

DEFENSE SECURITY COOPERATION AGENCY



**GUIDELINES FOR FOREIGN MILITARY FINANCING OF DIRECT
COMMERCIAL CONTRACTS**

MARCH 2017



DEFENSE SECURITY COOPERATION AGENCY

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MEMORANDUM FOR RECORD

SUBJECT: Revision to the Defense Security Cooperation Agency's Guidelines for Foreign Military Financing of Direct Commercial Contracts

The Defense Security Cooperation Agency (DSCA) is revising its *Guidelines for Foreign Military Financing of Direct Commercial Contracts* effective March 1, 2017. The revised edition also includes the *First Tier Sub-Contractor's US. Content Certification and Agreement*. This new edition replaces the August 2009 edition of the Guidelines.

Guidelines and documents may be used immediately and will be mandatory after March 1, 2017. Countries participating in the Foreign Military Financing of Direct Commercial Contracts program should complete their transition to the March 2017 edition no later than March 1, 2017.

We appreciate your continued interest and support of this important aspect of the Security Assistance Program, and look forward to working with you in the future and building upon our partnership.



J. W. Rixey
Vice Admiral, USN
Director

Direct Commercial Contractor's (DCC) Guidelines and Contractor's Certification Revisions

Summary of Changes

Note: The following summary of changes is not all inclusive. The summary is intended to highlight some of the more significant substantive differences from the previous Guidelines. The summary also highlights new content in the revised Guidelines that has been added to further clarify existing DCC guidance or practices. Since the new Defense Security Cooperation Agency (DSCA) DCC Guidelines have been substantially revised, the new Guidelines should be carefully reviewed in their entirety to ensure compliance.

1. Inapplicability of the Buy America Act and Trade Agreement Act to Direct Commercial Contracts. DCCs are governed by the Arms Export Control Act, the DSCA Security Assistance Management Manual, and these DCC Guidelines. These DCC Guidelines emphasize that the Buy America Act and Trade Agreement Act are inapplicable to DCCs. While these Acts have never applied to DCCs, previous DCC Guidelines did not explicitly note the inapplicability of these Acts to DCCs. Clarification which laws and guidance applies to DCCs is intended to ensure that contractors clearly understand that methodologies for determining U.S. content and non-U.S. content is solely derived from the DCC Guidelines. The DCC Guidelines do not incorporate content methodologies relied upon under either the Buy American Act or Trade Agreements Act. See Overview and Paragraph 6(A) for further details. (References to Paragraphs refer to paragraphs in the DCC Guidelines.)

2. Inclusion of Hypotheticals in the DCC Guidelines. Hypothetical examples have been added to the new Guidelines. The examples illustrate the application of the Guidelines to a specific circumstance. Examples are not used to introduce any new guidance or requirement that is not already addressed elsewhere in the Guidelines.

3. Revised DCC Methodology for Determining U.S. and non-U.S. Content.

a. Consideration of Sub-Contractor U.S. and non-U.S. Content. Under previous DCC Guidelines, Prime Contractors were required to determine the amount of U.S. content and non-U.S. content data from all levels of their sub-contractors. In some circumstances, capturing exact U.S. and non-U.S. content costs through multiple tiers of sub-contractors could impose a difficult and complex accounting or administrative burden. To eliminate the potentially impractical need to identify all costs through all sub-contractor tiers, the revised Guidelines only require a Prime Contractor to obtain U.S. and non-U.S. content costs from its First Tier Subcontractors. See Paragraph 6(D) for further details.

b. Re-characterization of non-U.S. content as U.S. Content. While the previous DCC Guidelines provided some exceptions which allowed for the payment of FMF for non-U.S. content, previous DCC Guidelines did not allow non-U.S. content to ever be re-characterized as

U.S. content. Under the revised DCC Guidelines, some of the First Tier Subcontractor's costs may be re-characterized as U.S. content. However, consistent with previous Guidelines, non-U.S. content from the Purchaser's nation (host nation content) is never re-characterized and all such content from any level of sub-contractor must be disclosed to DSCA. See Paragraph 6(C) for further details.

c. Use of Substantial Transformation for Information Technology (IT) Hardware. As noted above, previous DCC Guidelines did not allow any non-U.S. content to be re-characterized as U.S. content. However, under the new Guidelines, a DCC prime contractor may seek DSCA permission to apply a substantial transformation methodology to IT Hardware manufactured in the U.S. If approved, with the exception of Purchaser host nation content, a prime contractor may report their Commercial Off-the-Shelf (COTS) IT hardware end product as 100% U.S. content if their end product was substantially transformed in the U.S. Substantial Transformation is not allowed for any other type of item than IT Hardware. See Paragraph 6(B) for further details.

4. Use of First Tier Subcontractor Certifications. Under previous DCC Guidelines, only prime contractors completed a DCC contractor certification. Under the new Guidelines, if a prime contractor wants to consider the costs of a First Tier subcontractor's material or services as U.S. content, the prime contractor must obtain a written First Tier Subcontractor DCC certification that verifies the amount of U.S. content in the provided material or services includes at least 51% U.S. content. First Tier subcontractor certifications are not provided to DSCA but are maintained by the prime contractor and can be reviewed as part of a compliance audit. These Guidelines do not impose a requirement on a Prime Contractor to obtain certifications from their First Tier subcontractors. The content of the First Tier subcontractor certification or lack of any certification will determine how the content from the First Tier subcontractor must be characterized (U.S. content, non-U.S. content, host nation content, or a combination thereof). A First Tier subcontractor's decision to provide a certification See Paragraphs 6(C), 16(C) through 16(F), and the content of the First Tier Subcontractor's Certification Template for further details.

5. Clarification of Reasonable Travel Expenses. Previous Guidelines allowed the use of FMF to pay reasonable travel expenses of contractor personnel but no further guidance was provided concerning what constitutes a "reasonable travel expense". The new Guidelines clarify that expenses for travel, food, and temporary lodging will be considered reasonable if the expense for contractor personnel is equal to or less than what a U.S. federal government employee would be entitled to under the Joint Federal Travel Regulations. See paragraph 6(H).

6. Use of FMF for Non-U.S. Spare Parts. The new Guidelines provides greater leeway to use FMF to purchase non-U.S. content spare parts as part of COTS item purchase. FMF may be used to pay for non-U.S. content spare parts as long as: (i) The item for which the spare parts are purchased is a COTS item; (ii) the COTS item and associated spare parts are all purchased simultaneously on the same Purchase Order; and (iii) the total cost of the U.S. content for the COTS item and its associated spare parts is 51% or more of the total cost of the COTS item and the associated spare parts. See paragraph 6(M).

7. Waiver Requests of Guidelines Requirements. The new Guidelines clarifies that only a DCC purchaser, a foreign government, can request DSCA to consider a waiver of a DCC Guidelines requirement. While a prime contractor may request DSCA to clarify the application of the DSCA Guidelines to its specific circumstances, absent a request from the Purchasing country, DSCA will not consider contractor requests to waive any DSCA DCC Guideline requirements. See Paragraph 6(N) for further details.

8. Use of FMF for non-U.S. Content if the Same End Item is Purchased by USG. Under certain circumstances, previous DCC Guidelines allowed the use of FMF to pay non-U.S. content in an end item if the same item was also purchased by the USG. This is an exception to the prohibition against the use of FMF for non-U.S. content. The new Guidelines clarifies that use of this specific exception is only permissible if the same end item has at least 51% U.S. content. The new Guidelines also clarifies that in order to qualify as an item that is also purchased by the USG, the USG must have purchased the same item within the last five years and a continuing need for future USG procurements must be foreseeable. See Paragraph 7(A) for further details.

9. Clarification of the term “Commercial Marketplace” for DCCs. Previous Guidelines defined a commercial off-the-shelf (COTS) item as 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. The new Guidelines clarify that the “commercial marketplace” in a DCC context constitutes the “commercial marketplace in the United States”. See Paragraph 7(B).

10. Purchasing Company’s Consideration of Non-US Content in Price Competition.

For all DCCs awarded on a competitive basis, the Purchaser must identify, in writing, the various contractors solicited and the prices submitted. If the lowest offeror was not selected, a Purchaser must provide a written explanation that adequately justifies the basis for the contract award. The new Guidelines clarifies that a purchaser’s desire to minimize the expenditure of national funds is not an appropriate justification to not award a contract to the lowest offeror. See Paragraph 12 for further details.

11. Clarification of when a Commission is not part of the DCC Price. DCC contractor certifications require a certification that a commission is not included in the price of a DCC. The new Guidelines provide a list of qualifying justifications that allow a contractor to certify that a commission or contingency fee is not included in the DCC price. See Paragraph 18 for further details.

12. Higher Threshold for DCC Compliance Audits. The new DCC Guidelines increases the DCC threshold for a compliance audit from \$750,000 to \$1,000,000. See Paragraph 28.

13. Consequences of Non-Compliance with DCC Guideline Requirements. Previous Guidelines did not explicitly address consequences for non-compliance. The new Guidelines clarifies that if a company demonstrates an inability or unwillingness to comply with DSCA DCC Guidelines,

the company may be excluded from participating in future DCCs until such time that the company is able to remedy any prior noncompliance and provide reasonable assurance of the company's future compliance with all DCC Guideline requirements. See Paragraph 32(D). The scope of the DCC Guidelines is limited to the DCC program. Noncompliance with DCC Guidelines may lead to other civil, criminal, or other administrative penalties but such matters are outside the scope of the DCC program and are not addressed by DCC Guidelines.

