



DEPARTMENT OF THE NAVY  
COMMANDER, NAVY INSTALLATIONS COMMAND  
716 SICARD STREET, SE, SUITE 1000  
WASHINGTON NAVY YARD, DC 20374-5140

CNICINST 7043.1 CH-1  
N9

AUG 2 2011

CNIC INSTRUCTION 7043.1 CHANGE TRANSMITTAL 1

From: Commander, Navy Installations Command

Subj: PROCUREMENT POLICY FOR CNIC NONAPPROPRIATED FUND  
ACTIVITIES

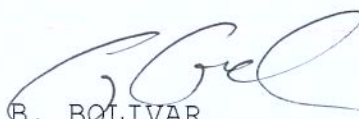
Encl: (1) Revised Contents Page  
(2) Revised Appendices Page  
(3) Revised Index Pages (Appendix F)  
(4) Procurement Policy Update Notices Page (Appendix E)

1. Purpose. To insert an appendix that will contain future procurement policy update notices and to transmit revised pages due to inserted appendix.

2. Action

a. Remove the Contents page, Appendices page, and Index pages of enclosure (1) of the basic instruction and insert enclosures (1), (2), and (3) respectively.

b. Insert enclosure (4) as the new Appendix E into enclosure (1) of the basic instruction.

  
B. BOLIVAR  
Captain, U.S. Navy  
Chief of Staff

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ACTIVITIES

Ref: (a) DOD Instruction 4105.71 of 26 February 2001  
(b) DOD 5500.7-R, Joint Ethics Regulation, August 1993  
(c) SECNAVINST 7043.5B  
(d) SECNAVINST 7010.6A  
(e) BUPERSINST 7510.1B  
(f) BUPERSINST 1710.11C  
(g) DOD 7000.14-R, DoD Financial Management Regulation  
Vol. 13, November 2010  
(h) CNICINST 5300.2  
(i) DOD Instruction 7060.3 of 7 December 2005  
(j) CNICINST 5890.1  
(k) SECNAVINST 5430.25E

Encl: (1) Procurement Policy for CNIC Nonappropriated Fund  
Activities

1. Purpose. To establish nonappropriated fund (NAF)  
procurement policy within Commander, Navy Installations Command  
(CNIC).

2. Background. Reference (a) requires NAF program managers to  
prescribe procurement procedures consistent with DoD  
instructions and policies that govern NAF procurement. This  
instruction establishes the policy and provides the necessary  
procedures for CNIC activities that process NAF procurement  
actions.

3. Policy

a. The provisions of enclosure (1) are promulgated under  
the guidance of references (a) through (k) and apply to all Navy  
NAF activities for which CNIC Fleet and Family Readiness (N9) is  
program manager.

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b. This policy applies to military and civilian Morale, Welfare, and Recreation (MWR) operations; Navy Gateway Inns & Suites; the New Sanno Hotel, and Fisher Houses.

#### 4. Responsibilities

a. CNIC is responsible for:

(1) Establishing NAF procurement authorities, policies and procedures in accordance with reference (a).

(2) Managing NAF procurement authority under the CNIC NAF warrant program.

(3) Providing regular training to Region and Installation staffs on NAF procurement policies and procedures.

(4) Providing oversight and regular reviews of Region and Installation procurement policies and actions.

b. Region Commanders (REGCOMS) are responsible for:

(1) Establishing Region policies as necessary to ensure this instruction is properly executed.

(2) Regularly monitoring and assisting local Installations in executing this instruction properly.

(3) Providing reports to CNIC as may be required.

c. Installation Commanding Officers (COs) are responsible for:

(1) Ensuring that provisions of this policy are executed properly on the Installation.

(2) Assisting CNIC and REGCOM as necessary in monitoring execution of this policy on their installations.

#### 5. Action

a. CNIC shall:

(1) Establish NAF procurement authorities, policies and procedures in accordance with reference (a).

(2) Manage NAF procurement authority under the CNIC NAF warrant program.

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(3) Provide regular training to region and installation staffs on NAF procurement policies and procedures.

(4) Provide oversight and regular reviews of Region and Installation procurement policies and actions.

b. REGCOMS shall:

(1) Establish Region policies as necessary to ensure this instruction is properly executed.

(2) Regularly monitor and assist local Installations in executing this instruction properly.

(3) Provide reports to CNIC as may be required.

c. Installation COs shall:

(1) Ensure that provisions of this policy are executed properly on the installation.

(2) Assist CNIC and REGCOM as necessary in monitoring execution of this policy on their installations.

6. Forms and Reports. Enclosure (1), paragraph 219 provides a list of forms and instructions on how they are obtained.



M. C. VITALE  
Vice Admiral, U.S. Navy

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**PROCUREMENT POLICY**

**FOR**

**COMMANDER, NAVY INSTALLATIONS COMMAND**

**NONAPPROPRIATED FUND ACTIVITIES**



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## CHAPTER 1

### AUTHORITIES AND CONTROLS

#### 101. General

a. Authority and Scope. Commander, Navy Installations Command (CNIC) N9 provides policy, technical direction, performance appraisal, procurement planning, and other aspects of functional management to Navy Nonappropriated Fund (NAF) activities subject to its program management. These activities include military and civilian Morale, Welfare, and Recreation (MWR) funds, Region offices, Navy Gateway Inns & Suites (NGIS), custodial funds and others which are responsible to CNIC N94 for the proper performance of contracting functions conducted under the authority delegated herein. The provisions of this instruction apply to all aspects of contracting with NAFs performed by or for activities under the program management of CNIC N94.

b. Deviations and Exceptions. Requests for deviations and exceptions from the application of the provisions of this instruction will be forwarded to the Director, Fleet & Family Readiness.

c. Waivers. Requests to approve waivers that are authorized within the provisions of this instruction or in contract clauses requiring approval above the level of the contracting officer will be forwarded to CNIC Fleet & Family Readiness Service Center (CNIC N94).

d. Content of Requests. All requests for deviations, exceptions and waivers must set forth the following information in order to be considered;

(1) Section of the regulation or contract clause for which the request is being made;

(2) Reason for the request;

(3) Full explanation of the expected benefits; and,

(4) Length of time for which the deviation, exception or waiver is sought.

e. Updates and Revisions. Changes in federal law and in Department of Defense, Department of the Navy or CNIC

procurement policy can result in the need to make immediate changes to non-appropriated procurement policy and procedures set forth in this instruction. When such changes are required, NAF Procurement Policy Update Notices will be numbered, published and placed in Appendix E of this instruction. All NAF Procurement Policy Update Notices take effect upon publication and placement in Appendix E and remain in effect until cancelled or incorporated into revisions of the basic instruction.

102. Funding Approvals. All contracting procedures addressed throughout this instruction presume that funds are available and expenditures have been authorized according to the uniform accounting system and standard operating procedures governing NAFs.

103. Terms of Reference

a. COMMANDING OFFICER (CO) means Region Commander or Installation Commanding Officer (when delegated), or their duly authorized designee.

b. CONTRACT means all types of contracts and purchase orders for the procurement, sale or disposal of merchandise, supplies, services (including construction) and/or equipment. It includes amendments, change orders and supplemental agreements with respect to any of the foregoing.

c. CONTRACTING includes purchasing, renting, leasing or otherwise obtaining supplies, services or construction. It also includes all functions that pertain to the obtaining of supplies, services or construction, including description (but not determination) of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration.

d. CONTRACTING OFFICER is the warranted person with authority to execute or administer a contract on behalf of the NAF activity or the successor or successors.

e. CONTRACTOR means the person responsible for providing goods, services and/or construction at a certain price or rate. This includes the term "vendor," "seller" or "supplier."

f. MEMORANDUMS OF AGREEMENT/UNDERSTANDING (MOA/U) are agreements between two government entities.

g. NEGOTIATION means the method of government procurement other than sealed bidding. Negotiation permits oral or written solicitation and subsequent discussion on prices, terms and conditions of the proposed contract with the objective of arriving at an agreement that is most advantageous to the buyer. Negotiation is the preferred method of contracting because it is more responsive to NAF requirements than other methods.

h. NONAPPROPRIATED FUNDS (NAFs) are monies derived from sources other than congressional appropriations. Such funds are derived from the sale of goods and services to government agencies, departments or other instrumentalities and personnel, their family members and other authorized patrons. NAFs are used to support or provide MWR and certain educational programs. While NAFs are considered government funds, they are separate and apart from funds which are recorded in the books of the United States Treasury.

i. NONAPPROPRIATED FUND INSTRUMENTALITY (NAFI) is a DoD organizational and fiscal entity formally created by SECNAV or CNO that is supported in whole or in part by NAFs. A NAFI, as an instrumentality of the U.S. Government, enjoys the same immunities and privileges as the U.S. Government in the absence of specific Federal statute. It is not incorporated under the law of any State, but has the legal status of an instrumentality of the United States. Within Navy, the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN (M&RA)) is the principal assistant to the Secretary of the Navy (SECNAV) for MWR programs, including NAFI programs and activities. SECNAV delegated authority and responsibility to the Chief of Naval Operations (CNO) for the establishment and disestablishment of NAFIs and for NAFI management, administration and control. CNO has approved the establishment of the Navy MWR NAFI and designated CNIC as the NAFI Program Manager for Navy MWR. An integral function of CNIC N9 is the Navy MWR Program, which is a NAFI operated by the Fleet & Family Readiness (F&FR) Service Center (CNIC N94).

j. RELIGIOUS OFFERING FUNDS (ROFs) are used only for benevolences as regulated by reference (d) and managed by the program manager. Chapels are not considered a NAFI.

k. OFFER means a response to a solicitation that, if accepted by the NAFI, would bind the offer or contractor to perform the resultant contract. Responses to Requests for Proposals (RFPs) are offers called "proposals."

l. QUOTATIONS (oral or written) are information received in response to a Request for Quotation (RFQ). The RFQ is used by the NAFI to obtain information only for planning purposes. A price "quote" does not obligate the contractor to sell; therefore, cannot be merely accepted by the NAFI to form a binding contract. A purchase order must be issued by the NAFI and be accepted by the contractor before a mutually binding contract is formed.

m. RESPONSIBLE is the term used to describe potential contractors. For a potential contractor to be deemed "responsible", they should be qualified and eligible to receive a contract award by having, at a minimum, adequate financial resources to perform, be able to comply with contract delivery/performance schedules, have a satisfactory past performance record, have satisfactory record of integrity and business ethics, as well as have the necessary organization, experience and technical skills to perform the contract. If a potential contractor is listed in the List of Parties Excluded from Federal Procurement or Nonprocurement Programs, such contractor shall be deemed nonresponsible. This information is available on the internet at <https://www.epls.gov>.

o. SEALED BIDDING means the method of contracting by sealed bid procedures with resultant award to the responsible offeror whose offer, conforming to the invitation for bid, is most advantageous to the buyer, considering only price and price-related factors included in the invitation. Responses to an Invitation for Bid (IFB) are offers called "bids."

p. SOLICITATION means an RFP, RFQ, IFB, or any verbal or written request for information.

104. Legal Status. NAFIs are legal instrumentalities of the U.S. government and as such have the immunities and privileges given to the Federal government under the Constitution, Federal laws, international law, treaties and agreements. NAFIs are immune from direct State taxation and most State laws, such as license and price controls, which would interfere with the performance of their government functions. NAFI contracts are U.S. Government contracts; however, they do not obligate appropriated funds of the United States.

105. Simplified Purchase. Simplified purchase procedures reduce administrative time and costs. A simplified purchase is a purchase of supplies, services, or construction, the aggregate of which does not exceed \$150,000. Simplified purchases may be

made issuing purchase orders, delivery orders, blanket purchase agreements (BPA), contracts, or the NAF purchase card.

106. Contracting Authority. A NAF contracting officer warrant is required for executing all contracts, purchase/delivery orders, and blanket purchase agreements. All NAF contracting officer warrants are issued by CNIC N94, as authorized by reference (c). Termination of a contracting officer's warrant may be required due to a reassignment, termination of employment, exceeding warrant authority, or a violation of contracting policy contained in this instruction. Termination will be by letter, unless the certificate of appointment contains other provisions for automatic termination. No termination will operate retroactively. Termination will be made by CNIC N94.

a. Contracting officers have the authority to obligate NAFs through execution and administration of contractual actions. Contracting officers cannot delegate contracting authority to others. Only contracting officers who have attended training and received a warrant are authorized to sign NAF purchase orders, delivery orders, and contracts. Procedures for requesting a warrant are outlined in paragraph 107. The mandatory requirements to qualify for a warrant are described in paragraph 108.

b. Purchasing requirements shall not be split for the purpose of avoiding the contracting officer warrant limitation or other prescribed expenditure limitations.

c. Requirements that exceed a person's warrant must be forwarded to a contracting officer with a higher warrant level. A "modification" to a purchase order or contract that increases the total dollar amount of a purchase order or contract to a level exceeding a person's warrant authority must also be forwarded to a contracting officer with a higher warrant.

d. A NAF contracting officer warrant may not be used to contract with appropriated funds; however, an appropriated fund contracting officer warrant may be used to contract with nonappropriated funds.

e. A NAF Supply/Service contracting officer warrant does not apply to construction contracts exceeding \$2,000.00. (paragraph 314).

107. Warrant Request Procedures. The Commanding Officer shall recommend and provide justification in writing for the appointment of a NAF contracting officer.

a. The request for appointment and related paperwork shall be signed by the Commanding Officer and submitted to CNIC N94.

b. The request will include the name of the nominee, grade and duty address, documentation concerning the successful completion of training course requirements, work experience, and the warrant limitation requested based on the nominee's level of training and experience.

c. Upon approval by CNIC N94, the original copy of the warrant will be mailed to the individual. Copies will be sent to the respective MWR director or NGIS manager, Commanding Officer, and Region Command. CNIC N94 will maintain a file of all contracting officer appointments.

d. Commanding Officers may establish limitations on the dollar amount and type of expenditures contracting officers may contract for without their prior written approval.

e. All appointments shall be reviewed annually by the MWR director/NGIS manager to ensure a valid requirement still exists for the warrant. CNIC N94 shall be notified upon a reassignment or termination of employment.

108. Training. Reference (c) requires that personnel involved in the procurement process receive formal training (e.g., requestors, receivers, BPA callers, purchasing agents, etc.). To qualify for a NAF contracting officer warrant for supplies and services, individuals must complete mandatory training courses. Current training schedules are available from CNIC N944. The mandatory requirements to qualify for a warrant are as follows:

a. To qualify for a \$5,000 (\$50,000 resale) warrant, individuals must have at least 1 year of MWR/NGIS experience or 1 year of contracting experience either with the government or industry engaged in executing government contracts, and complete one of the following basic courses (or equivalent):

(1) Army/Navy NAF contracting basic course,

(2) Air Force NAF purchasing course,

- (3) Department of Defense (DoD) small purchase course,
- (4) Small purchase/schedule contracts, or
- (5) Basic procurement.

b. To qualify for a \$25,000 warrant, individuals must complete a 1-week basic procurement course **and** complete at least one 2-week intermediate course **or two** of the 1-week intermediate courses (or equivalent) listed as follows:

- (1) Army/Navy NAF contracting advanced course (2 weeks),
- (2) Contract negotiation (1 week),
- (3) Contract administration (1 week).

c. To qualify for an "Unlimited" NAF contracting officer warrant, individuals must complete the basic and intermediate courses, as well as **both** of the following advanced courses (or equivalent):

- (1) Contract law **and**
- (2) Price analysis or cost and price analysis.

109. Course Equivalents. Determinations of course equivalency will be made by CNIC N944B.

110. Ratification. Ratification is the act of approving a voidable contract by an official who has the authority to do so, for the purpose of paying for supplies or services provided to NAFIs as a result of an unauthorized commitment made by an individual who lacked the authority to make the contractual commitment.

a. Ratification procedures will be followed if purchases are made by other than those individuals authorized to do so; a contracting officer exceeds their authority; a contractor is told to begin work before a purchase order/contract has been issued; or items are received or invoiced before a purchase order/contract has been issued.

(1) Requirements. An unauthorized purchase may be made valid by use of the ratification process only if all of the following requirements are met:

(a) The unauthorized purchase was in the best interest of the NAFI.

(b) The resulting contract would otherwise have been proper, if it had been made by an authorized person.

(c) The contracting officer determines that the price is reasonable.

(d) Funds to make payment are available.

(2) Procedure. Each unauthorized commitment shall be documented and submitted to the ratification authority according to the following procedures:

(a) The individual who made the unauthorized commitment shall prepare and sign a written statement of all pertinent facts, covering at a minimum why normal procurement procedures were not followed and what benefit was received, if any, and its value. Copies of all relevant documents (e.g., orders, invoices, etc.) shall be included with the statement.

(b) The individual's supervisor shall review the statement and documents for accuracy and completeness, and prepare a written statement describing measures to prevent recurrence of unauthorized commitments. The statement shall also include whether concurrence of ratification is recommended. A recommendation against ratification shall suggest a method of resolving the issue.

(c) An Office of the General Counsel attorney shall review all documentation for legal sufficiency and forward their recommendation to the contracting officer.

(d) A contracting officer shall review all documentation and determine whether price reasonableness exists and how such determination was made. Contracting officers shall forward their recommendation to the ratification authority.

(3) Ratification Authority. Ratification authority shall be the MWR director/NGIS manager for purchases up to \$25,000, and the Commanding Officer for purchases over \$25,000. A person, however, cannot be their own ratifying official; therefore, ratification shall be forwarded to the next highest level of management, with the exception being the Commanding Officer. Ratification authority cannot be delegated to others. The ratification authority will make the final determination for



or against ratification. If ratification is approved, the requester will complete a purchase request to start the procurement process. If ratification is disapproved, the requester will be notified that the unauthorized purchase was not ratified.

