

NOTAT

DBA case ref. xxxx-xxxx

DRAFT

Industrial Co-operation Contract [ACQUISITION]

Article 1: Parties to the contract

The Danish Business Authority (DBA)

Company Registration No.: 10150817
Dahlerups Pakhus
Langelinie Allé 17
DK – 2100 Copenhagen
Denmark

And

[NN]

[Company Registration No.]

[Address]

[Address]

[Address]

[Country]

DANISH BUSINESS AUTHORITY

Dahlerups Pakhus
Langelinie Allé 17
DK - 2100 Copenhagen
Denmark

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MINISTRY OF INDUSTRY,
BUSINESS AND FINANCIAL
AFFAIRS

Hereby enter into an Industrial Co-operation Contract (ICC) in connection with the future supply of **[product/services]** to the Danish Defence Acquisition and Logistics Organization (DALO) on behalf of the Danish Ministry of Defence, **[RfQ No. / DALO Contract No.]**.

Article 2: Legal basis

2.1 In accordance with EU law, especially with reference to Article 346 of the Treaty of the Functioning of the European Union, it has been decided that the abovementioned acquisition contract shall be subject to an obligation for industrial co-operation.

Article 3: Definitions

3.1 “Industrial co-operation” is defined as a foreign supplier’s fulfilment of an obligation to co-operate with companies in Denmark.

3.2 “Defence equipment” and “defence services” are defined as the specific weapons, ammunition and war-materials that conforms to the

interpretation in Article 1(6) in EU directive 2009/81/EC of 13 July 2009 as amended.

3.3 “A company in Denmark” is defined as a company registered in Denmark, and where an essential part of the industrial co-operation in question concerns competencies and capabilities to be performed and/or supported within the Danish territory.

Article 4: Obligations

4.1 By signing this ICC, [NN] shall undertake to establish industrial co-operation with companies in Denmark if [NN] is selected by DALO as a supplier of [product/services] and enters into an acquisition contract with DALO.

4.2 [NN] shall be obliged to establish industrial co-operation for [x] per cent of the total contract value of the acquisition contract with DALO.

4.3 After [NN]’s signature of the acquisition contract and based on a notification from DALO, DBA shall forward an Addendum to [NN], which shall be signed by both parties. The Addendum shall contain information on:

- Contract no. of the acquisition contract with DALO.
- The contract value, the industrial co-operation percentage required and the value of the industrial co-operation obligation, which shall be referred to as the “industrial co-operation obligation” for this ICC.
- Length of the time frame for fulfilling the industrial co-operation obligation, which shall be referred to as “the fulfilment period”.
- Fulfilment dates for 50 per cent and for 100 per cent of the industrial co-operation obligation, which shall be referred to as the “fulfilment milestones”.

The template for the Addendum is annexed to this ICC as Attachment A. The Addendum shall be referred to as the “Activation Addendum”.

4.4 When DBA and [NN] have both signed the Addendum, cf. Article 4.3, the Addendum becomes part of this ICC.

4.5 Following the signature of the Addendum, cf. Article 4.3, DBA shall forward a case summary to [NN], which will be continuously updated by DBA with all relevant information concerning the supplier’s industrial co-operation obligation.

Article 5: Eligible Parties

5.1 With the pre-approval of the DBA, [NN] may be assisted by other companies within the [NN] group, companies which are majority-owned by [NN] and/or major subcontractors involved in the specific supply of [product/services] to DALO, in fulfilling the obligations under this ICC.

Such contracts may qualify as industrial co-operation if the conditions in Article 6 are fulfilled.

5.2 The list of eligible parties, which have been pre-approved by DBA, shall be attached to this contract (Attachment B). Any changes to the list of eligible parties must be approved in writing by DBA.

Article 6: Scope and fulfilment

6.1 The fulfilment of the industrial co-operation obligation under this ICC shall adhere to the conditions concerning the acquisition of [product/service] defined by the Ministry of Defence and described in Article 6.2 and 6.3.

6.2 The fulfilment of industrial co-operation obligations can only be approved for activities that meet all the following three conditions:

1. The activities must concern defence equipment and defence services, as defined in Article 3.2;
2. The activities must take place within the domain determined by the Ministry of Defence and described in Article 6.3;
3. The activities may not entail a disproportionate risk of adversely affecting the conditions for competition in the internal market regarding products not intended specifically for military purposes.

6.3 The Ministry of Defence has defined the domain for this acquisition of [product/services] as:

- [Udfyldes med genstandsfelt fra FMN].

