

CONTRACT

This Contract is made on the first day of August 2001 between Ambassador Henry Lee Clarke, Deputy High Representative and Supervisor of the Brcko District of Bosnia and Herzegovina, of Obiliceva bb, 49 000 Brcko District of Bosnia and Herzegovina of the first part, the Government of Republika Srpska here represented by Milenko Vracar, Minister of Finance of Republika Srpska and Goran Popovic, Republika Srpska Customs Administration Director of Vuka Karadzica 4, 78 000 Banja Luka, Bosnia and Herzegovina of the second part and the Brcko District of Bosnia and Herzegovina, here represented by Sinisa Kisic, Mayor of the Brcko District of Bosnia and Herzegovina of Kneza Lazara 1, 49 000 Brcko District of Bosnia and Herzegovina of the third part.

WHEREAS:

1. ***With a view*** to implementing the Final Award issued by the International Arbitration Tribunal for Brcko on March 5, 1999 and in particular Paragraph 7 of the Annex to the Award providing for the establishment of a District Customs Service;
2. ***In accordance with*** Article III(1)(c) of the Constitution of Bosnia and Herzegovina providing that Customs Policy is the responsibility of the Common Institutions of Bosnia and Herzegovina;
3. ***Recognizing*** that the Laws on Customs Policy and Customs Tariff of Bosnia and Herzegovina are directly applicable on the territory of the Brcko District and that Bosnia and Herzegovina is a unique customs territory;
4. ***According to*** Article 2(2) of the Law on Customs Policy of Bosnia and Herzegovina providing that the Law shall be implemented by the Customs Administrations of the Entities and Article 9 of the Statute of the Brcko District of Bosnia and Herzegovina, providing that Customs Administration is among the functions and powers delegated by the Entities to the Brcko District of Bosnia and Herzegovina;
5. ***Following the*** Tender opened by the Deputy High Representative and Supervisor for Brcko to the Customs Administrations of both entities in August 2000 and the evaluation of the bids submitted thereafter that resulted in the Contract for the establishment of Customs Service in the Brcko District being awarded to the Customs Administration of Republika Srpska;

It is hereby **AGREED** as follows:

Clause 1

Definitions

“Contracting Authority” means the Deputy High Representative and Supervisor for Brcko.

“Contractor” means the Republika Srpska Customs Administration who has been awarded this Contract to establish and operate the Customs Service of the Brcko District of Bosnia and Herzegovina in accordance with the conditions specified in this Contract.

“The District” means the Brcko District of Bosnia and Herzegovina represented by the Mayor in accordance with Article 6 of the Statute of the Brcko District of Bosnia and Herzegovina.

“Brcko District Customs Service” means the integrated and unified administration of the custom stations located within the District. These include the station at the international border crossing point at the Brcko Bridge, the station at the International Rail Border crossing point, the station at the International Port on the river Sava, the inland clearance station at the Port on the river Sava as well as any other customs clearance station that may be established in the future within the boundaries of the Brcko District by the Contracting Authority.

“Payment Authority” means the Department or Agency of the District that in accordance with the Law and Regulations of the District is responsible for the receipt of revenues collected by the Brcko District Customs service and the payment of expenses to the Contractor.

“CAFAO” means the Customs and Fiscal Assistance Office Program which is funded by the European Commission and provides advice and assistance in customs and tax related matters to BiH, its constituent entities (the Federation and Republika Srpska) and the Brcko District.

“An accurate expense” is an expense, which is supported by receipts, business records or other documentation.

“A reasonable expense” is an expense incurred because of changing market conditions.

“A legitimate expense” is an expense incurred in accordance with applicable law and regulations and the terms of this Contract.

Clause 2

Scope of the Contract. The Contractor shall establish and operate, under the conditions specified in this Contract, a Customs Service in the Brcko District of Bosnia and Herzegovina to be called “The Brcko District Customs Service” (hereinafter: BDCS). The BDCS shall report directly to the Director of the RS Customs Administration.

Clause 3

Term of the Contract. The term of the Contract is three (3) years. The Contract shall be subject to yearly review and renewal by the Contracting parties.

Clause 4

Obligations. The Contractor shall carry out all activities in the field of customs in the District, in accordance with applicable laws and customs regulations.

