



**TOURISM  
INFRASTRUCTURE AND  
ENTERPRISE  
ZONE  
AUTHORITY**

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**MEMORANDUM**

**TO :** THE *MANAGER*  
Legal Department

**FROM :** THE *ASSISTANT CHIEF OPERATING OFFICER*  
Assets Management Sector

**SUBJECT :** REQUEST FOR LEGAL OPINION ON THE EXTENSION OF CONTRACT  
OF BERKMAN INTERNATIONAL, INC. FOR THE MASTER PLAN AND  
DESIGN OF AN INTEGRATED TOURISM COMPLEX IN BALACAD,  
ILOCOS NORTE

**DATE :** August 19, 2020

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On 10 August 2020, the Bids and Awards Committee (BAC) Secretariat called for an online meeting with the representatives from the Office of the Chief Operating Officer (OCOO), Asset Management Sector, Business Research and Development Division and Legal Department to discuss the memorandum addressed to the Chief Operating Officer submitted by our Sector regarding the request of Berkman International, Inc. (BII) for contract extension of its Consultancy Service for the Master Plan and Design of an Integrated Tourism Complex in Bo. Balacad, Laoag, Ilocos Norte. The objective of the discussion was to address issues and concerns relating to the legality and justification for contract extension and payment of services in accordance to Republic Act 9184, otherwise known as the General Procurement Reform Act.

Their meeting reached an agreement that a revised memo requesting for approval of contract extension and payment of services rendered for BII will be submitted to the OCOO following another legal opinion supporting the request.

It is in this connection that we **request for another legal opinion and recommendation** on the issues and concerns relating to the legality and justification for contract extension and payment of services following the opinion prepared by Atty. Bryan Merza last January 2020 on the same subject matter. Atty. Merza's opinion was the output of the meeting held last November 7, 2019 among Investment Committee members- the undersigned, ACOO Karen Sarinas-Baydo, Ms. Clea Nava, Mr. Rodolfo E. Ancheta, Angelo Alhambra, Ms. Janeth Christine Ocampo and Ms. Reyna Palacay. Kindly note too that the audio-visual presentation of the Concept Plan for Balacad was already presented to the Investment Committee.

We are hoping that we can come up with a recommendation that would allow us to finally resolve this matter and proceed with our Investment Committee activities.

For your consideration and immediate action.

  
**JETRO NICOLAS F. LOZADA**  
Assistant Chief Operating Officer  
Assets Management Sector



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### Brief Background for BALACAD PROPERTY

The Balacad Property is a vast land containing an area of **165,307.40** square meters that was acquired by the Philippine Tourism Authority (PTA), now TIEZA, by virtue of Presidential Decree (PD) No. 1704 on July 30, 1980.

President Ferdinand E. Marcos signed PD No. 1704 in 1980 that transferred, ceded and conveyed to PTA for tourism development purposes certain parcels of land of public domain located in Laoag City in the Province of Ilocos Norte. Paoay Lake was declared as a National Park through Republic Act. No. 5631 dated June 21, 1969 and Proclamation No. 1653 declaring the whole province of Ilocos Norte a tourism zone under the administration and control of PTA through Proclamation 1653 on July 13, 1977

During the administration of Governor Ferdinand “Bongbong” E. Marcos, Jr., portion of the acquired property was **donated to the Provincial Government of Ilocos Norte** on November 2006. It is where the Plaza del Norte Hotel and Convention Center was built. **The total land area donated was 41,921.40 sq.m..**

Since the acquisition of the Balacad lots, **TIEZA did not utilize the property which to date contains an estimated area of 123,386 sq.m.**

Through the assistance of the Provincial Government of Ilocos Norte and the effort of the dissolved Corporate Investment Department of the Operations Sector, the title to the property was transferred on **CY 2009 in the name of PTA under Transfer Certificate of Title (TCT) No. 40066 for Lot # 827 covering an area of 103,467 sq. m. and TCT No. 40068 for Lot # 1564 with an area of 19,920 sq. m.**

The property was identified for tourism development since the asset has clear proof of ownership, no legal disputes or claimants. In addition, Balacad is a strategic gateway to the province’s exciting tourism destinations including the Fort Ilocandia Hotel and Casino, Paoay Golf Course, Paoay Lake, Paoay Sand Dunes and Malacañang of the North.

