

CUSTOMER CONTRACT REQUIREMENTS
India Apache
CUSTOMER CONTRACT 10001/GS/WE-10(AVN)/APACHE HEPTR

CUSTOMER CONTRACT REQUIREMENTS

The following customer contract requirements apply to this Contract to the extent indicated below. If this Contract is for the procurement of commercial items under a Government prime contract, as defined in FAR Part 2.101, Section 3 replaces the requirements of Sections 1 and 2 below. Please note, the requirements below are developed in accordance with Buyer's prime contract and are not modified by Buyer for each individual Seller or statement of work. Seller will remain at all times responsible for providing to any government agency, Buyer, or Buyer's customer, evidence of compliance with the requirements herein or that such requirements are not applicable to the extent satisfactory to the requesting party.

1. Prime Contract Special Provisions The following prime contract special provisions apply to this purchase order

10001/GS/WE-10(AVN)/APACHE HEPTR Special Provisions .

Obsolescence / Last Time Buy Notification

Seller shall give at least two (2.0) years notice to the Buyer prior to closing the production line so as to enable a lifetime-buy of all spares prior to closing the said production line

Quality

SELLER confirms that the stores (Goods) to be supplied under this Contract shall be new, i.e.not manufactured before 2020.

Equipment:

Sellers providing equipment requiring calibration should also supply the recommended calibration intervals. Sellers providing ground support or ground handling equipment should note the oil and lubricant requirements for ongoing maintenance when providing this equipment.

Shelf Life and Residual Life Requirements

Sellers providing products or materials with shelf lives will ensure all products or materials delivered have at least 95% residual life at the time of delivery.

India Integrity Pact Clause

1. Compliance with Laws:

Seller shall (i) comply with all applicable country laws relating to anti-corruption or antibribery, including, but not limited to, legislation implementing the Organization for Economic Co-operation and Development "Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" (the "OECD Convention"), the India Prevention of Corruption Act or other anticorruption/anti-bribery convention; (ii) comply with the requirements of the Foreign Corrupt Practices Act, as amended, (FCPA) (15 U.S.C. §§78dd-1, *et. seq.*), regardless of whether Seller is within the jurisdiction of the United States; and (iii) neither directly nor indirectly, pay, offer, give, or promise to pay or give, any portion of monies or anything of value received from Buyer to a public official or any person in violation of the FCPA and/or in violation of any applicable country laws relating to anti-corruption or antibribery.

2. India Integrity Pact:

Seller confirms that it has read the Pre-Contract India Integrity Pact, which was executed by Buyer and the Government of India (GOI) substantially in the form provided in the CCR and is familiar with Buyer's obligations therein and Seller agrees that it shall comply with the Integrity Pact therein or the modified version signed by Buyer and the GOI, a copy of which is or has been provided to Seller.

3. Independent Contractor:

Seller is an independent contractor fully and solely responsible for its own actions and is not, and shall not hold itself out as, an employee, agent, partner or joint venture party of or with, or attorney in fact for Buyer. Directors, officers, agents, representatives, consultants, subcontractors, employees and affiliates of Seller (collectively, "Seller's Affiliates") shall not be considered, directors, officers, agents, representatives, consultants, subcontractors, employees or affiliates of Buyer and neither Seller nor Seller's Affiliates may make or sign or purport to make or sign sales orders or contracts or other instruments in the name of Buyer, make any commitment for the account of, assume or create express or implied obligations of any kind on behalf of, or in any respect bind Buyer, or market, sponsor or promote any product or service on behalf of Buyer. Seller shall not have the authority to accept service of legal process for or on behalf of Buyer. Seller shall be solely responsible for the actions of Seller's Affiliates. In no event shall Buyer be held liable or accountable for any obligations incurred by Seller or Seller's Affiliates and Seller shall indemnify and hold Buyer harmless against any such liability or accountability. Seller agrees at all times to comply with all legal, fiscal and commercial obligations, which are required of Seller in its capacity as an independent contractor.

4. Indemnification:

Seller shall indemnify and hold harmless Buyer for the amount of any loss suffered by Buyer and any penalty imposed on Buyer by the GOI as a result on Seller's breach of any provision hereof.