111. Protection of NAF Contracting Activities. MWR directors/NGIS managers will ensure that no one, including themselves, will exert pressure on the contracting officer, or other NAF contracting personnel involved in the contract decision making process. Contracting officers will not be forced to do anything which may violate provisions of this instruction, provisions of reference (b), statutes, or other applicable procurement and related regulations.

112. Separation of Functions. To maintain the integrity of the contracting system, the following functions shall be performed by independent offices (e.g., accounting, contracting, receiving, etc.) or by different individuals:

- a. Issuance of the purchase request and certification of funds availability.
- b. Negotiating, executing, and signing of purchase order, delivery orders, BPA, or contract.
- c. Receipt of goods and services.
- d. Processing bills or invoices for payment.
- e. Signing of checks.

113. Ethics and Standards of Conduct. All personnel involved in the contracting process, including drafters of purchase requests, shall annually read and comply with reference (b).

114. Contract Review Board (CRB)

- a. A CRB, consisting of at least three members including an attorney and two senior contracting personnel, shall be established by the Commanding Officer for the purpose of reviewing significant NAF contracting actions. This review shall supplement, but not substitute for, normal supervisory and contracting officer review, which should be done prior to presentation to the CRB. Contracting officers should make an award decision before forwarding the package to the board. The

board will review the contracting officer's decision. All of the following actions shall be reviewed prior to execution:

(1) Solicitations where the estimated value is in excess of \$150,000.

(2) Contract awards in excess of \$150,000.

(3) Contract awards in excess of \$150,000 to other than the low offeror.

(4) Sole source contract awards in excess of \$150,000.

(5) Concession/percentage contracts expected to generate revenue exceeding \$150,000 during the life of the contract.

(6) Contract awards in excess of \$150,000 when only one response to an RFP has been received.

(7) Modifications extending delivery schedules to contracts in excess of \$150,000.

(8) Contract awards with economic price adjustment (escalation) provisions.

(9) Termination actions.

b. CRB approval is not required for delivery orders issued against existing contracts such as Air Force Nonappropriated Fund Purchasing Office (AFNAFPO) purchasing agreements, or General Services Administration (GSA) Federal Supply Schedule (FSS) contracts, since contract reviews were conducted at the time the original contracts were negotiated.

c. CRB approvals are not required when purchase requests are sent to Fleet and Industrial Supply Centers (FISCs), Navy Region support offices, or interservice contracting agencies such as AFNAFPO, because the contracting office is responsible for all reviews/approvals before making an award.

d. CRB members must familiarize themselves with the provisions of this instruction and the differences between appropriated and nonappropriated fund contracting procedures. In most instances the reviews may be accomplished by chop chain routing, limiting formal board assemblies to high value, or special problem contracting.

115. Contracting Assistance

a. Reference (c) authorizes the NAFI to obtain contracting assistance as required from appropriated fund (APF) contracting offices for all contracts for goods and services anticipated to exceed the NAFI warrant level. In accordance with reference (e), an APF contracting officer warrant issued in accordance with applicable APF regulations is sufficient for signing NAF supply or service contracts, however NAF procurement rules will be used (see reference (a)).

b. Contracting actions may be handled by NAF agencies authorized to contract for Navy NAFIs. A purchase request to such agencies, such as AFNAFPO, may be prepared on a locally devised purchase request form and shall contain the following:

- (1) Purchase request number.
- (2) Issued by, ship to, and invoice addresses.
- (3) Detailed specification/purchase description of the requirement.
- (4) Quantities.
- (5) Required delivery date.
- (6) Name/telephone number of point of contact (POC) of requiring activity.
- (7) DSN and commercial telephone number of paying office.
- (8) Overseas shipping instructions, if applicable.
- (9) Single source justification, if applicable.
- (10) Amount of funds authorized (with percentage increase, if applicable).
- (11) Funds certification signature.
- (12) Suggested source.

c. All necessary approvals, whether administrative or financial, must be obtained prior to submission of the purchase request to a contracting office. The contracting office will be

responsible for analyzing the requirement, obtaining competition, determining the source, performing contract administration and obtaining legal reviews. They will issue the purchase order/contract, keep one copy, send one copy to the contractor, and forward all the remaining copies to the NAFI. They will request the contractor to ship to the NAFI and bill the NAFI directly. This process is different from placing a delivery order against an AFNAF or GSA contract where the delivery order is mailed directly to the contractor (paragraph 306).

116. Coordination. NAFIs are encouraged to seek out and develop liaisons with other like activities within Navy and other services for purposes of developing consolidated procurement efforts aimed at reducing prices and administrative effort.

117. Federal Acquisition Regulation (FAR)

a. Applicability. Reference (c) exempts NAF contracting from the provisions of the FAR and its DOD FAR Supplement (DFAR), except when compliance is specifically required by a DOD component directive. Compliance with the FAR is required in the following instances:

(1) When a contract involves any degree of APF.

(2) When, unless otherwise specified, a contract involves construction or architect-engineering services over \$2,000.

b. Specific Exemptions. The applicability of some FAR provisions to NAF contracting is frequently questioned. Policy in respect to these provisions is as follows:

(1) Competitive negotiation is the preferred method of contracting for supplies and services with NAF. Sealed bidding may be used only if it can be determined to be more advantageous.

(2) Procurement schedules, such as GSA FSS contracts, are not mandatory for use by the NAFI, except as specified in paragraph 208.

(3) Contracts for services, while not subject to FAR requirements, must not be used to circumvent current hiring policies.

(4) Standardized contract formats prepared by CNIC N94 may be used for common services required throughout MWR and NGIS activities in lieu of an Order for Supplies or Services (DD 1155) or a Solicitation, Offer, and Award (SF 33) (paragraph 321). Standardized contract formats for repetitive contracting, which have undergone legal review, will not require further legal review as long as there is no deviation from the approved contract.

(5) NAFIs may contract with NAF employees in certain circumstances (paragraph 212).

118. Required Clauses. All contracts (except delivery orders) shall include as an attachment, clauses contained in appendices A and B. Clauses contained in appendix C shall be included in contracts when applicable. Representations, certifications, and acknowledgments contained in appendix D shall be inserted in all RFPs exceeding \$15,000. It is unnecessary to file a copy of the clauses and certifications in every purchase order or contract file; however, a copy should be kept in the front of the file drawer. The full text version of referenced clauses in appendix B must be made available to contractors upon request. Full text of referenced clauses shown in appendix B may be obtained from Part 52 of the FAR. NAF clauses are also available on the MWR Home page at <http://www.mwr.navy.mil>.

119. Procurement Management Reviews (PMRs). Per reference (e), certain procurement functions (e.g., contracting office, receiving, and accounts payable) are identified as being highly vulnerable to fraud, waste, and abuse. Procurement procedures and contract files should be reviewed annually to ensure compliance with this instruction. The Command evaluation office, an internal auditor, or an audit board will conduct PMRs.

120. Agreements. Certain agreements do not require signature by a contracting officer. For example, a MOA (paragraph 103) with another federal government entity may be signed by the MWR director/NGIS manager or by the Commanding Officer. The MWR director or the information, ticket and tours (ITT) manager may sign a ticket consignment agreement, including agreements furnished by the vendor. After review by a Staff Judge Advocate, commercial sponsorship agreements shall be signed by the Commanding Officer or by the MWR director, if designated by the Commanding Officer (reference (f) refers).



**NONAPPROPRIATED FUND PROCUREMENT**

**Chapter 2: COMMON CONTRACTING PROCEDURES**

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## CHAPTER 2

### COMMON CONTRACTING PROCEDURES

201. General. Contracting with NAF is divided into two categories, purchases in the amount of \$150,000 or less, and purchases in excess of \$150,000. Simplified procedures (commonly referred to as small purchase procedures) using purchase orders or standardized contract formats are allowed only for amounts of \$150,000 or less. Simplified purchasing procedures are also allowed for issuing delivery orders against existing contracts regardless of total dollar value. Formal contracting procedures (RFP/contract or standardized contract formats) shall be used for amounts above \$150,000.

202. Scope. The provisions of this chapter apply to all contracting methods regardless of dollar value.

203. Competition. Contracting with NAF shall be accomplished on a competitive basis. Competition shall be solicited from at least three sources for purchases over the competition threshold of \$5,000. (Exceptions: (1) Delivery orders against existing contracts do not require competition, (2) A valid single source purchase (paragraph 209), and (3) certain entertainment type contracts (paragraph 318a). Purchases under \$5,000 may be accomplished without competition when the contracting officer determines that prices are fair and reasonable (paragraph 403b). Verbal quotations are authorized for purchases less than \$25,000. Written quotations are required for supply purchases exceeding \$25,000, service contracts exceeding \$2,500, and construction contracts exceeding \$2,000. Quotations by facsimile or email transmission may be accepted if the contracting officer states in the solicitation that it will be acceptable.

204. The Contract Process. Contracting shall proceed in a logical planned progression from the development of a requirement through delivery and payment. The procedures and complexity will vary with the dollar value of the contract. The essential procedures are described below:

a. Purchase Request. All contract actions (except purchase card orders) shall be initiated by a purchase request document that identifies the requirement and certifies the availability and applicability of NAF funds. This document is prepared by the requestor and submitted to the contracting office for action. A locally devised or standard request form may be used.

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Each contracting activity should establish procedures for preparation and approval of purchase requests by user activities and for their submission to the contracting officer. The contracting officer without prior approval of the requestor may make no changes to the requirements. A complete and accurate description of the item or a statement of work must be either on the purchase request or accompany the request. When applicable, written justification for single source or brand name shall accompany the purchase request. See paragraphs 209 and 210 for single source/brand name justification requirements. See paragraph 115 when requesting contracting actions from another agency.

b. Solicitation. Solicitation includes all methods of obtaining competitive price information, e.g., telephone calls, catalog comparisons, or requests for quotations/proposals/bids. The use of standard forms (SFs) outlined in paragraph 219 is required.

c. Evaluation. Evaluation is the comparison of quotations, proposals, or bids received to determine the most advantageous offer to the NAFI, price and other factors considered.

d. Award. The type of award will vary depending on the price and nature of the purchase. It may be a purchase order, delivery order, contract, and call against a blanket purchase agreement, petty cash purchase, or purchase card order. Although there is a maximum limit of \$150,000 on the use of a purchase order form (unlimited for delivery orders against existing contracts), RFPs are frequently written for less than that amount when it is necessary to communicate complex requirements to contractors.

e. Shipment/Delivery. All contracts shall specify place of delivery and acceptance. If place of acceptance is different from place of delivery, the contract shall so specify. Title to the supplies/equipment passes to the NAFI at acceptance regardless of when or where the NAFI takes physical possession. It is at this point, along with a proper invoice, that the payment due date is calculated according to the Prompt Payment Act.

(1) If the contract specifies free on board (FOB) origin, NAFI acceptance takes place at the contractor's plant. Freight is prepaid by the contractor and added as a separate item on the invoice. Payment by the NAFI is due upon receipt of proof of shipment (certificate of conformance or government bill

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of lading) and a proper invoice from the contractor. If there is a problem with the shipment, the NAFI must pay the contractor and file a claim with the carrier.

(2) If the contract specifies FOB destination, acceptance occurs at the NAFI's delivery point. Freight charges are included in the price of the item, and payment by the NAFI is due upon receipt of proof of delivery (a signed delivery ticket) and a proper invoice from the contractor. If there is a problem with the shipment, the contractor is responsible for filing a claim with the carrier. If the contract does not specify place of acceptance, acceptance will be deemed to occur at destination (for FOB destination orders), or upon delivery to a common carrier or postal facility (for FOB origin orders). Chapter 7, paragraph 707, outlines duties of the receiving activity.

f. Payment

(1) Payment will be made according to the Prompt Payment Act. NAFIs shall refer to reference (g), in executing payments under the Prompt Payment Act.

(2) Advance payments are advances of monies to a government contractor without regard to the receipt of supplies or services or progress made. Advance payments must have prior approval of the funds manager (MWR director/NGIS manager) and may be used only after the contracting officer has considered using partial or progress payments. In situations where it makes good business sense (i.e., entertainment contracts, magazine subscriptions, and registration fees), advance payments may be issued if approved by the funds manager.

205. Legal Review. Reference (k) provides that the Office of the General Counsel (OGC) is responsible for providing legal services in the areas of acquisition, business and commercial law. Accordingly, OGC attorneys shall provide required legal support unless an acceptable arrangement has been made between the cognizant CNIC OGC attorney and either the local Region Legal Service Office (RLSO) Judge Advocate General (JAG) attorneys or other JAG attorneys for the provision of contracting legal support by JAG attorneys. Such arrangements shall include means for prompt advice and consultation between OGC and JAG attorneys and shall be approved by CNIC Office of Counsel. Legal review and approval must be obtained before taking the following actions:

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a. Contract awards over \$5,000 resulting from unsolicited proposals.

b. Responding to any disputes, protests, appeals, claims, or novations.

c. Termination, suspension, or debarment proceedings.

d. Third party agreements such as Public-Private Ventures (PPV) and outsourcing MWR functions.

e. Commercial sponsorship agreements.

f. Substantive changes to standard contract clauses.

206. Identification of Requirements. All purchases (except purchase card orders and calls made against existing BPAs) will be preceded by a written purchase request signed by the requestor. It is the responsibility of the requestor to identify its requirement in sufficient detail to ensure receipt of the desired supplies or services. A proper specification/purchase description or a statement of work for services can best accomplish this.

a. The requestor is also responsible for verifying that NAF funds are available and applicable.

b. Requirements will not be split for the purpose of circumventing procedures authorized by this instruction. The word requirement(s), purchase(s), quotation(s), and solicitation(s) shall be interpreted to mean complete transactions such as purchase orders or contracts, not components or parts such as line items.

207. Specifications. Good item descriptions and specifications are essential. They enable buyers to obtain goods and services of the desired quality, in the correct quantity, at the proper time, from the right source, and at the right price, and to do it continuously and consistently. Good specifications detail the essential functional and physical characteristics of a requirement such as design features, materials, dimensions, electrical requirements, intended use, restrictions, etc. Well-developed item descriptions and specifications enable buyers and sellers to avoid misunderstandings. Whenever possible, specifications should not specify particular products or features unless they are essential to the requirement. Restrictive specifications limit competition and may result in

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higher prices. Standard item descriptions and specifications are available for many products, including food, furniture, furnishings, equipment, and supplies.

a. There are many specification guides that are available from manufacturers, trade associations, and specialty publishers.

(1) Culinary & Hospitality Industry Publication Services, 1307 Golden Bear Lane, Kingwood, TX 77339-3017, phone (713) 359-2270, facsimile (713) 359-2277. This book provides comprehensive purchase and specification information.

(2) Various agencies and departments of the Federal government make available at no cost detailed specifications for virtually any type of raw product. In many cases, they can be used "as is" or adapted to NAFI requirements.

(3) Meat Service Report. This weekly publication provides valuable pricing information for over 200 meat products. It also provides the purchaser with United States Department of Agriculture's (USDA) Institutional Meat Purchasing Specifications (IMPS). The cost of the service is nominal. Contact the National Provisioner, 15 West Huron Street, Chicago, IL 60610 for details or refer to their web site at <http://www.nationalprovisioner.com>.

208. Sources of Supply. All contractors, except those listed as debarred, ineligible, or suspended (paragraph 211) are eligible sources of NAFI requirements. Federal government sources shall be used, or shall be considered, prior to contracting with commercial sources. Except for those cited as mandatory, these sources should not be used if lower prices for like or similar items are available from commercial sources. Government established sources are as follows:

a. Naval Supply Systems Command (NAVSUP). Certain items of supply and subsistence are available from NAVSUP. Purchase of subsistence items for the general mess will be processed according to NAVSUP Publication 486, Food Service Management, paragraph 6220. Purchases of other than subsistence items will be governed by procedures established locally. Restriction: not to be used for resale items unless authorization is granted by the office concerned.

b. Navy Exchange (NEX). Prices to the NAFI shall be in accordance with the Navy Exchange Service Command (NEXCOM)

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manual. NEX will only accept cash, check, or the NAF purchase card for purchases at point of sale.

c. Inter/Intra Service Agreements. NEXCOM, Norfolk, VA; AFNAFPO, San Antonio, TX; U.S. Army Community and Family Support Center (USACFSC), Alexandria, VA; GSA, Washington, D.C.; Defense Personnel Support Center (DPSC) field activities; and CNIC N94, Millington, TN, issue various purchasing and price agreements. Navy NAFIs are eligible and authorized to use many of these agreements. Competition is not required when issuing delivery orders against existing price agreements and contracts.

d. Federal Supply Schedule (FSS). GSA establishes FSS contracts with commercial firms for common use classes of supplies and services. The FSS contracts list contractors, the supplies and services that may be purchased from them, and pertinent terms such as delivery, discounts, and transportation. Competition is not required when issuing delivery orders against these contracts. All FSS are listed on <http://www.gsaelibrary.gsa.gov/ElibMain/home.do>. FSS contracts are optional for use by NAFIs using NAFs. FSS contracts may not be used to purchase resale items.

e. GSA Stock Program

(1) GSA stocks a wide range of national stock number (NSN) items in a nationwide network of Wholesale Distribution Centers (WDCs). All stock items are listed in and can be requisitioned from the GSA supply catalogue. Copies of the catalogue can be obtained from GSA Administration, Centralized Mailing List Services (7CPNL), 4900 Hemphill St., P.O. Box 6477, Fort Worth, TX 76115, DSN 739-7369, or commercial (817) 334-5215, facsimile: (817) 334-5227.

(2) Retail supply outlets called Customer Supply Centers (CSC) stock administrative supplies, as well as common janitorial and tool items. Contact your local CSC or FSS Bureau for copies of the retail supply catalogues. GSA contracts may not be used to purchase resale items.

f. Federal Prison Industries, Inc. (FPI). FPI, usually referred to by its trade name UNICOR, is a government corporation under the Department of Justice, providing supplies and services to the federal government. These goods and services are listed in the Schedule of Products Made in Federal Penal and Correctional Institutions, referred to as the "Schedule." FPI has priority, under 18 United States Code

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(U.S.C.) 4124, over workshops for the blind and severely handicapped in the production of commodities for sale to the government. Copies of the schedule are available at FPI, c/o Department of Justice, Washington, D.C. 20537. A "Schedule" should be kept on file.