6.4 The fulfilment of the industrial co-operation obligation may include, but is not limited to, the following ways of co-operation:

- [NN]'s procurement of defence equipment and defence services from companies in Denmark within the domain defined in Article 6.3;
- [NN]'s participation in development projects with companies in Denmark, which develop and maintain competencies and capabilities within the domain defined in Article 6.3.

6.5 DBA can approve the fulfilment of obligations for industrial co-operation if an essential part of the industrial co-operation relates to competencies and capabilities in Denmark. If this is not the case, DBA can approve the specific part of the industrial co-operation in question that relates to competencies and capabilities in Denmark. In this connection, information shall be obtained from the Danish company in question.

Article 7: Pre-approval of development projects and multipliers

7.1 Concerning development projects, [NN] must obtain a Pre-approval from DBA before the start of the project. The Pre-approval shall set out the time frame, milestones and documentation requirements for the development project.

7.2 [NN] must use the application form for development projects provided by DBA. Additionally, a binding confirmation in writing from the CEO of the involved company in Denmark, stating that the company in Denmark is committed to and accepts the details of the development project, as well as the conditions for DBA's pre-approval, must be attached to the application.

7.3 For DBA to process an application for Pre-approval, the development project must pass an assessment of competitiveness. The assessment will be conducted by DBA and based on DBA's screening model for development projects. The DBA's processing of an application for Pre-approval is contingent on receiving the necessary information from the relevant company in Denmark to conduct the assessment of competitiveness.

7.4 DBA will consult the Ministry of Defence concerning the development project's contribution to the defence industrial effect on which the industrial cooperation obligation is based, cf. Article 6.

7.5 DBA may approve the use of multipliers if it can be demonstrated that the contribution from [NN] to the development project contributes significantly to meeting the obligations defined by the Ministry of Defence, cf. Article 6. Multipliers may be approved up to:

- Transfer of technology, software, etc.: Maximum multiplier of 7
- Funding of development projects: Maximum multiplier of 5
- Advisory services: Maximum multiplier of 5
- Making facilities available: Maximum multiplier of 3

7.6 DBA uses the following definitions for determining potential multipliers in a development project:

- Technology transfer: The foreign supplier transfers its own technology to the company in Denmark that uses the technology in its defence industrial R&D activities pursuant to the specific development project. "Technology" is defined as the foreign supplier's own commercial knowledge and skill sets being transferred to the company in Denmark for either ownership, right of use or on loan. The purpose of a technology transfer must be to develop new or improved defence industrial products, processes or services within the domain specified in Article 6.3. DBA's valuation of technology is based on DBA's calculation principles, cf. Article 7.7.

- **Funding:** The foreign supplier finances the company in Denmark's defence industrial R&D activities, which helps enhance the competencies and capabilities of the company in Denmark within the domain specified in Article 6.3. The allocation of a multiplier for funding assumes that the Danish company is free to use the transferred funds for R&D activities pursuant to the specific development project without being under an obligation to deliver defence industrial products or defence services to the foreign supplier in return. The funding can also go towards the acquisition of specialised equipment and advisory services for use in the R&D activities in the specific development project.
- **Advisory services:** The foreign supplier advises and supports the company in Denmark's defence industrial R&D activities pursuant to the specific development project within the domain specified in Article 6.3. The advisory services are provided via the foreign supplier's own staff resources. DBA's valuation of the advisory services is based on the number of work hours and the relevant internal hourly cost of staff resources provided by the foreign supplier.
- **Use of facilities:** The foreign supplier places its own manufacturing or testing facilities at the disposal of the company in Denmark free of charge as part of the company in Denmark's defence industrial R&D activities pursuant to the specific development project, which is within the domain specified in Article 6.3. DBA's valuation of the facility lending is based on a market price, if such a price can be estimated. Alternatively, DBA's valuation can be based on the foreign supplier's internal pricing of the value of the use of the facilities.

7.7 As for the transfer of technology in a development project, DBA uses a fixed procedure for assessing the value of the technology based on the relief-from-royalty method.

7.8 Any changes to a pre-approved development project must be approved by DBA in writing.

7.9 If the conditions specified in the Pre-approval are not met by [NN], DBA may revise or annul the Pre-approval.

Article 8: Reporting on development projects

8.1 Concerning development projects with companies in Denmark, cf. Article 7, DBA can approve activities that are consistent with the Pre-approval as fulfilment of obligations for industrial co-operation.

