


## SUPPLIER'S CONTRACT

For the "Procurement of CNC Gear Shaping Machine with Toolings and Accessories under the project Establishment of a Gear Making and Assembly Facility"

KNOW ALL MEN BY THESE PRESENTS:


This CONTRACT made and executed by and between:


 **METALS INDUSTRY RESEARCH AND DEVELOPMENT CENTER**, an attached agency under the DEPARTMENT OF SCIENCE AND TECHNOLOGY, with office address at Gen. Santos Avenue, Bicutan, Taguig, represented herein by its Assistant Secretary, DOST and Officer-in-Charge, **MIRDC, ROBERT O. DIZON**, hereinafter referred to as "**MIRDC**";


--- and ---

**MESCO, INC.**, a corporation duly existing and organized under and by virtue of the Republic of the Philippines, with office address at Mesco Bldg., Reliance Corner Brixton Street, Pasig City, represented herein by its Vice President, **MR. EDGAR L. LEE**, hereinafter referred to as **MESCO**;

WITNESSETH:

 **WHEREAS, MIRDC** is undertaking the procurement for the "**CNC Gear Shaping Machine with Toolings and Accessories**" under the project **Establishment of a Gear Making and Assembly Facility**, hereinafter referred to as the **PROJECT**;

 **WHEREAS, MIRDC** conducted a public bidding on March 14, 2016 in accordance with the Government Procurement Reform Act (R.A. 9184) and, after evaluating all the Bid proposals submitted, determined that herein **MESCO** was the **Single Calculated Responsive Bidder**;

 **WHEREAS**, a Notice of Award was issued to the **MESCO** who has accepted to supply and deliver the items for the **PROJECT** under set terms and conditions and warrants itself to be competent and fully equipped with the necessary materials, manpower and equipment necessary for undertaking the **PROJECT**;

**NOW, THEREFORE**, for and in consideration of the foregoing premises the **PARTIES** have agreed as follows:

## ARTICLE I

### SCOPE OF CONTRACT

1.1 The Goods and Related Services to be provided shall be as specified in the Schedule of Requirements/Terms of Reference.

1.2 This Contract shall include all such items, although not specifically mentioned, that can be reasonably inferred as being required for its completion as if such items were expressly mentioned herein.

## ARTICLE II

### CONTRACT DOCUMENTS

2.1 The following documents are incorporated hereto and made an integral part of this Agreement, to wit:

- (a) Bid Documents, including the General and Special Conditions of Contract, if any;
- (b) Technical Specifications/ Terms of Reference;
- (c) Invitation to Apply for Eligibility and to Bid;
- (d) Instructions to Bidders;
- (e) Bid Data Sheet;
- (f) Addenda and/or Supplemental/Bid Bulletins, if any;
- (g) Bid form, including all the documents/statements contained in the Bidder's bidding envelopes, as annexes;
- (h) Eligibility requirements, documents and/or statements;
- (i) Performance Security;
- (j) Credit line issued by a licensed bank, if any;
- (k) Notice of Award of Contract and the Bidder's *conforme* thereto;
- (l) Other contract documents that may be required by existing laws and/or by MIRDC.

2.2 In case of doubt or conflict between and among any items or provisions of the Contract Documents, and/or between and among any of the Contract Documents and this Agreement, MESCO shall refer the same in writing to MIRDC for clarification and guidance. The clarification or determination made by MIRDC in writing shall be binding and conclusive upon the Parties.

2.3 MESCO shall not make any changes or alteration in the drawings, designs, or specifications in the **PROJECT** without prior written approval by **MIRDC**.

2.4 The parties may, in writing, agree to any revision, alteration, or addition to the terms and conditions of this Agreement or the Contract Documents.

### ARTICLE III

#### CONTRACT PRICE

3.1 For and in consideration of the performance and accomplishment of the **PROJECT**, **MIRDC** shall pay **MESCO, INC.** the total amount of **Thirty Two Million Three Hundred Thousand Pesos and 00/100 (Php32,300,000.00)** subject to pertinent laws on government contracts and auditing procedures.