14. Excessive Pass-Through of Prime Contractor Costs to Sub-Contractors. The DCC contractor's certification has been revised to prevent a prime contractor from shielding an excessive amount of costs from a compliance audit. The previous and current DCC contractor certification enumerates a number of circumstances that would exempt a subcontractor's records from government access. However, the revised contractor's certification disqualifies use of such exemptions if 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, then the United States must have access to any sub-contractor's records directly related to the DCC subcontract if the cost of any subcontractor's contract with the Prime Contractor accounts for more than 30% of the Prime Contractor's DCC costs. See Paragraph 6 of the new DCC Contractor's Certification.

Overview

In 1984 the U.S. Department of Defense (DoD) established guidelines for the processing and review of commercial contracts for direct purchase of U.S. defense articles and services from U.S. firms to be financed with funds appropriated by the Congress. These guidelines are periodically revised and updated. This publication supersedes the DCC Guidelines dated August 2009. Foreign governments use direct commercial contracts (DCC) to acquire defense articles, defense services, or design and construction services directly from a United States company; rather than through the U.S. Government pursuant to a Letter of Offer and Acceptance. In accordance with the Arms Export Control Act (AECA) (22 USC 2794), a defense service includes any test, inspection, repair, training, publication, technical or other assistance, or defense information.

Funds appropriated by Congress which are granted to purchasers for defense requirement acquisition are known as Foreign Military Financing (FMF). With limited exception, FMF funds are required to be used through the Foreign Military Sales (FMS) system. A limited number of foreign countries¹ are authorized by law to finance their DCCs with FMF. The Security Assistance Management Manual (SAMM), DSCA 5105.65-M, and this Defense Security Cooperation Agency (DSCA) publication contain the procedural, policy and legal requirements governing the use of FMF for DCCs.

The publication of these Guidelines does not invalidate or modify existing DCCs that predate the publication of the current Guidelines. Purchasers and Contractors must comply in all respects to these newly published Guidelines for any contracts entered after the publication of these Guidelines or whenever an existing DCC is amended or modified after the Guidelines publication date. When an existing DCC is amended or modified subsequent to the publication date of these Guidelines, the applicability of these Guidelines shall only be applied to the content of the amendment or modification.

Since a DCC is not a U.S. Government acquisition, DCCs are not governed by the Federal Acquisition Regulation (FAR), Title 41 U.S.C. §§ 8301 - 8305 (popularly referred to as the Buy American Act and formerly codified as Title 41 U.S.C. §§ 10a – 10d), or the Trade Agreements Act (Title 19 U.S.C. §§ 2511-2518). DCCs are governed by the AECA, the SAMM, and these guidelines. While the entire FAR is not applicable to DCCs, some portions of FAR are incorporated by reference by the DSCA DCC guidelines.

For the purposes of this publication, a Purchaser is defined as a foreign government eligible under U.S. law to establish a DCC with FMF.

DSCA will consider all proposed expenditures of FMF to fund DCCs on a case-by-case basis and in accordance with these guidelines. As indicated in the FMF Grant Agreement between the United States Government (USG) and the Purchaser, the USG is under no obligation to approve any specific DCC for FMF funding. Further, all DCCs must be for purposes consistent with section 4 of the AECA. The Department of State (DoS) maintains overall direction and control

¹ Since Fiscal Year 1990, through recurring provisions in Department of State Appropriations Acts, countries authorized by law to use FMF for direct commercial contracts are limited to Israel, Egypt, Jordan, Morocco, Tunisia, Turkey, Portugal, Pakistan, Yemen, and Greece.

on the use of FMF. Therefore, DSCA consideration of FMF-funded DCCs must comply with any DoS requirements concerning the use of FMF. The financing of DCCs may be reviewed by the Department of State, General Accounting Office (GAO), the DoD Inspector General (DoD/IG), the Department of Justice (DOJ), and Congress. Revisions of these guidelines over time reflect DoD's effort to minimize vulnerability to waste, fraud, and abuse, and where possible, maximize application of acquisition streamlining and reform principles.

Contractor Eligibility

1. The prime contractor must be a U.S. supplier, manufacturer, reseller, or distributor incorporated or licensed to do business in the United States.
2. Purchase agreements are made directly with the manufacturer of the defense article or service provider, if possible. The prime contractor is required to add value to the product being sold.
 - A. Purchases of materiel are made, to the maximum extent feasible, from the prime manufacturer, or assembler, or from a U.S.-based distributor or reseller of a manufacturer or assembler pursuant to a preexisting contractual or licensed relationship.
 - B. The prime contractor must demonstrate to DSCA (through completion of a DoD pre-award survey or other means) its capability -- e.g., expertise, experience, infrastructure, and financial soundness -- to perform by itself a substantial portion of the work. Prior successful completion of recent DCCs financed with FMF funds or DoD contracts for the same or essentially similar items will satisfy this requirement typically.
 - C. When applicable, Purchasers should ensure that the items purchased demonstrate interoperability with equipment used by U.S. armed forces to enhance U.S. and allied nation compatibility and standardization.
 - D. FMF may not be used to compensate a procurement agent, broker, import-export firm or other intermediary unless justified by unique factors relating to the specific country needs and the country's abilities to conduct commercial contracting. A request for exception may be favorably considered if sufficient justification is provided by the Purchaser as to why the purchase is sought from a firm other than the prime manufacturer.
 - E. Prime contractors are required to ensure that all first and second tier suppliers, and subcontractors are not excluded from conducting business with federal programs and their export privileges are not suspended or revoked (see paragraph 32). Prime contractors will maintain a list of the names and addresses of and materials/services procured from all first and second tier suppliers and subcontractors applicable to the DCC. The prime contractor must provide this list to DSCA upon request.

Non-Standard/Standard Items

3. DCCs are primarily designed for procurement of non-standard items.² A non-standard item is an item that does not have a national stock number (NSN) and is not regularly procured or available through the U.S. supply system. Purchasers must demonstrate that items are non-standard by providing catalog data or information received from the U.S. military department (MILDEP) or DoD component to demonstrate that the item cannot be procured through the U.S. supply system. Modified NSN items (items that have been altered from their normal/original NSN configuration) do not qualify as non-standard items.

4. Absent an approved exception from a MILDEP, DCCs will not be permitted for standard items. A standard item is an item that may be obtained through the DoD supply system, e.g., an item with a NSN. However, with DSCA concurrence, the Purchaser may request an exception from the MILDEPs, for the commercial procurement of a standard DoD item. When doing so, the Purchaser must provide written justification to DSCA supporting its request. The justification should include the item description, required delivery date, and any other information that may be pertinent to the exception decision³ (see Enclosure 1). DSCA will consult with the appropriate MILDEP or DoD component before acting on a requested exception. If the MILDEP elects to process a proposed sale as a FMS case, a Purchaser's request for a DCC will not be approved.

A. Purchaser representatives should allow approximately 14 days for DSCA to process a Purchaser's request to use a DCC. DSCA will approve or disapprove such requests in writing.

B. After DSCA approves a Purchaser's request to use a DCC to obtain a specific standard item, the Purchaser may then submit the specific contract for such an item to DSCA for consideration of FMF. When the contract is submitted for DSCA review, the Purchaser must include a copy of the DSCA approved exception.

5. Country-Unique Major Programs. The use of FMF for DCCs is permissible for the development and/or procurement of articles and services in support of country-unique major programs. The Purchaser should consult with DSCA and receive approval prior to proceeding with contract negotiations on major unique systems. Written justification supporting the Purchaser's request to use FMF for a DCC for a country-unique major program should be provided to DSCA as far in advance as possible, but not less than 45 days before solicitation of offers or initiation of contract negotiations. This requirement will allow sufficient time to evaluate the proposed acquisition and, if necessary, consult with the appropriate MILDEP or DoD component. If justification is not provided to DSCA prior to the submission of a contract, processing of the request for funding approval may be delayed or the DCC may be returned without action.

² The FMS system is always the preferred option even for the purchase of non-standard items. A MILDEP will always have a right of first refusal on all FMF purchases, including the purchase of a non-standard item. Absent a MILDEP objection, DSCA will approve the use of a DCC for a non-standard item.

³ Potential justifications for use of a DCC for a standard item may include, but are not limited to, an inability of the FMS system to meet Purchaser's required delivery date for a combat critical requirement or substantially reduced costs for the item.

Determination of U.S. and Non-U.S. Content

6. Section 42 of the AECA requires the U.S. Government to emphasize procurement in the United States when carrying out provisions under the Act. Accordingly, in order for a DCC to be approved for FMF funding, the defense articles purchased must be (i) manufactured and assembled in the United States, or the defense services purchased must be performed by U.S. manufacturers/suppliers and (ii) purchased from U.S. manufacturers/suppliers. Absent an applicable exception or approved offshore procurement waiver, FMF funding may be used only to pay for the cost of the U.S. content portion of items or services that consist of a mix of U.S. and non-U.S. content. For this reason, prime contractors must accurately account for the cost of U.S. and non-U.S. content of items and services sold pursuant to a DCC. Prime contractors must also maintain and provide, if requested, supporting documentation that establishes the value of both U.S. and non-U.S. content.

A. A prime contractor must account for the value of all U.S. and non-U.S. content costs for the prime contractor's material, labor, and all other expenses to produce or provide the item or service. Prime contractors are not permitted to characterize the cost of their manufactured end item as 100% U.S. content simply because their produced end item qualifies as having a U.S. country of origin in accordance with the Buy American Act (Title 41 U.S.C. § 10). Prime contractors also may not apply the substantial transformation doctrine under the Trade Agreements Act (Title 19 U.S.C. §§ 2511-2518) to report their produced end item as 100% U.S. content. In the context of a FMF-funded DCC, prime contractors must determine the value of all U.S. and non-U.S. content costs in accordance with the methodologies established by the DSCA DCC Guidelines. A methodology authorized by these DSCA DCC Guidelines for determining U.S. and non-U.S. content may be analogous to a methodology employed under the Buy American Act (BAA) or the Trade Agreements Act (TAA). However, the fact that a DSCA DCC Guidelines methodology for determining U.S. content is similar in certain respects to a methodology utilized by the BAA or TAA is not a DSCA attempt to incorporate either the BAA or the TAA as part of the DCC Guidelines. The DSCA DCC Guidelines are the sole source of guidance for how DCC contractors must determine and report their U.S. and non-U.S. content costs.