8.2 The time frame for release of the approved credits shall follow the milestones set out in DBA's Pre-approval.

8.3 The documentation required shall follow the conditions specified in DBA's Pre-approval. The documentation required to approve milestones in a development project may include, but is not limited to:

- A written confirmation by the CEO of the company in Denmark.
- A statement by an authorised Danish accountant.
- Time logs.
- Test reports/certifications.
- Invoices.

Article 9: Reporting on procurement

9.1 Each year before 15 February, [NN] must report to DBA about the fulfilment of industrial co-operation obligations for the past year concerning the procurement of defence equipment and defence services from companies in Denmark.

9.2 The report must be submitted electronically in a template provided by DBA.

9.3 DBA can only approve industrial co-operation fulfilling the obligations defined by the Ministry of Defence, cf. Article 6.

9.4 DBA can only approve procurements that pass an assessment of competitiveness. The assessments will be conducted by DBA and based on DBA's screening model for procurement. The DBA's assessment is contingent on receiving the necessary information from the relevant companies in Denmark.

9.5 Concerning the procurement of sales and services from companies in Denmark, DBA can approve invoices concerning defence equipment and defence services in the previous calendar year specified with the information requested in the template provided by DBA.

9.6 Each claim shall be presented in the actual currency applied. DBA shall convert any approved claim into the currency of this ICC using the daily rate from Danmarks Nationalbank (central bank of Denmark) at the invoice date.

Article 10: Sanctions for non-fulfilment

10.1 If [NN] does not fulfil 50 per cent of the obligation for industrial co-operation before the fulfilment milestone, [NN] must pay a penalty. The penalty shall equal 15 per cent of the difference between 1) the value of the actual, approved industrial co-operation activities carried out by [NN] at the time of the 50 per cent milestone, and 2) the value of the 50 per cent milestone to DBA, cf. Article 4.3 and the Activation Addendum.

10.2 If [NN] does not fulfil 100 per cent of the obligation for industrial co-operation before the fulfilment milestone, [NN] must pay a penalty. The penalty shall equal 15 per cent of the difference between 1) the total value of the approved industrial co-operation at the date of the 100 per cent milestone, and 2) the total obligation for industrial co-operation to DBA.

10.3 If [NN] must pay a penalty, cf. Articles 10.1 and 10.2, the penalty must be paid to DBA before one month after the date of DBA's approval of the annual report and specification of the penalty, cf. Article 9.

10.4 The payment of a penalty liquidates an amount of the industrial co-operation obligation equal only to the value of the payment. The residual value of the industrial co-operation obligation shall remain outstanding. The payment of a penalty will extend the fulfilment milestones under Article 4 following an assessment by DBA.

10.5 In case of non-fulfilment of this ICC, and if [NN] fails to fulfil the obligations for industrial co-operation despite 3 written requests from DBA, DBA may exclude [NN] from obtaining new contracts with DALO for a limited time period.

10.6 Information about an exclusion of [NN], cf. Article 10.5, may be published by DBA on DBA's website.

Article 11: Changes to the ICC

11.1 Any changes to this ICC shall be agreed upon by both parties. Changes will be included in an Addendum to be signed by both parties.

11.2 Any additional orders placed by DALO at [NN] within the contract referred to in Article 1 will be added to the total obligation under this ICC. Such additional orders will be included in an Addendum to be signed by both parties.

11.3 Each of the parties shall notify the other contracting party immediately in case the party changes its status as a legal person, or is subject to bankruptcy proceedings, restructuring proceedings (initiation of negotiations for an arrangement with creditors) or voluntary liquidation.

Article 12: Settling of disputes

12.1 Any dispute arising from this ICC shall be governed by Danish law. If a dispute is not settled by amicable negotiations, the dispute shall be finally settled by arbitration.

12.2 The venue for arbitration proceedings shall be Copenhagen, Denmark, and the Rules for Trial of Cases by the Danish Institute of

Arbitration with three judges shall apply. The language to be used in the arbitral proceedings shall be Danish and English.

Article 13: Contact persons

13.1 The daily contact person in DBA will be

Title: [Title]
Name: [Name]
Address: [Address]
E-mail: [E-mail]
Telephone number: [No.]
DBA main e-mail: offset@erst.dk

13.2 The daily contact person of [NN] will be

Title: [Title]
Name: [Name]
Address: [Address]
E-mail: [E-mail]
Telephone number: [No.]