3.2 The Contract Price is inclusive of all taxes, stamp duties, license fees, and other such levies imposed for the completion of this Contract.

3.3 The Contract Price shall be fixed and not subject to variation or price escalation on any account except under conditions specified by law. Any adjustments in Contract Price shall be done in accordance with the guidelines provided by law.

3.4 Any amount payable to **MESCO** may be compensated against liquidated damages payable to **MIRDC** under this Agreement.

### ARTICLE IV

#### PAYMENTS and WARRANTY

4.1 **MIRDC** shall, upon a written request of **MESCO** which shall be submitted as a contract document, make an advance payment to **MESCO** in an amount not exceeding fifteen percent (15%) of the total contract price, to be made in lump sum or, at the most, two installments according to a schedule specified in the Instruction to Bidders and other relevant Tender Documents.

4.2 The advance payment shall be made only upon the submission to and acceptance by **MIRDC** of an irrevocable letter of credit or from a bank guarantee issued by a universal or commercial Bank. The irrevocable letter of credit or bank guarantee shall remain valid until the goods are delivered.

4.3 The advance payment shall be repaid by **MESCO** by deducting fifteen percent (15%) from his periodic progress payments or in an amount equal to the percentage of the total contract price used for the advance payment until the amount of advance payment is fully liquidated.

4.4 MIRDC shall pay MESCO progress payments based on billings or invoice describing, as appropriate, the actual works accomplished as verified and certified by the Executive Director of MIRDC or his representative.

4.5 All progress payments shall be subject to a retention fee of ten percent (10%). Such retention shall be based on the total amount due to MESCO prior to any deduction and shall be retained from every progress payment until fifty percent (50%) of the value of work, as determined by MIRDC, are completed. If, after fifty percent (50%) completion, the work is satisfactorily done and on schedule, no additional retention shall be made; otherwise, the ten percent (10%) retention shall again be imposed using the rate specified therefore.

4.6 The total "retention money" shall be due for release after the lapse of the warranty period (minimum of 3 months for expendable goods or until consumption; minimum of 1 year for non-expendable goods); provided, however, that the Goods delivered are free from patent and latent defects and all the conditions imposed under this Contract have been fully met.

4.7 MESCO warrants that the materials used for the PROJECT are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials, except when the technical specifications required by MIRDC provides otherwise.

4.8 MESCO further warrants that the Goods shall have no defect, arising from materials or workmanship or from any act or omission of that may develop under normal use of the supplied Goods in the conditions currently prevailing.

#### ARTICLE V

##### TIME OF COMPLETION AND LIQUIDATED DAMAGES FOR DELAY

5.1 MESCO shall perform and complete the PROJECT to the satisfaction of MIRDC within TWO HUNDRED FORTY (240) CALENDAR DAYS reckoned from the date of receipt of the Notice to Proceed.

5.2 Time being of the essence of the PROJECT, delay in the completion of the PROJECT may be excusable only if the same is due to *force majeure*, additional work approved by MIRDC, or for any other special circumstances as may be determined by MIRDC.

5.3 *Force majeure* shall be interpreted to mean an event that the Contractor could not have foreseen, or which though foreseen, was inevitable. It shall not include ordinary unfavorable weather conditions except for typhoons; and any other cause the effects of which could have been avoided with the exercise of reasonable diligence by MESCO.

5.4 If a *force majeure* situation arises, MESCO shall promptly notify MIRDC in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable

after receipt of MESCO's notice, MIRDC shall evaluate the situation and may extend MESCO's time for performance, in which case the extension shall be ratified by the Parties by amending this Contract.

5.5 If MESCO fails to satisfactorily deliver any or all of the Goods and/or to perform the Services within the period(s) specified under Section 5.1 of this Contract inclusive of duly granted time extensions, if any, MIRDC shall, without prejudice to its other remedies under this Contract and under the applicable law, deduct from the Contract Price, as liquidated damages, the applicable rate of **one tenth (1/10) of one (1) percent** of the cost of the delayed goods scheduled for delivery for every day of delay until such goods are finally delivered and accepted by MIRDC.