In accordance with these guidelines, with the exception of Commercial Off-The-Shelf (COTS) Information Technology (IT) hardware, a prime contractor must derive the proportion of non-U.S. content in its provided defense article or service from the actual costs for its material, labor other costs.

Example 1: A Company manufactures and sells a fork lift for \$20,000. In producing the forklift, the Company imports \$2,000 worth of parts and materials from non-U.S. subcontractors. When the Company completes its DCC contractor certification, the Company must report the value of non-U.S. content in its fork lift as \$2,000.

B. Determining U.S. Content for COTS IT Hardware Items: With the exception of Purchaser

host nation content⁴, after obtaining DSCA approval for use of substantial transformation methodology, a prime contractor may report their COTS IT hardware end product as U.S. content if their end product was substantially transformed in the U.S. Before using a substantial transformation methodology to determine U.S. content, the prime contractor must first seek DSCA approval.

- (1) When requesting DSCA permission to allow the use of substantial transformation when determining U.S. content, the prime contractor must provide sufficient information with its request to explain its manufacturing process in the U.S. to establish how the contractor's efforts to transform its imported components are substantial enough to re-characterize the contractor's end item as U.S. content. To qualify as substantial transformation, the manufacture of the end item must occur in the U.S. and the company's efforts in the U.S. must have transformed the imported non-U.S. components into a new and different article with a name, character, or use different from its components. Simple assembly of imported components is not sufficient to qualify as substantial transformation. Factors that may indicate substantial transformation include but are not limited to: (i) whether the finished product has a function or use different from that of the imported items; (ii) the degree of customization accomplished by the company; (iii) the value of the assembly as compared to the total cost of the imported components; (iv) the company's use of precision or complex tools or machinery to complete the assembly; (v) the required skill of the company's workers; and (vi) whether the imported components were physically modified.
- (2) DSCA will only consider requests from a prime contractor to apply substantial transformation when determining the U.S. content in COTS IT hardware items. DSCA will not consider a request to apply substantial transformation when determining the U.S. content in any other type of item. A contractor selling COTS IT hardware may submit a request to apply substantial transformation in connection with a DCC contractor certification for an individual contract or in connection with an annual DCC contractor certification.
- (3) The DSCA DCC Guidelines will also not allow U.S. IT companies to use substantial transformation to re-characterize imported content from the DCC-purchaser's nation (host nation content) as U.S. content. Absent an off-shore procurement waiver, FMF may not be used to pay for any host nation content.

C. First-Tier Subcontractors: With the exception of Purchaser host nation content, the prime contractor must account for an item or material purchased from a first-tier subcontractor as either 100% US content or 100% non-US content.

⁴ Host-nation content is defined as the value of any defense articles manufactured, assembled, or supplied by host nation manufacturers or suppliers or any services performed in the host nation by citizens or residents of the host nation. Host nation content is also discussed in paragraph 8 of the DCC Guidelines. For the purposes of these guidelines, costs attributable to the host nation of the purchaser are never disregarded or reclassified as U.S. content.

- (1) An item purchased from a first-tier subcontractor that has no Purchaser host nation content will constitute 100% U.S. content if the subcontractor's item was (1) manufactured in the United States; and the (2) subcontractor's domestic costs⁵ equals or exceeds 51% of the total item's cost. In order to consider a First Tier Subcontractor's costs as U.S. costs, the Prime Contractor must obtain a signed certification from the first-tier subcontractor attesting to the aforementioned facts (See First-Tier Subcontractor U.S. Content Certification). If an item purchased from a first-tier subcontractor includes host nation content but still meets the aforementioned criteria, the first-tier subcontractor item will be considered by the prime contractor as a mix of host nation and U.S. content. Under such circumstances, the first-tier subcontractor's item constitutes the actual cost percentage of host nation content with the remainder considered as entirely U.S. content.
- (2) If an item has no Purchaser host nation content, an item purchased from a first-tier subcontractor will constitute 100% non-U.S. content if the subcontractor's item was purchased from a non-U.S. company or the U.S. company subcontractor does not provide the Prime Contractor with a signed certification (See First-Tier Subcontractor U.S. Content Certification). If an item purchased from a first-tier subcontractor includes host nation content and does not meet the aforementioned criteria for the provided item, the first-tier subcontractor item will be considered by the prime contractor as a mix of host nation and non-US content. Under such circumstances, the first-tier subcontractor's item constitutes the actual cost percentage of host nation content with the remainder considered as entirely non-US content.
- (3) If a prime contractor is unable to obtain a First-Tier Subcontractor U.S. Content Certification or other written factual assertion concerning content of the First-Tier Subcontractor's product from its First-Tier Subcontractor, the prime contractor must presume that 100% of the cost of the item from the First-Tier Subcontractor constitutes non-U.S. (host nation) content. First Tier Subcontractor content is only presumed to be all host nation content when a prime contractor is unable to obtain any written factual assertion concerning host nation content from its First-Tier Subcontractor. If a First-Tier Subcontractor provides a First-Tier Subcontractor Certification or an alternate written factual assertion that only specifies the amount of host nation content in the First-Tier Subcontractor's product, the content of the First-Tier Subcontractor's product would constitute the actual amount of host nation content specified with the remainder of the content presumed to be other non-US content (not host nation content). If a First-Tier Subcontractor provides a Contractor Content Certification or an alternate written factual assertion that only verifies the lack of any host nation content in the First-Tier Subcontractor's product, the prime contractor must presume that 100% of the cost of the item from the first-tier subcontractor constitutes other non-U.S. content (not host nation content).

⁵ For the purpose of determining the percentage of U.S. content in an item or service sold to a Prime Contractor, a first-tier subcontractor's "domestic costs" consist of the sum of its U.S. labor costs; any allocable overhead or general and administrative expenses; and the cost of any U.S. manufactured components to produce or provide the item to the Prime Contractor. For the purposes of determining U.S content, a subcontractor's profits are not considered part of the subcontractor's domestic costs.

Example 2: Company A, a U.S. company, manufactures and sells a delivery truck for \$30,000. Company A purchases the engine for its delivery truck from Subcontractor X, a first-tier subcontractor, for \$10,000. Subcontractor X, a U.S. company, manufactures its truck engines in the United States. About 70% of Subcontractor X's costs to produce the engine consist of imported parts from various overseas sources. As disclosed in the First-Tier Certification, none of the non-US content is attributable to the host nation. Since assembly of Subcontractor X's engine takes considerable skill and expertise, Subcontractor X's engine is substantially transformed in the U.S. and considered to be of U.S. origin for purposes of the Trade Agreements Act. However, since Subcontractor X's cost of its domestic U.S. costs for the engine is less than 50% of the engine's total cost, Subcontractor X's engine does not qualify as a U.S. Origin item under the DSCA DCC Guidelines. DCC Guidelines regarding substantial transformation apply only to COTS IT hardware. As a result, Company A must consider the entire cost of the \$10,000 engine as non-US content.

Example 3: Company B, a U.S. company, manufactures a video surveillance and motion detector security system for large installations. Company B purchases cameras from Subcontractor X, a U.S. company, for \$50,000. Subcontractor X, a U.S. company, manufactures its cameras in the United States. About 10% of Subcontractor X's costs to produce the cameras consists of imported parts from various overseas sources, including \$1,000 in costs from the host nation. Subcontractor X's camera qualifies as a U.S. Origin item under the DSCA DCC Guidelines. As a result, Company B may attribute \$49,000 of the cost of the cameras as US content. However, Company B must also report \$1,000 of the cost of the cameras as host nation content.

D. Second-Tier Subcontractors: From the perspective of the prime contractor, first-tier subcontractors account for and capture all second-tier subcontractor costs. Therefore, a prime contractor does not need to quantify U.S. and non-U.S. content costs for its second-tier or below subcontractors when determining non-U.S. content under these guidelines.

E. Subsidiaries. If a prime contractor owns a majority share of another company, the other company is a subsidiary. For the purposes of these guidelines, subsidiary costs towards a prime contractor's end item are considered direct costs to the prime contractor. Expenses incurred by non-U.S. (foreign) subsidiaries of U.S. prime contractors are considered to be non-U.S. content and must be declared. If a prime contractor or a subsidiary buys components from a company in which the prime company has a minority ownership interest, the costs of the components are considered as a cost from a first-tier subcontractor.

Example 4: Company A manufactures and sells a delivery truck for \$30,000. Company A purchases the engine for its truck from Subsidiary X, for \$10,000. Subsidiary X, a U.S. company, manufactures truck engines in the United States. About 30% of the cost of Subsidiary X's engine consists of imported parts from various overseas sources. None of the non-U.S. content is attributable to the host nation. Since Subsidiary X's cost of its domestic U.S. costs for the engine is greater than 50% of the engine's total cost, Subsidiary X's engine qualifies as a US Origin item under the DSCA DCC Guidelines. However, Company A cannot report the cost of the engine as 100% U.S. content. Since

the engine was purchased from a subsidiary and not a subcontractor, Company A must track the actual US and non-US costs for the engine. As a result, when Company A completes its DCC contractor's certification, \$3,000 of the engines cost must be reported as non-U.S. content.

