



PROJECT: Mass Production, Supply, Distribution, Configuration, Testing, Commissioning, Training, and Maintenance of TVL Tools and Equipment Packages to Public Senior High Schools (Cabinets, Various Tools and Equipment)

CONTRACT NO.: 2021-BLR4(007to008)-BV-CB-010-U39

CONTRACT AGREEMENT

THIS AGREEMENT made and entered into this 26 day of AUG 26 2021 2021 by and between **DEPARTMENT OF EDUCATION**, located at DepEd Complex, Meralco Avenue, Pasig City, Philippines, represented herein by its Secretary, **LEONOR MAGTOLIS BRIONES**, as per Department Order No. 023, s. 2021 (hereinafter referred to as "DEPED"); and **NIKKA TRADING** represented herein by its Authorized Representative, **JONATHAN R. ZULUETA**, with office address at Unit 1014, Cityland Herrera Tower, V.A. Rufino St. cor. Valera St., Salcedo Village, Makati City, Metro Manila, Philippines (hereinafter referred to as "NIKKA TRADING").

DEPED and NIKKA TRADING are collectively called "PARTIES."

WHEREAS, **DEPED** invited bids for the mass production, supply, distribution, configuration, testing, commissioning, training and maintenance of TVL Tools and Equipment Packages consisting of nine (9) Lots and received bids from five (5) bidders; **DEPED** opened, read, and evaluated the bids of the five (5) bidders; the bidder having the lowest calculated bid for Lot No. 6 was post-disqualified and **NIKKA TRADING** was notified as having the next lowest calculated bid; after evaluation, **DEPED** post-qualified and declared the bid of **NIKKA TRADING** as the lowest calculated responsive bid for Lot No. 6 in the sum of **PHILIPPINE PESOS FIFTY-FOUR MILLION, FIVE HUNDRED SIXTY-TWO THOUSAND, SIX HUNDRED SEVEN and 25/100 (Php 54,562,607.25) ONLY**, (hereinafter called the "Contract Price") detailed as follows:

Lot No.	Description	Items	Quantity	Amount (Php)
6	Refrigerators and Freezers (MI-LOT 6)	Freezer, Reach-in	304	54,562,607.25
		Freezer, Upright	58	
		Refrigerator, 7 cu. Ft.	472	
		Refrigerator, Reach-in	304	

[Signature]
 NIKKA TRADING's Witness

[Signature]
 JONATHAN R. ZULUETA
 NIKKA TRADING

[Signature]
 ARIZ DELSON ACAY D. CAWITAW
 DEPED's Witness

[Signature]
 LEONOR MAGTOLIS BRIONES
 Department of Education

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents as required by the 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184 shall be deemed to form and be read and construed as part of this Agreement, viz:
 - i. Philippine Bidding Documents (PBD);
 - a. Schedule of Requirements;
 - b. Technical Specifications;
 - c. General and Special Conditions of the Contract;
 - d. Bid Bulletin No. 1 dated June 2, 2021; and
 - e. Bid Bulletin No. 2 dated June 8, 2021.
 - ii. **NIKKA TRADING's** bid, including the Eligibility Requirements, Technical and Financial Proposals, and all other documents or statements submitted;
 - iii. Performance Security;
 - iv. Notice of Award of Contract and **NIKKA TRADING's** conforme thereto; and
 - v. Other contract documents required by existing laws and/or DepEd in the PBD. **NIKKA TRADING** agrees that additional contract documents or information prescribed by the GPPB that are subsequently required for submission after the contract execution, such as the Notice to Proceed, Variation Order, and Warranty Security, shall form part of the Contract.
3. The goods supplied by **NIKKA TRADING** under this Contract shall be picked-up or hauled by the third-party logistics provider designated by **DEPED**. Risk and title to the goods shall pass from **NIKKA TRADING** to **DEPED** upon receipt and final acceptance at **NIKKA TRADING's** warehouse. However, assembly, installation, start-up and/or commissioning of items, in cases where they are necessary, shall remain to be the responsibility and for the account of **NIKKA TRADING** notwithstanding inspection and acceptance at its warehouse or premises.
4. The goods shall be ready for pick-up or hauling by the third party logistics within the period as may be prescribed in the notice to proceed.
5. **NIKKA TRADING** shall post a Performance Security within ten (10) calendar days from receipt of the Notice of Award in the form and amount prescribed therein. The performance security shall be posted in favor of **DEPED**, and shall be forfeited in the event it is established that **NIKKA TRADING** is in default of any of its obligation under this contract. **NIKKA TRADING** shall be responsible