5.6 This Contract is automatically rescinded once the total sum of liquidated damages exceed ten percent (10%) of the total contract price, without prejudice to imposition of appropriate sanctions over and above the liquidated damages.

## ARTICLE VI

### PERFORMANCE SECURITY

6.1 The Performance Security shall be posted in favor of MIRDC in the form and amount prescribed under the Contract Documents or applicable laws, rules and regulations. It shall remain valid until the issuance of the Certificate of Final Acceptance and may be released after the issuance of the Certificate of Final Acceptance subject to conditions mandated by law.

6.2 The Performance Security shall be forfeited in the event it is established that MESCO is in default in any of its obligations under this Agreement.

6.3 In case of a reduction of the contract value, MIRDC shall allow a proportional reduction in the original performance security, provided that any such reduction is more than ten percent (10%) and that the aggregate of such reductions is not more than fifty percent (50%) of the original performance security.

## ARTICLE VII

### INSPECTION AND TESTS

7.1 MIRDC or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract specifications at no extra cost to MIRDC.

7.2 MIRDC may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. MESCO shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary to meet the specifications at no cost to MIRDC, and shall repeat the test and/or inspection, at no cost to MIRDC.

7.3 **MESCO** agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by **MIRDC** or its representative, shall release **MESCO** from any warranties or other obligations under this Contract.

## ARTICLE VIII

### ASSIGNMENTS AND SUB-CONTRACTING

8.1 **MESCO** cannot assign, transfer, pledge, sub-contract, or otherwise dispose of this Agreement or any part or interest herein without the prior written approval of **MIRDC**. Any such approval shall not relieve **MESCO** from any liability or obligation under the law or this Agreement, nor shall it create any contractual relation between the sub-contractor, pledgee, transferee, or assignee, and **MIRDC**.

8.2 **MESCO** will be responsible for the acts, defaults, and negligence of any sub-contractor, its agents, servants or workmen as fully as if these were **MESCO**'s own acts, defaults, or negligence, or those of its agents, servants or workmen.

8.3 In case of sub-contracting, **MESCO** shall submit, before Final Acceptance, a sworn statement executed by the sub-contractor attesting to the fact that the latter has been fully paid by **MESCO** for the materials furnished and the labor performed under the sub-contract.

## ARTICLE IX

### OBLIGATIONS/RESPONSIBILITIES OF **MESCO, INC.**

9.1 **MESCO** shall comply with all laws, rules and regulations promulgated by the government of the Republic of the Philippines, including those on labor, environment, safety and sanitation and other pertinent laws. **MESCO** shall be solely liable for any violation of the same.

9.2 **MESCO, INC.** shall, with all reasonable speed, repair or replace the defective Goods or parts thereof, without cost to **MIRDC**. If **MESCO**, having been notified, fails to remedy the defect(s) within a reasonable period, **MIRDC** may proceed to take such remedial action as may be necessary, at **MESCO**'s risk and expense and without prejudice to any other rights which **MIRDC** may have against **MESCO** under this Contract and applicable law.

## ARTICLE X

### SETTLEMENT OF DISPUTES

10.1. Any dispute or difference arising between the Parties hereto in connection with or arising out of this Contract shall be resolve amicably through mutual consultation. Unresolved issues remaining after thirty (30) days shall be settled in accordance with Republic Act 9285 ("R.A. 9285"), otherwise known as the "Alternative Dispute Resolution Act of 2004."

10.2 Notwithstanding any reference to arbitration herein, the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and MIRDC shall pay MESCO any monies due them.

#### ARTICLE XI

##### LIABILITY OF MESCO, INC.

11.1 Subject to additional provisions, if any, set forth in the Contract Documents, MESCO's liability under this Agreement shall be provided by the laws of the Republic of the Philippines.