Clause 5

I. Applicable Law and Regulations. Until such time as the District adopts Customs legislation in accordance with the Law on Customs Policy and Customs Tariff of Bosnia and Herzegovina the Contractor shall continue to apply the Republika Srpska legislation and regulations to the extent they are not contradictory with the terms of the Final Award, the Statute of the District and this Contract.

II. Amendments to the Applicable Law and Regulations. In compliance with paragraph 37 and 39 of the Final Award, the Contracting Authority shall have the right to amend the Republika Srpska customs legislation and regulations with regard to the area of the District and their application by the BDCS.

Clause 6

I. Employment with the BDCS. Customs officers employed by the Contractor to serve in the BDCS shall be based within the District on a permanent basis and not be subject to transfer to other areas. The Contracting Authority may relax this restriction upon application by the Contractor on a case by case basis.

II. Recruitment of Customs Officers. The Contractor shall agree with the Contracting Authority on the terms of a countrywide competition calling for qualifying candidates to apply for positions in the BDCS.

III. Recruitment Process. The Contracting Authority shall approve in advance all persons to be employed in the BDCS. The Contractor shall afford the Contracting Authority or its designated representative the right to sit on all interview boards for employment, promotion, discipline measures or dismissal of customs officers to or in

the BDCS. All such appointments, promotions, disciplinary measures or dismissals shall be subject to the final approval of the Contracting Authority.

IV. Salaries and Contributions. Salaries and contributions to the Health Care and Pension Systems for the employees of the BDCS shall be paid by the District in accordance with the salary scale used for the employees of the Brcko District Government.

Clause 7

Anti-corruption measures. The Contractor shall take all necessary measures to prevent corruption and criminal activities in the BDCS including the following steps:

- a) Harmonize the normative and legal acts relating to complete and synchronized implementation of regulations that regulate customs service through, *inter alia*, instructions, orders, explanations and decrees.
- b) Define the organization and functioning of customs service and determination of rights, duties and responsibilities of customs officers employed by the BDCS as set by the RS Customs Service Law.
- c) Develop and implement programs of education, training, improvement, and equipping of customs officers regarding the detection and prevention of corruption.
- d) Take all measures provided by law against customs officers who act in violation of the Code of Conduct for Customs Officers provided in Annex 1 of the Law on Customs Policy of Bosnia and Herzegovina and/or violate their positions, as set in the Book of Rules on Disciplinary and Material Responsibility of Officers of the Republika Srpska Customs Administration, or as set out in such rules or regulations as may apply to their positions from time to time.
- e) Reward customs officers employed in the BDCS credited with discovering customs frauds and customs criminal acts.
- f) Establish efficient communication among the control activities of the various departments of the BDCS, especially those dealing with administrative and violation procedures, internal audit, information systems and financial affairs.
- g) Ensure transparency in all activities that take place in the BDCS.

Clause 8

Sanctions. The Contractor shall promptly investigate any allegations of violations by officers of BDCS of the Code of Conduct for Customs Officers provided in Annex 1 of the Law on Customs Policy of Bosnia and Herzegovina and shall submit a report to the Contracting Authority. In the event that the allegation proves to be true, the Contractor shall enforce any remedy—including sanctioning or dismissing the BDCS

officers involved — that is provided by law and that the Contracting Authority seeks to implement.

Clause 9

Measures Against Criminal Activities. In order to establish the most efficient struggle against criminal activities and corruption in the area of responsibility of BDCS, the Contractor shall undertake the following measures:

- a) Reinforce the control activities (both regular and special) relating to discovering of channels of illegal imports and transit of goods in the District;
- b) Analyze and plan the observation of companies that are involved in foreign trade, especially those which have a history of illegal business, as well as impose legal sanctions and take legal measures against those companies;
- c) Draft a list of all forwarding agents in the area of responsibility of the BDCS, observe and analyze their activities and activate the guarantee system for all forwarding agents that have outstanding non-reconciled declarations;
- d) Pay special attention to the prevention of occurrence of the so-called “fictitious companies” in co-operation with other relevant institutions in the District;
- e) Take all necessary measures to prevent and punish customs frauds relating to: customs value (under-evaluation), declaring of goods under incorrect tariff rates, presenting lower weights of goods, incorrect declarations relating to type of goods etc.;
- f) Take all necessary measures to prevent losses of income from non-payment of customs and other duties and taxes for goods when their clearance station is in the Entities, or when they are in transit through the District and their final destination is a third country;
- g) Prevent and punish any forged customs and other documentation at the level of customs officers, importers or forwarding agencies;
- h) Take all necessary measures against pirate goods and their distribution including seizure, where necessary;
- i) Investigate thoroughly all allegations and formal complaints regarding the involvement of customs officers of BDCS in illegal activities and, in case allegations prove to be correct, undertake all appropriate legal measures against companies involved and officers that have facilitated the illegal activities;
- j) Use all advantages that the Contractor’s computer system provides in the BDCS especially with regard to the ASYCUDA system that will be installed as of second half of 2001 and which is of crucial importance in observation of importers, forwarding agents as well as activities by customs officers and employees, or such other systems as may be made available or become available from time to time;