NIKKA TRADING's Witness


JONATHAN R. ZELUETA
NIKKA TRADING


ARIZ DELSON ACAY D. CAWILAN
DEPED's Witness


LEONOR MAGTOLIS BRIONES
Department of Education

for the extension of its performance security and/or undertake to renew its performance security whenever necessary, and without need of prior notice or instruction from the **DEPED**, to ensure that it is in force and effect for the whole duration of the contract and until a Certificate of Final Acceptance is duly issued.

6. The goods supplied under this Contract should conform to and comply with the standards mentioned in Section VI. Schedule of Requirements of the Bidding Documents, as amended by Bid Bulletin No. 1 dated June 2, 2021 and Bid Bulletin No. 2 dated June 8, 2021, and must be in accordance with the final technical specifications, a copy of which is hereto attached as Annex "A" and made an integral part hereof. Any proposal to deliver items of equivalent, higher or superior technical specifications, in lieu of those of the approved bids or samples shall be discretionary to **DEPED** and is subject to the evaluation and recommendation of the end-user or implementing unit and the approval of the herein authorized representative and signatory.

Goods with defects or non-compliant with the required specifications during pre-delivery inspection shall be replaced immediately by **NIKKA TRADING**, and replacement items shall be subjected to re-inspection. Goods with defects or non-compliant with the required specifications upon delivery shall be rejected by **DEPED** and replaced by **NIKKA TRADING** in accordance with the warranty provisions in the bidding documents. **DEPED** shall have the option to inspect **NIKKA TRADING's** premises covered by the Contract, at any time or stage of contract implementation, to monitor and assess **NIKKA TRADING's** capacity to discharge its contractual obligations.

8. The procured goods or items contemplated under this Contract shall be inspected by **DEPED** Inspectorate Team prior to pick-up or hauling from **NIKKA TRADING's** warehouse in accordance with the provisions of the Special Conditions of the Contract, the Schedule of Requirements, or otherwise indicated in other parts of the bidding documents.

9. In case **NIKKA TRADING** encounters condition(s) impeding timely delivery of the goods, **NIKKA TRADING** shall promptly notify **DEPED** Procurement Management Service-Contract Management Division (ProcMS-CMD) in writing of such condition(s). As a rule and on account of the emergency nature of this project, no work suspensions and/or contract delivery period extension shall be allowed.

10. The Contract Price shall be paid to **NIKKA TRADING** in accordance with the following disbursement procedures:

- 10.1. An advance payment not to exceed fifteen percent (15%) of the Contract Price shall be allowed and paid within sixty (60) calendar days from signing of the contract. An irrevocable Letter of Credit or Bank Guarantee of an equivalent amount must be submitted, and shall remain


NIKKA TRADING's Witness


JONATHAN R. ZULUETA
NIKKA TRADING


ARIZ DELSON ACAY D. CAWILAN
DEPED's Witness


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Department of Education

valid until the goods are delivered, and accompanied by a claim for advance payment.

10.2. **NIKKA TRADING** may submit a request for payment based on Progress Reports which shall be attached to the progress billing and include the following: (i) cumulative quantities of items delivered based on the schedule of deliveries and other relevant terms and conditions of the Contract; (ii) Inspection and Acceptance Reports (IARs), including certification by **NIKKA TRADING**, duly signed and dated by the authorized representative of the **DEPED** indicating that the items have been delivered in accordance with the Contract. Other documents in support of a request for payment may be prescribed by **DEPED** pursuant to existing disbursement, accounting and auditing rules and procedures.

10.3. Subject to the recoupment of the advance payment contemplated in Clause 10.1. above, and retention contemplated in the immediately succeeding clause, payment shall be made to **NIKKA TRADING** within sixty (60) days from submission of the documents specified in SCC Clause 2.2 and other documents as may be prescribed by **DEPED**, in the following manner:

10.3.1. For the initial progress payment, a minimum of twenty-five percent (25%) of the Contract Price shall be paid to **NIKKA TRADING** upon a minimum of twenty-five percent (25%) delivery and acceptance of the items by **DEPED's** authorized representative;

10.3.2. Final payment shall constitute release of the retention money in case of expiry of the warranty period, or whatever is left of it, after it has been called for use under the warranty provision.