**MANDATORY.** 18 U.S.C. 4124 requires NAFIs to buy supplies of the classes listed in the Schedule of products made in FPIs at prices not to exceed current market prices.

g. Products of the Blind and Other Severely Handicapped. Under the Javits-Wagner-O'Day Act of 1938, amended in 1971, certain supplies and services are provided to agencies of the federal government by workshops for the blind and workshops of other severely handicapped persons located in various cities. The supplies and services offered, and the procedures are identified in the *Procurement List of Supplies and Services* provided by the blind and other severely handicapped. Copies of the procurement list are available from the address listed in paragraph 208e. The customer service number is 1-800-433-2304.

**MANDATORY.** 41 U.S.C. 48 requires NAFIs to buy required goods and services identified on the procurement list.

209. Single Source of Supply. This situation exists when required products can only be obtained from one source, or when it is impracticable to obtain competition. "Single source" contracting is rarely justifiable. If similar items of different manufacture are unacceptable for any reason, it is generally practicable to obtain price competition by soliciting the preferred manufacturer, their distributors and dealers, and considering government sources as well. The requestor must provide a written, single source justification with the purchase request that states what critical or unique features of the requirement limits its availability to a single source. The justification should also explain why other sources are not acceptable. The contracting office makes the final determination on all single source purchase requests, and documentation is required in the contract file for actions taken and price evaluation. The basis for price reasonableness can be a prior purchase, published catalog prices, market prices, etc. If the price reasonableness is based on a prior purchase, the prior purchase must have been competed.

210. Brand Name Only. A brand name only purchase is useful when only one product, not a substitution, meets the needs of the requesting activity, such as for resale items, where

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requirements are based on customer preference. No written justification for a brand name is required when the purchase request so indicates that the purchase is for resale and is based on customer preference. However, a brand name only purchase description allows for the possibility of competition in that it may be able to be procured from sources other than the brand name manufacturer (e.g. distributor). Written justification for brand name only purchase of items, other than resale/customer preference, which exceeds \$5,000, is required from the requestor and must be furnished with the purchase request. The justification will state what specific need makes this particular brand necessary over others and state specifically why other sources are not acceptable. Brand name items shall be competed from other suppliers carrying that brand, when possible.

#### 211. Contractor Qualifications

a. Purchases will only be made from contracts awarded to responsible prospective contractors. In order to be considered responsible, a prospective contractor must be able to affirmatively demonstrate its responsibility by:

(1) Having sufficient financial resources to perform the contract, or have the ability to obtain them.

(2) Being able to comply with the delivery or performance schedule.

(3) Having a satisfactory performance record.

(4) Having a satisfactory record of integrity and business ethics.

(5) Having the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them.

(6) Having the necessary production, and technical equipment and facilities, or the ability to obtain them.

b. The decision determining contractor responsibility must be based upon fact. Contracting officers may utilize many sources of information when gathering facts needed to make the decision regarding responsibility. The extent of research involved will depend upon the amount of new information of a prospective contractor that is available and accessible.



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However, the contracting officer should use the following sources of information to support determinations of responsibility or nonresponsibility:

(1) List of Parties Excluded from Federal Procurement or Nonprocurement Programs (GSA) and applicable "theater lists" overseas. This joint consolidated list, issued by GSA, lists contractors and individuals who are debarred, declared ineligible or suspended under existing regulation from doing business with the Government. Contracting officers shall not award any contracts to sources listed in this publication. Subscription to this publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402, commercial (202) 512-1800, or is available on the internet at <http://www.arnet.com>.

(2) Financial data, questionnaire replies, personnel information and information on product equipment from prospective contractors.

(3) From other sources such as publications (e.g. Dun & Bradstreet Reports), other suppliers, subcontractors, and customers of the prospective contractor, financial institutions, other Government agencies, and business and trade associations (e.g. Better Business Bureau, Chambers of Commerce, etc.)

#### 212. Government Employees

a. Except as prescribed in reference (h), contracts shall not be entered into between NAFIs and military or civilian employees of the government, or between the NAFI and business organizations which are substantially owned or controlled by such government employees. An employee of a NAFI may not enter into a contract with a NAFI in which they are employed; however, they may enter into contracts with other NAFIs on off-duty time, providing there is no conflict of interest in their employing NAFI.

b. The only justification for exemption is an exceptionally compelling reason, such as if the needs of the NAFI cannot otherwise be reasonably met. When a contracting officer has reason to believe that such an exemption is justified, written approval from CNIC N941 shall be obtained prior to execution of the contract.

#### 213. Trade Agreements Act

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a. Public Law 96-39 requires reports of individual NAF contract actions for supplies and equipment (except resale, construction, and services), where the total dollars obligated exceed \$190,000, be submitted to CNIC N948 within 10 calendar days after the date of the contract action.

b. The report will include contract number, modification number, date of action (year, month), total dollars obligated or de-obligated, principal product, country of origin of foreign components of products manufactured in the United States, and country of manufacture.

c. Reportable contract actions include:

(1) A contract that obligates more than \$190,000.

(2) An indefinite-delivery type contract or BPA that may result in obligations during the fiscal year that accumulate to more than \$190,000 (orders against these contracts or orders against BPAs are not to be reported individually).

(3) A modification that obligates more than \$190,000.

(4) A modification that terminates a contract that was previously reported.

(5) Two or more contracts for the same product that resulted from a single solicitation when the total amount of the multiple contracts exceeds \$190,000.

214. Walsh-Healey Act. The general policy of the Walsh-Healey Public Contracts Act pertains to supply-type contracts and requires that representations be obtained from a prospective contractor that is a manufacturer or regular dealer of the supplies offered, and all employees whose work relates to the contract be paid no less than the minimum wage rate prescribed by regulations issued by the Secretary of Labor. The Act applies to contracts including indefinite-delivery contracts, blanket purchase agreements, and certain subcontracts for the manufacture or furnishing of supplies that are to be performed within the United States, Puerto Rico, or the Virgin Islands and that exceed or may exceed \$15,000, unless exempted by the Act.

215. Small Business Act. The Small Business Act provisions (15 U.S.C 631 et. seq.) are not mandatory when contracting with NAF; however, NAFIs shall ensure that small and disadvantaged

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enterprises are given the maximum opportunity to compete for NAF contracts.

216. Buy American Act

a. Definition. Foreign goods are defined as those goods produced or manufactured in a foreign country and physically located outside the United States, its possessions, Puerto Rico, or in bonded warehouses or a foreign trade zone within the United States, its possessions, or Puerto Rico.

b. Policy. No foreign goods shall be purchased for use in the United States, its possessions, and Puerto Rico without specific authorization of CNIC N94. Before requesting approval, the feasibility of foregoing the requirement or providing an American-made substitute shall be considered.

(1) The Buy American Act does not apply to purchases for use overseas. Such purchases will be per reference (i).

(2) The Buy American Act does not apply to purchases of resale items.

217. Documentation. Each NAFI procurement office shall maintain records of all purchase/contract actions sufficient to constitute the full history and to permit reconstruction of all stages of the transaction. The file should contain, at a minimum, the purchase request, the solicitation, a list of sources solicited, quotes/offers received, approvals required, evaluation of offers, contract/purchase order, justification statements for single source (if applicable), justification for award to other than the low offeror (if applicable), price reasonableness documentation, and a record of all contract administration action. Files should be retained for the periods prescribed in SECNAV Manual 5210.1 of November 2007.

218. Uniform Procurement Instrument Identification Number (PIIN). A PIIN shall be used for identifying NAF procurement instruments (solicitations, purchase/delivery orders, contracts, BPAs, amendments modifications, etc.).

a. NAF contracting activities shall establish and maintain separate document registers for each of the NAF procurement instruments (solicitations, purchase orders, delivery orders, contracts, BPAs, etc.). Registers shall be maintained on a fiscal year basis and sequential numbers will start over at the beginning of each fiscal year.

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b. The basic PIIN number shall consist of 13 alphanumeric characters positioned as follows:

(1) The first six positions can be any six characters. For example, the first three positions might be the letters NAF to denote nonappropriated funds. The fourth, fifth, and sixth positions might be the first three letters of the installation name or the first six positions might be the first six letters of the installation name or the Unit Identification Code (UIC).

(2) The seventh and eighth positions shall be the last two digits of the fiscal year in which the PIIN is assigned.

(3) The ninth position shall be a capital letter assigned to indicate the type of instrument as follows:

- A - Blanket Purchase Agreement/Orders.
- B - Invitation for Bids (Sealed Bid).
- C - Contracts (excluding Indefinite-Delivery type contracts).
- D - Indefinite-Delivery type contracts.
- F - Delivery Orders placed against existing contracts.
- L - Lease agreements.
- M - Purchase Orders.
- Q - Request for Quotations.
- R - Request for Proposals.
- S - Entertainment contracts.
- T - Concession and other revenue generating contracts.

(4) The tenth through thirteenth positions shall be the serial number of the instrument. Each series of serial numbers shall commence with the number 0001 at the start of each fiscal year. Alphanumeric serial numbers shall be used when more than 9999 numbers are required, i.e., A001 through A999, then B001 through B999, etc. The letters "I" and "O" will not be used to eliminate potential confusion and typographical errors.

(5) Example: NAFJAX-99-M-0001.

c. Modifications to contracts and agreements will be numbered supplementary to the 13 position PIIN, as follows:

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(1) The first position will be a capital letter "P" identifying the modification as being issued by the contracting office.

(2) The second through sixth positions will be a serial number commencing with 00001.

d. Amendments to each solicitation document will be sequentially numbered by use of a four position numeric serial number, supplementary to the basic PIIN, commencing with 0001.

#### 219. Forms

a. Forms prescribed for NAFI use are listed below. All NAFI contracts/purchase and delivery orders shall contain, as applicable, the following minimum information:

- (1) Current date;
- (2) Contract/purchase/delivery order number;
- (3) Address of issuing office, point of contact, and telephone number;
- (4) Contractor name and address;
- (5) Required delivery date;
- (6) Quantities;
- (7) Payment terms;
- (8) Invoice address, point of contact, and telephone number;
- (9) Clear and precise delivery address (no post office box numbers);
- (10) Statement that the funds are NAF;
- (11) Description of supplies/services or statement of work;
- (12) Contract clauses; and
- (13) Signature of contracting officer.

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The following forms are available on the MWR website at <http://www.mwr.navy.mil>.

<u>Form Number</u>	<u>Form Name</u>
SF 18	Request for Quotation
SF 30	Amendment of Solicitation/Modification of Contract
SF 33	Solicitation, Offer And Award
SF 98	Notice of Intention To Make a Service Contract and Response to Notice
SF 1409	Abstract of Offers
OF-336	Continuation Sheet (Optional use, blank sheet of paper may be used)
DD 1155	Order for Supplies/ Services
DD 250	Material Inspection and Receiving Report

c. Activities may use computer generated forms; however, these forms must correspond with all specifications of the prescribed form, including overall size, wording, and arrangement.

220. Vendor Contracts. Signing contractor-provided forms on behalf of the NAFI is not authorized. NAF contracts will only be written on forms authorized by this instruction.

221. Contract Duration

a. NAFI contracts for supplies and services shall not exceed 5 years (including options, extensions, or renewals). Contracts will normally be written for a period of 1 year with

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four 1-year options. Contracts with option years, when used, will contain the Option to Extend clause (appendix C).

b. Contracts may exceed 5 years when they involve "outgrants" or lease (inclusive of Public/Private Ventures) of Department of the Navy (DON) controlled real property and/or result in DON granting authority to construct improvements thereto. This policy applies to all outgrants whether that outgrant is called a lease, a license, a concession agreement, an easement, a conveyance, a permit, or equivalent term. Proposed outgrants/leases exceeding a 5-year term shall be approved by the Assistant Secretary of the Navy (Energy, Installation & Environment) (ASN (EI&E)). Request for such approval shall be forwarded through the NAFIs appropriate Chain of Command to CNIC N944. Exceptions to the above are outlined below:

(1) Agricultural outleases with a term not to exceed 10 years.

(2) Renewals of existing easements unless the renewal would grant a right to construct improvements to the property.

(3) Leases for mobile antennas with a term of up to 20 years.

(4) Outgrants with a term up to 5 years where the lessee is permitted to construct improvements with a value under \$5,000.

(5) Use agreements and host-tenant agreements for use of DON property by other DOD agencies.

c. All outgrants/leases involving DON controlled real estate interests, regardless of their term or nature (except short-term leases or use agreements that do not permit modification or construction of improvements), shall be reviewed by the NAVFACENGCOM Real Estate Division for sufficiency and compliance with all applicable laws, regulations, and policies. Review shall be requested via the Region NAVFAC office, the NAFIs Region Command, and CNIC N944, and forwarded to NAVFACENGCOM.

222. Unsolicited Proposal. An unsolicited proposal is a written proposal that is submitted to the NAFI for the purpose of obtaining a contract and which is not in response to a formal or informal request from the NAFI. Advertising materials,

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commercial product offers, contributions, or technical correspondence are not unsolicited proposals. Unsolicited proposals can provide innovative and unique methods of approach; however, NAFI personnel will not encourage vendors to submit unsolicited proposals. A proposed award resulting from an unsolicited proposal must receive legal review and approval if over \$5,000.

a. Validity. A valid unsolicited proposal must:

- (1) Be innovative and unique.
- (2) Be independently originated and developed by the offeror.
- (3) Be prepared without NAFI or government personnel supervision.
- (4) Include sufficient detail to permit determination that the NAFI would benefit.
- (5) Not be an advance proposal for a known NAFI requirement that can be obtained by competitive methods.

b. Evaluation. A valid, unsolicited proposal will be forwarded to technical personnel for evaluation. If, however, the unsolicited proposal is not related to the NAFI mission, it may be returned to the offeror without evaluation, citing reasons. A favorable evaluation does not in itself warrant negotiation on a noncompetitive basis. The NAFI shall return the unsolicited proposal if its substance:

- (1) is available to the NAFI without restriction from another source;
- (2) closely resembles a pending competitive solicitation; or
- (3) is not sufficiently innovative or unique to justify acceptance.

c. Prohibitions. The NAFI must safeguard the content of the unsolicited proposal as it would solicited proposals. NAFI personnel shall not use any data, concept, idea, or other part of an unsolicited proposal as the basis, or part of the basis, for a solicitation or in negotiations with any other firm, unless the offeror is notified of and agrees to the intended



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use, or unless the information is available from other sources without restriction.

## 223. Protests, Disputes, Claims and Appeals

### a. Definitions

(1) Appeal. An appeal is a contractor's or interested party's request for higher level review of the contracting officer's final decision regarding its protest, dispute or claim.

(2) Claim. A claim is a monetary claim by a contractor in which it claims entitlement to a specific payment under a particular clause of the contract or under applicable law. A contractor may request a final decision of the contracting officer regarding its claim.

(3) Dispute. A dispute is an assertion by a contractor of a contract right that the contractor believes it has under the provisions of the contract or applicable law. A dispute can be verbal or written, however a request for a final decision from a contracting officer regarding the dispute must be in writing. A dispute may involve a contract right or a financial entitlement or both. A contractor may request a final decision of the contracting officer regarding its dispute.

(4) Interested Party. For the purpose of filing a protest, an interested party is an actual or prospective offeror whose direct economic interest would be affected by the act or omission forming the basis for the protest or appeal. For the purpose of being allowed to provide comments on or otherwise participate in a protest, an interested party is the awardee or any other actual offerors who, in the sole discretion of the Contracting Officer, appears to have a substantial prospect of receiving an award if the protest were granted.

(5) Protest. A protest is a written objection by an interested party filed to the Contracting Officer concerning any one of the following: a solicitation or other request for offers for a contract or purchase order for the procurement of property or services; the cancellation of solicitation or other request; the award or proposed award of a contract or purchase order; or the termination or cancellation of an award of a contract or purchase order, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract or

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purchase order. A protest may be filed either pre-award or post-award. To be considered by the contracting officer, a protest must be filed in a timely manner, as defined in these procedures, and must be clearly identified by the interested party as a protest. Oral and written complaints not clearly identified as protests are not considered to be protests within the meaning of this paragraph. In addition to a protest not filed in a timely manner, protests involving other issues set forth at 4 C.F.R. § 21.5 are not for consideration by the Contracting Officer on the merits and may be dismissed.

**Note regarding protests filed at the General Accountability Office (GAO):** Protests involving a NAF contract or purchase order issued by NAF Contracting Officer on behalf of nonappropriated fund instrumentality (NAFI) are not subject to the jurisdiction of the General Accountability Office under the Competition in Contracting Act (CICA, 31 USC 3551 et seq.) However, see subparagraph b(3) concerning additional actions which must be taken by the Contracting Officer regarding a protest filed at GAO.

(6) Protester. The term protester refers to the individual, partnership, firm, corporation, or other entity filing a protest.

b. General

(1) Satisfactory Settlement. The first step in resolving any concern or issue raised by an offeror is for the contracting officer to consider the matter and respond to the offeror accordingly. Many times, a concern or issue raised by an offeror may be resolved with a simple explanation of the reason for the contracting officer's action. Where the concern or issue raised by the offeror cannot be resolved through informal discussion between the contracting officer and the offeror, the offeror must file a written protest for the matter to be considered further.

(2) Protest Consideration. Only interested parties may file protests. Contracting officers shall consider all timely protests filed by interested parties, whether submitted before or after award. The protester shall be notified in writing of the final decision by the contracting officer. Where the protest is not filed timely, the contracting officer shall dismiss the protest, without the need for further consideration of the merits of the protest. Where the protest is not filed by an interested party, the contracting officer shall dismiss the

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protest without the need for further consideration of the merits of the protest. In either case, however, the contracting officer shall issue a final decision stating that the protest is being dismissed, state the reasons for the dismissal, and advise the protester of the appeal procedures contained herein.

