

**CONTRACTOR'S CERTIFICATION AND AGREEMENT
WITH
DEFENSE SECURITY COOPERATION AGENCY (DSCA)
AUGUST 2001**

Contractor's Name: _____

Contractor's Address: _____

Contractor POC and Phone #: _____

Purchaser: Government of _____

Contract Number: _____ Contract Date: _____

Amendment Number: _____ Amendment Date: _____

Intent of Contract (items/services to be provided): _____

Instructions: Read *DSCA's Guidelines for Foreign Military Financing of Direct Commercial Contracts* located at <http://www.dsca.osd.mil>. Contractors must complete all sections; DSCA will not process Certifications with blank areas. Attach supporting documentation if necessary.

The Contractor named above, in entering into an agreement to sell defense articles, defense services, or design and construction services to the foreign government listed above as the Purchaser, hereby acknowledges that the sum to be claimed as due and owing under the contract or proforma invoice identified above (hereafter sometimes referred to as the "Purchase Agreement") is to be paid, in whole or in part, to the Contractor from U.S. Government funds made available to the foreign government under the provisions of the Arms Export Control Act, as amended. In consideration of the receipt of such sum, the Contractor certifies to and agrees with the U.S. Government, as represented by the Defense Security Cooperation Agency (DSCA), the following:

1. Agrees that authorized representatives of the Department of Defense and the Government of the United States shall have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for a period of three years following receipt of the final payment made on this Purchase Agreement.
2. Agrees to permit Defense Contract Management Agency (DCMA) with support of Defense Contract Audit Agency (DCAA) to conduct pricing reviews at the Purchaser's expense on all sole source procurements of \$750,000 or more as a condition for FMF funding of the contract.
3. Agrees to complete and accurate disclosure in connection with any and all pricing reviews accomplished by DCMA/DCAA in support of sole source procurements of \$750,000 or more, or in

other circumstances where such a pricing review is required by DSCA or the Purchaser. Acknowledges, that as a further condition of Foreign Military Financing (FMF) funding of the contract, findings as to the fairness and reasonableness of the price may be provided to the Purchaser.

4. Agrees to permit DCMA, with support from the DCAA, to perform contract administration and audit services on all contracts of \$750,000 or more (sole source or competitive). Contract administration and audit services are at the Purchaser's expense.

5. Agrees to include in subcontracts under this contract, a clause to the effect that authorized representatives of the Government of the United States shall have access to and the right to examine, for a period of three years following the final payment to the Contractor, any of the subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to the subcontract.

The following subcontracts with suppliers are exempted from this provision [these items may be procured from both U.S. and foreign sources, and are subject to the non-U.S. origin disclosure requirement in paragraph 11]:

- a. Those orders equal to or less than \$100,000 in value.
- b. Those orders in implementation of a Purchase Agreement awarded to the contractor on a competitive lowest responsive bid or best bid/best value basis.
- c. Those orders for common hardware¹ and/or raw materials².
- d. Those orders for commercially available U.S. off-the-shelf items³.
- e. Those orders issued and effective prior to date of the Purchase Agreement identified above.

6. Agrees that it is the prime contractor's responsibility on all subcontracts (except those exempted under paragraph 5) to obtain written compliance from its first and second tier subcontractors to the certification signed by the prime contractor. Multi-year contracts must also meet this flow-down requirement. This includes cumulative contract amounts with all aggregate orders, modifications, and amendments under the Purchase Agreement.

7. Agrees to include in the written terms and conditions of every subcontract or order (except those exempted under paragraph 5e) a prominently displayed statement that United States Government

¹Common hardware consists of commercially available, off-the-shelf-items, that do not require custom production or specific manufacture.

²Raw materials are items that are in a natural state, not subject to manufacturing, refining, or finishing processes, and routinely stored without accountability or segregation based on origin.

³Commercially available off-the-shelf item means a commercial item sold in substantial quantities in the commercial marketplace and offered to the U.S. Government without modification and in the same form in which it is sold in the commercial marketplace (see 41 USC 431). It does not include bulk cargo such as agricultural products and petroleum products.