11. Payments shall be subject to the "Warranty" provision in the form of either retention money in an amount equivalent to three percent (3%) of every progress payment or a Special Bank Guarantee in the amount equal to three percent (3%) of the Contract Price required under Section 62 of R.A. 9184 and its revised IRR.

11.1. The warranty period of one year (parts and services) and succeeding two years (service) shall reckon from the date of issuance of Certificate of Final Acceptance by **DEPED**.

12. **NIKKA TRADING** shall be liable for liquidated damages for the delay in its performance in an amount equal to one-tenth (1/10) of one percent (1%) of the cost of the delayed goods scheduled for delivery, for every day of delay until such goods are finally delivered and accepted by **DEPED**. **DEPED** shall deduct


NIKKA TRADING's Witness


JONATHAN R. ZULUETA
NIKKA TRADING


ARIZ DELSON ACAY D. CAWILAN
DEPED's Witness



LEONOR MAGOLIS BRIONES
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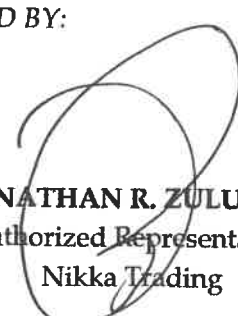
the liquidated damages from any money due or which may become due to NIKKA TRADING, or collect from any of the securities or warranties posted by NIKKA TRADING, whichever is convenient to DEPED. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the Contract Price, DEPED may rescind or terminate the Contract, without prejudice to other courses of action and remedies available under the circumstances.

13. The PARTIES shall make every effort to resolve amicably and by mutual consultation any and all disputes or differences arising between the Parties in connection with the implementation of the Agreement. Should such dispute not be resolved amicably, it shall be submitted to arbitration in the Philippines according to the provisions of Presidential Decree No. 242 and Executive Order No. 292. Provided, however, that by mutual agreement, the Parties may agree in writing to resort to other alternative modes of dispute resolution.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in accordance with governing laws on the day and year first above written.

SIGNED, SEALED AND DELIVERED BY:


LEONOR MAGTOLIS BRIONES
Secretary
Department of Education



JONATHAN R. ZULUETA
Authorized Representative
Nikka Trading

SIGNED IN THE PRESENCE OF:


ARIZ DELSON
DEPED's Witness


CAY D. CAWITAN
NIKKA TRADING's Witness

CERTIFIED FUNDS AVAILABLE: ₱54,562,607.25


MA. RHUNNA I. CATALAN
Chief Accountant

ORIGINAL SIGNED
CERTIFIED DUPLICATE COPY
CMDCDC-2021C139-021

Adriana Arma
NIKKA TRADING's Witness

REPUBLIC OF THE PHILIPPINES)
MAKATI CITY, METRO MANILA) S.S

ACKNOWLEDGMENT

BEFORE ME, a Notary Public in and for MAKATI CITY, Philippines,
this ___ day of JUNE 26 2021 personally appeared:

Jonathan R. Zulueta
JONATHAN R. ZULUETA
NIKKA TRADING

Ariz Depson Acay D. Cayat, A.N.
ARIZ DEPSON ACAY D. CAYAT, A.N.
DEPED's Witness

NAME

GOVERNMENT ISSUED ID
(Number, Issued On, Issued By)

LEONOR MAGTOLIS BRIONES
Department of Education

JONATHAN R. ZULUETA
Nikka Trading

Phil. Passport No. PG219471A
Issued on 2/28/2018 at DFA NCR West

Known to me and to me known to be the same persons who executed the foregoing instrument and acknowledge to me that the same is the free and voluntary act and deed of the entities which they respectively represent.

The foregoing instrument is a CONTRACT consisting of six (6) pages (exclusive of attachments), including this page on which this acknowledgment is written and signed by the parties hereto and their instrument witness on the left-hand margin of each and every page hereof.

WITNESS MY HAND AND SEAL on the date and place first above written.

Leonor Magtolis Briones
LEONOR MAGTOLIS BRIONES
Department of Education

Doc. No. 744;
Page No. 70;
Book No. 96;
Series of 2021.

