof.

7.16 VENUE OF ACTION. Any action arising from arbitration or other modes of dispute settlement as agreed upon by the parties pursuant to Section 5.1 of this Contract shall be brought by the aggrieved party exclusively before the proper Court in the City of Pasay

7.17 GOVERNING LAWS. This Contract and the TOR shall be subject to the pertinent provisions of R.A. No. 9184, otherwise known as the Government Procurement Reform Act, its Revised Implementing Rules and Regulations, and other related laws, rules and regulations

IN WITNESS WHEREOF, the parties have hereunto set their hands in the City of Pasay, Philippines

GOVERNMENT SERVICE
INSURANCE SYSTEM

PHILIPPINE POSTAL CORPORATION

By:

By:

ISAGANI E. DEL ROSARIO
OIC-Vice President North Luzon

JOEL L. OTARRA
Postmaster General and CEO

SIGNED IN THE PRESENCE OF:

Certified Funds Available:
Php 396,000.00
January 01 - December 31, 2020

Certified Included in the GSIS
2020 Annual Procurement Plan

NINOROMAIN C. VITUG
Controller Officer I, BASSAD

PATRICK O. GONZALES
Acting Head, GBAC Secretariat