With its high revenue potential and significant impact on tourism, procurement was made for the **consultancy service for the Master Plan and Design of an Integrated Tourism Complex in Balacad.**

#### *Location*

Barangay Balacad is located in the **City of Laoag**, Province of Ilocos Norte. TIEZA Balacad Property is situated near the boundary of Laoag City in the southeast, proximately close to the Municipality of Paoay.

#### *Appraisal Value*

Approximately P700.00/ sq.m. market value based on two independent appraisals conducted by Asian Appraisal Company, Inc. and Royal Asia Appraisal Corporation on October 2015 for nearby Paoay Golf Course.



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**CONSULTANCY SERVICE OF BERKMAN INT'L INC.  
MASTER DEVELOPMENT PLAN and DESIGN OF AN INTEGRATED TOURISM COMPLEX  
IN BO. BALACAD, LAOAG, ILOCOS NORTE**

**Chronology of Events:**

DATE	TIEZA	BERKMAN INT'L INC	REMARKS
March 29, 2016	Publication of Bid Notice		ABC of the Consulting Service: P10,000,000.00
December 13, 2016		Notice of Award was received by Berkman Int'l Inc. (BII) with a total contract price of P9,999,416.00	
January 24, 2017	Kick-off meeting		Stated in the Minutes of the Meeting: "Concerns and Issues: Item #4: approval of report/ deliverable: ...turnaround time depends on the deliverable submitted. Time will be frozen during this period".
March 16, 2017	Memorandum of Agreement between TIEZA and Berkman Int'l Inc. (BII)		Contract Amount: P9,999,416.00 Payment in Tranches: 1 <sup>st</sup> : Inception Report 2 <sup>nd</sup> : Conceptual Master Plan 3 <sup>rd</sup> : Preliminary Master Plan 4 <sup>th</sup> : Final Report Contract Duration: In accordance w/the period provided in the TOR w/c is 6 months
March 16, 2017	Notice to Proceed		
April 11, 2017		Submitted the Inception Report (IR)	
June 16, 2017		Draft request for contract extension on the submission of Conceptual Master Plan (CMP)	BuDD requested BII to provide advance copy of their letter. BII sent copy via email. Grounds for extension: • Site's lot plotting & reading necessary in





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DATE	TIEZA	BERKMAN INT'L INC	REMARKS
			the preparation of the Land Dev't Plan as inclusion in the CMP • Acceptance of the Inception Report
June 27, 2017	Clarification letter to BII on the deliverables based on the submitted Inception Report		TIEZA requested for revision of the report based on the scope of work
July 20, 2017		Submitted the Revised Inception Report	
August 3, 2017		Follow-up on the status of revised IR, comments and approval of the report	
August 29, 2017		<ul style="list-style-type: none"> <li>Follow-up on the Acceptance of the Revised IR and the settlement of the site's lot plotting and reading</li> <li>Requested for contract period extension for another six (6) months from the date of expiration on Sept. 2017</li> </ul>	
October 6, 2017		Requested for endorsement on acquisition of cadastral map of Balacad	
November 21, 2017		Follow-up on the status of revised IR and lot plan of the study area	
December 20, 2017	Acceptance Letter to BII of the submitted revised Inception Report		Acceptance signed by ACOO-AMS
December 22, 2017		Statement of Account for the 1 <sup>st</sup> Tranche of the consulting services, Inception Report	Billing amount: P1,499,912.40 (15% of the contract price plus 12% VAT)
January 24, 2018	The COO approved the request for 1 <sup>st</sup> tranche payment		



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February 21, 2018		Requested for Computer-Aided Design (CAD) file of the study area with actual coordinates to plot the actual image drone shot and shape file on the land use plan and working drawings needed for the next deliverables	The data provided by AESS have no projections on the CAD file, just a floating map, and no coordinates provided
February 22, 2018	Forwarded to FSD the request for processing of payment for BII		
March 6, 2018		Follow-up the status of the lot plan needed for the preparation of the CMP	Despite the adjustments made by the Engr'g Team of BII on the projections, still the actual drone shot cannot be plotted on the shape file
April 11, 2018	ACOO-AMS requested from the ACOO-AESS for an actual survey over the Balacad Lots to reconcile TIEZA's lot plan to BII's file		
April 23, 2018		Requested for the contract period to be extended until October 30, 2018 due to unforeseen circumstances and issues that remain unsettled	Unsettled issues: <ul style="list-style-type: none"> <li>• Lot Plan provided by TIEZA remains open and will be subject for a verification survey by TIEZA</li> <li>• The turnaround for TIEZA to provide comments on the reports submitted took longer time</li> <li>• Issuance of Acceptance Certificate to proceed to the succeeding activities resulted</li> </ul>