5. Cancellation for Default

Seller's breach of any provision of this clause shall be grounds for cancellation of this contract under the Cancellation for Default and/or Termination/Cancellation articles of this contract.

BUYER PRE-CONTRACT INDIA INTEGRITY PACT

1.0 Objectives

Now, therefore, the Buyer and the Bidder agree to enter into this pre-contract agreement, hereinafter referred to as Integrity Pact, to avoid all forms of corruption by following a system that is fair, transparent and free from any influence I unprejudiced dealings prior to, during and subsequent to the currency of the Contract to be entered into with a view to:

1.1 Enabling the Buyer to obtain the desired defence stores at a competitive price in conformity with the defined specifications of the Services by avoiding the high cost and the distortionary impact of corruption on public procurement, and

1.2 Enabling the Bidder to abstain from bribing or any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also refrain from bribing and other corrupt practices and the Buyer will commit to prevent corruption, in any form, by their officials by following transparent procedures.

2.0 Commitments of Bidders

The Bidder commits himself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of his bid or during any pre-contract or post-contract stage in order to secure the Contract or in furtherance to secure it and in particular commits himself to the following:

2.1 The Bidder will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Buyer, connected directly or indirectly with the bidding process, or to any person, organization or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the Contract.

2.2 The Bidder further undertakes that he has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Buyer or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the Contract or any other Contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the Government.

2.3 The Bidder will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.

2.4 The Bidder will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.

2.5 The Bidder further confirms and declares to the Buyer that the Bidder is the Original manufacturer I integrator I authorized government sponsored export entity of the defence stores and has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the Buyer or any of its functionaries, whether officially or unofficially to the award of the contract to the Bidder, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.

2.6 The Bidder, either while presenting the bid or during pre-contract negotiations or before signing the contract, shall disclose any payments he has made, is committed to or intends to make to officials of the Buyer or their family members, agents, brokers or any other intermediaries in connection with the contract and the details of services agreed upon for such payments.

2.7 The Bidder shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the Buyer as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The Bidder also undertakes to exercise due and adequate care lest any such information is divulged.

2.8 The Bidder commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.

2.9 The Bidder shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.

3.0 Previous Transgression

3.1 The Bidder declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprise in India or any Government Department in India, that could justify the bidder's exclusion from the tender process.

3.2 If the Bidder makes incorrect statement on this subject, Bidder can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

4.0 Company Code of Conduct

4.1 The Bidder is also advised to have a company code of conduct (clearly rejecting the use of bribes and other unethical behaviour) and a compliance program for the implementation of the code of conduct throughout the company.

5.0 Sanctions for Violation

5.1 Any breach of the aforesaid provisions by the Bidder or any one employed by him or acting on his behalf (whether with or without the knowledge of the Bidder) or the commission of any offence by the Bidder or any one employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act 1988 or any other act enacted for the prevention of corruption shall entitle the Buyer to take all or any one of the following actions, wherever required:

(i) To immediately call off the pre-contract negotiations without assigning any reason or giving any compensation to the Bidder. However, the proceedings with the other bidder(s) would continue.

(ii) The Earnest Money / Security Deposit / Performance Bond shall stand forfeited either fully or partially, as decided by the Buyer and the Buyer shall not be required to assign any reason therefore.

(iii) To immediately cancel the contract, if already signed, without giving any compensation to the Bidder.

(iv) To recover all sums already paid by the Buyer, with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due to the Bidder from the Buyer in connection with any other contract for any other defence stores, such outstanding payment could also be utilized to recover the aforesaid sum and interest.

(v) To encash the advance bank guarantee and performance bond / warranty bond, if furnished by the Bidder, in order to recover the payments, already made by the Buyer, along with interest.

(vi) To cancel all or any other Contracts with the Bidder.

(vii) To debar the Bidder from entering into any bid from the Government of India for a minimum period of five years, which may be further extended at the discretion of the Buyer.

(viii) To recover all sums paid in violation of this Pact by the Bidder to any middleman or agent or broker with a view to securing the contract.