(USG) funds will be used to finance such subcontract, and that acceptance of the subcontract or order will constitute acknowledgment of such notification of USG financing.

8. Certifies and agrees that no bribes, rebates, gifts, kickbacks or gratuities have been or will be directly or indirectly offered or given, or have been or will be arranged with officers, officials, or employees of the Purchaser by the Contractor, its employees or agents to secure the Purchase Agreement or favorable treatment under the Purchase Agreement, or for any other purpose relating to the Purchase Agreement contrary to U.S. law or regulation.

9. Agrees to include in the written terms and conditions of every subcontract or order (except those exempted under paragraph 5e) a prominently displayed statement: Acceptance and implementation of the subcontract constitutes a declaration and agreement by the principal executive officers of the subcontractor that no bribes, rebates, gifts, kickbacks, or gratuities to secure the Purchase Agreement or the subcontract, or for favorable treatment under such agreements, or for any other purpose relating to the Purchase Agreement or the subcontract have been or will be directly or indirectly offered or given to, or have been or will be arranged with officers, officials or employees of the Purchaser by the subcontractor, its employees or agents.

10. Understands that it may not recover any offset costs under direct commercial sales financed with nonrepayable FMF funds (U.S. funds provided to a foreign government or international organization on a nonrepayable basis). To the extent the contractor seeks to recover such costs, it must be from the foreign Purchaser who must pay with its own funds or with repayable FMF credits.

Certifies that \$ _____ is the amount of offset costs included in the price of this Purchase Agreement.

11. Certifies that the materiel, components, goods, or services (hereafter “content”) to be provided under the Purchase Agreement are of U.S. manufacture and/or origin. The dollar value of all non-U.S. content to be procured specifically for this Purchase Agreement is indicated below.

Certifies that \$ _____ is the current cumulative total dollar value of non-U.S. content in the Purchase Agreement identified above (including all amendments).

Certifies that \$ _____ is the current total dollar value of non-U.S. content in amendment # _____ to the Purchase Agreement identified above.

a. Agrees that regardless of whether DSCA approves financing of the total dollar value of non-U.S. content disclosed in this certification, or a lesser specified dollar value of the disclosed non-U.S. content, or none of the disclosed non-U.S. content, the disclosed value will not be exceeded during the execution of said Purchase Agreement.

b. Agrees to promptly disclose to DSCA any change in value of non-U.S. content.

c. Agrees that if FMF funds are denied either in whole or part, that the costs for which funding was denied will not be financed with funds received from the USG under the Purchase Agreement either directly or indirectly.

d. Agrees to maintain and provide, if requested, supporting documentation for the value of both U.S. and non-U.S. origin content.

12. Certifies that USG funds received by the Contractor under the Purchase Agreement will not be used to purchase services, other than those disclosed in paragraph 11 above and approved by DSCA, from non-U.S. contractors or individuals that are not U.S. citizens or resident aliens of the United States, unless the financing of such services is expressly authorized by the DSCA.

13. Certifies that the recipient(s) and amount(s) of any commission, contingent fees, or similar compensation paid or to be paid in any way (to include payments to a bona fide employee or a bona fide commercial or selling agency), whether in cash or in kind, directly or indirectly related to the Purchase Agreement are fully disclosed below.

Recipient(s) of commissions, contingent fees, or compensation:

NAME and ADDRESS:

AGGREGATE AMOUNT PAID OR TO BE PAID: _____

AGGREGATE AMOUNT INCLUDED IN PURCHASE AGREEMENT: _____

RELATIONSHIP TO CONTRACTOR: _____

NATIONALITY: _____

a. Certifies that the Purchase Agreement price does not include commissions, contingent fees, or similar compensation paid or promised to any person for the purpose of soliciting or securing the Purchase Agreement, unless such payments have been identified to and approved in writing by the Purchaser prior to contract award for payment with repayable FMF credit or with the Purchaser's national funds.

b. Certifies that any commissions, contingent fees, or similar compensation paid or promised by the contractor to any person in relation to soliciting the Purchase Agreement were not in violation of U.S. law or regulations.

c. Agrees to include within every subcontract or order under the Purchase Agreement (except those exempted under paragraph 5) prominently displayed contract clause(s) requiring that the subcontractor provide the disclosures and certifications set forth in this paragraph 13 and 13(a-b).