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			to a slippage of five months
May 2, 2018	Memo for the COO from ACOO-AMS recommending the extension of contract period to October 30, 2018		Forwarded to the OCOO on May 15, 2018
May 17, 2018	Emailed to BII coordinates of the planning area		WGS geographic coordinates of the Balacad property was provided by TIEZA's private surveyor for Paoay properties, verification survey was conducted on May 9, 2018
May 23, 2018		Letter confirming lot plan / site location	BII proceeded with the completion of the conceptual planning utilizing the submitted maps and coordinates as reference
June 6, 2018	Memo for the COO from ACOO-AMS submitting BuDDs own guidelines and schedule of turnaround time for TIEZA to review, comment and make necessary recommendations on reports submitted and recommending extension of contract of BII until December 2018 instead of October 2018, considering the turnaround time of TIEZA		Forwarded to the OCOO on June 11, 2018
July 2, 2018		Submitted the Conceptual Master Plan	
July 11, 2018		Presentation of CMP to TIEZA Management	The presentation was attended by representatives from OCOO (including Atty. Karen & Ms. Mitch), FSD, PEPPD,





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DATE	TIEZA	BERKMAN INT'L INC	REMARKS
			BUDD and AMS and BII Project Team
July 13, 2018	Letter to Governor Imee R. Marcos, Province of Ilocos Norte, requesting for appointment to present the CMP of the proposed integrated tourism complex		In consideration that the LGU is a primary stakeholder and collaborator in ensuring the success of the project
July 19, 2018		BII billed TIEZA for the submitted CMP	P3,499,795.60 35% of the contract price plus 12% VAT
August 14, 2018		Follow-up on the Certificate of Acceptance on the CMP Report submitted and presented to TIEZA	BII also follow-up on the official letter of TIEZA's chosen development theme and scheme
August 22, 2018	TIEZA received an email from the Office of the Governor Imee Marcos, submitting their comments and concerns regarding the proposed Balacad Project		Due to the busy schedule of the Governor, she requested copy of the CMP for review
September 10, 2018	Memo for the COO from the ACOO-AMS re recommendation and comments on the submitted CMP		Approved and signed by COO, with attached note from the OCOO (Ms. Cleah) instructing AMS to include their inputs in a letter to be submitted to BII
October 18, 2018	Notes/ action slip from OCOO, Ms. Cleah, revisions and inputs to be incorporated in a letter to be submitted to BII regarding TIEZA's comments and recommendations to CMP		BuDD revised the draft letter to BII to include the comments from the OCOO
October 29, 2018	Letter to Ms. Angela Tiangco, BII re recommendation and clarification and modification in CMP		
November 12, 2018	BuDD and BII conducted a meeting to discuss and clarify the comments made		With minutes of meeting



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	by TIEZA and revision of the timeline of activities		
November 21, 2018		Requested for extension of contract until April 30, 2019 in consideration of the anticipated amount of work to render the remaining 2 deliverables including the review period for TIEZA	<p>Grounds for extension:</p> <ul style="list-style-type: none"> <li>• Pendency of technical issue on the shape file of the planning area</li> <li>• Consideration of the support and inputs from the Provincial Government of Ilocos Norte</li> <li>• Required approval of the management in all communications to BII including comments and recommendations on reports and other requests.</li> </ul>
November 2018	Ms. Cleah drafted her Rational for contract extension of Balacad Masterplan		
December 10, 2018	Memo for the COO from ACOO-AMS recommending the contract extension of BII until April 2019		Forwarded to the OCOO on December 12, 2018
January 29, 2019		Submitted the Preliminary Master Development Plan (PMDP)	BII also submitted their matrix of comments from the CMP and the way they addressed them in the PMDP
February 2019	In a series of meeting conducted by AMS, BuDD and Ms. Cleah, to address the issue on extension of contract of BII, a suggestion to draft an acceptance letter to BII to be signed by Atty. Guiller Asido was raised. The draft letter dated September 7, 2017 was emailed to Atty. Asido, but he declined to sign, he said he started working for Intramuros Administration on March 23, 2017.		
May 15, 2019		Follow-up on the payment for the	