#### ARTICLE XII

##### CONFIDENTIAL INFORMATION

12.1. MESCO shall not, except for purposes of performing the obligations in this Contract, without MIRDC's prior written consent, disclose this Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of MIRDC. Any such disclosure shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.

#### ARTICLE XIII

##### CONTRACT EFFECTIVITY

13.1 Contract effectivity date shall be provided in the Notice to Proceed.

#### ARTICLE XIV

##### COUNTERTRADE PROVISIONS

14.1 The winning supplier shall be required to perform Countertrade equivalent to at least fifty percent (50%) of the foreign exchange value of the imported equipment to be supplied under the Supply Agreement to be signed between supplier and end user / procuring agency. The terms and conditions relative hereto shall be agreed upon between the supplier (or its nominated Trading Company) and Philippine International Trading Corporation (PITC), the Philippine Government's countertrade agency, under a separate Contract/Agreement which must be signed no later than ninety (90) days from the date of the signing of the said Supply Contract.

14.2 As a condition for participation in the tender, all bidders / proponents must sign a Countertrade Undertaking per the formal attached hereto as Annex A and submit the accomplished form with their respective bids/offers.

ARTICLE XV

TERMINATION OF CONTRACT

14.1 MIRDC shall terminate this Contract on grounds stated under Republic Act No. 9184, otherwise known as the General Procurement Law, and its implementing rules and regulations:

IN WITNESS whereof the parties thereto have caused this Agreement to be executed this 26 MAY 2016 at Baguio City.

METALS INDUSTRY RESEARCH AND  
DEVELOPMENT CENTER

MESCO, INC.

By:

By:

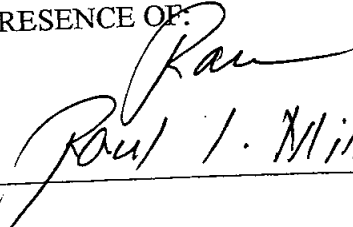
  
Engr. ROBERT O. DIZON  
Executive Director

  
MR. EDGAR L. LEE  
Vice President

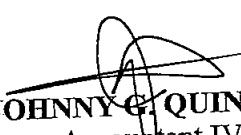
SIGNED IN THE PRESENCE OF:

  
Dr. DOMINIC S. GUEVARRA

Project Leader

  
Paul I. Millera

CERTIFIED FUNDS AVAILABLE:

  
JOHNNY G. QUINGCO  
Accountant IV



# ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)  
CITY OF PASIG CITY ) S.S.

Before me, a Notary Public for and in the PASIG CITY this  
26 MAY 2016 2016, personally appeared:

NAME

ID. NO.

DATE/PLACE ISSUED

Engr. ROBERT O. DIZON

2016002

DOST, Bicutan, Taguig City  
January 08, 2016

Mr. EDGAR L. LEE

all known to me to be the same persons who executed the foregoing instrument and they acknowledged to me that the same is their free act and deed as well as of the principal they represent.

This instrument refers to **Supplier's** Contract consisting of nine (9) pages, including this page in which the Acknowledgment is written, signed by the parties and their witnesses on each and every page and sealed with my notarial seal.

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

Doc No. 146  
Page No. 29  
Page No. 61  
Series of 2016.

ATTY. CESAR D. AMORANTO  
Notary Public

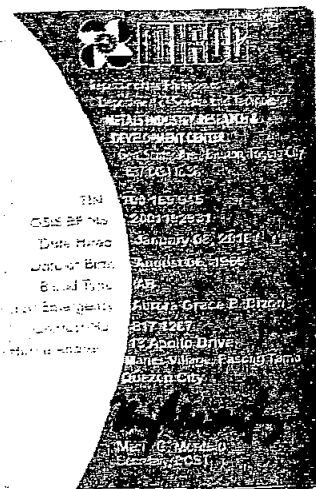
Pasig, Taguig, San Juan, Pateros, MM.  
Until December 31, 2016

686 B. Shaw Blvd. Kapitolyo, Pasig City  
PTR NO. 1216092 Jan. 7, 2016

IBP NO. 1022965 Jan. 7, 2016 Roll NO. 6637/  
MCLE EXEMPT - MAR. 8, 2010  
Appointment NO. 7 (2015-2016).