14. Agrees to identify in its accounting records the full amount of any payment received under the Purchase Agreement as an advance payment, to apply these funds solely to the performance of obligations under this Purchase Agreement, and to provide a clear audit trail on the use of these funds. Agrees to certify on the invoice or request for any payment made before performance of work under the Purchase Agreement that it does not exceed 15 percent of the Purchase Agreement price.

15. Agrees that export transportation costs financed under terms of the Purchase Agreement will be paid only to steamship, barge, tug, and airline companies of United States registry unless such costs have been identified to and approved in writing by the Purchaser prior to contract award for payment with Purchaser's national funds. Agrees that amounts billed for such transportation shall be only the cost for shipping the defense articles provided under the terms of the Purchase Agreement. Freight forwarder services are not authorized for FMF funding unless specifically authorized by DSCA.

16. Agrees that the cost of travel, per diem, accommodations, lodging, car rental, personal expenses, entertainment, or other similar expenses (except the reasonable cost of business meals) incurred by or for the purchasing country personnel, which relate directly or indirectly in any way to this contract, will not be paid by the contractor using FMF funds.

17. Certifies that the full extent of the contractual relationship between the Contractor and the purchasing government, as it pertains to this Purchase Agreement, consists of the contract and/or amendments identified on page one of this certification (provide/attach necessary documentation or correspondence, including purchase orders if necessary, to disclose the full extent of the agreement between the parties) and recognizes that the U.S. Government makes no commitment to finance any additional or subsequent agreements related to this Purchase Agreement.

18. Agrees that invoices will be prepared in accordance with the relevant provisions of the Purchase Agreement and will be submitted through the Purchaser for presentation to the Defense Finance Accounting Service (DFAS) for payment, as follows:

a. All Contractor's invoices must be submitted with the following certification:

The Contractor (_____) acknowledges U.S. Government funds are being used by the Government of _____ to finance this purchase and certifies that the invoice(s) submitted with respect thereto are free from any material false statement or misrepresentation and do not omit any material facts.

b. All invoices should (as applicable) also:

(1) Reflect the invoice date, Purchase Agreement number, DSCA case identifier, amount due, and payment due date.

(2) Specify whether the amount billed is an advance, interim, progress/milestone, or performance payment.

- (3) Provide description, quantity, unit of measure, unit price and extended price of the items and services delivered.
- (4) State the terms of any prompt payment discount, if offered.
- (5) Designate the name and address to where the payment should be sent.
- (6) Designate the FOB point and "ship to" address.
- (7) Indicate by a separate entry the transportation costs if not included in the item price.
- (8) Provide the name of the carrier(s) to be used from the U.S. Port of Embarkation whenever the amount being billed includes the "cost, insurance, and freight (CIF)" terms of delivery of invoiced items to a destination point outside the United States.
- (9) Be supported by a stamped, dated and initialed copy of the freight bills, air way bills, or rated on-board bills-of-lading, fully accounting for the cost of inland and export transportation of the items covered by the invoice for which payment is requested.
- (10) Provide any other information or documentation required by the contract.
- (11) Provide name, title, and phone number of person to be contacted in event of questions.

If the Contractor pays for the transportation, bills-of-lading or airway bills must be submitted with the invoice for which payment is requested, whether the transportation cost is included in the price of the item or billed separately to the Purchaser. A copy of the invoice for the cost of any insurance coverage on the shipment must also be submitted with the shipping documents.

- c. If the contractor is not paying for the export transportation costs, the Contractor will submit a certification with the invoice as follows:

The Contractor (_____) acknowledges that U.S. Government funds are being used by the Government of _____ to finance this purchase and certifies that no shipping cost has been incurred by this firm for exporting this materiel from the United States and no shipping cost is included in the sales price or otherwise included in the invoiced amount for which payment is requested.