(3) Protests filed at GAO. When notice has been received that a protest has been filed at GAO, the Contracting Officer must immediately consult with OGC to determine what steps must be taken to comply with statutory requirements of CICA, 31 U.S.C. § 3553, concerning the automatic stay of making the award in a pre-award protest, or suspending the contractor's performance in a post-award protest. Even though GAO does not have jurisdiction to issue a decision on the merits of a protest involving NAFI procurements, legal counsel must first consider whether to file a motion to have the protest dismissed; and the Contracting Officer must either withhold award or suspend performance of the contract or purchase order, as appropriate, while the protest remains pending and GAO has not yet ruled on the jurisdiction issue. All determinations either to proceed with making the award or continuing performance of a contract or purchase order while a protest remains pending at GAO must be approved by CNIC N94.

(4) Appeal of a Contracting Officer Final Decision

(a) Should the protestor or contractor desire, it may appeal a NAF Contracting Officer final decision (COFD) on its protest, dispute or claim in accordance with the procedures identified herein. Only those matters raised in the original protest, dispute or claim may be appealed. A party submitting an appeal may not raise new issues or grounds for protest not previously raised and considered by the contracting officer. The appeal authority will not address any new issues or new grounds in an appeal.

(b) Appeals from NAF COFDs shall be as follows:

<u>Contracting Officer's Activity</u>	<u>Appeal Authority</u>
CNIC Millington (N94)	CNIC HQ (N9)
Region	Region N9
All others	Installation CO

c. Timeliness

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(1) Time Limit. Protests based on alleged improprieties in a solicitation which are apparent on the face of the solicitation must be filed with the contracting officer, in writing, prior to the closing date for receipt of proposals. In all other cases, including protests after award, protests shall be filed, in writing, not later than 10 calendar days after the date of the contracting officer's award decision.

(2) Determining Timeliness. A party's objection or comments to a solicitation do not become a protest within the meaning of these procedures unless and until the objections or comments are put in writing, clearly identified as a protest, and received in a timely manner by the contracting officer. For the purpose of these procedures, the date that the written protest is received by the contracting officer is the relevant date for determining whether the protest has been filed in a timely manner. Further, the "calendar day," as it affects the time for filing a protest, or other document called for under these procedures, expires at 4:00 p.m. local time at the location where the protest or other document is required to be filed, unless contracting officers, in their sole discretion, set a different hour.

(3) Untimely Protests. Untimely protests will not be considered on the merits of the allegations made. Failure to file a protest within the time requirements of this instruction will result in a dismissal of the protest by the contracting officer.

d. Protests: Required Content

(1) To be considered, a protest must be timely filed, in writing, and clearly identified as a protest. While no particular form or format is required, a protester shall furnish a complete written protest to the contracting officer including, as a minimum:

(a) the name, address, and telephone number of the protester;

(b) sufficient details regarding the protest, to include relevant documents, so that the contracting officer can make a thorough and well-reasoned decision on the matter;

(c) when necessary to resolve the protest, a copy of the offer or proposal submitted by the protester;

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(d) copies of the specifications or portions of the solicitation relevant to the protest; and

(e) any other matters which the protester considers relevant to the resolution of the protest, including the specific relief requested by the protester.

e. Processing Protests

(1) Expeditious Handling. All protests shall be handled expeditiously. The contracting officer shall give a copy of the protest to the awardee (if the contract has been awarded), any interested party, and cognizant NAFI personnel who may be affected by the protest. The contracting officer may allow any party so notified to submit written comments regarding the protest for consideration by the contracting officer. The time limits in which the comments must be filed should be set by the contracting officer when the party is notified of the protest. Where the protest contains information claimed by the protester to be procurement sensitive or otherwise protected from disclosure, the contracting officer should send a summary of the grounds of protest and not an actual copy of the protest.

(2) Conferring with the Protester. Many times, a protest can be resolved by a brief explanation of the contracting officer's rationale for a decision. Upon receipt of a protest before contract award, the contracting officer may wish to contact the party filing the protest to explore the subject matter of the protest. This procedure does not contemplate an extensive discussion with the protesting party. Rather, any contact with the protester should be brief and to the point, in an attempt to resolve the matter under protest.

(3) Award Pending Protest. When a protest is filed before contract award, award shall not be made until the matter is resolved, unless the contracting officer determines, and documents that determination in the contracting file, that any one or more of the following conditions applies:

(a) the supplies or services are urgently required;

(b) delivery or performance will be unduly delayed by failure to make award promptly; or

(c) a prompt award will otherwise be in the best interest of the NAFI.

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(4) The determination by the contracting officer to continue with contract award pending resolution of the protest does not provide independent grounds for protest or appeal under these procedures.

(5) Suspension of Performance. Contract performance may be suspended in accordance with the provisions of the Suspension of Work clause of the contract if in the opinion of the contracting officer, in consultation with counsel, it would be in the best interest of the NAFI.

g. Notification to Interested Parties

(1) All Cases. In any case, whether or not contract award or contract performance will be affected, interested parties, as well as cognizant NAFI personnel, should be given a copy of the protest as soon as practicable and, where possible, within three working days after receipt of the protest by the contracting officer. The contracting officer may allow any party so notified to submit written comments regarding the protest for consideration by the contracting officer. The time limits in which the comments must be filed should be set by the contracting officer when the party is notified of the protest.

(2) Award Withheld. When a protest against the making of an award is received, and award will be withheld pending settlement of the protest, all interested parties shall be informed of the protest as soon as practicable after receipt of the protest. If appropriate, the interested parties should be requested to extend the time for acceptance of their respective offers to avoid the need for resolicitation. Should the contracting officer fail to obtain an extension, consideration should be given to proceeding with award as allowed under these procedures.

(3) Claims of Procurement Sensitive Information. The burden to show that information is procurement sensitive or otherwise protected from disclosure rests with the party making the claim for protection from disclosure. Where the protest or comments filed by an interested party contain information clearly marked as being procurement sensitive or otherwise protected from disclosure, the contracting officer should take steps to safeguard the information pending further investigation into the matter. For example, when notifying a party of a protest, the contracting officer should delete or "redact" any such information before sending a copy of the protest. Where this cannot be done effectively, the contracting officer should

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summarize the grounds of the protest, avoiding the information claimed as protected.

(4) Marked Protected Material. To claim protection from disclosure, the information must be clearly marked. The title or cover page must contain a restrictive legend stating that the material submitted contains information which is considered to be proprietary or procurement sensitive and asserting a privilege from release of the information outside the government. Furthermore, each page which contains any material claimed to be proprietary or procurement sensitive must contain a similar notification as well.

(5) Returning Unmarked Material. When a party claims protection from disclosure, but its submissions are not marked at all or are not clearly marked, the contracting officer should notify the party submitting it and discuss the situation. If the submitter of the information persists in the claim that the information is protected, the material should be returned to the submitter to be marked with the appropriate restrictive legends.

(6) Contracting Officer's Authority. As noted above, interested parties may submit comments regarding protests and appeals. If the contracting officer determines the protest or appeal cannot be decided unless the other parties are made aware of the information claimed as being protected so that they may comment on it, the contracting officer should discuss the matter with the parties in order to resolve the situation. The contracting officer, however, maintains the ultimate authority to determine whether the material is subject to protection under applicable law and regulation or may be released to the other parties to the protest.

#### h. Issuance of Decisions

(1) Final Decision of the Contracting Officer. Final decisions of the contracting officer shall be in letter format and include the date of the final decision and reference to the solicitation or contract number. The final decision should include essential elements of the protest, dispute or claim and a summary of any evidence or arguments submitted in support of the protester's position. In addition, the final decision must advise the protester or any party adversely affected by the final decision of the right to appeal the decision of the contracting officer to the appropriate appeal authority. The final decision must include the following paragraph: "This is the final decision of the contracting officer. If this decision

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does not answer the matter to your satisfaction, the next level of review available is the (insert appropriate appeal authority and complete address). Your appeal is limited to the matters addressed in this final decision. If you elect to appeal the contracting officer's final decision, the appeal must:

(a) be in writing to the appropriate appeal authority and contain an original and two copies;

(b) be received by the appropriate appeal authority within 10 calendar days from the date of your receipt of the contracting officer's final decision forming the basis for appeal;

(c) clearly indicate that an appeal is intended;

(d) reference the contracting officer's final decision, the solicitation and/or contract number, and the date that the contracting officer's final decision was first received; and

(e) contain a full factual and legal explanation of why the contracting officer's final decision is wrong and should be overturned."

(2) Notification of Decision. The decision shall be furnished directly to the contractor and shall be signed by the contracting officer. If the decision is mailed, it shall be sent via first class mail, return receipt requested, and the date of the contractor's receipt be recorded in the contract file. If sent via facsimile transmission, evidence of the receipt shall be maintained in the contract file and a hard copy shall also be sent via first class mail, return receipt requested. For purposes of determining whether an appeal is timely, the earliest date that the contracting officer's final decision was received will control.

(3) Invalidated Award. If a contract award is to be terminated as a result of the decision of the contracting officer, the contracting officer shall terminate the contract pursuant to the provisions of the termination for convenience clause.

i. Appeals of Contracting Officer's Final Decisions

(1) Contents of Appeal. A protester or an interested party adversely affected may appeal a final decision of the



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contracting officer by filing a written appeal with the appropriate appeal authority. The appeal shall:

- (a) be in writing with an original and two copies;
- (b) be sent to the appropriate appeal authority,  
(insert complete address);
- (c) be reviewed by the appropriate appeal authority within 10 calendar days from date of receipt of the contracting officer's final decision by the party filing the appeal;
- (d) clearly indicate that appeal of the contracting officer's decision is intended;
- (e) reference the contracting officer's final decision, the solicitation and/or contract number, and the date that the final decision was first received by the party filing the appeal; and
- (f) contain a full factual and legal explanation of why the contracting officer's final decision is wrong.

(2) Receiving Appeal. Upon receipt of an appeal, the appeal authority shall:

- (a) if mailed, record the date of mailing (postmark date) on the notification as well as the date of receipt;
- (b) record the date and time received on the notification;
- (c) record the manner of delivery of the notification (e.g., hand delivered, facsimile, overnight courier, etc.); and
- (d) record the identify the individual making the entries.

(3) Processing Appeal. Upon receipt of the appeal and related documentation, the appeal authority will take responsibility for processing the appeal and will take steps to ensure that the contracting officer forwards relevant information for the appeal authority's consideration in the appeal decision.

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(4) Timeliness of Appeals. The appeal authority will not determine appeals which are not filed within the time limits set forth in these procedures. Failure to file an appeal within the time requirements of these procedures will result in dismissal of the appeal without further consideration by the appeal authority.

j. Finality of Appeal Authority's Decision. The decision of the appeal authority is final and no further appeal is possible.

224. Variation in Quantity (Supply Contracts). Contractors are responsible for delivering the quantity of each item stated in an order or contract; however, a fixed-price supply contract may authorize acceptance of a variation in the quantity ordered as long as the variation is caused by conditions of loading, shipping, or packing, or by allowance in the manufacturing process (e.g., carpet, produce, truck load quantities ordered by weight, etc.). When a variation in quantity is allowed, it will be stated in a percentage (which will increase or decrease or a combination of both). There will be no standard variation percentage; it should be based on industry practices for the items involved and should only be large enough to provide reasonable protection to the contractor; however, the percentage should never exceed 10 percent. Care should be exercised by the contracting officer when applying a variation in quantity to an order or contract. For example, if a purchase is for 10 televisions, the NAFI should expect to receive all 10 units. If a purchase is for carpet, a variation in quantity may be called for. When the contracting officer determines a variation in quantity is applicable, the Variation in Quantity Clause in appendix C (clause 4) should be substituted for the Variation in Quantity Clause in appendix A (clause 22).

**NONAPPROPRIATED FUND PROCUREMENT**

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### CHAPTER 3

#### SPECIAL CONTRACT TYPES

301. General. A variety of contracting methods have been developed to satisfy special conditions. When conditions apply, contracting officers shall use the procedures of this chapter determined to be most suitable, efficient, and economical to satisfy each immediate requirement. Dollar limits appropriate to each procedure shall be adhered to.

302. Scope. This chapter details specific procedures applicable to purchasing by means of various contract types.

303. Petty Cash. Petty cash funds may be established to ease in the payment of incidental expenditures. Some payments are so small and non-recurring that it is not necessary that they be paid by check, or the cost in the actual issuance of a check actually outweighs the benefit in these instances. Usually, items that are reimbursed from the petty cash fund are small supply purchases, parking charges, etc. Petty cash purchases will be in accordance with reference (g).

#### 304. Blanket Purchase Agreements

a. General. BPAs provide a simplified method of making recurring small purchases in the open market by establishing a purchase agreement with a supplier. BPAs are, in effect, monthly "charge accounts" with selected suppliers and reduce administrative costs by reducing the repetitive issuance of individual purchase orders and payments. The establishment of a BPA with a supplier is not a binding contract and does not obligate the NAFI to purchase the supplies or services named in the agreement. Once a call (purchase or order) is placed against a BPA and the supplier performs or provides the supplies, the call is binding and the NAFI is obligated for payment of that call.

b. Competition. The existence of a BPA does not justify single source purchasing. Calls \$5,000 or less will be rotated among BPA suppliers. If multiple BPAs are not available, competition must be obtained from other sources. Calls in excess of \$5,000 shall be competed (exception paragraph 203).

c. Conditions for Use. BPAs may be used when

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(1) There is a recurring need for the purchase of small quantities of similar supplies or services, and when the use of such a purchase instrument would be more economical than other purchasing methods.

(2) There are a wide variety of items in a broad class of supplies or services that are generally purchased, but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.

(3) There is a need to provide commercial sources of supply for one or more activities on an installation that do not have or need authority to purchase otherwise.

d. Establishment of a BPA

(1) Generally, an individual at an installation activity (e.g., bowling center, BQ, club, etc.) will request that a BPA be established. Initial requests for BPAs will be prepared by the requester on a purchase request form and will certify that funds in a specified amount will be available for a specified period of time (bulk funding). This certification of funds eliminates the need for individual purchase requests and individual certification of available funds for each order (call).

(2) Contracting officers may determine the need for a BPA exists when it is identified that an activity is requesting recurring purchases for similar type items or groups of items. When the contracting officer identifies that these purchases may be more efficiently managed by a BPA, the contracting officer will so advise the installation activity and require a purchase request, to include funding certification, be submitted for the establishment of a BPA. Negotiating the terms and conditions with suppliers and the preparation of the BPA shall be the responsibility of the contracting officer. When establishing a BPA, the contracting officer is responsible for

(a) Training BPA callers on their responsibilities.

(b) Determining how many BPAs will be issued.

(c) Establishing parameters to limit purchases to specific items or commodity groups, or to specify that the BPA applies to all supplies or services available from the suppliers.

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(d) Ensuring BPAs are established with responsible suppliers from whom recurring purchases will be made.

(e) Establishing BPAs with more than one supplier who can provide supplies and services of the same type to ensure the rules of competition are met and to maintain a competitive base.

e. Preparation and Issuance of BPAs. The contracting officer is responsible for the preparation and issuance of BPAs.

(1) BPAs will be distributed equally among qualified suppliers primarily on the basis of price, discounts offered, and the supplies or services available. Concurrent agreements with several suppliers of similar items or services are advisable in order to rotate calls among the suppliers when competition is not required and to have sources readily available when competition is required. BPAs are normally issued for an indefinite period of time, but, if desired, a time period may be specified. Most BPAs are unpriced, but they may be priced.

(2) BPAs will be issued on DD 1155 with contract clauses attached.

(3) BPAs will be assigned a PIIN in accordance with paragraph 218 of this instruction. PIINs assigned will be consecutive and distinguishable from other purchase orders and contracts.

(4) The contracting officer (any warrant level) will sign BPAs prior to distributing to suppliers.

f. Terms and Conditions of BPAs. Each BPA shall include

(1) Authorization to the supplier to furnish the supplies or services described within the agreement, whether general or specific items. The agreement may limit the allowed supplies or services, or indicate that all supplies or services that the supplier is able to furnish are allowable.

(2) A "pricing" statement that the prices charged the NAFI shall be as low as or lower than those charged the supplier's most favored customer.

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(3) A statement that the NAFI is only obligated for authorized calls placed against the agreement by authorized personnel named in the agreement.

(4) A statement that no individual call under the agreement shall exceed \$25,000 for supplies and services (\$50,000 for resale) for authorized contracting officers, or \$5,000 for callers without contracting officer authority. NOTE: A warrant is not required for calls less than \$5,000.

(5) A list of individuals designated as authorized callers, their office name and location, and each individual's per call dollar limitation.

(6) A statement that the agreement is intended for items which are readily available.

(7) Street addresses of delivery points (not P.O. Box), and any delivery instructions such as specific times deliveries will be accepted, days of the week, etc. It is permissible to include a provision that the supplies may be picked up at the supplier's location if this is determined to be in the best interest of the NAFI.

(8) A requirement that all shipments under the agreement be accompanied by delivery tickets or sales slips prepared by the supplier, which shall contain, at a minimum, the name of the supplier, the BPA number, date of BPA call, BPA call number, itemized list of supplies or services furnished, quantity ordered, negotiated prices, applicable discounts, and date of delivery of the shipment.

(9) Monthly invoicing requirements for the supplier. Two types of invoicing are acceptable, but only one option shall be included in the agreement. Invoicing options are:

(a) A Summary Invoice submitted monthly for all deliveries made during a billing period. Such invoices need not be supported by copies of delivery tickets.

(b) An Itemized Invoice submitted monthly for all deliveries made during a billing period, identifying the delivery tickets covered, stating their total dollar value, and supported by receipt copies of the delivery tickets.

g. One signed copy of the agreement will be sent to the supplier, one copy retained in the contracting office, and one



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copy forwarded to accounting, receiving and all BPA callers named in the agreement.

h. Call Procedures. Calls placed against BPAs will only be made by authorized individuals and will not exceed the dollar limitations authorized. BPA callers cannot re-delegate their authority. BPA callers will:

(1) Negotiate prices at the time the call is placed.

