**DEPARTMENT OF THE NAVY**
**UNITED STATES NAVAL ACADEMY**
**121 BLAKE ROAD**
**ANNAPOLIS MARYLAND 21402-1300**

USNAINST 7010.2C
4/NABSD
29 JUN 2011

USNA INSTRUCTION 7010.2C

From: Superintendent

Subj: UNITED STATES NAVAL ACADEMY (USNA) NONAPPROPRIATED FUND (NAF) PROCUREMENT POLICY

Ref: (a) Secretary of the Navy ltr of 10 May 74
(b) 10 U.S.C. §§6971 and 6976
(c) DOD 7000.14-R, Volume 12, Chapter 20
(d) SECNAVINST 7043.5B
(e) CNO Action Memo Ser N00/100144 of 10 Dec 10
(f) DODINST 1015.15
(g) DODINST 4105.71
(h) DOD Directive 4105.67
(i) SECNAVINST 5401.2A

Encl: (1) USNA NAF Procurement Policy Manual

1. Purpose. To revise and reissue USNA NAF procurement policy. This instruction incorporates review comments from the Assistant Secretary of the Navy (Manpower &Reserve Affairs) and the Commander Navy Installation Command fiscal oversight team.

2. Cancellation. USNAINST 7010.2B

3. Applicability. The provisions of this instruction are promulgated under the authority of references (a) through (i) and apply to all NAF activities for which the Superintendent, USNA is program manager.

4. Discussion. The Superintendent is the program manager of five Nonappropriated Fund Instrumentalities (NAFIs): Naval Academy Business Services Division (NABSD), Midshipmen Welfare Fund (MWF), Midshipmen Ration Account (MRA), Naval Academy Preparatory School (NAPS) Battalion Activity Fund (BAF), and Candidate Guidance Fund (CGF). These five NAFIs are classified as Program Group V – Supplemental Mission Funds and, as such, are not governed by Morale, Welfare, and Recreation (MWR) or Navy Exchange System (NES) instructions or policies.

5. Action. Procurements by all USNA NAF activities shall be accomplished in accordance with enclosure (1), as well as all applicable Public Law, Department of Defense (DOD) and Secretary of the Navy regulations, instructions and directives.

6. Contracting Authority. Reference (d) appoints the Superintendent a NAF contracting officer and authorizes re-delegation of this authority. All contracting officer appointments are required to be granted in writing by the Superintendent as detailed in enclosure (1).

7. Resale Material. NABSD is the only organization with the authority to contract for resale material.

8. NAF Funds Approval. The funds approval process is separate and distinct from contracting and purchasing authority limits. Funds approval must be obtained prior to commencement of the procurement process.

a. Except for resale material, procurements in excess of $250,000 require prior written approval by the Superintendent. The Director, NABSD is authorized to approve all resale material procurements, regardless of dollar value.

b. The Director, NABSD; Commandant of Midshipmen; Commanding Officer, NAPS; and Dean of Admissions are authorized to approve procurements of $250,000 and less. They may re-delegate funds approval within their organizations. Delegations must be in writing and specify actual approval limits.

c. Subsistence procurements executed by the MRA via a purchase order generated utilizing the Navy's Food Service Management (FSM) system are exempt from this requirement and do not require NAF funds approval.

9. Oversight and Administration. The Director, NABSD is responsible for the administration and maintenance of this instruction.

/S/
M. H. MILLER

Distribution:
All Non Mids (electronically)

# UNITED STATES NAVAL ACADEMY (USNA) NONAPPROPRIATED FUND (NAF) PROCUREMENT POLICY

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# USNA NAF PROCUREMENT POLICY

## CHAPTER 1

## PROCUREMENT AUTHORITY AND RESPONSIBILITY


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# USNA NAF PROCUREMENT POLICY

## CHAPTER 1

## PROCUREMENT AUTHORITY AND RESPONSIBILITY

1000. PURPOSE

1. This instruction establishes policies and procedures governing procurements made with nonappropriated funds (NAF) for which the Superintendent, United States Naval Academy (USNA) is program manager. This policy applies to the Naval Academy Business Services Division (NABSD), the Midshipmen Welfare Fund (MWF), the Midshipmen Ration Account (MRA), the Naval Academy Preparatory School (NAPS) Battalion Activity Fund (BAF) and the Candidate Guidance Fund (CGF).