13.3 Changes regarding contact persons shall be notified by e-mail to the other party as soon as possible.

Article 14: Sharing of information

14.1 To ensure transparency in the field of industrial co-operation, DBA may publish that [NN] has entered a contract with DALO in relation to the specific supply of [product/services]. Contact information for [NN], the aggregated amount of [NN]'s outstanding industrial co-operation obligation in Denmark, as well as the aggregated value at any time of [NN]'s pre-approved development projects, may also be published.

14.2 Any other information concerning this ICC shall only be published by DBA upon consultation with [NN].

Article 15: Attachments

15.1 Attachments included are:

Attachment A: Template for the Activation Addendum, cf. Article 4.3.

Attachment B: List of eligible parties, cf. Article 5.

Article 16: Effect of contract

16.1 This ICC must be signed at least 10 working days prior to the signature of the relevant acquisition contract between DALO and [NN].

16.2 This ICC shall come into effect upon the date of signature of the acquisition contract between DALO and [NN], referred to in Article 1, and effectuated by the signature of the Addendum, cf. Article 4.3.

16.3 In case [NN] is not awarded the acquisition contract referred to in Article 1, this ICC shall become null and void. DBA shall inform [NN] hereof in writing.

16.4 Upon signature of the acquisition contract with DALO, [NN] may start claiming industrial co-operation.

Date:

For the Danish Business Authority

Date:

For [NN]

Signature 1

Signature 1

Signature name in block letters

Signature name in block letters

Signature 2

Signature 2

Signature name in block letters

Signature name in block letters

Attachment A: Template for the Activation Addendum

Addendum no. 1

to the Industrial Co-operation Contract (ICC) between the Danish Business Authority (DBA) and [NN] regarding the acquisition contract for [product/service] to the Danish Acquisition and Logistics Organization (DALO), DALO contract no. [XXX]

Article 1: Effect of contract

- 1.1 The acquisition contract between DALO and [NN] was signed on [DATE] thus putting the ICC into effect, cf. Article 16.2 of the ICC.
- 1.2 This addendum forms part of the ICC and adds information regarding the industrial co-operation obligation value, the fulfilment period for the ICC as well the fulfilment milestones, cf. Article 4.3 of the ICC.

Article 2: Obligations, fulfilment period and milestones

- 2.1 Based on DALO's notification of DBA of [DATE], the value of the contract between DALO and [NN] concerning [product/services] is [contract value + currency]. [NN] shall be obliged to establish industrial co-operation for [x] per cent of the said amount.

[The banked credits under [NN]'s [banking/pre-qualification banking] agreement (DBA case ref. [XXXX]) will be transferred to and deducted immediately against the industrial co-operation obligation under this ICC. The value of banked credits is [value DKK/currency].]

The amount, which shall be referred to as the "industrial co-operation obligation" for the ICC, is thus [IC value + currency].

- 2.2 Any additional orders placed by DALO at [NN] within DALO contract no. [XXX] will be added to the total industrial co-operation obligation under the ICC, following Article 11.2 of the ICC.
- 2.3 [NN] shall have [x] years from the date of signature of the DALO contract no. [XXX] to fulfil this industrial co-operation obligation. This time period shall be referred to as "the fulfilment period".
- 2.4 In order to ensure timely co-operation with companies in Denmark and the fulfilment of the industrial co-operation obligation, the following fulfilment milestones shall apply to [NN]:
 1. *Starting date:* The date of signature of the DALO contract no. [XXX].

2. *50 per cent milestone*: The date for 50 per cent fulfilment of the industrial co-operation obligation by [NN] is the first occurring 1st of January after the first half of the fulfilment period, equalling [x] years after the starting date. Effectively this date is the 1st of January [YEAR].
3. *100 per cent milestone*: The date for 100 per cent fulfilment of the industrial co-operation obligation by [NN] is the first occurring 1st of January after the end of the fulfilment period, equalling [x] years after the starting date. Effectively this date is the 1st of January [YEAR].

2.5 Reporting on the 50 per cent and the 100 per cent milestones shall follow the general reporting requirements, cf. Article 9 of the ICC.

Date:

For the Danish Business Authority

Date:

For [NN]

Signature 1

Signature 1

Signature name in block letters

Signature name in block letters

Signature 2

Signature 2

Signature name in block letters

Signature name in block letters

Attachment B: List of Eligible Parties

Companies within the [NN] group and companies which are majority-owned by [NN]

-
-
-

Major subcontractors involved in the specific supply of [product/services]

-
-
-