(2) Place oral calls against a BPA unless a written order is deemed appropriate.

(3) Assign a separate call number for each order placed. This will be an alphanumeric number beginning with the letter designation for the activity placing the call and ending with a sequential number assigned to the individual call, such as A-0001, A-0002, etc. Sequential numbers will be maintained on a fiscal year basis and will start over at the beginning of each fiscal year. Contracting officers will assign the letter designation for each activity.

(4) Ensure the item being ordered is authorized under the agreement and the item is available.

(5) Identify themselves to the supplier, provide the supplier with the BPA number, verify the price of the item, and provide delivery instructions.

(6) For each call made, BPA callers will enter the date of the call, the call number, the amount of the call, and the caller's name on a call log. A copy of the log should be furnished to receiving personnel. A purchase request is not required to be completed prior to making a call against an existing BPA. At the end of each month or billing cycle, callers will forward the original signed log along with original delivery tickets to the central accounting office. The caller will retain a copy of the log and delivery tickets for the caller's files at the activity. An aggregate purchase order covering all calls made during that monthly period is not necessary. The signed call record and delivery tickets will provide sufficient documentation for payment purposes.

i. BPA Controls. Calling and receiving functions will be separated among various people to ensure the integrity of the procurement process.

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j. Review Procedures. Contracting officers or their designee shall review BPA files at least annually and, at a minimum, ensure calls are being equally distributed among suppliers of similar items with whom BPAs have been established, callers are not splitting requirements to circumvent their dollar limitation, and ensure compliance with this instruction. If a BPA is not being utilized, it should be canceled.

305. Blanket Purchase Orders (BPO). A BPO is similar to a BPA and may be used as an alternative to a BPA when it is feasible to lock in a firm price for a specified period of time. BPOs will be in accordance with reference (g).

306. Requirements Contract. A Requirements Contract is a "type" of Indefinite Delivery/Indefinite Quantity (IDIQ) contract and one that is useful for acquiring supplies or services when the NAFI anticipates recurring requirements, but cannot predetermine the precise quantities the NAFI will need during a definite period. The contract shall state a realistic estimated total quantity. This estimate is not a representation to the contractor that the estimated quantity will be required or ordered. A specified maximum and minimum quantity of the contractor's obligation to deliver and the NAFI's obligation to order may be included in the contract. Purchases against this type of contract are accomplished by issuing a written delivery order. When awarding this type of contract, contracting officers will ensure the "Requirements" and "Ordering" clauses (see appendix C) are included in the contract.

307. Delivery Orders. A delivery order is a request for delivery of supplies or services under the terms of an existing contract. Delivery orders may be placed against any current contract or agreement which is set up to allow such orders and is authorized for NAFI use, such as GSA, FSS, and AFNAFPO contracts. Contracting officers (any warrant level) have signature authority for all delivery orders regardless of dollar value. The contract number and the activity's delivery order number shall both be cited on the DD 1155. Contract clauses are not attached as the terms and conditions of the existing contract prevails. Competition is not required. Delivery orders do not require legal review since legal review is required for the contract against which the initial order is written.

308. Un-priced Purchase Orders

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a. General. An un-priced purchase order is an order for supplies or services, the price of which is not established at the time of the purchase order. Un-priced purchase orders will be issued on DD 1155. Un-priced purchase order procedures will not be used when the exact price of an item or service is available. Un-priced purchase order procedures will be used only when the following conditions exist:

(1) The estimated (or actual) price will not exceed the simplified purchase dollar limitation (\$150,000).

(2) It is impractical or impossible to obtain exact prices in advance of issuing a purchase order, e.g., for equipment repairs requiring disassembly and diagnosis, or for out of production items.

b. Restrictions. Each un-priced purchase order must contain a realistic cost limit, subject to adjustment, that the contractor cannot exceed without specific approval from the contracting officer. Un-priced purchase orders will contain the following statement: "NOTICE TO SUPPLIER. This is a firm order only if your price does not exceed the total amount listed hereon. If you cannot perform within this limitation, withhold performance, and contact the contracting officer immediately."

c. Source Selection. In lieu of competition based on actual price quotes, contracting officers will attempt to obtain several estimates from qualified suppliers. The file will be documented to show responses received and method of evaluation for award.

d. Equipment Repair

(1) The tear down and quote procedure can be used for equipment requiring disassembly before a repair quote can be given. Equipment disassembly and repair should be performed at the NAFI installation, if possible, not at a contractor's facility.

(2) An un-priced purchase order is issued to tear down and diagnose the extent of damage. The contractor then quotes a firm price for the disassembly and diagnosis, and a firm price for the repair, and proceeds no further. If the repair price is determined fair and reasonable, the contracting officer may award the repair portion to this same contractor by modifying the un-priced purchase order. If the repair price is not fair

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and reasonable, the contracting officer shall seek competition and may award the repair portion to another contractor.

309. Emergency Purchases. An emergency purchase is authorized only when the interests of a NAF activity demand that a contractor be given a binding commitment so that work or performance can commence immediately, and when the negotiation of a definitive contract in sufficient time to meet the need is not possible. In such cases, the following procedures are permissible:

a. Solicitations. Verbal solicitations may be used. Competition shall be obtained where practicable.

b. Simplified Purchases. For requirements of \$150,000 or less, verbal orders may be placed; however, confirming purchase orders shall follow immediately with the notation, "Confirming Order - Do Not Duplicate." A memorandum justifying the emergency must be prepared for the file.

c. Letter Contracts. Emergency requirements in excess of \$150,000 require issuance of a letter contract. The letter contract may be used when (1) the NAFI's interests demand that a contractor be given a binding commitment authorizing immediate delivery, commencement of manufacture, or performance of services and (2) negotiating a definitive contract is not possible in sufficient time to meet the requirement. A letter contract, however, should be as complete and definite as possible. A letter contract shall be used only after written determination by the contracting officer that no other type of contract is suitable. Letter contracts must contain a price ceiling and an agreement that states that an RFP will be issued prior to 180 days from the date of the letter contract or 40 percent of the production or performance, whichever occurs first. The NAFI's liability, stated in the letter contract, will be the amount estimated to cover the contractor's requirements for funds prior to issuance of the RFP, but not exceed 50 percent of the total estimated cost of the procurement. The letter contract shall include the clauses appropriate to the contract contemplated.

310. Service Contracts. A service contract is a contract that calls for a contractor's time and effort, rather than for a tangible end product. "Personal" service contracts are not authorized, because they establish an "employer-employee" relationship between the NAFI and the contractor and circumvent hiring policies. "Non-personal" service contracts, however, are

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authorized because the contractor retains employee control and supervision. Non-personal service contracts can be awarded to an individual or to a company or business. The contract must be free of any indications that an "employer-employee" relationship exists. A standardized contract format is available from CNIC N944, 5720 Integrity Drive, Millington, TN 38055-6560, (C) (901) 874-6686, and on MWR home page at <http://www.mwr.navy.mil>.

a. Service Contract Act. Certain services are subject to the Service Contract Act. Part 22 of the FAR illustrates the types of services covered by the Act. The Act requires that such contracts over \$2,500 contain mandatory provisions regarding minimum wages and fringe benefits, safe and sanitary working conditions, notification to employees of the minimum allowable compensation, and equivalent federal employee classifications and wage rates. The Act does not apply to contracts performed outside the United States.

(1) If a new contract, extension to an existing contract, or the exercise of an option to a contract will exceed \$2,500 and it is determined that the Service Contract Act is applicable, SF 98 and 98a, a Notice of Intention to Make a Service Contract and Response to Notice, must be submitted to the Department of Labor (DOL). If applicable, the DOL will respond with wage rate determinations that shall apply to the awarded contractor and any subcontractor.

(2) The contracting officer shall complete and forward SF 98 and 98a to the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210 in sufficient lead time to ensure receipt and inclusion of any applicable wage determinations in the contract solicitation and award. The Wage and Hour Division's "Service Contract Act Directory of Occupations" contains standard job titles and descriptions for many commonly used service employee occupations. Contracting officers shall use this directory to list service employee classes on the SF 98a. The latest edition of the directory is available from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

b. Service Contracts with Individuals

(1) General. Service contracts awarded to individuals, as opposed to a bona fide company or business, shall provide for payment on a fee basis, or a per job basis. A contract to which a salary or wage is attached is prohibited. Contracts such as entertainment and aerobics instructors are service contracts

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subject to this paragraph unless written with a bona fide company or corporation.

(2) Reporting Requirements. Payments under service contracts to anyone other than a bona fide company or corporation that aggregates \$600 or more during a calendar year must be reported to Internal Revenue Service (IRS) by the NAF accounting office. The dollar figure is cumulative for the entire calendar year; therefore, records must be maintained in order to determine when multiple payments or contracts to an individual reach the \$600 threshold. Contracting officers shall ensure that copies of such contracts, along with the individual's name, address, and social security number are provided to the NAF accounting office.

311. Information Technology. CNIC N946 is the designated program manager for selection, acquisition, and management of information technology hardware and software with NAF that exceeds \$5,000 dollars. Commands procuring IT that exceeds the \$5,000 dollar threshold for MWR/NGIS activities shall submit to CNIC N946 a requirements analysis, hardware and software configuration, and justification for technical review and approval prior to purchase. Ensure the package addresses compatibility with existing systems. In addition, all IT procurements shall be coordinated with the Region N6 to ensure IA compliance.

312. Used Equipment/Vehicles. MWR/NGIS activities may purchase used equipment when in the best interest of the NAFI. Competition should be obtained if over \$5,000 when practicable; however, if competition is not available, a determination by an independent expert should be made and documented in writing. For example, if the purchase is a used vehicle, a mechanic should check out the vehicle to ensure it is in good condition and that the price is reasonable. The mechanic may be the auto hobby shop manager or a mechanic under contract.

313. Trade-In. MWR/NGIS activities may take advantage of the trade-in value of material to be replaced providing the material was originally purchased with nonappropriated funds. Equipment originally procured with APF must be returned to the appropriate accountable officer for disposition in accordance with existing APF regulations.

314. Leases and Rentals. A lease is any contract by which one party obtains temporary use or possession of property and equipment, such as land, buildings, vehicles, etc., for a

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specified time and at a fixed price. Although such contracts are sometimes referred to as rentals, they are considered leases. Leases executed by NAF activities are contracts subject to all the provisions of this instruction regarding competitive procurement, including single source justification when required. A decision to lease rather than to purchase must be documented by a comparative analysis of lease versus purchase cost factors.

### 315. Construction

a. General. Navy and DOD policy requires that construction contracting (using APF or NAF) be accomplished using prescribed acquisition procedures for all government construction. Construction contracting (warrant) authority is approved by COMNAVFACENGCOM.

b. Authority. NAF contracting officers may exercise construction contracting authority not in excess of \$2,000. Minor construction, including alteration and repair exceeding \$2,000 must be handled as prescribed in COMNAVFACENGCOM facility acquisition directives by designated contracting officers.

### 316. Interior Design Services

a. General. Interior design for furniture and furnishings is frequently developed in-house by the CNIC N944 facilities design staff, or by commercial designers. Activities must adhere strictly to design package specifications to maintain the intended coordination of style, quality, color, and finish. During the procurement process, the integrity of the design package will be maintained to the maximum extent possible. A standardized contract format may be used and is available from CNIC N944, 5720 Integrity Drive, Millington, TN 38055-6560, (C) (901) 874-6686, and on MWR home page at <http://www.mwr.navy.mil>.

b. Requirements. Designers should consider quality, durability, availability, reasonableness of total and unit cost in relation to the design, and the overall cost-effectiveness of the items selected. Designers should ensure that selected items meet applicable construction and safety codes, standards, and regulations. Designers should be encouraged to select items on GSA and AFNAFPO approved contracts whenever possible. Interior design projects must not be split or executed in phases except when considered by the Commanding Officer to be in the best interest of the NAFI. If phasing is necessary because of availability of funds, the project should be designed so that it

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may be procured and installed in phases. Projects shall not be phased, however, to circumvent procedures authorized by this instruction (paragraph 206). Activities and designers should plan and coordinate execution of design projects to ensure adequate contracting lead-time. Phasing and inadequate lead times can affect price and availability of furniture and furnishings.

c. Authority. To maintain design integrity, items specified by the designer shall be procured on a single source basis without further comparison or substitution, unless such a substitution is required because of non-availability (e.g., obsolescence, out of production, extended delivery time) and the substitution is first approved by the designer. A single source justification must be provided and signed by the designer. Certain items in the design package will be competed when a specific brand-name is not required, e.g., carpet padding, stacking chairs, cocktail tables, etc.

### 317. Food and Beverage

a. General. Activities procuring meat, fresh produce, and grocery items shall prepare marketing spread sheets listing local vendor and commissary prices as often as necessary to ensure that all products are procured at the best price or value. Use of such spread sheets for procurement satisfies the competition requirements for purchases under \$150,000.

b. Sources. Activities shall procure food products such as meat and meat products, seafood, bread, dairy products, and produce only from approved sources. A list of sanitarily approved food sources may be obtained from Navy medical officers or their representative, or from the nearest Army food procurement activity.

c. Inspection. All meats, i.e., beef, veal, lamb, pork, meat products, poultry, and game, delivered to all food service activities must have been inspected and passed by the USDA. This inspection must be indicated by a stamp "U.S. Inspected and Passed" on the product itself or the package. Inspections by state or local agencies are not acceptable unless they are at least equivalent to USDA inspections. When USDA inspections are not available, foods shall be inspected by U.S. Army or U.S. Air Force veterinary corps or a Navy medical officer.

318. Concession/Percentage Contracts. Concession contracts authorize a commercial contractor to sell a particular item or



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provide a particular service, at a designated location, for a specified period of time, to authorized patrons of the NAFI. Typically, they involve payment to the NAFI of a fixed percentage of gross sales, a flat fee plus percentage, or any other acceptable combination. Concession contracts must be competed if the anticipated revenue generated during the term of the contract is expected to be \$5,000 or more. Local NEXs shall be included in the competition to determine if the desired products/services can be provided more advantageously by the Exchange. Competition may be determined on the basis of selling price or percentage fee or both, provided that evaluation factors, which must be specified in the solicitation, are written to make the basis for award clear. Contracting officers (any warrant level) have signature authority for all concession contracts. A standardized contract format may be used and is available from CNIC N944B, 5720 Integrity Drive, Millington, TN 38055-6560, (C) 901-874-6686, and on MWR home page at <http://www.mwr.navy.mil>.

319. Entertainment Contracts. Commercial entertainment contracts include, but are not limited to, entertainers such as comedy or musical acts, and amusement/traveling shows such as circuses, carnivals, rodeos, fireworks displays, etc. All provisions of this directive apply to entertainment contracts except as specified below.

a. Contracts for comedy and/or musical acts need not be competed. Performers should be auditioned, whenever possible, and negotiations should commence regarding fees. Award can be determined based on customer preference, availability, or anticipated draw. The contract file shall be documented to reflect the manner in which prices were determined fair and reasonable.

b. Contracts for amusement/traveling shows such as circuses, carnivals, rodeos, etc., shall be competed except that requirements for nationally known firms need not be competed.

c. Prior to soliciting these types of entertainment contracts, approval must be obtained from the installation Commanding Officer or designee as to whether such activities can be held on the installation. Additionally, such solicitations/proposed contract awards shall be reviewed by legal counsel prior to issuance/award regardless of dollar value. The contract file shall be documented for price reasonableness.

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d. The MWR manager on duty shall complete a written performance evaluation for each entertainment type contract. This evaluation will serve as the receiving report for the contracted entertainment. It should be submitted to the accounting office via the contracting officer as evidence of satisfactory contract completion. The contracting officer shall retain a copy to aid in future selections.

e. Insurance coverage will be included in the contract as specified in reference (j). Reference (j) provides a provision allowing Commanding Officers to reduce or waive general liability coverage in certain situations. However, general liability coverage shall not be reduced or waived for circuses, carnivals, rodeos, or any event involving live animals, fire (other than cooking) or fireworks displays. In situations where general liability coverage is waived, contractors shall be required to execute a "hold harmless" agreement. Entertainment contracts exceeding \$5,000, which are to be conducted outdoors, should be covered by weather/rain insurance in a minimum amount to recover expenses when payments are guaranteed. Weather/rain insurance is not provided by CNIC centrally, so it must be procured commercially.

f. A standardized entertainment contract format may be used and is available from CNIC N944B, 5720 Integrity Drive, Millington, TN 38055-6560, (C) 901-874-6686, and on MWR home page at <http://www.mwr.navy.mil>. It must be modified and completed as necessary to include the specific requirements of each individual contract. Substantial changes must be reviewed by legal counsel prior to award.

320. NAF Purchase Card. The NAF purchase card offers a simplified method of purchasing commercially available supplies and services which do not exceed \$25,000. A purchase request is not required. CNIC N94 NAF Standard Operating Procedure (SOP) delineates the specific policies and procedures for use of the card and implementation instructions. Purchase card purchases will be in accordance with the SOP. Copies of the SOP are available from CNIC N944B, 5720 Integrity Drive, Millington, TN 38055-6560, (C) 901-874-6686.

321. Sealed Bidding

a. Sealed bidding is the least flexible contracting method and is, therefore, the least preferred method of NAF contracting. Sealed bidding solicitations are accomplished by issuing an IFB, which furnishes a set plan and invites potential

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bidders to respond with price only. There is no negotiation or discussion of terms and no deviations from the terms of the solicitation. Sealed bidding may be used only when it can be documented to be in the best interest of the NAFI and when the following conditions are present and documented:

- (1) Price is the only evaluation factor.
- (2) Current and accurate purchase descriptions or specifications are available.
- (3) Time permits a minimum of 30 days response time for bidders.
- (4) It will not be necessary to conduct discussions with bidders.
- (5) There is a reasonable expectation of receiving more than one bid.