F. Accounting for Multiple Sources of Common Raw Materials or Components: If raw materials, components, or items used in a prime contractor's manufacturing process are procured from both U.S. and non-U.S. sources, are not segregated as to origin, and are incorporated on an interchangeable basis into the prime contractor's articles or services, the prime contractor may report the average total cost of non-U.S. parts in its end products from the previous calendar year. Reporting an average cost relieves the prime contractor of tracking the specific source for each and every part in each specific end item sold to the Purchaser.

(1) If the prime contractor relies on an average for non-U.S. content in an individual or annual certification, the prime contractor must also identify what average percentage of non-U.S. costs, if any, constitute host nation costs⁶. If requested, the prime contractor may be required to produce cost records to substantiate the average costs of its non-U.S. content for its end item.

Example 5: A prime contractor who manufactures generators obtains the same subcomponents from both U.S. and non-U.S. companies. Procured supplies and components from its subcontractors are pooled together and then used on an interchangeable basis to manufacture a generator. When a part is taken from its inventory during the manufacturing process, the prime contractor does not know whether a U.S. or non-U.S. subcontractor provided the specific part placed in any specific generator. As a result, the specific cost of non-U.S. component varies for each generator. The prime contractor has cost data for all material procured from all of its subcontractors for the previous calendar year. In determining the amount of non-U.S. content parts in a generator, the prime contractor must use an average cost for each common part obtained from both U.S. and non-U.S. suppliers. For example, the metal case used to house each generator is obtained from both U.S. and non-U.S. sources. The prime contractor does not have any host nation sources of material. Last calendar year, the prime contractor obtained 14,000 metal cases from multiple U.S. subcontractors that qualify as U.S. origin for a total cost of \$174,580 (\$12.47 average unit cost). Last year, the prime contractor obtained 27,000 metal cases from various non-US subcontractors or subcontractors of unknown origin for a total cost of \$195,750 (\$7.25 average unit cost). Using this data, the prime contractor calculates the average non-U.S. cost of each metal case to be \$4.77 (total cost of the metal cases from non-US subcontractors and subcontractors of unknown origin divided by total number of metal cases from all subcontractors). In order to determine the average total cost of non-U.S. parts in each generator, the prime contractor will replicate this same methodology for each common component from U.S. and non-U.S. subcontractors and then submit a proposed DCC contractor's certification or annual contractor certification, if applicable. If approved, the contractor will rely on the approved DCC contractor's certification for any new DCCs for one-year period. After a year has lapsed, if the prime contractor wishes to continue to rely upon an annual certification, the prime contractor will need to recalculate the average cost of its non-U.S.

⁶ Host nation content is addressed in paragraph 8 of the DCC Guidelines.

content using its updated cost data and request a new annual DCC contractor's certification.

G. License Fee and/or Royalties⁷: For the purposes of these guidelines, with the exception of Purchaser host nation content⁸, determining whether the cost of a license or royalty constitutes U.S. or non-U.S. content is dependent solely on whether a U.S. or non-U.S. company receives the payment. Any license fee and/or royalty paid by the prime contractor to a non-U.S. entity (defined as any manufacturer or supplier not incorporated or licensed to do business in the United States), must be identified as non-U.S. content. With the exception of host nation content, any license fee and/or royalty paid by the prime contractor to a U.S. manufacturer or supplier incorporated or licensed to do business in the United States constitutes U.S. content. Any license fee and/or royalty paid that constitutes non-US content not attributable to the Purchaser's nation (host nation), may be approved for funding if it falls within one of the Paragraph 7 exceptions.

Example 6: A purchaser uses a DCC to procure 300 licenses of a commercial off-the-shelf accounting software from the prime contractor. The prime contractor is incorporated in the United States. The prime contractor also owns and operates a number of foreign subsidiaries. The U.S. Company primarily developed its software with foreign labor from its foreign subsidiaries. The prime contractor does not have a subsidiary in the Purchaser's host nation. The procured licenses constitute 100% U.S. content because the prime contractor is incorporated in the United States.

Example 7: Same facts as Example 6, except the prime contractor has a foreign subsidiary in the Purchaser's host nation. Computer programmers of the prime contractor's subsidiary have and continue to contribute to the development of the prime contractor's accounting software. Given the collaborative efforts of computer programming, the prime contractor has no way to definitively determine the exact portion of cost of the accounting software that can be attributed to host nation programmers. Since the cost of producing the accounting software includes host nation content, the procured software licenses cannot be reported as constituting 100% U.S. content and the prime contractor must make a good faith effort to estimate its host nation costs. As a result, the prime contractor uses its known labor costs for its host nation computer programmers to estimate its host nation costs. Since the annual salaries of its host nation programmers equals 6% of all salaries paid to all of the company's worldwide global computer programmers, the prime contractor reports the content of its software licenses as 94% U.S. content and 6% host nation content.

H. Temporary Overseas Labor Costs/Travel Expenses: Reasonable expenses for support of U.S. contractor personnel (defined as U.S. citizen employees or U.S. resident alien employees of U.S. prime contractors) performing services temporarily in the host nation (purchaser country) are

⁷ A license fee or royalty is a payment made by one company (the licensee) to another company (the licensor) in exchange for the right to use intellectual property or physical assets owned by the licensor. Internal company payments are not construed as a license fee or royalty.

⁸ Host nation content is discussed in paragraph 8 of the DCC Guidelines. For the purposes of these guidelines, costs attributable to the host nation of the purchaser are never disregarded or reclassified as US content.

considered U.S. content and may be funded with FMF. Expenses for travel, food, and temporary lodging will be considered reasonable if the expense for contractor personnel is equal to or less than what a U.S. federal government employee would be entitled to under the Joint Federal Travel Regulations (<http://www.defensetravel.dod.mil/site/travelreg.cfm>).

I. Profits: The profits of a U.S. prime contractor constitute U.S. content.

J. General and Administrative (G&A) expenses: General and Administrative (G&A) expenses of a U.S. prime contractor constitute U.S. content.

K. Overseas Warranty Costs: The costs of a prime contractor's warranty work, such as maintenance arrangements, performed in the Purchaser's host nation or outside of the U.S., and by non-U.S. personnel (defined as neither U.S. citizens nor resident aliens in the U.S.) must be declared as non-U.S. content and will not be approved for FMF funding.

L. Qualifying Used Components as U.S. Content: If a prime contractor obtains a used component from a non-U.S. company and the used component was originally manufactured and assembled in the United States, the cost of the component is considered U.S. content if: (1) under the present DSCA DCC Guidelines, FMF could have been used to pay for the entire cost of the item made by the original U.S. manufacturer of the component; and (2) the nature of the component has not been substantially changed or modified from its original configuration.

Example 8: Company B sells overhauled aircraft engines to a purchaser. Company B purchases the used aircraft engines on a secondary market from both U.S. and non-U.S. suppliers. Company B then overhauls the used engine with new parts purchased from U.S. companies for the purchaser. All of the used engines would have been originally manufactured by the same U.S. company many years earlier. Further, at the time the used engines were originally produced, the original manufacturer would have qualified as U.S. content under these Guidelines for the produced engines. While all of the used engines have undergone routine maintenance by a variety of US and non-US companies, none of the engines have been substantially modified from its original configuration. As a result, when Company B completes its DCC contractor's certification, the cost of used engines is considered US content regardless of whether the used engine was purchased from a US or non-US company.

M. Spare Parts versus System Components. How items are listed or sub-divided within a purchase order is not determinative of whether such items constitute an integral part of a procured system or spare parts. Whether a procured item is a spare part or a system component is based upon the nature of the item in the context of the entire purchase. If an item is a spare part, the non-U.S. content for the spare part will be considered separate and apart from other items purchased from the prime contractor. If an item is an integral part of a procured system, the non-U.S. content of the item will be considered in conjunction with all of the other integral items that comprise the procured system.

Example 9: The purchaser buys 100 monitors and 50 desktop computer processing units (CPUs) from Company F, a U.S. company. The monitors are manufactured by an overseas manufacturer and constitute 100% non-U.S. content. However, the cost of all non-U.S. content

in the combined cost of all the monitors and CPUs constitutes 40% of the total cost to the purchaser.⁹ In order to determine whether the proposed use of FMF for the proposed purchases is appropriate, DSCA will have to determine whether the monitors constitute “spare parts” or an integral part of a system. If the monitors are deemed to be spare parts, absent an off-shore procurement waiver, FMF funds cannot be used to purchase the monitors. However, if the monitors are deemed an integral part of a complete computer system, FMF funds can be used to purchase both the monitors and CPUs as long as the computer system constitutes a commercial off-the-shelf item. In this hypothetical, the monitors would be considered as part of system because a desktop computer can be configured and used with dual monitors.

Example 10: The purchaser buys 1,000 monitors and 50 desktop computer processing units (CPUs) from Company G, a US company. The monitors are manufactured by an overseas manufacturer and constitute 100% non-US content. Absent substantiation for a purchaser requirement for a computer configured with 20 separate monitors, the monitors would be deemed spare parts and absent an off-shore procurement waiver could not be funded with FMF.

(1) Simultaneous purchase of a COTS item and its associated spare parts:, even if items on a Purchase Order are deemed to be “spare parts” instead of a “part of a system”, FMF may still be used to pay for non-U.S. content spare parts as long as: (i), the item for which the spare parts are purchased is a COTS item; (ii) the COTS item and associated spare parts are all purchased simultaneously on the same Purchase Order; and (iii) the total cost of the U.S. content for the COTS item and its associated spare parts is 51% or more of the total cost of the COTS item and the associated spare parts.