2. The goal of the NAF procurement system is to obtain products and services in a fair, equitable, and impartial manner, and to the best advantage of USNA. Accordingly, USNA NAF procurement personnel will:

a. Conduct procurement actions with integrity and fairness.
b. Perform procurements in a timely, high quality, and cost-effective manner.
c. Promote competition in the procurement process.
d. Comply with applicable laws and regulations.

1001. EXCEPTIONS AND CLARIFICATIONS. Written requests for exceptions and clarifications will be sent to the Superintendent via the USNA General Counsel and the USNA Command Evaluation Officer.

1002. DELEGATION OF PROCUREMENT AUTHORITY

1. The Superintendent establishes USNA NAF procurement policy, procedures, and training requirements, and appoints NAF contracting officers via a Letter of Appointment.

2. The Director, NABSD; Midshipmen Supply Officer; Commanding Officer, NAPS; and Dean of Admissions have the responsibility to:

a. Nominate contracting officers.
b. Ensure contracting officers receive required training.
c. Exercise fiduciary responsibility by reviewing contracts and purchase orders, as needed.

3. In accordance with their Letter of Appointment, NAF contracting officers are delegated the authority to obligate the Nonappropriated Fund Instrumentality (NAFI), to the extent funds have been approved and made available by the Director, NABSD, the Midshipmen Supply Officer, the Commanding Officer, NAPS, the Dean of Admissions, and the Superintendent.

4. NAF procurement personnel may not obligate appropriated funds (APF).

1003. APPOINTMENT AS CONTRACTING OFFICER

1. A Letter of Appointment is the instrument by which the Superintendent grants individuals the authority to enter USNA into legally binding contracts. This authority recognizes an employee's qualifications to be appointed a NAF contracting officer. The title "Contracting Officer" will be determined based on employee's qualifications, delegation (by appointment), and level of dollar value of appointment.

a. Nomination requests will specify the dollar value of the appointment. Nominations will document the individual's experience, education, and training level, per paragraphs 1005 and 1006.

b. Exceptions to the qualification requirements in paragraphs 1005 and 1006 may be requested for individuals who, due to their experience or circumstances, should be granted contracting officer authority. Requests should include the individual's name, training, education, and experience. Exceptions must be authorized by the Superintendent.

2. Termination of appointment as a contracting officer may be made for reasons such as unsatisfactory performance, reassignment, or termination of employment.

1004. AUTHORITY OF CONTRACTING OFFICER

1. USNA NAF contracting officers have authority to enter into, administer, or terminate contractual actions and to make related decisions. NAF contracts are contracts of the United States Government; however, they do not obligate appropriated funds of the United States except for a judgement or compromise settlement in suits brought under provisions of the Contract Disputes Act (41 USC 601-613), in which event USNA will reimburse the United States Government (31 USC 1304[c]). Contracting officers may bind the NAFI only to the extent of the authority delegated to them.

2. A contract action is defined as an award or modification of a purchase order, delivery order, or contract. Dollar value authority is applicable to each contract action. Contracting officers and purchasing agents will not amend or modify a contract that has a dollar value, including any modifications, over the dollar limitation authorized by their Letter of Appointment.

3. Guidance in deciding the dollar value in various contractual actions is provided as follows:

a. Fixed dollar contracts - the total amount of the contract award, inclusive of all option years.

b. Indefinite delivery contracts, direct delivery agreements, open purchase orders, and blanket purchase orders - the value of the total estimated procurement for the contract, inclusive of all option years.

c. Concession, vending and agency contracts - the estimated gross sales for the term of the contract.

d. Contract modification - the full value of the contract, as modified.

4. All contracts entered into by a contracting officer shall include all required provisions and clauses as well as clear documentation to justify the contract award as part of the contract file.

5. To meet the mission of USNA, contracting officers will be allowed wide latitude to exercise business judgment. Contracting officers will:

a. Verify that the purchase request is complete, including all required signatures and provides enough descriptive data to make the purchase.

b. Be responsible for managing contractor relationships by overseeing the integrity and effectiveness of the procurement process, ensuring that contractors are treated fairly and objectively, and maintaining effective communications with contractors during contract performance.

c. Take into consideration the advice of specialists in audit, law, accounting, transportation, and other fields as appropriate.