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		completed CMP, acceptance of the PMDP and approval of the request for contract extension	
May 23, 2019	Note/ action slip from the OCOO for: AMS and Legal AMS: provide status and update Legal: legal opinion and recommendation		
June 10, 2019	Memo from Legal Dept. for ACOO-AMS requesting for a meeting on June 18, 2019 for clarifications in preparation for their legal opinion on Bill extension of contract		ACOO Jetro Lozada in a note: in June 18/19 the options were ( w/ cleah representing OCOO) (1) COO sign a antedated memo (2) ask teng
July 15, 2019		Follow-up on response to Letter dated May 15, 2019, Notice to conduct the Final phase of the project (Final Master Development Plan), and payment for the submitted PMDP	
August 2, 2019		Requested TIEZA to positively act with urgency on the payment for CMP and PMDP, and Notice to conduct the final phase of project implementation	
August 9, 2019		Billing Statement dated Aug. 2, 2019 for payment of the PMDP	P3,999,766.40 40% of the contract price plus 12% VAT
October 15, 2019		Submitted the Final Master Development Plan (FMDP)	3D scale model was not yet submitted, the end user was requested to decide on the size the scale model
October 23, 2019	Note/ action slip from the OCOO to AMS re submitted FMDP: For review, comments and recommendation, please		



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	provide memo until Oct. 29, 2019		
October 31, 2019		Billing Statement for the rendered and submitted reports: CMP, PMDP & Final Report	For Final Report: P999,941.60 10% of the contract price plus 12% VAT  Total amount billed: P8,499,503.60
November 5, 2019	BuDD prepared an updates on Master Planning and Design for the proposed Integrated Tourism Complex in Bo. Balacad, Laoag, Ilocos Norte		
November 7, 2019	A meeting was called by AMS and attended by representatives from Legal, FSD, BuDD, Ms. Cleah of OCOO and Atty. Karen Baydo, TEZ		Atty. Bryan Merza of Legal will prepare legal opinion and BuDD to prepare time analysis with BII to consider the turnaround time in each deliverable. Per FSD and Atty. Karen, it is possible to process payment for BII on the services rendered provided the timeline of BII covered 6 months as required in the TOR and legal opinion favoring the payment
November 12, 2019	AMS acknowledged the submission of Final Report and requested for a presentation of the Final Master Development Plan to TIEZA Management		
November 19, 2019	Discussions between AMS, BuDD and BII were made on the analysis of timeline for the actual implementation period of the project		



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November 27, 2019		Follow-up on the request for payment of services rendered and reports submitted – CMP, PMDP and FMDP; schedule of the presentation of FMDP and project timeline analysis	Stated in the letter: <i>"in the General Conditions of the Contract of the Phil. Bidding Document under R.A. 9184 stated on Section 13. Good Faith, prescribed that the "Parties undertake to act in good faith with respect of each other's right under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract".</i>
December 9, 2019	Memo to Legal Dept. from the ACOO-AMS requesting for legal opinion on the extension of contract of BII		Forwarded to Legal on Dec. 12, 2019
December 17, 2019		Presentation of the Final Report for the Project: Master Development and Design of an Integrated Tourism Complex in Balacad, Laoag, Ilocos Norte	Attended by BII Project Team & representatives from AMS, BuDD, FSD, OCOO, PEPD, Legal Dept., and Atty. Karen Baydo
January 10, 2020	Memo from Legal Dept. for ACOO-AMS re legal opinion on BII request for contract extension prepared by Atty. Bryan Merza		Memo on legal opinion was received by AMS on February 8, 2020  Stated in the legal opinion: <i>"BII's completion of the project beyond the period prescribed in the TOR is only a reasonable outcome when the mentioned delays are considered."</i>  <i>"TIEZA's active participation, acceptance and utilization of the final product while denying payment to BII is</i>





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			<i>tantamount to unjust enrichment and estoppel. Therefore, any amount payable to BII as prescribed in the TOR should be given to BII".</i>
February 5, 2020		Submitted the Revised Final Master Development Plan	
June 30, 2020	Memo for the COO from ACOO-AMS recommending the contract extension of BII until October 2019 and approval of payment amounting to P8,499,503.60		Forwarded to OCOO on July 29, 2020

Prepared by: Reyna A. Palacay, BuDD