(ix) If the Bidder or any employee of the Bidder or any person acting on behalf of the Bidder, either directly or indirectly, is closely related to any of the officers of the Buyer, or alternatively, if any close relative of an officer of the Buyer has financial interest or stake in the Bidder's firm, the same shall be disclosed by the Bidder at the time

of filing of tender. Any failure to disclose the interest involved shall entitle the Buyer to rescind the contract without payment of any compensation to the Bidder.

The term 'close relative' for this purpose would mean spouse whether residing with the Government servant or not, but not include a spouse separated from the Government servant by a decree or order of a competent court; son or daughter or step son or step daughter and wholly dependent upon Government servant, but does not include a child or step child who is no longer in any way dependent upon the Government servant or of whose custody the Government servant has been deprived of by or under any law; any other person related, whether by blood or marriage, to the Government servant or to the Government servant's wife or husband and wholly dependant upon Government servant. (x) The Bidder shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the Buyer, and if he does so, the Buyer shall be entitled forthwith to rescind the contract and all other contracts with the Bidder. The Bidder shall be liable to pay compensation for any loss or damage to the Buyer resulting from such rescission and the Buyer shall be entitled to deduct the amount so payable from the money(s) due to the Bidder.

(xi) In cases where irrevocable Letters of Credit have been received in respect of any contract signed by the Buyer with the Bidder, the same shall not be opened.

5.2 The decision of the Buyer to the effect that a breach of the provisions of this Integrity Pact has been committed by the Bidder shall be final and binding on the Bidder, however, the Bidder can approach the monitor(s) appointed for the purposes of this Pact.

6.0 Fall Clause

6.1 The Bidder undertakes that he has not supplied / is not supplying the similar systems or subsystems at a price lower than that offered in the present bid in respect of any other Ministry I Department of the Government of India and if it is found at any stage that the similar system or sub-system was supplied by the Bidder to any other Ministry / Department of the Government of India at a lower price, then that very price, with due allowance for elapsed time, will be applicable to the present case and the difference in the cost would be refunded by the Bidder to the Buyer, if the contract has already been concluded.

6.2 The Bidder shall strive to accord the most favoured customer treatment to the Buyer in respect of all matters pertaining to the present case.

Customer Contract Requirements (Direct Commercial Sales)

In addition to the requirements set forth in the Boeing General Provisions and other terms and conditions in or attached to this Contract, the Goods to be delivered under this Contract may be common to items delivered to a U.S. Government customer. Accordingly, the following terms supporting technical conformance of the Goods apply to this Contract to the extent indicated below. In all of the following clauses, "Contractor" and "Offeror" mean Seller. Certain clauses below may be deemed inapplicable if the parts being purchased under this Contract previously had commercial item determinations (CIDs) completed and approved for identical parts.

52.204-23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (JUL 2018). In paragraph (c) (1), the term "Government" means "Government or Buyer" and the term "Contracting Officer" means "Buyer." All reporting required by paragraph (c) shall be reported through Buyer. Seller shall report the information in paragraph (c) (2) to Buyer.

52.211-5 Material Requirements (AUG 2000). Any notice will be given to Buyer rather than the Contracting Officer.

252.209-7010 Critical Safety Items (AUG 2011). Delete the second sentence in paragraph (b) and substitute the following sentence in lieu thereof: Items delivered under the Contract are considered critical safety items if they have previously been designated as critical safety items under a prior contract. Delete paragraph (c) and insert the following in lieu thereof: Heightened quality assurance surveillance. Items considered critical safety items in accordance with paragraph (b)

of this clause are subject to heightened, risk-based surveillance by Buyer and/or the Government.

252.223-7003 Change in Place of Performance-Ammunition and Explosives (DEC 1991). The clause is revised as follows: (a) Seller shall identify in their offer, the place of performance of all ammunition and explosives work that would be covered by 252.223-7002. Failure to furnish this information with the offer may result in rejection of the offer. (b) Seller agrees not to change the place of performance of any portion of the offer that would be covered by 252.223-7002 after the date set for receipt of offers without the written approval of the Contracting Officer, which shall be obtained through Buyer. The Contracting Officer shall grant approval only if there is enough time for the Government to perform the necessary safety reviews on the new proposed place of performance. (c) If a contract results from this offer, Seller agrees not to change any place of performance previously cited without the advance written approval of the Contracting Officer, which shall be obtained through Buyer.