6. NAF contracting officers will be guided by the Standards of Conduct as prescribed by Joint Ethics Regulation (DOD 5500.7-R) especially in the areas of conflicts of interest, favoritism, gifts and gratuities, and post government employment. Questions should be directed to local Ethics Counselors.

7. DOD NAF employees are subject to the same fiduciary responsibilities as appropriated fund civilian employees. Questions should be directed to the USNA Counsel.

1005. QUALIFICATIONS OF NAF CONTRACTING OFFICERS

1. Only NAF pay banded (NF) civilian employees or military personnel assigned to NABSD, the MWF, MFSD with respect to the MRA, and the NAPS BAF will be appointed as NAF contracting officers.

2. In selecting contracting officers, the nominating authority will consider the following, commensurate with the nominee's assigned responsibility:

a. Demonstrated knowledge and experience in Government/NAF or commercial purchasing, contracting, contract negotiation, administration, and termination functions. This includes preparing solicitations, contracts, contract modifications, and supporting procurement documents; obtaining and analyzing product and price data for contract negotiations; and evaluation, reporting, and monitoring contractor performance.

b. Demonstrated knowledge and experience in rental or lease of supplies, services, and equipment through open-market methods, placement of purchase orders, and placement of orders under blanket purchase agreements or indefinite delivery contract such as Federal supply schedules, or other commercial purchase procedures;

c. Demonstrated knowledge of the retail (resale) buying functions, including review and evaluation of vendor products, price negotiation, placement of merchandise orders, product distribution, inventory control, and analysis of new trends;

d. Demonstrated personal integrity and ability to apply sound business judgment.

1006. EDUCATION AND EXPERIENCE REQUIREMENTS FOR CONTRACTING OFFICERS

1. The following education and experience benchmarks will be used in evaluating a nominee's qualifications for appointment as a contracting officer:

a. For NF-3 Employees or equivalent. Nominees should have one or more years of current (within the last five years) contracting or purchasing experience with progressive assignments leading toward broader technical knowledge. The nominee should have a high school diploma or equivalent;

b. For NF-4 Employees or equivalent. Nominees should have three or more years of current, progressively complex and responsible procurement experience with Government/NAF agencies or commercial procurement. The nominee should have a bachelor's degree from an accredited college or university that included or was supplemented by at least 24 semester hours in a field of study directly related to procurement, such as contracts, purchasing, contract law, accounting, business finance, merchandising, economics, marketing, or organization and management.

2. Procurement training is the cornerstone of professional development. To enhance professional capabilities of procurement personnel, training criteria for appointment as a contracting officer is defined in paragraph 1007.

1007. TRAINING AND APPOINTMENT LEVELS FOR NAF CONTRACTING OFFICERS

1. USNA NAF contracting and purchasing personnel must satisfactorily complete procurement training as follows:

a. Appointment Level Up to $25,000 ($50,000 Resale and $50,000 as an Ordering Officer for the Subsistence Prime Vendor Program). To qualify for an appointment to purchase/contract up to $25,000 ($50,000 Resale and $50,000 as an Ordering Officer for the Subsistence Prime Vendor Program), completion of the Basic NAF Contracting (online course provided by the U.S. Army Installation Management Community Academy and can be accessed at this hyperlink

http://www.imcomacademy.com), or DAWIA Level I contracts certification, or other equivalent course is required.

b. Appointment Level Up to $100,000. To qualify for an appointment to purchase/contract up to $100,000, completion of the Basic NAF Contracting course and the NAF Acquisition Management course (resident 2-week course provided by the U.S. Army Installation Management Community Academy. Next course offering and registration can be accessed at this hyperlink http://www.imcomacademy.com), or DAWIA Level II Contracts certification, or other equivalent course is required.

c. Appointment Level In Excess of $100,000. The contracting officer must complete the contract training above and at least one of the following;

(1) Have a certification or associates degree in the procurement field, or;

(2) Have an undergraduate or graduate degree from an accredited college or university, that included or was supplemented by at least 24 semester hours in a field of study directly related to procurement, such as contracts, purchasing, contract law, accounting, business finance, merchandising, economics, marketing, or organization and management, or;

(3) Have at least 10 years of procurement experience.

(4) DAWIA Level III Contracts certification, or other equivalent certification.