- k) Continue and enhance implementation of the “Stop Smuggling” action in the District.

Clause 10

Enforcement. Co-ordination of customs enforcement will be dealt with by the Contractor’s enforcement section in close coordination with CAFAO. Within 30 days of the Contract entering into force, the Contractor shall appoint an anti-smuggling team and a customs investigator to BDCS on behalf of its enforcement section.

Clause 11

I. Revenues. All revenues collected by the BDCS shall belong to the District. The Contractor shall collect and deposit at the end of each working day to the Payment Authority all revenues collected by the BDCS in the course of the same day. The customs revenues shall include the revenue from the sale of seized goods and the parking fees. The Contractor shall not maintain any customs revenue for any reason.

II. Evidencing Fee. The 1% evidencing fee provided for in Article 13 of the Law on Customs Policy of Bosnia and Herzegovina shall be lodged by the District to an account specified by the Contracting Authority and will be used by the Contracting Authority solely to improve BDCS’s operations.

III. Servicing Fee. The Contractor shall be awarded 7% of the total customs revenues collected in accordance with Paragraph 1 of this Clause as fee for the services provided to the BDCS. The fee shall be paid by the Payment authority on the first day of each calendar month for the previous calendar month to an account specified by the Contractor for this purpose.

Clause 12

I. Payment of Expenses. On the first day of each calendar month the Contractor shall present a voucher, for payment, of the expenses it incurred during the previous calendar month to the Payment Authority. The Payment Authority or its designated representative shall verify the accuracy, reasonableness and legitimacy of the expenses claimed by the Contractor. The Payment Authority shall pay without delay to the Contractor all expenses verified as accurate, reasonable and legitimate by the Payment Authority.

II. Agreement on expenses. At the time the Contract enters into force, the Contracting Authority or its designated representative and the Contractor shall review the cost elements of the Contractor’s operation with the exception of salaries as provided in Clause 7 of this Contract and mutually agree as to which elements would be considered as a reasonable and legitimate expense.

Clause 13

- I. Disputes over expenses. If the Payment Authority or its designated representative questions the accuracy, reasonableness or legitimacy of an expense claimed by the Contractor, the Payment Authority shall immediately contact the Contractor and seek to resolve the issue.
- II. Additional Information. If the issue cannot be resolved, the Payment Authority may require the Contractor to provide additional information, justification or documentation in support of questioned expenses or may conduct an investigation, including audit of questioned costs in order to establish the facts.
- III. Disallowance Statement. If a dispute over expenses can not be resolved through discussion, additional information, justification, documentation, investigation or audit of questioned costs the Payment Authority may issue a written, "Disallowance Statement" to the Contractor, identifying what expenses have been disallowed and stating the reasons. The Payment Authority shall then immediately process the payment of the remainder of the expenses that have been approved for payment.
- IV. Resolution of disputes. In the event of a Disallowance Statement issued by the Payment Authority, the Contractor may request resolution of the dispute by submitting a written request to the Contracting Authority. The request must be submitted within 10 days of the Contractor's receipt of the Disallowance Statement and the Contracting Authority's decision will be final and binding.

Clause 14

- I. Regular Audit. Internal Audit and Internal Control Structures on regularly approved internal audit and internal control definitions shall be established by the Contractor and dealt with by the Contractor's independent Audit Department.
- II. External Audit. The Contracting Authority may appoint an independent audit control to audit the operations of BDCS and the books, records, financial data or other documents maintained by the Contractor.
- III. Additional Audit. The Contracting Authority shall have the right to audit, at any time without prior notice, the books, records, financial data or other documents maintained by the Contractor.
- IV. Cost of External and Additional Audits. The Contracting Authority shall cover the cost for the audits provided in paragraphs (II) and (III) of this Article.