N. Requests for DSCA Clarification concerning U.S. content and Non-U.S. Content

Determinations pursuant to DCC Guidelines: A prime contractor for a DCC may submit a written request to DSCA to clarify how the prime contractor must report or calculate the value of U.S. content and non-U.S. content in their end item. Based upon the facts provided by the prime contractor, DSCA will either request additional information or advise the prime contractor in writing how they should calculate their non-US content of their end item in accordance with these DSCA DCC Guidelines. Any request for a DSCA DCC Guidelines clarification must be in writing and clearly describe the contractor’s facts and circumstances and include the prime contractor’s proposed methodology for determining the value of U.S, content and non-US content in its end item. While a prime contractor may request DSCA to clarify the application of the DSCA Guidelines to its specific circumstances, absent a request from the Purchasing country, DSCA will not consider contractor requests to waive any DSCA DCC Guideline requirements.

⁹ In this example, the Prime Contractor has elected not to seek DSCA’s permission to apply the substantial transformation methodology for determining the amount of U.S. content for its US-manufactured CPUs. A Prime Contractor is not required to use the substantial transformation methodology discussed in the DCC Guidelines. As demonstrated in this example, a Prime Contractor can elect to disclose the dollar amount of U.S. and non-U.S. content for manufactured COTS IT hardware.

Use of FMF to Purchase Non-U.S. Content

7. Off-Shore Procurement Waivers: In rare cases, pursuant to Section 42(c) of the Arms Export Control Act, a purchaser may request DSCA process an off-shore procurement waiver to use FMF for the purchase of non-U.S. content. An off-shore procurement waiver is only permissible when there has been an Executive Branch determination that such procurement will not result in adverse effects upon the U.S. economy or the industrial mobilization base.

For an item or service that consists of a mix of U.S. and non-U.S. content, an off-shore procurement waiver is unnecessary if either of the following two exceptions are applicable.

A. Same End Item is purchased by the USG from Same Source: FMF may be approved to pay for non-U.S. content purchased from a U.S. company if the following conditions are met:

- The USG procures the same end item from the same contractor;
- Non-U.S. content is an integral part of the end item;
- The end item was manufactured and assembled in the U.S.; and
- The end item is composed of at least 51% US content.

To be considered for this exception, DSCA requires, as a minimum, identification of the non-U.S. content item, its value, and the corresponding USG contract number. This exception is not available simply because the USG previously bought the same end item. Rather, in order to qualify an end item as an equivalent to a same item being procured by the USG for use by the USG, the USG must have procured the same item within the last five years and a continuing need for future USG procurements must be foreseeable.

Example 11: Company D, a U.S. company, sells an air-delivered munition to the Purchaser. Company D imports the explosive fill to manufacture the munition from a non-U.S. source. The cost of the explosive fill represents approximately 20% of the cost of the munition. Company D last sold the same munition to the USG six years ago. The USG no longer buys munitions with the non-U.S. source explosive fill because the USG opted to use an alternate explosive fill that is more expensive but more stable for naval transport. As a result, absent an off-shore procurement waiver, DSCA cannot approve the use of FMF to pay for the non-U.S. content of the munitions (20% of the cost of the munitions). The purchaser can still proceed with the proposed acquisition with Company D but the purchaser would be required to pay for the cost of the non-U.S. content with national funds.

B. Commercially available Off-The-Shelf (COTS) Items: FMF may be approved to pay for non-U.S. content purchased from a U.S. company if the following criteria apply

- The end item qualifies as a commercially available off-the-shelf (COTS) item;
- Non-U.S. content is an integral part of the end item;
- The end item was manufactured and assembled in the U.S.; and
- The end item is composed of at least 51% US content.

A COTS item is 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 section 104). COTS does not include bulk cargo such as agricultural products and petroleum products.

In order to establish the applicability of a COTS exception DSCA requires, as a minimum, a detailed description of the COTS items and a written statement from the contractor attesting that their end item(s) qualify as a COTS item. The contractor's statement must establish that its end item(s) are 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. DSCA may also require additional information to ensure that an item is COTS.

Example 12: Company D, a U.S. company purchases a used COTS aircraft engine from a foreign company to overhaul the engine in the U.S. The engine was originally manufactured in the United States and consisted of 100% U.S. content when it was first produced. All of the new parts used to overhaul the used engine will be imported and constitute non-U.S. content. The non-U.S. content is not attributable to the Purchaser's nation. The cost of the new foreign parts represents only 20% of the total cost of the overhauled engine. Although the used engine was purchased from a foreign company on a secondary market, as long as the engine is in substantially the same configuration as when it was originally manufactured, the used engine constitutes U.S. content because it was originally manufactured and assembled in the United States. FMF can be used to pay for the non-U.S. content (the new foreign made parts), because the overhauled aircraft engine is a COTS item that is manufactured and assembled in the U.S. and the total cost for the overhauled engine will include at least 51% US content.

Example 13: Company E, a U.S. company, obtains a newly manufactured engine from a subcontractor that was manufactured by a subcontractor outside of the U.S. Company E wishes to sell the same engine to a Purchaser. Company E's profit and G&A expenses would account for 51% of the Purchaser's total cost. The foreign produced engine is 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. Even though the proposed COTS engine contains 51% U.S. content, the use of FMF for this proposed DCC would be inappropriate because the prime contractor is not adding any value to the manufactured end item (See Guidelines discussion of Contractor Eligibility, specifically paragraph 2).

Requirement to Report Host Nation Content

8. In addition, to determining all non-U.S. content, a prime contractor must always separately determine and report all non-U.S. content attributable to the purchaser's nation. Host-nation content is defined as the value of any defense articles manufactured, assembled, or supplied by host nation manufacturers or suppliers or any services performed in the host nation by citizens or residents of the host nation. Host nation content will not be approved for FMF funding even if the non-U.S. content meets the criteria for an exception under paragraph 7(A) or paragraph 7(B) of these guidelines. The prime contractor must report any host nation costs in its end item,

including any host nation costs in end item components paid by any subsidiary, first-tier subcontractor, or second-tier subcontractor.

Contract Dollar Threshold for DCCs

9. Direct Commercial Contracts for less than \$100,000 will not be approved for FMF without specific approval from DSCA.¹⁰

Contract Amendments and Modifications

10. All amendments and modifications to DCCs funded with FMF, including no-cost amendments that do not change contract scope, must be submitted to DSCA for review and approval. Changes/amendments should be submitted in chronological order and numbered accordingly.

A. Any changes that add, delete, or substitute previously contracted articles or services must be accomplished through an amendment to the DCC.

B. Changes to DCCs requiring additional FMF will not be approved for FMF funding after five years from the date DSCA approved financing of the basic DCC. Requests for exception may be approved if the Purchaser provides sufficient justification to DSCA. Normally, the Purchaser will be required to enter into a new DCC if the Purchaser desires to continue purchasing the defense articles or services.

Competition Requirements

11. After DSCA DCC approval is obtained, a Purchaser must contact several U.S. companies or firms for solicitation of offers to meet its specific needs. If only one contractor was invited to submit an offer, the Purchaser must explain why the contract could not be competed. Sole source procurements shall be accompanied by sufficient justification; such as, but not limited to, urgent need, sole manufacturer of an item, standardization with Purchaser inventory, or Purchasers' own source selection process.

12. For all DCCs awarded on a competitive basis, the Purchaser must identify, in writing, the various contractors solicited and the prices submitted. If the lowest offeror was not selected, the Purchaser must provide a written explanation that adequately justifies the basis for the contract award. A purchaser's desire to minimize the expenditure of national funds is not an appropriate justification to not award a contract to the lowest offer.

A. Purchaser Waiver Request to Bypass the Lowest Offer in a Price Competition: If the difference in price between the lowest offer and desired offer is less than a 15% increase, a Purchaser may seek DSCA's permission, to not award a contract to the lowest offer in order to minimize the expenditure of national funds. However, the Purchaser must seek such a waiver

¹⁰Direct Commercial Contracts for the Government of Israel less than \$40,000 will not be approved for FMF.

prior to rendering any contract award and provide a justification why it is the interest of the United States to grant the requested exception.

Example 14: The purchaser solicits bids for 10,000 pairs of military boots and receives the following responses:

Company A: \$370,000
Company B: no reply
Company C: \$360,000
Company D: \$610,000

From previous business, the purchaser knows the boots from Company C contains 5% host nation content but the boots from Company A constitute 100% U.S. content. Absent explicit DSCA approval, the purchaser cannot award the contract to Company A in order to avoid the expenditure of host nation funds. The purchaser could reject Company C's bid if the Company C's provided a partial bid for less than the full contract requirements or the purchaser had a reasonable basis to doubt Company C's ability to perform the required work.

Contract Processing

13. Prime contractors and Purchaser representatives should plan for the time DSCA requires to evaluate the extent of FMF funding authorization. DSCA processing time for DCCs that are in full compliance with these guidelines is approximately 14 calendar days.¹¹ The Purchaser is responsible for providing copies of the DSCA Guidelines and the Contractor's Certification template to the prime contractor. If the DCC is submitted without a completed contractor certification signed by the prime contractor, the DCC will be returned to the Purchaser for inclusion of such data. When the prospective purchase is from a prime contractor that does not regularly sell to the U.S. Government, the Purchaser should set a commencement date for the DCC that allows at least an additional 30 days for the U.S. Government to conduct a preaward survey, if necessary.

Contract Financing

14. The DCCs must clearly identify the amount of any financing payments and be in accordance with the following limitations:

A. The Purchaser is responsible for demonstrating the reasonableness and security of contract financing arrangements.

B. Advance payments for FMF-funded DCCs made before performance of work under the DCC shall not exceed 15 percent (15%) of the contract price. The Purchaser shall obtain adequate security for such payments in accordance with paragraph F below.