2. The Superintendent may approve course equivalency and may substitute years of experience for formal training.

3. Continuous Learning Education. Procurement personnel are encouraged to receive additional training in order to stay current with changing procurement policy.

1008. LEGAL SUPPORT AND REVIEW. The USNA Counsel or the USNA Staff Judge Advocate (SJA) will provide legal support and assistance to USNA NAF contracting efforts. All NAF procurement personnel are strongly encouraged to submit all questions of a legal, policy, or business nature on any subject that is of concern.

1. USNA NAF procurement personnel will obtain legal review, or consultation as appropriate, for the following:

a. All nonrevenue generating support solicitations or contracts anticipated to be in excess of $250,000;

b. All revenue generating solicitations or contracts anticipated to generate sales in excess of $300,000 over the term of the contract;

c. Proposed awards that may result in a contract period in excess of five years;

d. Proposed awards that may result from an unsolicited proposal;

e. All decisions concerning procurement protests (prior to and after contract award), inexcusable delays, claims, disputes, and appeals;

f. Termination actions and supporting documentation;

g. All entertainment contracts to which the Service Contract Act applies.

h. Matters involving tax issues.

i. Recommendations for suspension or debarment of any USNA NAF contractor.

j. All Congressional inquiries pertaining to USNA NAF contracting actions;

k. Freedom of Information Act (FOIA) responses and questionable or controversial FOIA issues; and

l. Questions regarding applicability and implementation of Federal statutes such as the Service Contract Act, Davis Bacon Act, etc.

1009. SEPARATION OF FUNCTIONS

1. The integrity of the procurement system is best protected by separation of functions combined with the basic honesty of those involved. Oversight management and both proactive and detective controls are keys to success.

2. The following steps in the procurement process should be performed by different people to the maximum extent practicable:

a. Issuance of the purchase request.
b. Approval of the purchase request.
c. Certification of availability of funds.
d. Execution of a contract document.
e. Receipt of goods or services.
f. Issuance of payment for the purchase.

If all the above steps cannot be performed by different people, at a minimum the following steps will be performed by different people:

a. Issuance/approval of purchase request.
b. Certification of availability of funds.
c. Execution of contract documents.
d. Issuance of payment for the purchase.

3. Procurement personnel will not engage in receiving and/or invoice payment functions. A limited exception to the separation of functions requirement is granted to individuals making purchases with a purchase card or for purchases under the purchase card threshold.

1010. PROCUREMENT INTEGRITY

1. By awarding a contract (including delivery or purchase orders) the contracting officer certifies that during the procurement process:

a. He/she will not directly or indirectly discuss, solicit or accept future employment or any business opportunity with the contractor or any offeror prior to consulting with general counsel upon departure from the federal government employment;

b. He/she will not ask for, receive or accept an offer, promise or gift of any gratuity, entertainment, money or compensation, provided directly or indirectly for services from an offeror or contractor;

c. No information proprietary to another offeror or other procurement information will be disclosed or given to any person not authorized by the contracting officer.

2. If the contracting officer cannot certify compliance with these restrictions, the award will not be made (or delivery order or purchase order issued) and the contracting officer will report the circumstances in writing to the USNA Counsel.

1011. UNAUTHORIZED PROCUREMENT ACTIONS

1. An unauthorized procurement action is an agreement (either verbal or written) that commits USNA NAFs or resources to a concern that is not binding solely because the USNA NAF representative who made it lacked the authority to enter into that agreement on behalf of the NAFI. The ratification of an unauthorized procurement action is an after-the-fact approval of the purchase. An unauthorized procurement action purportedly on behalf of USNA may result in a void or voidable contract and, in some circumstances, may result in the personal liability of the individual making the unauthorized procurement.

2. All unauthorized procurement actions shall receive legal review and approval prior to ratification.

3. Ratifications may be performed by any applicably warranted contracting officer, and must also receive approval by the Director, NABSD; Midshipmen Supply Officer; Commanding Officer, NAPS; or Dean of Admissions. Any ratification over $100,000 must additionally receive approval by the Superintendent.