Clause 15

Revision of business agreements. Within thirty (30) days from the signing of this Contract, the contracting parties shall agree on the resolution of any such business agreement currently in effect within the District, which involve the Contractor and that the Contracting Authority deems inappropriate for continuation.

Clause 16

I. Authorized Representative. Within five (5) days of this Contract entering into force, the Contractor shall appoint an Authorized Representative to receive official instructions from the Contracting Authority in implementation of this Contract.

II. Instructions. The Contractor shall only receive instructions through its Authorized Representative from the Contracting Authority or his designated representative.

Clause 17

Information. The Contracting Authority shall make every reasonable effort to provide information to the Contractor that pertains to or affects its contractual obligations and entitlements. The Contractor will likewise make every reasonable effort to provide all information to the Contracting Authority especially those that pertain to or affect District revenues. The Contractor shall maintain a communications capability sufficient to enable it to communicate with the Contracting Authority for both routine and non-routine (emergency) matters during and after normal business hours.

Clause 18

I. Regular Reports. The Contractor shall submit to the Contracting Authority the following reports on a weekly basis:

- a) the report on the accounted and collected customs duty;
- b) the report on quantity of goods;
- c) the report on the value of the goods;
- d) the report on the foreign trade exchange;
- e) the report on the type of goods;
- f) the report on released and not released declarations;
- g) the report on temporary import and export;
- h) the report on stored goods;
- i) such other reports as may be stipulated by the Contracting Authority from time to time.

II. Periodic Reports. The Contractor shall provide periodic reports of customs collection activity so as to enable the District to project customs revenues and activity over the near future.

III. Special Reports. The Contractor shall, with no delay, provide any special report requested by the Contracting Authority on the activities of BDCS and/or the performance of the Contractor.

IV. Copies of reports. Upon instruction from the Contracting Authority, the Contractor shall, at no extra cost to the Payment Authority, provide copies of reports to other parties designated by the Contracting Authority.

Clause 19

Cooperation with International Organizations and Institutions. The Contractor, in the implementation of this Contract, shall continue its close cooperation with CAFAO, the Federation of BiH Customs Administration and other Institutions and International Organizations operating in the District.

Clause 20

I. Complaints. In the event of the Contracting Authority not being satisfied with the Contractor's reports regarding implementation of the Contract or the fulfillment of the Contractor's obligations, the Contracting Authority shall have the right to submit a complaint to the Contractor and require the matter complained of to be remedied. The Contractor shall reply within 72 hours from receipt of the complaint and provide the requested remedy without delay.

II. Breach of Contract. The Contractor's failure to perform any of the terms and conditions of the Contract shall constitute a breach of the Contract.

III. Notification. In the event the Contracting Authority determines that the Contractor has breached any provision of the Contract, the Contracting Authority shall notify the Contractor that it is in default of its obligations and shall give the Contractor a reasonable amount of time in which to cure the default. If the Contractor fails to cure the default within the specified time, the Contracting Authority has the right to terminate the Contract forthwith, or to continue performance and seek any other remedy available to the Contracting Authority.

IV. Termination of contract. In the event that the contract is determined on account of the default of the Contractor, the Contracting Authority shall, *inter alia*, have the right to substitute a new contractor or seek damages. Such damages may include the costs of procuring a new contractor, and any added costs resulting from the termination of the Contract.

Clause 21

Indemnification. The Contractor does hereby agree to and expressly indemnify, defend and hold harmless the other two contractual parties against and from any and all claims, actions, causes of action, demands, losses, suits, damages, liability and expenses of whatever kind, that occurred prior to this Contract entering into force.

Clause 22

Entering Into Force. This contract shall enter into force on the signing hereof.

Clause 23

Originals. This Contract is made in six (6) copies in both English and Serb language and each contracting party retains two (2) copies, one of each version. English copies are authentic for all purposes.

IN WITNESS whereof the parties hereto have hereunto set their hands the day and year first herein written.

Deputy High Representative and Supervisor of the Brcko District of Bosnia and Herzegovina.

Henry Lee Clarke

The Government of Republika Srpska, here represented by Minister of Finance of Republika Srpska and Republika Srpska Customs Administration Director

Milenko Vracar

Goran Popovic

The Brcko District of Bosnia and Herzegovina, here represented by the Mayor of the Brcko District of Bosnia and Herzegovina

Sinisa Kistic