Osias M. Merioles, Jr.
ATTY. OSIAS M. MERIOLES, JR.
NOTARY PUBLIC
UNTIL DECEMBER 31, 2021
No. 33 J. P. Rizal Ext., Comembo, Makati City, Philippines
PTR NO. 0025587 / 01/04/2021 / MAKATI CITY
IBP NO. 137120 / 12/29/2020
ROLL NO. 52598 / APPT. NO. M-134
Tel. No. (02) 8882-7282

Osias M. Merioles, Jr.
6
ORIGINAL SIGNED
CERTIFIED DUPLICATE COPY
CMDCDC-2021C139-021

Annex "A"

Lot 6. Refrigerators and Freezers

Item No.	Description	Technical Specifications
1	Freezer, Reach-in	<p>Design Specifications:</p> <ol style="list-style-type: none"> 1. Type: Reach-In Freezer; 2. Body Shape: Rectangular Box; 3. Body Material: 304 Stainless Steel; 5. Rated Voltage: 220 Volts-230 Volts/ 60 Hz / Single Phase with power cable 1.5 meters long with standard Type A male plug or provide plug adapter IOA/22OV; 6. Power Wattage: 120 watts (minimum); 7. Capacity: 14 cu. ft. (minimum) 8. Lowest temperature setting: at least - 18°C; 9. With thermostat control; 10. Number of doors: at least 1; 11. Number of shelves; 4 (minimum); 12. The refrigerant must be CFC free or Eco-friendly; 13. Packed in a carton box with bubble wrap or foam; 13. Comes with English user's manual that contain: Operation guide, maintenance and troubleshooting procedure; 14. With Service centers located in major cities in the Philippines <p>BRAND: HOSHIZAKI Model: HF-78MA</p>
2	Freezer, Upright	<p>Design Specifications:</p> <ol style="list-style-type: none"> 1. Type: Upright; 2. Body Shape: Rectangular Box; 3. Materials: Metal body with paint; 5. Power supply: 220 Volts - 230 Volts / 50 Hz - 60 Hz. with power cord 1.5 meters (minimum) with attached standard type A male plug or provide plug adapter, 10A/22OV; 6. Wattage: 130 Watts (minimum); 7. Freezing Capacity: 7 cu. ft (minimum); 8. With thermostat control; 9. Upright freezer and Single door; 10. The refrigerant must be CFC free or Eco-Friendly refrigerant; 11. Must be packed in wooden crate with cartoon; 12. Comes with English user's manual that contain: Operation guide, maintenance and troubleshooting procedure; 13. With Service centers located in major cities in the Philippines <p>BRAND: PANASONIC NR-A8O13FTG</p>

3	Refrigerator, 7 cu. Ft	<p>Design Specifications:</p> <ol style="list-style-type: none"> 1. Type: Two (2) Doors; 2. Body Shape: Box in Shape; 3. Material: Metal body (w/ paint); 5. Power supply: 220 Volts/240 Volts, 60 Hz; 6. With power Cord 1.5 meters (minimum) with attachment standard male plug Bpe A or provide plug adapter 10A/22OV; 7. Power Rating: 700 watts (minimum); 8. Total capacity: 7 cu. ft. (minimum); 9. With thermostat control; 10. No Frost, and Self-closing door; 11. The refrigerant must be CFC Free or Eco Friendly refrigerant; 12. Must be packed in wooden crate with carton; 13. Comes with English User's manual that contain: Operation guide, maintenance and troubleshooting procedure; 14. With Service centers located in major cities in the Philippines <p>BRAND: LG GR-B202SQBB</p>
4	Refrigerator, Reach-in	<p>Design Specifications:</p> <ol style="list-style-type: none"> 1. Type: Reach-In Refrigerator; 2. Body Shape: Rectangular Box; 3. Body Material: 304 Stainless Steel 5. Rated Voltage: 220 Volts-230 Volts/ 60 Hz/ Single Phase with power cable 1.5 meters long with standard Type A male plug or provide plug adapter 70A/22OV; 6. Power Wattage: 120 watts (minimum); 7. Capacity: 14 cu. ft. (minimum); 8. Temperature range: 0 to 10°C; 9. With thermostat control; 10. Number of doors: at least 1; 11. Number of shelves; 4 (minimum); 12. The refrigerant must be CFC free or Eco-friendly; 13. Packed in a carton box with bubble wrap or foam; 14. Comes with English User's manual that contain: Operation guide, maintenance and troubleshooting procedure; 14. With Service centers located in major cities in the Philippines <p>BRAND: HOSHIZAKI Model: HR-78MA</p>