4. To ratify unauthorized procurements, the supervisor of the individual who made the unauthorized procurement will prepare a request for ratification. The request will be sent to the ratifying official through the chain of command within five days of discovery of the unauthorized procurement action. The request will include the following information and documentation as appropriate to the circumstances:

a. Name of the individual who made the unauthorized procurement;

b. Date of the unauthorized procurement;

c. Name and address of the company or individual to whom the commitment was made;

d. Item or service involved and the benefit received by the NAFI;

e. A copy of the vendor's invoice including quantities with unit and total dollar amount;

f. The purchase request with supporting documentation;

g. A written, signed statement by the individual who made the unauthorized procurement explaining the circumstances and why the normal procurement process was not followed;

h. A statement of the disciplinary action taken, or an explanation of why none was considered necessary, and action taken to prevent recurrence of the unauthorized act;

i. Any other information or recommendation about the procurement and the individual involved;

j. Recommendations regarding approval or disapproval, and the basis for making them.

5. Based on a review of the documents submitted and concurrence by USNA Counsel, the ratifying official will either ratify the unauthorized procurement or prescribe an alternate course of action. If the ratifying official approves the purchase action, the contracting officer or purchasing agent will execute the appropriate purchase document.

1012. RELEASE OF ADVANCE PROCUREMENT INFORMATION. USNA NAF personnel will not provide potential contractors with advance information concerning proposed acquisitions. Such information will be released only by duly appointed contracting officers acting within the scope of their authority.

1013. STANDARDS OF CONDUCT. The Joint Ethics Regulation (JER), and the DOD Directive 5500.7-R (Standards of Conduct) apply to all DOD components, including NAFIs.

1. Those in contracting and procurement positions are required to have annual ethics training and to file annual Confidential Financial Disclosure Reports (OGE Form 450) with the USNA Ethics Counselor.

2. Purchase cardholders purchasing less than $100,000 annually are not required to file OGE Form 450; however, all purchase card approving officials must do so.

3. Individual supervisors may require additional personnel to conduct annual ethics training and complete OGE Form 450, if in the supervisor's judgment, they are in positions to influence the integrity of the procurement process.

4. Those in contracting and procurement positions are required to have annual standards of conduct training. Contracting and procurement personnel will not accept or solicit gifts given to them in their official capacity from any offeror or contractor, nor will they use their positions or influence to arrange for the direct purchase of items for their personal use, or use by their families or other USNA employees.

1014. REPORTING VIOLATIONS OF STANDARDS OF CONDUCT RELATING TO PROCUREMENT. Contracting Officers and other personnel are responsible for reporting any suspected violations of law or regulation to the proper authorities.

# USNA NAF PROCUREMENT POLICY

## CHAPTER 2

## ADMINISTRATIVE POLICY


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USNA NAF PROCUREMENT POLICY

CHAPTER 2

ADMINISTRATIVE POLICY

2000. UNIFORM PROCUREMENT INSTRUMENT IDENTIFICATION NUMBERING SYSTEM (PIIN)

1. USNA NAF solicitations and contracts will be numbered in the format shown below. The basic contract number assigned to the document will remain unchanged for the period of the contract, including any extensions. Sample USNA NAF Contract Number N00161-10-C-0001 is described as follows:

| Activity | FISCAL YEAR | CONTRACT TYPE | SEQUENTIAL NO. |
|---|---|---|---|
| 1 character & 5 characters | 2 characters | 1 character | 4 characters |

| POSITION | CONTENTS | DESCRIPTION |
|---|---|---|
| 1 | Command Type | "N" is Navy shore activity |
| 2-6 | UIC | Five character code |
| 7-8 | Fiscal Year | The last two digits of the fiscal year in which the document was prepared |
| 9 | Contract Type Code | One character contract type code (see contract type code listing below) |
| *10-13 | Sequential Number | Four digit sequential number - begins with 0001 each fiscal year for each contract type |

* Numbers 0001-5999 are to be utilized by the NABSD, numbers 6000-7999 are to be utilized by the MWF, numbers 8000-8999 are to be utilized by the MRA.