Note: Excess NAF property may be sold to interested parties using sealed bidding and in accordance with procedures outlined in reference (f).

b. Solicitation. Solicitations will be prepared as described in chapter 5, paragraph 503, except that the SF 33 must indicate "Sealed Bid" status.

c. Receipt of Bids. Receipt and safeguarding of bids will be per chapter 5, paragraph 505.

d. Opening of Bids. At the time set for the opening of bids, the contracting officer will publicly open all bids received and read them aloud. All bids will be recorded on an abstract of bids to be retained in the resulting contract file. The original bids may be examined by the public only under direct supervision of the contracting officer and under conditions that preclude possible alteration.

e. Evaluation and Award. The contracting officer will evaluate only responsible bidders whose bids are responsive to the solicitation, considering only price and price related factors included in the solicitation. Award will be made to the responsive and responsible bidder with the lowest price (or highest bidder in the case of sale of NAF property). There will be no discussions with the bidders after bid opening. Unsuccessful bidders will be notified in writing.

322. Standardized Contract Formats and Statements of Work

a. In an effort to streamline procurement procedures and save time, money, and paperwork, standardized NAF contract formats for common services required throughout MWR and NGIS activities have been developed by NAVPERSCOM. The NAF standardized formats include concessionaire, services, entertainment, and interior design, among others. Also available are APF sample statements of work such as sports officials and lifeguards. Copies may be obtained by calling (C) 901-874-6686 or writing to CNIC N944B 5720 Integrity Drive, Millington, TN 38055-6560. Additionally, these products are available on MWR home page at <http://www.mwr.navy.mil>.

b. Standardized contract formats should only be used (in lieu of DD 1155 or SF 33) when requirements can be described in simple terms. An RFP must be used for complex requirements, when negotiation with the contractor is required or when award is being made to other than the lowest price (or highest percentage in the case of a concessionaire contract). When using standardized contract formats, contract clauses must be attached. Legal review is not required unless the contract is substantially modified in any way.

**NONAPPROPRIATED FUND PROCUREMENT****Chapter 4: CONTRACTS \$150,000 OR LESS**

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**CHAPTER 4****CONTRACTS \$150,000 OR LESS**

401. General. The acquisition of goods and services valued at \$150,000 or less is referred to as simplified purchasing. Such purchasing may be accomplished by simplified procedures using appropriate types of contracts.

402. Scope. This chapter delineates procedures, forms, and other conditions peculiar to simplified purchasing. Dollar amounts pertinent to the various procedures will be noted and adhered to.

403. Solicitations

a. General. Offers or quotations should be solicited from a sufficient number of responsible sources to ensure adequate competition. Three sources are the recommended minimum. Effort should be made to obtain prompt payment discounts; however, such discounts shall not be considered in the evaluation of offers or quotations unless two exact quotations are received. Solicitations, offers, and quotations received will be recorded and documented for reference and evaluation (paragraph 217).

b. \$5,000 or Less. Nonrecurring purchases not exceeding \$5,000 per order may be accomplished without competition when the contracting officer determines that prices are fair and reasonable. The contracting officer's signature on the purchase order is only required to signify price reasonableness; however, contracting officers are expected to be able to support such determinations on the basis of a rational selection process, i.e., published catalog price information, personal and professional experience, or market knowledge. Recurring purchases require periodic solicitation to assure reasonable price levels. Such recurring purchases should be considered for BPAs.

c. \$5,000 to \$150,000. Purchases in excess of \$5,000 shall be preceded by solicitation of qualified suppliers. An informal oral solicitation is acceptable for less than \$25,000. Written solicitations for purchases exceeding \$25,000 will be made by letter or on SF 18. The SF 33 shall be used for purchases exceeding \$150,000 (except for delivery orders and when standardized contract formats are authorized).

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404. Evaluation. Offers and quotations shall be evaluated on the basis of specification requirements, price, and required delivery. Reasonableness of a proposed price should be determined by competition. If only one response is received or the price variance between multiple responses reflects lack of adequate competition, a statement shall be included in the contract file setting forth the basis for determination of a fair and reasonable price. The determination may be based on a comparison between proposed prices and prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items in a related industry, personal knowledge of the item being procured, or any other means. Notification to unsuccessful suppliers will be given in accordance with paragraph 507. Release of any other information must be handled under the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 522, as amended. All FOIA requests must be received from the contractor in writing and forwarded to the installation FOIA coordinator or legal advisor.

405. Award

a. General. Goods and services valued at \$150,000 or less shall be purchased on DD 1155 or a NAF standardized contract format. SF 33 will be used when determined to be in the best interest of the NAFI. All awards (except delivery orders) for \$150,000 or less will contain NAF clauses contained in appendices A and B.

b. PIINs shall be used to identify the NAF procurement (paragraph 218).

c. DD 1155 will be used for purchase/delivery orders (paragraph 219).

d. Copies will be distributed as follows:

(1) Original to contractor.

(2) One copy to the accounting office, requester, and receiver.

(3) One copy remains in procurement file.  
Additional copies will also be sent to interior designers, air or water ports (for overseas shipments), or others when applicable.



**NONAPPROPRIATED FUND PROCUREMENT****Chapter 5: CONTRACTS OVER \$150,000**

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## CHAPTER 5

### CONTRACTS OVER \$150,000

501. General. Contracting for goods and services valued over \$150,000 shall be accomplished by formal procedures, using SF 33, unless a standardized contract format is available and applicable, or a delivery order can be issued against an existing contract.

502. Scope. This chapter sets forth procedures, forms, and other conditions applicable to purchase requirements in excess of \$150,000 using SF 33 for negotiated contracting. Negotiated contracting (RFP as opposed to IFB) is flexible in that it allows contracting personnel to discuss and clarify contractors' offers. Negotiation is the preferred contracting method. An RFP is a written solicitation that provides a potential contractor with the opportunity to offer a price and a plan for accomplishing a particular acquisition.

#### 503. Solicitations

a. General. The number of contractors solicited should be consistent with the nature of the purchase and availability of sources; however, three is the recommended minimum. Effort should be made to obtain prompt payment discounts; however, such discounts shall not be considered in the evaluation of offers unless two exact offers are received. Contract files must include justification for the absence of competition, documentation of price reasonableness, and CRB approval (paragraph 114). Written solicitations prepared on SF 33, must indicate that the solicitation is to be negotiated (block 4 of SF 33).

b. Terms and Conditions. These cover such vital factors as instructions for preparation and submission of offers, factors to be used to evaluate offers, certifications and acknowledgments required to support offers, general contract clauses and any special clauses which may apply to the particular solicitation. A date and time for receipt of proposals will be clearly stated in the solicitation (block 9 of the RFP). Offerors should be instructed to forward the "pricing" section of their proposal in a separate envelope from the technical proposal. The time allowed for vendor preparation of offers will vary with the type of item or service being purchased. Generally, the time allowed should not be less than 30 days unless the contracting officer determines that market

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conditions/technology allow for a quicker turnaround. Terms, conditions, and clauses are shown at appendices A and B and shall be included in any solicitation and award package. Representations, certifications, and acknowledgments shown in appendix D shall be inserted in all RFPs for supply type items exceeding \$15,000. Appendix C shall be included when applicable. The contracting officer does not sign the solicitation before forwarding it to offerors.

c. Amendments. If it is necessary to change the specifications, terms, or conditions of a solicitation prior to its closing date, an amendment should be prepared on SF 30 and distributed to all contractors originally solicited. The closing date can be extended, if necessary, by the amendment.

504. Pre-proposal Conference. A pre-proposal conference may be held to brief prospective offerors on complex specifications. The conference is held after issuance of the solicitation, but before offers are prepared by the offerors. All prospective offerors will be furnished identical information pertaining to the proposed acquisition, regardless of whether they attend the conference. If time permits, prospective offerors should be asked to submit questions in writing prior to the conference.

a. The pre-proposal conference will be conducted by the contracting officer, accompanied by technical and legal personnel as needed.

b. Remarks and explanations at the conference will not change the terms of the solicitation and specifications. All attendees will be advised that unless the solicitation is amended in writing by the contracting officer, it will remain unchanged and, if an amendment is issued, it will be mailed to all offerors who received the original solicitation. A record of attendees and matters discussed will be added to the contract file.

505. Receipt of Offers

a. Late proposals and modifications may be accepted only according to the terms contained in "Instructions, Conditions, and Notices to Offeror," Part IV, Section L, of the solicitation (SF 33).

b. Proposals received will be safeguarded from unauthorized disclosure both before and after award.

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506. Evaluation. Factors that will be considered in evaluating offers should be tailored to each acquisition and include only those factors that will have an impact on selecting the source. Price or fee will be included as an evaluation factor. Other evaluation factors that may apply to a particular acquisition are technical excellence; quality of product; comprehension of the NAF requirement; management capability; personnel qualifications and experience; past performance in both budget and schedule requirements; and present ability to meet performance or delivery schedules. The contracting officer and requesting activity will ensure that the factors proposed tie directly to requirements in the statement of work. All criteria to be used in making the award and the relative importance of each criteria will be clearly set forth in section M of the solicitation. Numerical points or percentage weights will not be disclosed in the solicitation. Resulting scores are assigned by Technical Review Panel (TRP) members; however, will not be disclosed to competing contractors. In addition, evaluation scoring of each offeror will not be disclosed in debriefings to contractors after award.

a. TRP. In contracts exceeding \$150,000, a TRP will be formed to evaluate offeror's technical proposals. Panel members will not be given contractor's proposed prices. The panel will consist of technical experts having the specialized knowledge, skills, experience, management, or other associated factors appropriate to the requirements of the particular solicitation. Each proposal will be scored individually by each panel member. Proposals will not be compared one against the other. Once the proposals have been scored, they will be given to the TRP chairperson for a total score and will then be given to the contracting officer who will add in the prices and make the award decision.

b. Price Evaluation. The contracting officer will determine price reasonableness. Reasonableness of a proposed price should be judged by competition. If only one response is received or the price variance between multiple responses reflects lack of adequate competition, a statement will be included in the contract file setting forth the basis of determination of a fair and reasonable price. The determination may be based on a comparison of proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items in a related industry, personal knowledge of the item being procured, or any other means. If such determination is not possible, the requirement will be clarified or re-specified and re-solicited.

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c. Competitive Range. The contracting officer will determine which proposals are in the competitive range for the purpose of conducting oral or written discussions. The competitive range will consist of all proposals with a reasonable chance of being selected for award based on price and other factors as stated in the solicitation. If there is doubt as to whether a proposal is in the competitive range, it will be included.

d. Discussions. The contracting officers may conduct oral or written discussions with offerors, but if they do, they must determine all offerors to be in the competitive range, and discussions must be held with all offerors. Discussions are held when needed to "clarify" some aspect of an offeror's proposal. Any discussion with an offeror must be restricted to questions concerning **their** individual offer. In other words, you wouldn't ask each offeror the same questions. You may need to clarify one offeror's method of submitting their price proposal, but another offeror's technical proposal may need clarification to ensure they completely understand a certain requirement of the contract. Discussions with the third offeror may only be to verify their address. All discussions must be documented in writing. NAFIs are not authorized to disclose one offeror's price to another offeror during discussions. Use of auctioning techniques are not authorized. NAFIs cannot indicate to an offeror a cost or price that it must meet to obtain further consideration; however, an offeror can be informed that its price is considered by the NAFI to be too high or unrealistic.

(1) The contracting officer may:

(a) Advise each offeror of deficiencies in their respective proposal and provide an opportunity for them to revise such deficiencies.

(b) Clarify ambiguities and resolve suspected mistakes.

(c) Give each offeror a chance to revise their proposal as a result of discussions.

(2) The contracting officer shall not:

(a) Inform an offeror of its price standing relative to another offer.

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(b) Discuss the other offeror's proposals.

(c) Release technical or price information from one proposal that might result in improvement of a competing proposal.

(d) Inform an offeror of a price that must be met before the proposal can be considered.

507. Award. Proposals submitted in response to the RFP are offers signed by a contractor. An offer is accepted to form a binding contract when the contracting officer signs the award option of SF 33; no further contractor signature is required. Unsuccessful offerors will be notified in writing. This notice will include the awarded offeror's name and address, the total amount of the contract, and prompt payment discount terms. Requests for additional information shall be handled under the provisions of the FOIA. FOIA requests must be received from a contractor in writing and forwarded to the FOIA coordinator or legal advisor.





**NONAPPROPRIATED FUND PROCUREMENT**

**Chapter 6: CONTRACT EXECUTION**

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## CHAPTER 6

### CONTRACT EXECUTION

601. General. Only warranted contracting officers will sign and execute contractual instruments (within their warrant limitation) on behalf of the NAFI. Contracting officers will personally sign all purchase orders/contracts and related instruments or supporting contractual documents that require signature. No one may sign "for" contracting officers.

602. Scope. This chapter sets forth procedures applicable to executing purchase orders/contracts by NAFI contracting officers.

603. Contract Classifications. There are two general classifications of contracts.

a. Unilateral. A unilateral purchase order/contract is one that is signed only by the contracting officer. It constitutes an offer by the NAFI to pay for the future delivery of supplies or performance of services and does not require written acceptance of the contractor. It gives the NAFI the opportunity to cancel the order at any time before the initiation of performance by the contractor without liability to the NAFI. It does not, however, create a binding contract nor ensure that the contractor will perform in accordance with the terms of the purchase order/contract.

b. Bilateral. A bilateral purchase order/contract is one that is signed by both the contracting officer and the contractor. It creates a binding contract between the NAFI and the contractor and cannot be changed or cancelled without written modification (chapter 7).

604. Execution

a. When a unilateral purchase/delivery order is prepared using DD 1155, the contracting officer will sign block 24 of the order and attach the applicable contract clauses before forwarding to the contractor.

b. If the contracting officer deems it to be in the best interest of the NAFI, a bilateral purchase/delivery order may be entered into using DD 1155. Block 16 of DD 1155 is completed by the contracting officer which advises the contractor to sign and return the form to the contracting officer, indicating the

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contractor's acceptance of the order and its terms and conditions. Once the contractor has signed and returned the order to the contracting officer, a bilateral contract exists and the contract clauses apply.

c. SF 33 can also be used to enter into a bilateral contract. When an offer is received from a contractor in response to an RFP, the offer may be accepted by the contracting officer by signing the award portion of SF 33 indicating acceptance of such offer. Once acceptance occurs, a bilateral contract exists and the contract clauses apply.

d. Another method of entering into a bilateral contract is by using a standardized contract format.

**NONAPPROPRIATED FUND PROCUREMENT**

**Chapter 7: CONTRACT ADMINISTRATION**

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**CHAPTER 7****CONTRACT ADMINISTRATION**

701. General. Contract administration encompasses all the activities which take place during the performance of a contract, regardless of the dollar amount. The contracting officer is responsible for assuring that each contract is completed according to its specifications, terms, and conditions. If the contract must be altered by either the NAFI or by the contractor, the contracting officer must determine the propriety of the alteration and take appropriate action. As a representative of the NAFI, the contracting officer must protect the rights of the NAFI and at the same time not infringe on the rights of the contractor.

702. Scope. This chapter summarizes the policies and procedures pertaining to contract administration, and should be used to ensure that this management function is performed equitably and legally.

703. Designation of Contracting Officer Representative (COR)

a. COR's are primarily liaisons between the contractor and the contracting officer. CORs have no authority other than that which has been delegated to them by the contracting officer. A COR may not award a contract or agree to or issue a change to a contract if the change involves the unit price, total contract price, quantity, quality, or delivery schedule. A contracting officer may authorize a COR to make minor changes, not involving the foregoing items, and to resolve problems as long as such authorizations are not prohibited by the contract.

b. A contracting officer may appoint any NAFI employee, military or government civilian, as a COR on a designated contract. Appointments will be made in writing and designated by name and title of position. If it is necessary to change the terms of the appointment, it should be done by amendment to the appointment or the issuance of a new appointment. If a COR is to act on behalf of the contracting officer on more than one contract, there will be a separate appointment for each contract. A COR appointment will remain in effect for the term of the contract, unless sooner revoked by the contracting officer. Revocation must also be in writing. Each appointment will state that the COR may not delegate his or her authority. Each appointment will also contain the authority and restrictions applicable to the COR.

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c. The original and two copies of the COR appointment will be furnished to the COR, along with a copy of the contract, who will be instructed to sign the original and one copy and return them to the contracting officer. The contracting officer will retain the original in the contract file and give one copy to the contractor. Changes and terminations of appointments will be distributed in the same manner.

d. Contracting officers will be responsible for training COR's on their roles and responsibilities. CNIC N944B NAF COR Handbook delineates guidelines on the roles and responsibilities of CORs. This handbook may be used to provide training to CORs. Contracting officer's will provide a copy of this handbook to all CORs. Copies of the handbook are available from CNIC N944B, (C) (901) 874-6684. Additionally, this product is available on MWR home page at <http://www.mwr.navy.mil>.

704. Contract Modifications. A contract modification is any alteration of the specifications, delivery point, date of delivery, contract period, quantity, or other contract provision of an existing contract whether accomplished by unilateral action according to a contract provision or by mutual action of the parties to the contract. It includes (1) unilateral actions such as administrative changes, "change orders," notices of termination, and notices of the exercise of a contract option; and (2) bilateral actions such as supplemental agreements. The contracting officer shall not issue a contract modification that causes or will cause an increase in funds without "equal consideration" from the contractor (paragraph 704b). Additionally, certification of additional funds from the requesting activity is required. Contract modification must always be confirmed in writing by use of a SF 30.

a. Administrative Changes. Certain modifications which are administrative in nature and do not alter the essential agreement may be made by the contracting officer without requiring the contractor's acceptance. These include revisions of accounting data and corrections of typographical errors such as erroneous extensions of prices, misplaced decimal points, and errors in contractor names. These revisions or corrections are unilateral modifications accomplished by the use of a SF 30 and require only the contracting officer's signature.

b. Supplemental Agreements



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(1) A supplemental agreement is a written bilateral agreement signed by both parties which changes the obligations of the parties to the contract, or implements the obligations of the parties to the contract, i.e., economic price adjustment provisions. Supplemental agreements shall not be used to expand an existing contract to include additional work of any considerable magnitude unless it can be clearly documented that the additional work was not contemplated at the time of the original contract, and is such an inseparable part of the work originally contracted for as to render it reasonably impossible to perform by any other contractor. Increases in quantity are subject to competition unless documentation can substantiate otherwise.