19. Agrees that any penalty payment, refund, or other reimbursement due to the Purchaser pursuant to this Purchase Agreement will be paid to the U.S. Government for credit to the FMS trust fund account of the Purchaser. Understands that DFAS will not disburse funds to contractors until it receives all copies of the bonding or guarantee documents applicable to the purchase agreement.

20. Certifies that neither the Contractor nor any of its employees are suspended or debarred from conducting business with any agency of the U.S. Government and that export privileges are not suspended or revoked. Further agrees that no suspended or debarred firms will be used as a source of supplies or as a subcontractor for this Purchase Agreement.

21. Agrees that the U.S. Government has the right, without accruing any liability, to suspend the financing of this Purchase Agreement on the instruction of the Purchaser or for any suspected or confirmed misrepresentation or violation of any certification or agreement provided by this Contractor to obtain FMF financing.

22. For purposes of facilitating official U.S. Government inquiries to determine whether civil or criminal offenses may have been committed regarding the use, disbursement, or other disposition of funds made available under the U.S. Arms Export Control Act, to finance this Purchase Agreement, the Contractor agrees to provide to any requesting authorized U.S. government official, documents that demonstrate the cost and price elements for the final Purchase Agreement price, including total amounts and breakdowns for all cost and price elements.

23. In addition to the agreement in paragraphs 1 and 22 and for purposes of facilitating official U.S. Government inquiries to determine whether civil or criminal offenses may have been committed regarding the use, disbursement, or other disposition of funds made available under the U.S. Arms Export Control Act, to finance this Purchase Agreement, the Contractor agrees:

a. to identify and to consent to the disclosure of the following accounts to, and at the request of, the U.S. Department of Defense, the U.S. Department of Justice, or a U.S. Federal Grand Jury:

(1) accounts wherever located in the name of such Contractor or any related corporate entities; and

(2) accounts located outside the United States in the name of the principal executive officers of such Contractor (and any nominees) who have been personally and substantially involved in this Purchase Agreement, and

b. for these purposes to include in the written terms and conditions of each subcontract (other than those excepted under paragraph 5 above) applicable to this Purchase Agreement a statement that acceptance and implementation of the subcontract constitutes agreement by the subcontractor to identify and to consent to the disclosure of the following accounts to, and at the request of, the U.S. Department of Defense, or the U.S. Department of Justice, or a U.S. Federal Grand Jury:

(1) accounts wherever located in the name of such subcontractor or supplier; and

(2) accounts located outside the United States in the name of the principal executive officers of such subcontractor or supplier (and any nominees) who have been personally and substantially involved in this subcontract under the Purchase Agreement.

The term "consent to the disclosure" for purposes of sub-paragraphs (a) and (b) of this paragraph includes agreement to provide consent documents authorizing the disclosure of such information upon request.

24. By signature below, the named individuals hereby separately certify:

a. that he or she has actual authority to sign on behalf of the Contractor and to bind the Contractor with regard to all agreements and certifications contained hereon;

b. that this certification and agreement is being signed and submitted for the purpose of receiving payment under terms of the above listed Purchase Agreement to be financed by U.S. Government funds; and

c. that the information provided in this Certification and Agreement is complete and accurate to the best of each signatory's knowledge and belief after each has taken appropriate steps to verify the accuracy thereof. The person(s) signing the Purchase Agreement may not normally also sign this Certification and Agreement. In the event that the Contractor is a partnership, one general partner is required to sign this Certification and Agreement.

I certify under penalty of perjury that the foregoing certifications are complete and accurate to the best of my knowledge based upon: (1) written representation made to me by identifiable individuals within this company and which representations will be maintained for **six** years after receipt of the final payment made by DFAS on this Purchase Agreement; or (2) that I have exercised personal due diligence to ascertain that all statements in this certification are true and correct.

VICE PRESIDENT (OR OTHER SENIOR OFFICIAL) HAVING SUPERVISORY RESPONSIBILITIES OVER THE MAKING OF THIS PURCHASE AGREEMENT

TREASURER, COMPTROLLER, OR OTHER SENIOR FISCAL OFFICIAL

(Signature)

(Signature)

(Typed name)

(Typed name)

(Title)

(Title)

(Date)

(Date)