CONTRACT TYPE CODES:

A AGREEMENT
B BLANKET PURCHASE AGREEMENT
C CONTRACT
D INDEFINITE DELIVERY CONTRACT (DEFINITE QUANTITY OR INDEFINITE QUANTITY)
E CONSTRUCTION CONTRACT
F DELIVERY ORDER (PLACE AGAINST EXISTING NAF CONTRACTS OR CONTRACTS OF OTHER AGENCIES)
G BASIC ORDERING AGREEMENT
H REVENUE GENERATING CONTRACT (CONCESSION, VENDING, ETC.)
K SHORT TERM COMMODITY CONTRACT
L INDIVIDUAL SERVICE CONTRACT (INSTRUCTORS, ENTERTAINERS)
O BLANKET PURCHASE ORDER RELEASE
P PURCHASE ORDER (USE M WHEN P EXHAUSTED)
Q REQUEST FOR QUOTATION
R REQUEST FOR PROPOSAL
S RESALE PURCHASES (IF MANUALLY PREPARED)
V GOVERNMENT COMMERCIAL PURCHASE CARD PURCHASES
X OPEN PURCHASE ORDER/BLANKET PURCHASE ORDER
Z PURCHASE REQUEST

2001. ASSIGNMENT OF RESALE AND FOOD PURCHASE ORDER NUMBERS THROUGH AUTOMATED SYSTEMS

1. NABSD retail activities may utilize automated systems for purchase orders and inventory management. Purchase order numbers are assigned sequentially utilizing computer maintained log books prior to entering data into the automated system. In some cases, manual log books may be used. Purchase order forms are pre-numbered to ensure sequential auditing of all purchase order numbers.

2. NABSD food service activities utilize the ChefTec inventory management system for purchases and inventory management. All new orders are assigned a purchase order number at the time the order is entered into the system. Purchase order numbers are assigned sequentially through ChefTec and are not duplicated among individual activities. ChefTec order reports will be audited to ensure sequential purchase order numbering is maintained.

2002. CONTRACT FORMS PROVIDED BY THE CONTRACTOR. Standard Form 33 (for contract solicitation and award), SF-30 (for modifications), and DD-1155 (for purchase orders) shall be utilized. No contractor forms shall be used.

2003. CONTRACT PERIOD

1. Generally USNA NAF contracts may be for any length of time up to five years. When contract requirements are repetitive, multi-year contracting is recommended. If future requirements are unknown, the contract may specify an initial contract period of one or two years, with contract renewal options up to a maximum of five years.

2. Revenue generating service contracts may be negotiated for longer than five years if contractor capital investment is required.

3. USNA NAF activities may negotiate support service contract periods exceeding five years under special circumstances, such as noncompetitive service agreements (e.g., utility services).

4. USNA Counsel will review and approve documentation supporting all contract periods greater than five years prior to contract award. This documentation will be retained in the official contract file.

2004. EXECUTION OF CONTRACT ACTIONS

1. Only contracting officers will sign and execute NAF contract actions on behalf of USNA. The contracting officer will personally sign all contracts, purchase orders, and supporting documents that require signature of the contracting officer.

2. A contractor signing any contract must be an authorized agent having the authority to bind the company.

3. Order of signature:

a. Unilateral instruments will be signed by the contracting officer before sending to the contractor;

b. Bilateral instruments will be signed by the contracting officer after they have been signed by the contractor, unless justified otherwise by the contracting officer.

2005. DISTRIBUTION OF CONTRACT INSTRUMENTS

1. Contracting officers will distribute copies of unilateral contract documents as follows:

a. One copy to the contractor with original signature;

b. One copy to be retained in the procuring office;

c. One copy to the requesting activity or Contracting Officer's Representative (COR);

d. One copy to the receiving activity if other than the requesting activity;

e. One copy to the applicable accounting office.

2. Bilateral contract documents will be distributed as stated above; however, the contractor and USNA will both maintain original copies of the contract with original signatures. If the contract is lengthy, copies distributed to accounting and receiving may be limited to the signature page, list of items or services to be provided, price, and delivery or receipt and acceptance data.

3. Electronic copies may be distributed as above.

4. Additional distribution of contract documents should be only as required and kept to the minimum.

2006. OFFICIAL PURCHASE FILE

1. The purchase file will include the following for each action:

a. Purchase request including specifications of statement of work with necessary approvals;

b. Request for proposal/quotation and offers received, or justification for noncompetitive procurement.

c. Completed record of negotiations or Justification for Award memorandum;

d. Purchase Order;

e. Receiving report (if available);

f. Any other documents pertinent to the purchase.