(2) Supplemental agreements which change the obligations of the parties will, as a rule, result in the NAF activity receiving a new benefit or something of additional value in exchange for release of the contractor from existing obligations under the contract. The language "something of additional value" is referred to as "consideration." In contracting, each party exchanges a promise for a promise. For example, in a bilateral situation, if the NAFI requests a contractor to furnish equipment, the contractor promises to furnish the equipment, and the NAFI promises to pay money for such equipment...each promise is the consideration for the other. There always has to be an exchange of "equal" value. The contractor cannot later request a modification to increase the price unless there is equal consideration given to the NAFI, i.e., if a NAFI sends a purchase order to a contractor for \$450 and the contractor performs and ships the merchandise, the NAFI is obligated to pay the \$450; however, if the contractor performs and ships, but later bills the NAFI \$475, the NAFI is not obligated to pay the additional \$25.

c. Change Orders. A change order is a written order (modification) signed by the contracting officer, directing the contractor to make a change that the Changes Clause(s) authorizes the contracting officer to order without the contractor's consent. Appendix B sets forth several "Changes" clauses, and which clause is applicable to a contract depends on the nature of the contract itself. The clause empowers the contracting officer to at any time, by written order to make changes within the general scope of the contract in specific designated areas which the clauses allow. If such changes increase the contractor's costs, the contractor is entitled to a contract price increase, and if they delay the contractor's performance, the contractor is entitled to an extension of the

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contract completion date. On the other hand, if the changes decrease the cost of or time for performance, the contract price will be decreased or the completion time shortened. The clauses require the contractor to assert its request for equitable adjustment (claim) to the contracting officer within 30 days from the date of receipt of the changes order. The negotiated price and/or terms shall be confirmed in a supplemental agreement (bilateral modification). However, a change that can be issued in a unilateral modification may be priced before its execution if it can be done without adversely affecting the NAFI's interest (i.e. time does not permit negotiating an equitable adjustment).

#### 705. Disputes and Appeals

a. General. If a disagreement arises between the contracting officer and the contractor, the contracting officer must exert every effort to arrive at an agreement. Questions of law shall be referred to legal counsel (see Par 205). Questions of fact are resolved by the contracting officer. If questions of fact cannot be resolved by agreement, they will be decided by the contracting officer pursuant to the "Disputes" clause. The "Disputes" clause provides the contracting officer the authority and opportunity, subject to the exercise of sound judgment, to compromise and settle issues of fact when the parties are at an impasse. Failure to decide a dispute may amount to a breach of contract.

#### b. The Decision

(1) Prior to rendering a decision, the contracting officer should request the contractor to furnish in writing their version of the dispute. The contracting officer should gather all documents and record testimony and other evidence considered necessary to making the decision. The contracting officer should obtain technical and legal advice as to whether the proposed decision is supported by the evidence. The contracting officer must remember, however, the decision is their own personal act and may not be directed by any other authority. The decision should include a statement of facts sufficient to enable the contractor to understand the decision and its basis. It should refer to the contract number, cite the relevant contract provisions, and identify the areas of agreement and the areas of disagreement. The decision should contain the following statements:

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"This is the final decision of the contracting officer. Decisions on disputed questions of fact and on other questions that are subject to the procedure of the "Disputes" clause may be appealed according to the provisions of the "Disputes" clause. If you decide to make such an appeal from this decision, written notice thereof (in triplicate) must be mailed or otherwise furnished to the contracting officer within 90 days from the date you receive this decision. Such notice should indicate that an appeal is intended and should reference this decision and identify the contract by number. [Insert name of proper appeal authority pursuant to Par.223] the appeal authority responsible for hearing and determining such disputes. If notice to appeal is not provided, this decision will be final."

(2) In addition, the letter should provide that, pending final decision on any appeal, the contractor will proceed diligently with the performance of the contract to the extent not terminated.

(3) The decision should be sent by certified mail, return receipt requested, or it may be delivered in person. The decision ordinarily will be final and conclusive on both parties, unless the contractor appeals within 90 days of receipt.

c. Appeal. A contractor's appeal, following contracting officer endorsement, will be forwarded to the Immediate Superior in Command (ISIC) one level above the contracting officer's Command.

d. Finality of Decisions. Unless the contractor appeals the contracting officer's decision within 90 days from the contractor's receipt thereof, the contracting officer's decision becomes final and conclusive upon the parties; however, prior to the expiration of such 90-day period or subsequent to the taking of a timely appeal, the contracting officer may reconsider, modify, or withdraw the decision when of the opinion that the decision was not well-founded or was not supported by substantial evidence. Under no circumstances will the contracting officer extend the 90-day period for filing an appeal.

#### 706. Terminations

a. Authority. The authority to terminate the contract is established in the two termination clauses required to be in

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every contract: "Termination for Convenience" and "Termination for Default." Termination may be partial and apply to only a portion of the contractor's performance, or it may be for the complete contract. In considering a partial termination, the portion to be terminated must be severable so as not to hamper completion of the remaining contract requirements. All termination actions require review by legal counsel and the CRB prior to initiation. Termination for default requires ISIC approval.

b. Termination for Convenience. The termination for convenience clause permits the contracting officer to terminate a contract in whole or in part only if the supplies or services are no longer required.

(1) Termination Notice. The contractor must be informed in writing of the termination and the effective date and extent of the termination. The contractor should be advised to submit any termination claim promptly, but not later than 3 months from the effective date of the termination.

(2) Settlement. The contractor is entitled to fair and prompt settlement for the effort in connection with the terminated work, which includes a reasonable allowance for profit on preparations made, work done, and settlement expense, but not including anticipated profits. The contracting officer should make every reasonable effort to negotiate a settlement and modify the contract accordingly. If the parties are unable to come to a settlement, the contracting officer will issue a contracting officer's final decision stating the contractor entitlement under the contract and explain the basis for that determination. The contractor may accept the decision or appeal it according to the "Disputes" clause.

(3) No Cost Settlement. If little or no cost has been incurred, an attempt should be made to arrive at a "no cost" settlement in which case the contract can then be cancelled.

c. Termination for Default

(1) Conditions. The "Default" clause permits the contracting officer to terminate, in whole or in part, in the following circumstances:

(a) Failure to make delivery of the supplies or to perform the services within the time specified in the contract or any authorized extension.

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(b) Failure to perform any of the other provisions or failure to make progress so as to endanger contract performance.

(c) File documentation is extremely important to substantiate the basis for the termination. Termination for default should only be exercised after careful review by the contracting officer, technical personnel, and by legal counsel to assure the propriety of the action.

d. Notice Requirements. Written notification shall be issued to a contractor who is in danger of default action by the NAFI. Because of the magnitude of the rights and liabilities of this type of termination, coupled with the fact that time is of the essence, an immediate written acknowledgement or a return notice of delivery is required. There are two types of preliminary notices or notices of delinquency used for termination for default.

(1) Cure Notice. A cure notice will be used when it is determined that the amount of time equal to or greater than the period of the "cure" remains in the contract delivery schedule. The cure notice may be in the following format:

"You are notified that the activity considers your (specify the contractor's failure or failures) a condition that is endangering performance of the contract. Therefore, unless this condition is cured within 10 days after receipt of this notice (or longer if the contracting officer considers it necessary), the activity may terminate subject contract for default under the default clause."

(2) If the time remaining in the contract delivery schedule is not sufficient to permit a realistic "cure" period of 10 days or more, a "Show-Cause Notice" should be issued.

(3) Show-Cause Notice. If the time remaining in the contract for completion or performance is not sufficient to effect a cure as indicated above, a show-cause notice shall be issued to the contractor. It should be sent immediately upon expiration of the delivery period. The show-cause notice may be in the following format:

"Since you have failed to perform on (insert Contract No. \_\_\_\_\_) within the time required by its terms, or cure the conditions endangering performance under (insert Contract No.

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\_\_\_\_\_) as described to you in the activities letter of (insert date), the activity is considering terminating the contract under the provisions for default of this contract. Pending a final decision in this matter, it will be necessary to determine whether failure to perform arose from causes beyond your control and without fault or negligence on your part. Accordingly, you are given the opportunity to present, in writing, any facts bearing on the question to (insert the name and complete address of the contracting officer), within 10 days after receipt of this notice. Your failure to present any excuses within this time may be considered as an admission that none exists. Your attention is invited to the respective rights of the contractor and the government and the liabilities that may be invoked if a decision is made to terminate for default. Any assistance given to you on this contract or any acceptance by the government of delinquent goods or services will be solely for the purpose of mitigating damages, and it is not the intention of the government to condone any delinquency or to waive any rights the government has under the contract."

In determining whether to terminate a contract for default, the contracting officer shall consider the specific failures of the contractor and the excuses for the failures, terms of the contract, availability of supplies or services from other sources, the urgency of need for the supplies or services, and the period of time to obtain them from other sources, as compared with the time of delivery that it could be obtained from the delinquent contractor.

e. Excusable Delay. An excusable delay that may be claimed by a contractor is one that arises from causes beyond the control of and without fault and negligence of the contractor. Examples are: Acts of God or of the public enemy, acts of the government in either its sovereign or contractual capacity, fires, flood, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

f. Dispute as to Excusable Delay. Whether or not the contractor's failure of performance was due to excusable conditions may involve disputed questions of fact between the contractor and the contracting officer. The contracting officer's decision regarding the dispute will be made immediately prior to issuance of the notice of default and be part of the notice.

g. Procedures. If the contractor fails to respond satisfactorily to the "Cure/Show-Cause" letter, either by

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improved performance or establishment of excusable delays, the contracting officer shall issue a notice of termination for default setting forth the acts or omissions that make up the default and stating that the contractor's right to proceed further with performance of the contract or with a specific portion is terminated; that the terminated supplies or services may be purchased against the account of the contractor and that the contractor will be liable for any excess costs. The notice should also state that it constitutes a decision to which the contractor has the right to appeal according to the "Disputes" clause. If the notice of termination is issued prior to the contracting officer's determination regarding excusable delays, he/she should make a decision as soon as practicable and deliver the decision in writing to the contractor notifying him/her of the right of appeal under the "Disputes" clause.

h. Re-procurement. A defaulted contractor may be legally liable for any excess cost incurred by the NAFI when a replacement contract is awarded. Accordingly, when a re-procurement contract of the terminated supplies or services is awarded, care should be taken that items or services are procured in like quality, unit, and specifications, and that re-procurement occurs within a reasonable time at a reasonable price. To the extent possible, competition should be obtained. Excess costs should be assessed for requirements that are no greater than in the original contract with transportation and discounts considered. Should the re-procurement result in a price exceeding the original price, the defaulted contractor will be notified in writing by a demand letter stating in essence:

"I hereby find that, pursuant to the terms of your contract, you are obligated to (name of activity) in the amount of (excess costs)."

i. This letter should be sent certified mail, return receipt requested. Costs associated with the assessment and collection of re-procurement costs should be carefully reviewed by the contracting officer. If these costs outweigh the actual re-procurements costs, the assessment and collection of such costs may not be realistic.

#### 707. Inspection and Acceptance

a. Role of the Receiving Activity. The receiving activity is the authorized representative of the contracting officer for the purpose of conducting inspection and acceptance of supplies

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and services when the contract provides for acceptance and/or inspection at final destination. After inspection, verification of quantities received, and notation of any exceptions or variances, the receiving activity shall indicate acceptance by signature and date on the proper form, i.e., bill of lading, waybill or receiving document. Acceptance, following inspection, is final except for later rejection because of latent defects, fraud, or gross mistakes amounting to fraud.

**Important:** If defective or nonconforming supplies are not rejected within the time allowed by the contract or, in the absence of such provision, within a reasonable length of time, the NAFI will be considered to have accepted them. Shortages or nonconforming deliveries will be reported to the contracting officer for action. The following actions should be taken whenever a shipment is received:

(1) The receiving official should be present when goods are received.

(2) All boxes, cartons, packages, containers, etc., must be examined for damage before opening. Outside damage may consist of cave-ins, holes, water marks, etc.

(3) Inspection of actual goods should consist of at least matching stock numbers, quantity, kind, color, etc., with the contract and any modifications thereto.

b. Responsibilities of the Contracting Officer. The contracting officer is responsible for administering the inspection, acceptance, and warranty provisions of the contract. This includes:

(1) The settlement or determination of any disputes between the receiver and the contractor as to whether the supplies conform to the contract requirements;

(2) Arranging for the replacement or correction, by contract or otherwise, of nonconforming, non-accepted supplies which the contractor has failed to correct or replace at the request of the receiver; or the termination of the contract for default in consequence of such failure; or the authorization of the acceptance of nonconforming supplies at an equitable reduction in the contract price.

c. Disputes Over Nonconforming Supplies. Disputes regarding nonconforming supplies will be handled by the contracting officer. The contracting officer should first



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endeavor to resolve these matters by agreement. Failing in this, the contracting officer should decide the matter, to the extent it involves disputed questions of fact, according to the "Disputes" clause in the contract. Questions concerning the meaning of, or the interpretation to be given to the contract requirements, or action to be taken in cases involving disputed questions of law, should be referred to legal counsel for opinion.

708. Completed Contracts. A contract generally will be considered to be completed when final payment has been made under the contract. Contracting officers will not modify completed contracts.

709. Assignment of Claims. An assignment of claims means the contractor's transfer to a bank, trust company, or other financing institution of its right to be paid by the NAFI for contract performance as security for a loan to the contractor. However, a contractor may not assign any rights or delegate its responsibilities under a NAFI contract without written permission from the Contracting officer. Contracting Officers will coordinate with OGC for assistance on issues involving assignment of claims.

710. Novation and Change-of-Name Agreements

a. A novation agreement is a legal instrument executed by the contractor (transferor), the successor-in-interest (transferee), and the NAFI. Under a novation agreement, the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the NAFI recognizes the transfer of the contract and related assets.

b. A change-of-name agreement is a legal instrument executed by the contractor, under which the NAFI recognizes the legal change agreement of the contractor's name without disturbing the original contractual rights and obligations of the parties.

c. Contracting Officers must contact OGC for assistance with novation and change-of-name issues, and will execute a bilateral modification effecting the change if the agreement is accepted by the Contracting Officer.

711. Bankruptcy. Situations may arise where a contractor encounters financial problems during the course of contract execution and must enter bankruptcy proceedings. Contracting

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Officers will seek the assistance of OGC upon receiving notice of such proceedings.

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**PART II, SECTION I**

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**NONAPPROPRIATED FUND CONTRACT CLAUSES**

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1. Definitions. As used throughout this contract, the following terms and abbreviations have the meaning set forth below:

a. The term "Contract" means this agreement or order and any modifications hereto.

b. The abbreviation "NAFI" means Nonappropriated Fund Instrumentality of the United States Government.

c. The term "Contracting Officer" means the person executing or responsible for administering this contract on behalf of the NAFI which is a party hereto, or his successor or successors.

d. The term "Contractor" means the party responsible for providing supplies/equipment and/or services at a certain price or rate to the NAFI under this contract.

e. The term "Contracting Officer's Representative" (COR) means a person appointed by the contracting officer to monitor performance and act as a liaison between the contractor and the contracting officer.

2. Advertisements. The contractor agrees that none of its, nor its agent's, advertisements to include publications, merchandise, promotions, coupons, sweepstakes, contests, sales brochures, etc., shall state, infer, or imply that the contractor's products or services are approved, promoted, or endorsed by the NAFI. Any advertisement, including cents off coupons, which refers to a NAFI will contain a statement that the advertisement is neither paid for nor sponsored, in whole or in part, by that particular activity.

3. Assignment. A contractor may not assign their rights or delegate their obligations under this contract without prior written consent of the contracting officer.

4. Commercial Warranty. The contractor agrees that the supplies/equipment or services furnished under this contract

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shall be covered by the most favorable commercial warranties the contractor gives to any customer for such supplies/equipment or services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the NAFI by any other clause of this contract. The printed terms and conditions of such warranty will be provided to the NAFI with the delivery of any supplies/equipment or services covered.

5. Discounts for Prompt Payment. In connection with any prompt payment discount offered, time will be computed from the date of the contractor's invoice. Payment is deemed to have been made as of the date on the payment check or date on which electronic funds transfer is made.

6. Disputes. Except as otherwise provided in this contract, any dispute or claim concerning this contract, which is not disposed of by agreement, shall be decided by the contracting officer, who shall state their decision in writing, and mail or otherwise furnish a copy of it to the contractor. Within 90 days from date of receipt of such copy, the contractor may appeal by mailing or otherwise furnishing to the contracting officer a written appeal addressed to the immediate superior in Command (ISIC) of the Command one level above the contracting officer's Command. The decision of this authority shall be final and conclusive. If no such appeal is filed, the decision of the contracting officer shall be final and conclusive. The contractor shall be afforded an opportunity to be heard and to offer evidence in support of any appeal under this clause. Pending final decision on such a dispute, the contractor shall proceed diligently with the performance of the contract and according to the decision of the contracting officer, unless directed to do otherwise by the contracting officer.

7. Examination of Records

a. The clause is applicable if the amount of this contract exceeds \$10,000 and the contract was entered into by means of negotiation. The contractor agrees that the contracting officer or their duly authorized representative shall have the right to examine and audit the books and records of the contractor directly pertaining to the contract during the period of the contract and up to 3 years after contract expiration date and final payment.

b. The contractor agrees to include the clause in paragraph 7a above in all subcontracts there-under which exceed \$10,000.



