

SUPPLIER'S CONTRACT

For the "Procurement of CNC Gear Shaving 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 Shaving 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 **Fifteen Million Two Hundred Thousand Pesos and 00/100 (Php15,200,000.00)** 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 PASIG CITY.


METALS INDUSTRY RESEARCH AND
DEVELOPMENT CENTER

MESCO, INC.


By:

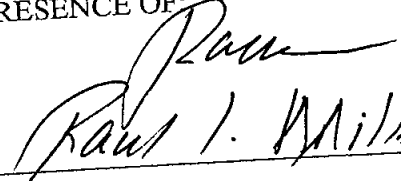
By:


Engr. ROBERTO O. DIZON
Executive Director



Mr. EDGAR L. LEE
Vice President

SIGNED IN THE PRESENCE OF:


DR. DOMINIC S. GUEVARRA
Project Leader


Paul I. Millen

CERTIFIED FUNDS AVAILABLE:


JOHNNY C. 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

LD. 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. 141
Page No. 30
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

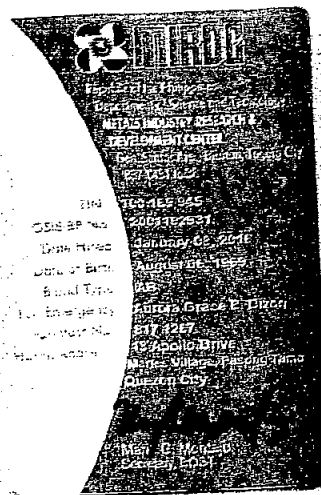
MCLE EXEMPT - MAR. 8, 2010

Appointment NO. 7 (2015-2016)



[Handwritten signature]

ROBERT O. DIZON



[Handwritten signature]



MESCO Bldg., Reliance cor Brixton Sts. Peapack City
1803 Tel. # 831-1775 to 84



Edgar L. Lee
VICE PRES., OPERATIONS

Blood Type

In case of emergency, notify:
(Name / Tel. No.)

MERCEDES LEE
810-7945

This card is MESCO, Inc. property, thus must be
surrendered upon termination of employment.

This card is issued for IDENTIFICATION purposes,
thus must be worn at all times while inside
company premises.

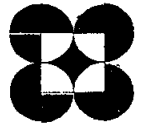
Czarina B. Aguilar
HRD Manager

Leni R. Samson
Vice President of Finance and Administration

Valid Until:
December 31, 2017



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 Shaving Machine with Tooling and Accessories"** of the Metals Industry Research and Development Center has been awarded to your firm in the amount of **Fifteen Million Two Hundred Thousand Pesos and 00/100 (Php15,200,000.00)** 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 O. DIZON
Executive Director

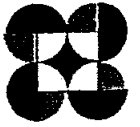


Molding the Future of Metal Industries

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 • 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 Shaving 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: Paul I. Millena

Authorized Signature: Paul I. Millena

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- 09

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

Approved Budget Contract (ABC): Php17,000,000.00

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.	Php15,200,000.00	Php17,000,000.00
Gecar Machine Solutions, Inc.	Php15,750,000.00	Php17,000,000.00

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	10.59%	<u>Complying</u>
Gecar Machine Solutions, Inc.	Php15,750,000.00	7.35%	<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
CNC Gear Shaving Machine with Toolings and Accessories	Mesco, Inc.	Php15,200,000.00	10.59% lower than ABC

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

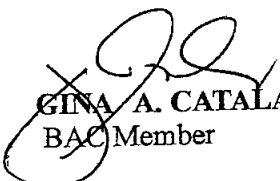
b.) To recommend to award the contract for the "Procurement of CNC Gear Shaving Machine with Toolings and Accessories to Mesco, Inc.

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

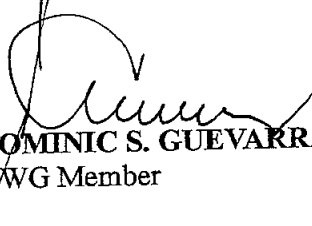

GINA A. CATALAN
BAC Member

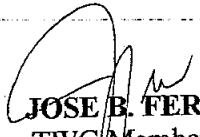

Atty. TRIXIE HAZEL C. VELUZ
BAC Member


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 _____