¹¹ A prime contractor's submission of a written request for DSCA to clarify the applications of the DCC guidelines to their specific circumstances could significantly increase the DSCA processing time for the applicable DCC.

C. Financing arrangements for DCCs may provide for payments to be made on the basis of accomplishment of specific milestones detailed in the DCC, or other basis such as installments. Installments shall be payable no more frequently than quarterly.

D. Cumulative DCC financing shall not exceed 85 percent (85%) of the DCC price of undelivered items. See paragraph F below for security requirements.

E. Full payment for a DCC shall not be made until after complete performance of the DCC.

F. All unliquidated advance and interim financing payments made by the U.S. Government shall be secured by guarantee documents, such as Irrevocable Letters of Guarantee (ILOG), Irrevocable Letters of Credit (ILOC), or Irrevocable Performance Bonds (IPB). See paragraph 23). The security shall be at least equal to the amount of the unliquidated contract financing. Direct Commercial Contracts lacking adequate provisions to ensure prompt payment directly to the U.S. Government will not be accepted.

G. Purchasers may not assess charges to U.S. prime contractors for processing DCCs or invoices for payment. FMF will be withdrawn if such charges are determined to have been assessed or if the Purchaser representatives have solicited U.S. prime contractors to provide free materiel, services, advertising, or other similar forms of benefits as a condition of award of a DCC or processing of invoices.

H. After validation of invoices, the Purchaser should submit them within 30 calendar days of receipt from the prime contractor to the Defense Finance and Accounting Service (DFAS) Indianapolis for payment.

Essential Elements of Contract

15. The Purchaser must submit complete copies of all DCCs and contract provisions to DSCA for FMF funding review. The Purchaser must also submit all subsequent modifications, amendments, side letters, or supplementary agreements that affect the contractual relationship between the Purchaser and the prime contractor.

A. Contracts should include, as a minimum, all essential contract elements outlined below:

- (1) Purchaser Country.
- (2) Complete identification of U.S. Prime Contractor to include name, address, and telephone number.
- (3) Contract number.
- (4) Complete nomenclature of defense articles and description of services to be provided.
- (5) Complete description of quantities and prices.
- (6) Complete description of financial arrangements:
 - Unit prices
 - Advance payment
 - Payment schedule (to include method of liquidating advance payment based on deliveries)

- (7) Contract clauses for contract audit.
- (8) Identification of shipment terms.
- (9) Guarantee Documents (See paragraph 23). Identification of any guarantee documents or clauses that could result in a refund to the Purchaser, such as, but not limited to:
 - Advance payment guarantee documents
 - Interim payment guarantee documents
 - Liquidated damages
- (10) Acceptance (signature) by both parties.

B. In addition to the DCC, the following supporting documentation must be provided to DSCA for FMF funding approval:

- (1) Identification of all non-U.S. origin content.
- (2) Identification of all host nation content.
- (3) Identification of offsets.
- (4) Prime Contractor's Certification and Agreement with DSCA with original signatures.
- (5) List of offerors and prices submitted on competitive procurements.
- (6) Proposed justification for selection of other than the lowest offeror on competitive contracts.
- (7) For any procurement of a standard item (e.g. an NSN item), a copy of Purchaser request for exception to use a DCC.

C. Undefined Basic Ordering Agreements (BOAs) will not be approved for FMF funding.

Contractor Disclosures & Certifications and Export Documentation

16. DSCA requires prime contractors to make disclosures and execute the Contractor's Certification and Agreement with DSCA in the proposal and the contracting process. Full and accurate disclosures and certifications are prerequisites for DSCA approval of FMF funding. If the procured item or service requires an export license, DSCA may request a Prime Contractor or Purchaser to provide DSCA with copies of the export license documentation before FMF payments can be made.

A. The Contractor's Certification and Agreement must be signed by the prime contractor and be submitted by the Purchaser to DSCA when the DCC is provided for funding review. The date of the current Certification is March 2017. The Certification submitted to DSCA must have original signatures of two company officials other than those who signed the DCC.

(1) A prime contractor may request an exception if it is not possible for the prime contractor to provide two different company officials than the officials who signed the DCC. DSCA will only excuse the requirement for signatures from two different company officials on the contractor's certification if it is impossible for the company to provide any other official with the legal authority to contractually obligate the company. Inconvenience or the temporary absence of a company official is not a valid reason to waive the requirement for different officers to execute the required contractor certification.

B. Prime contractors who execute many DCCs for identical defense articles, services, or categories of such articles or services with the same Purchaser may request DSCA approve an annual Contractor's Certification and Agreement. To do so, prime contractors must demonstrate that their particular business operations promote the use of an annual Certification and that they have a sound estimating methodology to provide the information required by the Certification.

C. First Tier Subcontractor Certifications obtained by a Prime Contractor need not be submitted to either the Purchaser or DSCA to facilitate DSCA's funding review. The Prime Contractor must maintain completed First Tier Subcontractor Certifications and provide such records upon request by DSCA or DCAA/DCMA auditors. Prime Contractors must maintain First Tier Subcontractor Certifications for the period of time that the applicable DCC is subject to a potential U.S. government audit.

D. These Guidelines do not impose a requirement on a Prime Contractor to obtain First Tier Certifications from their First Tier Subcontractors. If a Prime Contractor chooses not to seek a First Tier Certification or a Prime Contractor is unable to obtain any written factual assertion from a First Tier Subcontractor concerning host nation content in the First-Tier Subcontractor's product, the Prime Contractor must assume that the entire cost of the First Tier Contractor's goods or services constitutes host nation content (See paragraph 6(C)(3) of these Guidelines).

E. As discussed in paragraph 6 of the Prime Contractor Certification, the Prime Contractor is obligated to flow down the USG's right to examine their subcontractors records associated with the DCC, unless the subcontractor qualifies for an exemption. Whether a subcontractor qualifies for such an exemption is determined solely by the criteria explained in paragraph 6 of the Prime Contractor Certification. A First Tier Subcontractor's election to complete or not complete a First Tier Subcontractor Certification has no bearing on whether the First Tier Subcontractor is subject to this flow down requirement.

F. For a First Tier Subcontractor who is subject to a flow down requirement addressed in paragraph 6 of the Prime Contractor's Certification, the Prime Contractor's obligation to flow down DCC Guideline requirements to a First Tier Subcontractor may be satisfied by (1) the terms of the written contract between the Prime Contractor and the First Tier Subcontractor, and/or (2) by obtaining a First Tier Subcontractor Certification from the First Tier Subcontractor.

G. Upon request, a prime contractor or the Purchaser must provide copies of any or all export licenses related to the DCC (or alternatively, written documentation that confirms that an export license is not required) to "DFAS Indianapolis" and "DSCA/SA&E/DCC".

Offset Provisions

17. The amount of offset costs included in DCCs must be disclosed to the USG. Offsets are compensation practices required as a condition of purchase. Direct offsets are contractual arrangements that involve articles and services being financed under the DCC. An indirect offset is any other offset arrangement.

A. Grant FMF (non repayable FMF funds) will not be used to pay for any offsets, to include direct and indirect offsets, or the related costs of offset implementation. However, offset costs in a DCC may be financed with either repayable FMF credit¹² (a USG loan to the Purchaser) or a Purchaser's national funds.

Commissions or Contingent Fees

18. Commissions or contingent fees related to the DCC must be disclosed by the prime contractor during DCC negotiations and to DSCA at the time the DCC is presented for funding approval. The prime contractor shall maintain documents and records to demonstrate that commissions or contingent fees are not funded by the USG.

19. Commissions or contingent fees for the purpose of securing the DCC will not be included in the price of an FMF funded DCC, unless such payments have been identified and approved in writing by the Purchaser prior to contract award for payment in full with repayable FMF credit or Purchaser's national funds.

A. The contractor's DCC certification agreement requires a contractor to disclose whether any commissions or contingent fees related to a DCC will be paid for with funds earned by the USG funded DCC. For the purposes of these Guidelines, a Contractor may certify that a commission or contingency fee is not included in the price of the DCC if:

- (1) No commissions or contingency fees are paid by the contractor;
- (2) The commission or contingent fee constitutes a performance incentive paid by a contractor to its own bona fide U.S. employee for the employee's achievement of a predefined aggregate volume of sales over a period of time, such as a quarter or year; or
- (3) The price of every item or service sold under the DCC was sold at or below a catalog or published price.

Travel Expenses

20. Purchaser's Personnel. FMF will not be approved for payments for travel, per diem, accommodations, lodging, car rental, personal expenses, entertainment, or other similar expenses incurred by or for Purchaser country personnel that relate directly or indirectly in any way with a DCC.

21. Contractor Personnel. The reasonable cost of business meals for prime contractor or subcontractor personnel is an allowable cost that may be incurred by the prime contractor (See paragraph 6(H) of these guidelines for discussion of what constitutes a reasonable expense).

¹² With the exception of FMF loan authorization for Iraq in the FY2016 Foreign Operations Appropriations Act, no FMF repayable funds were provided to any country (Iraq is not one of the countries eligible to participate in DCCs). In the past, Egypt and Israel received some amount of repayable FMF funds. Specific legislation is required in order for a country to be provided with repayable FMF.

Contracts with Transportation Requirements

22. The use of FMF will only be approved for the financing of transportation performed by privately-owned U.S.-flag commercial vessels. Any waivers (general, security, or non-availability) will be in accordance with the Purchaser's agreement with DSCA. The waivers are described in the agreements and may apply to either specific shipments or for a specific period of financing. Prime contractors will include these requirements in all subcontracts for DCCs.