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## 8. Gratuities

a. The NAFI may, by written notice to the contractor, terminate the right of the contractor to proceed under this contract if it is found, after notice and hearing by the Contracting Officer that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the contractor, or any agent or representative of the contractor, to any officer or employee of the government or the NAFI with a view toward securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract. The Contracting Officer must coordinate with and receive approval from N94 on all matters arising under this section.

b. In the event this contract is terminated as provided in paragraph 8a above, the NAFI shall be entitled (1) to pursue the same remedies against the contractor as it would pursue in the event of a breach of contract by the contractor, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Contracting Officer, which shall not be less than three nor more than ten times the cost incurred by the contractor in providing any such gratuities to any such officer or employee.

c. The rights and remedies of the NAFI provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

9. Hold and Save Harmless. The contractor shall indemnify, save harmless, and defend the NAFI, its outlets, and customers from any liability, claimed or established, for violation or infringement of any patent, copyright, or trademark right asserted by any third party with respect to goods hereby ordered or any part thereof. Contractor further agrees to hold the NAFI harmless from all claims or judgments for damages resulting from the use of products listed in this contract, except for such claims or damages caused by or resulting from negligence of NAFI customers, employees, agents, or representatives. Also, the contractor shall at all times hold and save harmless the NAFI, its agents, representatives, and employees from any and all suits and expenses which arise out of acts or omissions of the contractor, its agents, representatives, or employees.

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10. Inspection. Unless otherwise provided herein, inspection shall be made after receipt of the supplies/equipment by the ordering activity, or after completion of services by the contractor. Inspection and acceptance shall not be conclusive, with respect to latent defects or fraud, or with respect to the NAFI's rights under the proof of shipment provisions contained herein. In case any supplies/equipment or services are defective in material or workmanship, or are otherwise not in conformity with the requirements of this contract, the NAFI shall have the right to reject such supplies or services, or to require replacement or correction. Rejected supplies/equipment shall be removed by and at the expense of the contractor promptly after notice. If required by the NAFI, the contractor, after notice of defect or non-conformance, shall, in a timely manner, correct or replace the defective or non-conforming supplies/equipment or services, or any part thereof. When such correction or replacement requires transportation of the supplies/equipment or part thereof, all shipping costs to and from the contractor's plant or place of business shall be borne by the contractor.

11. Insurance

a. The contractor shall, at their expense, procure and maintain, during the entire performance period of this contract, insurance of at least the kinds and minimum amount set forth herein.

b. At all times during performance, the contractor shall maintain with the contracting officer a current certificate of insurance showing at least the insurance required herein, and providing 30 days written notice to the contracting officer by the insurance company prior to cancellation or material change in policy coverage.

c. The contractor shall also require all first-tier subcontractors, who will perform work on a government installation, to procure and maintain the insurance required herein during the entire period of their performance. The contractor shall furnish (or assure that it has been furnished) to the contracting officer a current certificate of insurance meeting the requirements of paragraph 11b above, for each such first-tier subcontractor, at least 5 days prior to entry of each such subcontractor's personnel on the installation.

d. In implementation of the insurance clause above, the contractor shall procure and maintain:

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(1) Worker's compensation as prescribed by the laws of the State in which the work will be performed and employer's liability insurance.

(2) General liability insurance wherein the NAFI and the United States are included as named insured, stating that such insurance is primary (secondary to or contributory with no other insurance). Policy limits of \$1,000,000 per person - \$1,000,000 per occurrence for injury or death, and \$1,000,000 property damage per occurrence are required.

(3) The contractor is responsible for damage or loss to his/her owned or leased equipment. Claims will be honored only if it can be shown that the NAFI was negligent and caused damage or loss to the contractor's equipment.

12. Invoices. An invoice is a written request for payment under the contract for supplies/equipment delivered or for services rendered. In order to be proper, an invoice must include (and in order to support the payment of interest penalties) the following:

- a. Invoice date;
- b. Name of contractor;
- c. Contract number (include order number, if any), contract description of supplies or services, quantity, contract unit of measure, unit price, and extended total;
- d. Shipment number and date of shipment;
- e. Name and address to which payment is to be sent (name must be the same as that in the contract or on a proper notice of assignment);
- f. Name (where practicable), title, telephone number and mailing address of person to be notified in the event of a defective invoice; and
- g. Any other information or documentation required by other provisions of the contract (such as evidence of shipment).

Invoices shall be prepared and submitted in duplicate (one copy shall be marked "Original") unless otherwise specified.

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13. Law Governing Contracts. In any dispute arising out of this contract, the decision of which requires consideration of law questions, the rights and obligations of the parties shall be interpreted and determined according to the substantive and procedural laws of the United States of America.

14. Legal Status. The NAFI is an integral part of the Department of Defense and is an instrumentality of the United States Government. NAFI contracts are United States Government contracts; however, they do not obligate appropriated funds of the United States. NO APPROPRIATED FUNDS OF THE UNITED STATES SHALL BECOME DUE OR BE PAID A CONTRACTOR BY REASON OF THIS CONTRACT.

15. Modifications. No agreement or understanding to modify this contract will be binding upon the NAFI unless it is made in writing and signed by a contracting officer from the office that issued the contract or its successor.

16. Order of Precedence. In the event of an inconsistency between provisions of this solicitation/contract, the inconsistency shall be resolved by giving precedence in the following order: (1) description of the supplies/equipment or services and prices/costs; (2) description/specifications/work statement; (3) special contract requirements; (4) contract clauses; (5) other provisions of the solicitation/award; and (6) any portion of the contractor's bid or proposal that has been incorporated by reference and made a part of the contract.

17. Payments. Payment of prices stated in this contract will be made according to the Prompt Payment Act, as amended. Unless otherwise specified, payment will be made on partial deliveries accepted by the NAFI when the amount due on such deliveries so warrants. Payment is deemed to have been made as of the date on the payment check or date on which electronic funds transfer is made.

18. Proof of Shipment. (Applicable to shipments outside the United States through the Defense Transportation System (DTS) and parcel post shipments to overseas destinations.) Except as otherwise provided in this contract, payment will be made for items not yet received upon receipt of an invoice accompanied by proof of delivery to a postal system or common carrier if delivery is FOB point of origin. For deliveries FOB destination named port of debarkation, the invoice must be accompanied by a signed receipt by a government representative at the named port.

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19. Taxes. The prices herein reflect full reduction for taxes that are non-applicable. In addition to the exemption from federal excise taxes by virtue of exportation, all tangible personal property sold to NAFIs for resale are exempt from sales and use taxes. All sales other than for resale depend on state law or federal constitutional immunity for exemption from state sales and use taxes.

20. Termination for Convenience. The contracting officer, by written notice, may terminate this contract, in whole or in part when it is in the best interest of the NAFI. If this contract is for supplies/equipment and is so terminated, the contractor shall be compensated according to FAR subparts 49.1 and 49.2 in effect on the date of this contract award. To the extent that this contract is for services and is so terminated, the NAFI shall be liable only for payment according to the payment provisions of this contract for services rendered prior to the effective date of termination, providing there are no contractor claims covering non-recurring costs for capital investment. If there are any such contractor claims, they shall be settled according to FAR subparts 49.1 and 49.2.

21. Termination for Default. The contracting officer, by written notice, may terminate this contract in whole or in part for failure of the contractor to perform any of the provisions hereof. In such event, the contractor shall be liable for damages including the excess cost of re-procuring similar supplies/equipment or services; provided that, if (1) it is determined for any reason that the contractor was not in default or (2) the contractor's failure to perform is without the contractor's or subcontractor's control, fault, or negligence, the termination must be deemed to be a termination for convenience. As used in this provision, the term "subcontractor" means subcontractor at any tier.

22. Variation in Quantity. No variation in quantity of any item listed in the order/contract will be accepted unless authorized by the contracting officer.

23. Protests. Offerors are encouraged to resolve any complaints or issues they may have with the contracting officer in an informal manner. However, where an offeror is not satisfied with an award decision of the contracting officer, that offeror may file a written protest with the contracting officer and the contracting officer will issue a final decision on the protest. Any interested party who is dissatisfied by the contracting officer's final decision on the protest may file a

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written appeal with CNIC. The procedures for filing protests may be found in chapter 2, paragraph 223. A copy of paragraph 223 will be provided to any offeror by the contracting officer upon request.

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**CLAUSES INCORPORATED BY REFERENCE**

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The provisions of the following clauses set forth in the Federal Acquisition Regulation (FAR) are hereby incorporated into this order or contract by reference with the same force and effect as if they were given in full text. As used in the following clause, the term "Government" is deleted and the abbreviation "NAFI" is substituted in lieu thereof. The date of each clause shall be the current date set forth in the FAR at the time of issuance of an order or contract award. Clauses made inapplicable by the reference or by the type or order or contract (e.g., order or contracts for services instead of supplies/equipment) are self-deleting. Upon request, the contracting officer will provide the full text.

CLAUSE NO.	REFERENCE	CLAUSE TITLE
24	52.203-5	Covenant Against Contingent Fees (Contracts over \$150,000)
25	52.222-20	Walsh-Healey Public Contracts Act (Supply Contracts in Excess of \$15,000) (not with foreign contractors)
26	52.222.26	Equal Opportunity (Supply and Service Contracts over \$10,000)

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**ADDITIONAL NONAPPROPRIATED FUND CONTRACT  
CLAUSES FOR SERVICES**

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27	52.222.35	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Supplies and Services over \$100,000)
28	52.222-36	Affirmative Action for Workers with Disabilities (Supplies And Services Contracts Over \$15,000)
29	52.222-37	Employment Reports on Special Disabled Veterans, Veterans of The Vietnam Era, and Other Eligible Veterans (Supplies and Service Contracts over \$10,000)
30	52.225-13	Restrictions on Certain Foreign Purchases
31	52-232-11	Extras
32	52.243-1	Changes-Fixed Price (with ALT I through IV)
33	52.246-1	Contractor Inspection Requirements
34	52.246-16	Responsibility for Supplies



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**ADDITIONAL NONAPPROPRIATED FUND CONTRACT  
CLAUSES FOR SERVICES**

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35	52.247-52	Clearance and Documentation Requirements- Shipments to DOD Air or Water Terminal Trans- shipment Points
36	52.222-3	Convict Labor (Contracts over \$2,500)
37	52.222-4	Contract Work Hours and Safety Standards Act- Overtime Compensation - General (Contracts over \$150,000)
38	52.222-41	Service Contract Act of 1965, as amended (Contracts over \$2,500)
39	52.246-4	Inspection of Services - Fixed Price



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**SUPPLEMENTAL CLAUSES**

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1. Requirements

a. This is a requirements contract for the supplies or services specified, and effective for the period stated in the schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the NAFI's requirements do not result in orders in the quantities described in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

b. Delivery or performance shall be made only as authorized by delivery orders issued in accordance with the Ordering clause. The contractor shall furnish to the NAFI all supplies or services specified in the Schedule and called for by delivery orders issued in accordance with the Ordering clause. The NAFI may issue delivery orders requiring delivery to multiple destinations or performance at multiple locations. There is no limit on the number of orders that may be issued by the NAFI.

c. The NAFI shall order from the Contractor all the supplies or services specified in the schedule that are required to be purchased by the NAFI activity of activities specified in the Schedule.

d. Orders issued during the effective period of this contract and not completed within that time shall be completed by the contractor within the time specified in the delivery order, and the rights and obligations of the contractor and the NAFI respecting those orders shall be governed by the terms of the contract to the same extent as if completed during the effective period of this contract

2. Ordering. The supplies or services to be furnished under this contract will be ordered from time to time during the contract term, by the NAFI or its authorized representative. Each such order will be placed via written delivery order. All delivery orders are subject to the terms and conditions of this contract. In the event of a conflict between a delivery order and this contract, the contract shall control.

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### 3. Option to Extend

a. The contracting officer shall advise the contractor in writing at least 60 calendar days before the contract period expires of the NAFI's desire to extend the period of the contract for \_\_\_\_\_ months/days. If the NAFI exercises this option, the extended contract shall be considered to include this option provision.

b. The total duration of this contract, including any extension pursuant to the option exercised under this clause, shall not exceed 5 years from the date of the original contract.

### 4. Price Warranty/Economic Adjustments

a. The contractor warrants that during the period of the contract, the terms, conditions, prices, and discounts, in addition to any discounts offered for prompt payment, shall be as favorable or better than those extended to its most favored customer. The contractor agrees that any price reduction made prior to final delivery under the contract will be applicable to all items delivered subsequent to the reduction.

b. If the contractor's established price (the wholesale market price at which he sells a majority of the purchased item(s)) is increased after the contract date, the corresponding contract unit price may, at the discretion of the contracting officer, be increased, upon the contractor's request in writing to the contracting officer, by the same percentage that the established price is increased, and the contract shall be modified accordingly, provided that:

(1) The aggregate of the increases in any contract unit price made under this clause shall not exceed 10 percent of the original contract unit price;

(2) The requested increase is based upon significant increases in the contractor's labor and/or material costs;

(3) The increased contract unit price will be effective upon approval of the request by the contracting officer. The request will be approved or disapproved within 30 days of its receipt by the contracting officer who will promptly notify the contractor of his/her decision and the date thereof;

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(4) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract price unless the contractor's failure to deliver before such date results from causes beyond the control and without the fault or negligence of the contractor; and

(5) Notwithstanding the foregoing, no modification incorporating an increase in the contract unit price shall be granted pursuant to this clause until the contracting officer has verified the increased labor and/or material costs relied upon by the contractor as justification for his request.

c. Pending the contracting officer's determination on a price adjustment request, the contractor shall continue deliveries according to the terms and conditions of this contract and shall be paid for such deliveries at the then-applicable contract unit price.

#### 5. Variation in Quantity

a. A variation in the quantity of any item called for by this contract will not be accepted unless the variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, as specified in paragraph b. below.

b. The permissible variation shall be limited to

\_\_\_\_\_ Percent increase (*contracting officer to enter applicable percentage*)

\_\_\_\_\_ Percent decrease (*contracting officer to enter applicable percentage*)

This increase and/or decrease shall apply to the total order/contract quantity.



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**PART IV, SECTION K**

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**REPRESENTATIONS, CERTIFICATIONS AND ACKNOWLEDGMENTS**

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WALSH-HEALEY PUBLIC CONTRACTS ACT REPRESENTATIONS (Applicable to supply contracts exceeding \$15,000.00)

The offeror represents as a part of this offer that the offeror {\_\_\_\_} is or {\_\_\_\_} is not a regular dealer in, or {\_\_\_\_} is or {\_\_\_\_} is not a manufacturer of, the supplies offered.

CONTINGENT FEE

(a) Offeror \_\_\_\_ has \_\_\_\_ has not employed any company or persons (other than a full-time bona fide employee working solely for the offeror) to solicit or secure this contract, and (b) \_\_\_\_ has \_\_\_\_ has not paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the offeror) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this contract; and agrees to furnish information relating to (a) and (b), as requested by the contracting officer. (Interpretation of the representation, including the term "bona fide employee," see subpart 3.4 of the Federal Acquisition Regulation.)

TYPE OF BUSINESS ORGANIZATION

Offeror operates as \_\_\_\_ an individual \_\_\_\_ a partnership \_\_\_\_ a nonprofit organization \_\_\_\_ a corporation, incorporated under the laws of the State of \_\_\_\_\_.

EQUAL OPPORTUNITY (EO)

(a) Offeror \_\_\_\_ has \_\_\_\_ has not participated in a previous contract or subcontract subject either to the EO clause herein or the clause originally contained in section 310 of Executive Order No. 10925, or the clause contained in section 201 of Executive Order No. 11114; offeror \_\_\_\_ has \_\_\_\_ has not filed all required compliance reports; and that representation indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards.

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(b) Offeror represents that (1) it \_\_\_\_\_has developed and has on file \_\_\_\_\_has not developed and does not have on file, at each establishment affirmative action programs as required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2) or (2) \_\_\_\_\_it has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

CERTIFICATION OF INDEPENDENT PRICE DETERMINATION (Applicable to contracts over \$150,000.00)

(a) By submission of this offer, the offeror certifies, and in the case of a joint offer, each party thereto certifies as to its own organization, that in connection with this procurement:

(1) The prices in this offer have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening in the case of an advertised procurement or prior to award in the case of a negotiated procurement, directly or indirectly to any other offeror or to any competitor; and

(3) No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on this offer certifies that the signatory:

(1) Is the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein and that the signatory has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or

(2) (i) Is not the person in the offeror's organization responsible within that organization for the decision as to the prices being offered herein but has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated and will not



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participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify; and (ii) has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above.

CERTIFICATION OF NONSEGREGATED FACILITIES (Applicable to contracts and subcontracts exceeding \$10,000.00 which are not exempt from the provisions of the EO clause)

(a) By submission of this offer, offeror/subcontractor certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. Offeror/subcontractor agrees that a breach of this certification is a violation of the EO clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. Offeror further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will (1) obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000.00 which are not exempt from the provisions of the EO clause; (2) retain such certifications in its files; and (3) forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods).

Notice to prospective subcontractors of requirement for certifications of nonsegregated facilities.

(b) A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000.00 which is not exempt from the provisions of the EO clause.

(c) The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e.,

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quarterly, semiannually, or annually). NOTE: The penalty for making false offers is prescribed in 18 U.S.C. 1001.

(d) ACKNOWLEDGMENT OF AMENDMENTS

	Amendment No.	Date
The offeror acknowledges	_____	_____
receipt of amendments to	_____	_____
the solicitation for offers	_____	_____
and related documents	_____	_____
numbered and dated as	_____	_____
follows:		

NOTE: Offers must set forth accurate and complete information as required by this Solicitation (including attachments). The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

PROCUREMENT POLICY UPDATE NOTICES

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