252.223-7008 Prohibition of Hexavalent Chromium (JUN 2013). "Contracting Officer" shall mean Buyer.

252.225-7001 Buy American and Balance of Payments Program (DEC 2017). In paragraph (c), the phrase "in the Buy American Balance of Payments Program Certificate provision of the solicitation" is deleted and the word "certified" is deleted and replaced with the word "specified."

252.225-7007 Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies. (DEC 2018). This clause applies to items covered by the United States Munitions List or the 600 series of the Commerce Control List.

252.225-7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals (OCT 2014). Paragraphs (d) and (e) (1) of this clause are excluded. In paragraph (e) (2) "Government" means Buyer. Paragraph (c) (6) is revised as follows:

(c)(6) End items of the prime contract containing a minimal amount of otherwise noncompliant specialty metals (*i.e.*, specialty metals not melted or produced in the United States, an outlying area, or a qualifying country, that are not covered by one of the other exceptions in this paragraph (c)), if the total weight of such noncompliant metals does not exceed 2 percent of the total weight of all specialty metals in that end item. This exception does not apply to high performance magnets containing specialty metals. If the Seller will furnish goods that contain otherwise noncompliant specialty metals (*i.e.*, specialty metals not melted or produced in the United States, an outlying area, or a qualifying country, that are not covered by one of the other exceptions in this paragraph (c)), then the Seller shall disclose to the Buyer (i) the total weight of all specialty metals in each of the goods of this contract, and (ii) the total weight of the noncompliant specialty metals in each of those goods. In the calculation of total weight of noncompliant specialty metals in each of the goods, exclude the weight of specialty metals covered by other exemptions in this paragraph (c).

252.225-7011 Restriction on Acquisition of Supercomputers (JUN 2005).

252.225-7012 Preference for Certain Domestic Commodities (DEC 2017).

252.225-7015 Restriction on Acquisition of Hand or Measuring Tools (JUN 2005).

252.225-7016 Restriction on Acquisition of Ball and Roller Bearings (JUN 2011). This clause does not apply to contracts for commercial items or items that do not contain ball or roller bearings.

252.225-7025 Restriction on Acquisition of Forgings (DEC 2009). This clause applies if the Contract is for forging items or for other items that contain forging items.

252.225-7030 Restriction on Acquisition of Carbon, Alloy, and Armor Steel Plate (DEC 2006).

252.225-7036 Buy American-Free Trade Agreements-Balance of Payments Program-Basic (DEC 2017). In paragraph (c), the phrase "in the Buy American-Free Trade Agreements-Balance of Payments Program Certificate-Basic provision of the solicitation" is deleted, and the word "certified" is deleted and replaced with the word "specified."

252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System (AUG 2016). This clause applies to contracts for electronic parts or assemblies containing electronic parts or for contracts for the performance of authentication testing. The term "Contractor" means "Buyer" in the first sentence. In paragraph (c) (6), "Contracting Officer" means "Buyer." The introductory text at the beginning of the clause is deleted and only paragraphs (a) through (e) apply.

252.246-7008 Sources of Electronic Parts (MAY 2018). This clause applies if the Contract is for electronic parts or assemblies containing electronics parts, unless Seller is the original manufacturer of the electronic parts. The term “Contractor” means Seller and the term “subcontractor” means Seller’s lower-tier suppliers. In paragraph (b) (3) (ii) (A), the term “Contracting Officer” means “Buyer’s Authorized Procurement Representative.” Seller’s notification shall include, at a minimum, identification of the electronic parts being procured, identification of Seller’s lower-tier supplier providing such electronic parts, Seller’s rationale on acceptability of procuring such parts (including risk mitigation), and identification of the product using such parts (by lot or serial numbers).