A. For ocean transportation of FMF shipments, the prime contractor and the Purchaser will use, or cause to be used, privately-owned U.S.-flag commercial vessels. For prime contractor-originated ocean shipments, the prime contractor will, within 20 days of loading, submit one legible copy of the rated on-board ocean bill of lading for each shipment to: U.S. Maritime Administration, Office of Cargo Preference and Domestic Trade, Civilian Agencies Division, Mail Stop W23-453, 1200 New Jersey Avenue SE, Washington DC 20590. The bill of lading will identify: contract (DCC) number; name of vessel; flag of registry; date and port of loading; port of final discharge; description, weight, and value of cargo; and total ocean freight revenue.

B. No payments will be made to freight forwarders with FMF unless, prior to July 1, 1994, DSCA had authorized the Purchaser to use FMF-funded DCCs to procure freight forwarding services. Rated, on-board bills of lading or rated airway bills may be approved for direct payments to U.S. ocean or air carriers upon request.

Letters of Credit/Guarantee

23. FMF will not be approved for financing of commercial letters of credit or other guarantees which ensure payment to the prime contractor or subcontractor. FMF funding may be approved if the DCC requires irrevocable letters of credit, performance bonds, or other forms of performance guarantees from the prime contractor. They must be issued by a bank or financial institution licensed in and doing business in the United States. In addition, irrevocable letters of credit, performance bonds, or other forms of performance guarantees must be identified as a separate line item or clause within the DCC that states: "All irrevocable letters of credit, performance bonds, or other guarantees required by the Purchaser must provide for payment directly to the U.S. Government". (See paragraph 24).

A. Only federally-insured financial institutions licensed in and doing business in the United States, rated investment grade or higher shall issue or confirm an irrevocable letter of credit (ILC). Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year and otherwise meets all of the requirements for issuing an ILC.

B. The requirement to use a financial institution with an investment grade or higher rating is satisfied at the time the DCC is signed. The DSCA Guidelines do not require the issuance of a new ILC if, subsequent to the formation of the DCC, the financial institution's rating falls below investment grade. However, the DCC to which the Purchaser and prime contractor agreed can address explicitly whether a new ILC is required under such circumstances.

C. DFAS-IN will not disperse payments to prime contractors until it receives copies of all irrevocable letters of credit, bonding or guarantee documents applicable to the DCC. Copies must also be sent to DSCA/SA&E/DCC.

Refunds, Penalties, Liquidated Damages, Performance Bonds, Remittances

24. Any DCC that provides for a refund, penalty, liquidated damages, bonding provisions, or any other form of financial reimbursement to the Purchaser must be structured to ensure that such payment is made by the prime contractor or designated agent (including the prime contractor's commercial bank) directly and without undue delay, from the payor to the U.S. Government.

A. Should the Purchaser determine a draw on an irrevocable letter of credit is required, it must first notify DSCA/SA/DCC in writing stating the exact reasons necessitating the draw down and the amount at least 15 calendar days prior to the draw down. This notification will include rationale for the draw down and acknowledgement that the prime contractor has been notified of the rationale for the draw down and provided an opportunity to remedy the deficiency. DSCA will provide written acknowledgment to Purchaser confirming receipt of Purchaser's letter of intent to draw down on the ILC. Purchaser will not draw upon any ILC until it has received DSCA acknowledgement in writing. At that time, DSCA will notify DFAS of Purchaser's intended action. It is the Purchaser's responsibility to ensure funds are transferred directly from the payer to the U.S. Government.

B. Bonding and guarantee documents, such as Performance Bonds, Irrevocable Letters of Guarantee, Irrevocable Letters of Credit, and any other such instruments that are established by the prime contractor or its agent pursuant to the DCC, must be sent to the DFAS Indianapolis and DSCA/SA/DCC and made part of the DCC file. This is a prerequisite to disbursement of FMF funds to the prime contractor. Bonding and guarantee documents lacking adequate provisions to ensure prompt payment to the U.S. Government will not be accepted, and payments for the DCC will not be made until this requirement is satisfied.

C. Reimbursement payments must be remitted to the addresses noted below. These payments, when received by the DFAS Indianapolis, will be credited to the Purchaser's FMS trust fund account. Any reimbursement equal to or less than the FMF funds paid by the DSCA on the DCC may be applied to any FMS or commercial case approved for FMF. If a reimbursement exceeds the amount of FMF funds paid by the DSCA, the excess amount of may be applied as "cash" to any FMS case.

D. Remittances should be processed as follows:

(1) Payments by check must be accompanied by a letter, which identifies the Purchaser and the DSCA case identifier. The check must be made payable to the "United States Treasury" and mailed to:

Defense Finance and Accounting Service-Indianapolis Center

DFAS-IN/JAXBA (Credit Sales)
8899 E. 56th Street
Indianapolis, IN 46249-6300

(2) Payments by wire transfer should be transferred as follows:

United States Treasury
New York, New York
021-030-004
DFAS-IN/JAXBA
Agency Code 3801
Refund from: **(Name of Prime Contractor)**
For purchase made by the: Government of **(Purchaser Country)**
DSCA case (Identifier)_____

Preaward Surveys

25. To verify the prime contractors' statements and determine its capability to perform under the DCC terms, a DoD preaward survey or verification of the prime contractor's Certification such as ISO 9000, may be required as a condition of FMF approval. Preaward surveys are not normally required for U.S. manufacturers or suppliers that are selling or have recently sold the same defense articles or services to DoD. Whether DSCA requires it or a Purchaser requests a preaward survey, the Purchaser will pay for this service under an FMS Letter of Offer and Acceptance (LOA) negotiated with Defense Contract Management Agency (DCMA).

Pricing Reviews

26. A pricing review is required prior to DCC award for all sole-source procurements that exceed \$2,500,000. DCMA, with assistance as required from the Defense Contract Audit Agency (DCAA), will provide field-pricing support, at the Purchaser's expense, as a condition for FMF funding of the DCC. The Purchaser must provide a copy of the offer to DCMA for its use in providing this support.

A. DCMA, with DCAA assistance as required, will perform price reviews, and cost analyses and technical evaluations to determine price reasonableness of offers. The Purchaser should allow at least 90 calendar days for the U.S. Government representative to perform these functions and provide the subject reports to the Purchaser.

B. The Purchaser must include a copy of the pricing review as part of its justification submitted to DSCA in support of its request to use FMF to fund a DCC.

C. The Purchaser will be required to pay for this service under an FMS Letter of Offer and Acceptance (LOA) negotiated with DCMA.

D. Whenever any DCC amendment will increase the total amount approved FMF for a sole-source procurement to an amount in excess of \$2,500,000, the Purchaser will consult with DSCA to determine if a price review or cost analysis will be required. A pricing review may also be required by DSCA, if a purchaser executes multiple sole-source DCCs for substantially the same item from the same prime contractor, and the total of all such DCCs exceeds \$2,500,000.

E. The Purchaser is required to incorporate contract clauses consistent with the requirements detailed in Enclosure 2 into its requests for proposal on FMF-funded DCCs.

F. For sole source purchases in excess of \$2,500,000 of commercially available off-the-shelf (COTS) items that are sold pursuant to published catalog prices, DSCA will consider, on a case-by-case basis, the Purchaser's request for waiver of the DCMA field pricing analysis. All such requests must be accompanied by supporting documentation that demonstrates the reasonableness of the proposed price.

27. DSCA will not approve a Defined Basic Ordering Agreement (DBOA) purchase order totaling in excess of \$2,500,000 without a pricing review being conducted by DCMA. DCMA, with assistance as required from the Defense Contract Audit Agency (DCAA), will provide field-pricing support, at the Purchaser's expense, as a condition of FMF funding of the DBOA. The Purchaser must provide a copy of the offer to DCMA for its use in providing this support.

Contract Administration/Audit Services

28. On all DCCs valued at \$1,000,000 or more (sole source, DBOAs, or competitive awards) the Purchaser is required to contract with DCMA for contract audit services (CAS) using a DCMA FMS case. At a minimum, DCMA will arrange with DCAA to monitor the prime contractor's performance to ensure compliance with the DSCA Contractor's Certification throughout the life of the DCC. The Purchaser is required to incorporate the following contract clause into its FMF-funded DCCs of \$1,000,000 or more:

As a condition of FMF funding of the DCC, the prime contractor agrees that Defense Contract Audit Agency (DCAA) contract audit services will be performed to ensure that the prime contractor is in compliance with the Defense Security Cooperation Agency (DSCA) Contractor's Certification and Agreement. DCAA will perform contract audit services in accordance with the prime contractor's certification. To ensure prime contractor compliance DCAA contract audit services will be provided over the life of the DCC and will be coordinated with the Defense Contract Management Agency.

29. The Defense Contract Management Agency (DCMA) can perform quality assurance services if required by the DCC, if requested by the Purchaser, or if directed by DSCA.

A. The cost of DCMA quality assurance services may be provided in the DCC and paid to DFAS Indianapolis by the prime contractor on behalf of the Purchaser. However, the Purchaser is required to arrange for these services through an FMS agreement with the DCMA.