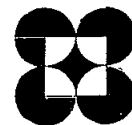
**2** **THIRD** ID No. 2015002



TSN 210 165 9315  
 20011512331  
 Date Recd January 06, 2001  
 Date of Birth Sample Date 1995  
 Breed Type AR  
 Line Quality  
 1267  
 12 Apollo Drive  
 Marie Village, Pasching Ta  
 Queen City



Metals Industry Research & Development Center



Department of Science & Technology

## NOTICE OF AWARD

May 02, 2016

**MR. EDGAR L. LEE**

Vice President  
MESCO, Inc.  
Mesco Building  
Reliance Corner Brixton Street  
Pasig City

Dear Mr. Lee:

You are advised that the Purchase Order for the procurement for the **"CNC Gear Shaping Machine with Tooling and Accessories"** of the Metals Industry Research and Development Center has been awarded to your firm in the amount of **Thirty Two Million Three Hundred Thousand Pesos and 00/100 (Php32,300,000.00)** only, subject to the approval of the concerned authorities.

You are therefore requested to accept the award in writing within ten (10) calendar days from receipt hereof and post a performance security according to the following schedule:

- a. Cash, Manager's check or Cashier's check – 5% of the total contract price;
- b. Bank Guarantee/ Draft/ Irrevocable Letter of Credit – 5% of the total contract price;
- c. Surety Bond, callable on demand, valid for one year, issued by the Office of the Insurance Commissioner, or any combination thereof – 30% of the total contract price.

Thank you.

Very truly yours,

  
**ROBERT A. DIZON**  
Executive Director



*Molding the Future of Metal Industries*

MIRDC Compound, Gen. Santos Avenue, Bicutan, Taguig City, 1631 Metro Manila  
P.O. Box 2449 MCPO 1299 Makati City, Philippines • Tel. Nos.: 837-0431 to 38, 837-2071 to 82 loc. 2401  
Fax. Nos.: 837-0430 and 837-0613 • E-mail Address: [mirdc@mirdc.dost.gov.ph](mailto:mirdc@mirdc.dost.gov.ph) • Website: <http://www.mirdc.dost.gov.ph>



Metals Industry Research & Development Center



Department of Science & Technology

## NOTICE TO PROCEED

May 13, 2016

**MR. EDGAR L. LEE**  
Vice President  
MESCO, Inc.  
Mesco Building  
Reliance Corner Brixton Street  
Pasig City

Dear Mr. Lee:

The attached Contract Agreement having been approved, notice is hereby given to **MESCO, INC.**, that work may proceed on the project for the **"Procurement of CNC Gear Shaping Machine with Tooling and Accessories"**, effective after Three (3) calendar days from receipt of this Notice to Proceed. Upon receipt of this notice, you are responsible for performing the services under the terms and conditions of the Agreement and in accordance with the Implementation Schedule.

Please acknowledge receipt and acceptance of this notice by signing both copies in the space provided below. Keep one copy and return the other to Metals Industry Research and Development Center.

Very truly yours,

  
**ROBERT O. DIZON**  
Executive Director

I acknowledge receipt of this Notice on MAY 27, 2016 (date of receipt)

Name of Bidder's Representative: Raul I. Millea

Authorized Signature: Raul

*The Head of the Procuring Entity or his duly authorized representative shall issue the Notice to Proceed within seven (7) calendar days from the date of the approval of the contract.*

