

**FIRST TIER SUB-CONTRACTOR'S U.S. CONTENT CERTIFICATION AND  
AGREEMENT  
WITH  
DEFENSE SECURITY COOPERATION AGENCY (DSCA)  
MARCH 2017**

Sub-Contractor's Name: \_\_\_\_\_

Sub- Contractor's Address: \_\_\_\_\_

Sub- Contractor POC and Phone #: \_\_\_\_\_

Prime Contractor's Name: \_\_\_\_\_

Prime Contractor's Address: \_\_\_\_\_

Prime Contract Number: \_\_\_\_\_ Prime Contract Date: \_\_\_\_\_

Purchaser: Government of \_\_\_\_\_

Sub-Contract Number: \_\_\_\_\_ Sub-Contract Date: \_\_\_\_\_

Amendment Number: \_\_\_\_\_ Amendment Date: \_\_\_\_\_

Intent of Sub-Contract (items/services to be provided): \_\_\_\_\_

**Instructions: Read DSCA's Guidelines for Foreign Military Financing of Direct Commercial Contracts located at <http://www.dscamilitary.com>. Contractors must complete all sections. Attach supporting documentation if necessary.**

The First Tier Sub-Contractor named above, in entering into an agreement to sell an item or service to a Prime Contractor to facilitate the Prime Contractor's sale of defense articles, defense services, or design and construction services to the foreign government listed above as the Purchaser, hereby acknowledges that a portion or all of the sum to be claimed as due and owing under the sub-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 Sub-Contractor from U.S. Government funds made available to the foreign government and provided to the Prime Contractor under the provisions of the Arms Export Control Act, as amended. In consideration of the receipt of such sum, the Sub-Contractor certifies to and agrees with the U.S. Government, as represented by the Defense Security Cooperation Agency (DSCA), the following:

1. Agrees the Sub-Contractor will comply in all respects with the "DSCA Guidelines for Foreign Military Financing of Direct Commercial Contracts" that is in effect when the contract was signed. Further, should a newer version of the Guidelines be published subsequent to contract award, the Contractor agrees to comply in all respects with the "DSCA Guidelines for Foreign Military Financing of Direct Commercial Contracts" that is in effect when any amendment or modification to such a contract is signed.

2. Unless exempted by the terms of Paragraph 6 of this certification, 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 Sub-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.

3. 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 \$2,500,000 or more as a condition for FMF funding of the contract.

4. Agrees to complete an accurate disclosure in connection with any and all pricing reviews accomplished by DCMA/DCAA in support of all sole source procurements of \$2,500,000 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.

5. Agrees to permit DCMA, with support from the DCAA, to perform contract administration and audit services on all contracts of \$1,000,000 or more (sole source or competitive). Contract administration and audit services are at the Purchaser's expense.

6. Agrees to authorize representatives of the Government of the United States to have access to and the right to examine, for a period of three (3) years following the final payment from the Prime 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 sub-contract awarded to the sub-contractor on a competitive lowest responsive bid or best bid/best value basis.
- c. Those orders for common hardware<sup>1</sup> and/or raw materials<sup>2</sup>.
- d. Those orders for commercially available U.S. off-the-shelf items<sup>3</sup>.
- e. Those orders issued and effective prior to date of the Purchase Agreement between the Prime Contractor and the Purchaser identified above.

In order to prevent any Prime Contractor from excessively passing its costs to its sub-contractors, none of the above exemptions (paragraphs 6(a) through 6(e)) can be relied upon if the more than 70% of the Prime Contractor's costs are attributable to its sub-contractors. If more than 70% of the Prime Contractor's costs are attributable to its sub-contractors, than notwithstanding any of the above

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

<sup>2</sup> Raw 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.

<sup>3</sup> Commercially available off-the-shelf item means a commercial item sold in substantial quantities in the commercial marketplace in the United States 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.

exemptions, the United States will have access to any sub-contractor's directly pertinent books, documents, papers, or other records involving transactions related to the subcontract if the cost of any subcontractor's contract with the Prime Contractor accounts for more than 30% of the Prime Contractor's costs for its agreement with the Purchaser.

7. Acknowledges the prime contractor's responsibility on all subcontracts (except those exempted under paragraph (6) 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 between the Prime Contractor and the Purchaser.

8. Agrees to include in the written terms and conditions of every subcontract or order (except those exempted under paragraph 6e) a prominently displayed statement that United States Government (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.

9. 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 Sub-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.

10. Agrees to include in the written terms and conditions of every subcontract or order (except those exempted under paragraph 6e) 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.

11. In accordance with Paragraph 6(C) of the DSCA DCC Guidelines, the Sub-Contractor certifies that the materiel, components, goods, or services (hereafter "content") to be provided under the Sub-Contract to the Prime contractor (mark one of the below blocks and disclose the amount of host nation content):

are manufactured in the United States and include at least 51% U.S. content;

include less than 51% U.S. content; or

include either U.S. or non-U.S. content but no assertions are made with respect to the amount of U.S. or non-U.S. content except for the amount of host nation content (or the lack thereof).

The dollar value of all non-U.S. content attributable to Purchaser (host nation) content to be procured specifically for the subcontract with the Prime Contractor for Purchase Agreement is indicated below.

**Certifies that \$ \_\_\_\_\_ is the current cumulative total dollar amount of Purchaser (host nation) content.**

**Further, certifies that of the above amount of non-U.S. content, \$ \_\_\_\_\_ is the current cumulative total dollar amount of Purchaser (host nation) content in amendment # \_\_\_\_\_ to the Purchase Agreement identified above.**

a. Agrees to immediately provide a revised and amended original signed Sub-Contractor's Certification to the Prime Contractor and DSCA-SA&E/DCC if the disclosed value of non-U.S. content of Purchaser (host nation) content is ever exceeded.

b. Agrees to promptly withdraw this certification and disclose to DSCA and the Prime Contractor if the total value of non-U.S. content ever exceeds 49% of the value of the sub-contract.

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 Sub-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 contractors or individuals that are citizens or resident aliens of the Purchaser's nation, 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. Concerning the disclosure of the amount, if any, included in the price of the purchase agreement, please review Paragraph 19(A) of the DSCA DCC Guidelines.

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

NAME and ADDRESS:

AGGREGATE AMOUNT PAID OR TO BE PAID: <sup>4</sup> \_\_\_\_\_

AGGREGATE AMOUNT INCLUDED IN PURCHASE AGREEMENT: <sup>4</sup> \_\_\_\_\_

RELATIONSHIP TO CONTRACTOR: \_\_\_\_\_

NATIONALITY: \_\_\_\_\_

a. Certifies that the Sub-Contract 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

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<sup>4</sup> N/A is not a proper response to this question. Certifying contractor must write zero or the amount paid in this space.

promised by the sub-contractor to any person in relation to soliciting the sub-contract 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 6) prominently displayed contract clause(s) requiring that the subcontractor provide the disclosures and certifications set forth in this paragraph 13 and 13(a and b).

14. 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 subcontract, will not be paid by, be submitted, invoiced, or billed by the subcontractor for payment with FMF funds.

15. Certifies that neither the Subcontractor 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.

16. 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.

17. 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 Subcontractor 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.

18. In addition to the agreement in paragraphs 1 through 18 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 6) 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.

19. 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 sub-contract 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. 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 the Prime Contractor; 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)