B. For some DCCs, DSCA may require DCMA quality assurance verification before delivery to ensure that the quality of the defense articles or services is in accordance with DCC contract terms. If DSCA determines such quality assurance verification is required as a condition for FMF funding, DSCA will notify the Purchaser. The Purchaser is obligated to notify the prime contractor. Generally, DoD quality assurance services are arranged by the Defense Contract Management Agency, International and Federal Business Division:

Defense Contract Management Agency
ATTN: DCMA-FBR
DOD Central Control Point (DoDCCP)
3901 A. Avenue Bldg 10500
Fort Lee, VA 23801-1890
Office: 804-734-1328/1324/2604
Fax: 804-734-1346

U.S. Government Audits

30. Not every DCC will be audited but all FMF-funded DCCs are subject to audit by the Defense Contract Audit Agency (DCAA). DCAA will perform audits, at the U.S. Government's expense, to ensure the prime contractor's compliance with these Guidelines and the requirements in the prime contractor's Certification. DCAA may initiate audits at any time up to three years following receipt of the final payment on the DCC by the prime contractor. The Purchaser is required to incorporate contract clauses consistent with the requirements detailed in Enclosure 3 into its requests for proposal on FMF-funded DCCs.

Accounting Principles

31. Prime contractors and any Sub-Contractors subject to audit per these Guidelines must comply with generally accepted accounting principles and must comply with the applicable cost accounting standards. Costs incurred associated with DCCs shall be accumulated separately from costs from other contracts, and cost documentation must be readily retrievable and sufficiently identifiable to enable cross-referencing with invoices and with amounts disclosed in the Contractor's Certification. Costs which may be unallowable under the DSCA guidelines, shall be segregated and accounted for by the contractor separately. FMF may be disallowed for DCCs, which result in additional costs being transferred to the DoD. The DCAA has expressed concerns about the formation (by U.S. prime contractors) of separate corporate segments to conduct foreign sales. In some cases, when significant intracompany contracting is involved, the resulting allocations of costs are inconsistent with cost accounting standards and result unjustifiably in the allocation of additional costs to DoD contracts. If DoD prime contractors establish separate companies or other corporate segments for the purpose of conducting foreign sales and request FMF for sales by such segments, DSCA will request DCAA review of the transaction. FMF will be approved only upon confirmation by the DCAA that the arrangement is consistent with cost accounting standards and that there would be no unjustifiable additional cost on DoD contracts with the prime contractor.

Parties Excluded from FMF Funding

32. A company or individual who is serving a period of suspension or debarment with the federal government or the Department of Defense is ineligible to perform work on a DCC.

A. FMF funding will not be approved for DCCs with U.S. manufacturers, suppliers, or persons included on the U.S. General Services Administration List of Parties Excluded From Federal Procurement or Nonprocurement Programs; the U.S. Commerce List of Denial Orders Currently Affecting Export Privileges; or similar determinations in which the U.S. Department of State has made certain contractors ineligible to export material under the International Traffic in Arms Regulations (ITAR).

B. Lists of ineligible contractors can be obtained from the following web sites:

General Service Administration List: <https://sam.gov>

Commerce List: <http://www.bis.doc.gov/complianceand enforcement/liststocheck.htm>

State Department list: <http://www.pmddtc.state.gov/licensing/debar.html>.

C. A U.S. prime contractor cannot allow an ineligible individual or company to work on an FMF-funded DCC. If a prime contractor desires to pursue the appropriate administrative or legal steps to remove the relevant organization or individual from the debarment/suspension list, the prime contractor should directly pursue such action with the agency that issued the applicable debarment or suspension. Proof of removal of an individual or organization from such debarment or suspension lists must be provided to DSCA/SA&E/DCC.

D. If a company, through its participation in the DCC program, demonstrates an inability or unwillingness to comply with DSCA DCC Guidelines, the company may be excluded from participating in future DCCs until such time that the company is able to remedy any prior noncompliance and provide reasonable assurance of the company's future compliance with all DCC Guideline requirements.

Insurance Requirements

33. Use of a U.S. insurance firm is required if FMF funding is used to pay this cost.

Contract Dispute /Arbitration

34. If the DCC includes a dispute resolution or arbitration clause mutually agreed to between the Purchaser and the contractor, the dispute resolution/arbitration must take place in either the United States or a third country, but not in the Purchaser's country. The arbitration clause shall provide that the arbitrator(s) shall determine the matters in dispute in accordance with the commercial law of the United States or of any state of the United States, as agreed by the parties and set forth in the DCC, notwithstanding that the rules of private international law (choice-of-law rules) might otherwise lead to the application of some other law.

DSCA Points of Contact

35. DCCs and supporting documentation should be submitted by the Purchaser to the following address:

Defense Security Cooperation Agency
ATTN: Manager, Direct Commercial Contracts
201 12th Street South, Suite 303
Arlington, VA 22202-5408

36. Inquiries concerning these policies and procedures or the DCC review process should be directed to the above address or by phone to (703) 697-9514 or (703) 697-9024.

37. A copy of these Guidelines and/or the Contractor's Certification and Agreement with DSCA, dated March 2017 may be downloaded from the following internet address:

<http://www.dsca.mil>.

Enclosures: As stated

ENCLOSURE 1

REQUESTS FOR EXCEPTIONS

Requests for exceptions for standard DoD items and/or justification for major-unique items to be funded with U.S. FMF funds must, at a minimum, include the following:

A. Purchaser Country:

B. Identification of Requirements:

- (1) U.S. Defense Items or Services (item description and NSN).
- (2) Quantity.
- (3) Estimated Purchase Agreement Value in U.S. Dollars.
- (4) Projected date of submission of contract to DSCA for funding approval.
- (5) Required delivery date.

C. Basis for requesting exception to allow FMF funding of a Direct Commercial Contract, including, but not limited to the following:

- (1) Statement as to why a DCC should be used instead of FMS.
- (2) Anticipated source of goods or services.
- (3) Documentation from MILDEP or DoD component supporting FMF-DCC request.

ENCLOSURE 2

PRICING REVIEWS

1. As a condition of FMF funding of sole source contracts of \$2,500,000 or more, or in other circumstances where such a pricing review is required by DSCA, the prime contractor must agree to the requirement for field pricing review. The Defense Contract Management Agency (DCMA) and the Defense Contract Audit Agency (DCAA) will conduct this review. It may include a technical and cost analysis of the contractor's proposal.

2. The Purchaser shall request field-pricing support through the DCMA DoD Central Control Point by emailing their request to mailbox, dodccp@dcma.mil. Field pricing support may include a review by the cognizant contract audit activity before concluding negotiation of the DCC or any modification. The prime contractor may be required to submit cost or pricing data in connection with pricing of the DCC or any modification to the DCC that affects the price of the DCC.

3. The U.S. Government field support is intended to give the Purchaser a detailed analysis of the proposal for use in contract negotiations to determine a fair and reasonable price prior to contract award. It normally would be a Defense Contract Audit Agency audit or procedure, appropriate to evaluate the contractor's proposal. It may also include a technical analysis by Defense Contract Management Agency, if required by the cognizant auditor. The field support may include any or all of the following:

A. Price Audit of the individual cost elements:

- (1) Evaluation that that proposed costs are current, accurate, and complete, based on an adequate contractor proposal;
- (2) Comparison of costs proposed by the offeror to actual historical costs previously incurred by the same offeror;
- (3) Evaluation of forecasts or planned expenditures;
- (4) Verification of cost or pricing data and evaluation of the cost elements;
- (5) Analysis of the results of any make-or-buy program reviews in evaluating proposed subcontracts;
- (6) Independent evaluation of technical aspects of the contractor's estimates by appropriate Government technical specialists.

B. Price Analysis:

- (1) Establishment that the contractor's proposed supplies or services are eligible for commercial pricing status. Commercial items include any item of a type customarily used by the general public, or by nongovernmental entities, for purposes other than Government purposes that has been sold, leased, or licensed to the general public;
- (2) Comparison of the proposed prices to previously awarded Government and commercial contract prices for the same or similar items, if both the validity of the comparison and the reasonableness of the previous prices is established;

- (3) Use of parametric estimating methods or other Cost Estimating Relationships (CERs);
- (4) Comparison of the proposed prices to competitive published price lists, supplier's catalog, published market prices of commodities, similar indexes, and discount or rebate arrangements;
- (5) Comparison of the proposed prices with prices obtained through market research;
- (6) Analyzing any other pricing information provided by the offeror.

C. Technical Analysis to review and assess:

- (1) The quantities and kinds of material proposed;
- (2) The need for the number and kinds of labor hours and the labor mix;
- (3) Any special tooling and facilities proposed;
- (4) The reasonableness of proposed scrap and spoilage factors; and
- (5) Any other data that may be pertinent to the cost or price analysis.

4. Verification that the offeror's cost/price submissions are in accordance with U.S. Federal Acquisition Regulations (FAR), Defense Federal Acquisition Regulations Supplement (DFARS), other contract cost principles and procedures, generally accepted accounting principles, and the requirements and procedures of the Cost Accounting Standards (CAS), as applicable.

A. A review to determine that all cost or pricing data necessary to make the contractor's proposal accurate, complete, and current has been either submitted or identified in writing by the contractor.

5. Non-competitively awarded subcontracts meeting the \$2,500,000 or more threshold are subject to the same field pricing requirements as the prime contract.

ENCLOSURE 3

U.S. GOVERNMENT AUDITS

USG representatives shall have the right to examine and audit all the prime contractor's books, records, documents, and other data, related to proposing, negotiating, pricing, or performing the DCC, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used. The prime contractor shall make available at its office, at all reasonable times, the materials described above for examination, audit, or reproduction, until three (3) years after final payment under the DCC. General access to the prime contractor's books and financial records shall be limited to USG representatives. The USG representatives shall verbally notify the Purchaser immediately of data provided that is so deficient as to preclude review, or where the prime contractor has denied access to records or to cost or pricing data considered essential to the performance of a satisfactory review. This verbal notification shall be promptly confirmed in writing to the Purchaser describing the deficiency or the denial of access to data or records. A prime contractor's failure to provide adequate cost and pricing data may disqualify the DCC from consideration for FMF approval.