**BAC RESOLUTION DECLARING NOTICE OF AWARD AND RECOMMENDING  
FOR APPROVAL**

**RESOLUTION NO. 2016- 68**

**Project: "Procurement of CNC Gear Shaping Machine with Tooling and Accessories"**

**Approved Budget Contract (ABC): Php33,000,000.00**

**Pre-Bid Conference: March 02, 2016 ; 09:00 a.m.**

**Opening of Bids : March 14, 2016 ; 09:00 a.m.**

Whereas, the Metals Industry Research and Development Center (MIRDC) advertised the Invitation to Bid for the above project in one newspaper of nationwide general circulation on February 27, 2016 and posted on February 24, 2016 in the Philippine Government Electronic Procurement System (PhilGEPS), Metals Industry Research and Development Center (MIRDC) websites and conspicuous places at the premises of the DOST Bicutan, Taguig City continuously for 19 days;

Whereas, in response to the said advertisement, two bidders, namely: Mesco, Inc. and Gecar Machine Solutions, Inc., signified their intention to join the bidding and purchased the bidding documents;

Whereas, a pre-bid conference was conducted on March 02, 2016 and attended by the aforementioned bidders and the BAC/TWG members;

Whereas, bids were submitted on March 14, 2016 and the bid proposals of the following bidders were found to be substantially complying:

Name of Bidders	Total Bid Price (As Read)	ABC
Mesco, Inc.	Php32,300,000.00	Php33,000,000.00
Gecar Machine Solutions, Inc.	Php32,790,000.00	Php33,000,000.00

Whereas, detailed evaluation of bids on April 14, 2016 resulted in the following:

Name of Bidders	Total Bid Price	% Variance from ABC	Remarks
Mesco, Inc.	Php15,200,000.00	2.12%	<u>Complying</u>
Gecar Machine Solutions, Inc.	Php15,750,000.00	0.63%	<u>Complying</u>

Whereas, MESCO, INC., offered the lowest calculated bid. Upon careful examination, validation and verification of all the eligibility, technical and financial requirements submitted by the bidder in consideration of but not limited to Equipment, Resources, Personnel, and Track Records, the submitted bid has been found to be responsive.

Item	Name of Bidder	Total Bid Price	% Variance from ABC
<b>CNC Gear Shaping Machine with Toolings and Accessories</b>	<b>Mesco, Inc.</b>	<b>Php32,300,000.00</b>	<b>2.12% lower than ABC</b>

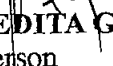
**NOW, THEREFORE,** We, the Members of the Bids and Awards Committee, hereby RESOLVE as it is hereby RESOLVED:


- a.) To declare MESCO, INC.'s bid proposal as the Lowest Calculated and Responsive Bid; and
- b.) To recommend to award the contract for the "Procurement of CNC Gear Shaping Machine with Toolings and Accessories to Mesco, Inc.

**RESOLVED FURTHER,** that the MIRDC BAC assumes no responsibility whatsoever to compensate or indemnify bidders for any expense/s incurred in the preparation of their bids.

RESOLVED, at Taguig City this \_\_\_\_\_ 2016.

  
**Ms. AUREA T. MOTAS**  
BAC Chairman


  
**Ms. MERCEDITA G. ABUTAL**  
Vice Chairperson

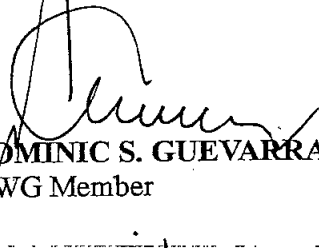
  
**GINA A. CATALAN**  
BAC Member


  
**Atty. TRIxie HAZEL C. VELUZ**  
BAC Member

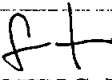
**ISIDRO D. MILLO**  
BAC Member

  
**FRED P. LIZA**  
TWG Member

  
**GHARRY M. BATHAN**  
TWG Member

  
**DOMINIC S. GUEVARRA**  
TWG Member

  
**JOSE B. FERRER**  
TWG Member

  
**ALLAN JOHN S. LIMSON**  
TWG Member

Approved (✓) / Disapproved ( )

  
**ROBERT O. DIZON**  
Executive Director

Approved on \_\_\_\_\_