2. Electronic documentation is authorized.

2007. OFFICIAL CONTRACT FILE

1. A contract file folder will be established and maintained by the contracting officer for each contract action. The complexity of the purchase normally dictates whether a hard cover multi-tab contract file folder or plain manila folder will be used. Regardless of the folder used, the contract file will contain the following data as applicable:

a. Contracting Authority. Approved document directing the contracting officer to proceed with the purchase action; for example, a purchase request with necessary approvals and funds certification.

b. The statement of work, specifications, or purchase description forwarded by the requestor;

c. Solicitation documents, including the Department of Labor Wage Determination for service contracts, and any solicitation amendments or correspondence with potential offerors;

d. Source list to which the solicitation was issued;

e. Request for review and approval, and review comments pertaining to the solicitation, award, and resulting contract;

f. Proposal register, identifying the firms who submitted a proposal, and the date and time of receipt;

g. Summary of abstract of proposals, which lists the prices or fees proposed by each offeror;

h. Evaluation documentation, which reviews and ranks the proposals submitted by each offeror;

i. The envelope and any other relevant paperwork which documents receipt of a late proposal (received after the date for receipt of proposals but prior to award);

j. Any other documents pertinent to the negotiation and award of the contract including memorandums of telephone calls made and received;

k. Justification for award memorandum;

l. Notice of award letter;

m. Unsuccessful proposals;

n. Notices (letter) to unsuccessful offerors regarding award;

o. The contract document as awarded;

p. Contractor performance or review documents, including inspection and audit reports;

q. Correspondence or memorandums of phone calls with the Contracting Officer's Representative (COR);

r. Contract administration documentation, including contract modifications with appropriate justification for contract actions;

s. Copies of all correspondence with the contractor;

t. Contract closeout records at the end of the contract period.

2. After awarding a contract, the contracting officer will review the contract file to make sure all required data is included. Original documents will be maintained in the official file. All solicitation and contract actions should be dated and signed.

2008. ADVANCE PAYMENTS. Advance payments may be provided on any contract. However, the contracting officer or purchasing agent will authorize advance payments sparingly. Advance payment is the least preferred method of contract financing and will not be authorized if other standard payments (partial, progress, and payment on receipt) procedures are available.

2009. RETIRING OFFICAL PURCHASE FILES AND CONTRACT FILES

1. When a contract instrument (including purchase orders, delivery orders, and agreements) expires through termination or otherwise, the file will be retained under procedures set forth in SECNAV M-5210.1. Identify orders/contracts by number on the outside of each box and keep a list of files in each box.

2. If a claim or dispute is ongoing or anticipated, the contract file will not be retired until the claim or dispute is settled.

2010. GENERAL TAX RULES. As an instrumentality of the United States, USNA NAFs are entitled to the same immunity accorded the U.S. Government from the taxes of states, the District of Columbia,

Puerto Rico, and territories and possessions of the United States. When a tax question arises, contracting officers and purchasing agents should request assistance from the USNA Counsel.

2011. STATE AND LOCAL TAXES IN THE UNITED STATES. Contracting Officers and purchasing agents will analyze each purchase action to ensure that USNA does not pay inapplicable taxes.

1. The following types of purchases often have state and local tax implications that must be considered:

a. Resale merchandise - USNA is not subject to direct state and local taxes on items purchased for resale;

b. Beer and liquor products - State and local excise taxes are usually the responsibility of the distributor. The distributor's tax expense would normally be an element in determining its price charged to USNA for the goods.

c. Leased or rented equipment - Certain state and local taxes are the responsibility of the lessor. Under these circumstances, assuming there is no independent exemption available on sales to the federal government, the vendor or lessor may include the cost of such taxes in the price charged USNA for the goods or services.

2012. FOREIGN TAXES. USNA is precluded from paying foreign taxes. By virtue of international agreements, USNA is exempt from most foreign customs, duties, and taxes. Questions should be referred to the USNA Counsel.

2013. CONTRACTOR TAXES

1. USNA NAF contractors are responsible for payment of all federal, state, and local taxes applicable to the property, income, and transactions of the contractor. When required by applicable laws and regulations, patron service contractors will collect and remit sales taxes to the state.

2. To ensure compliance with federal tax requirements, each contract will include the Taxpayer Identification Number (TIN) or Employer Identification Number (EIN) of each corporation or individual providing supplies or services to USNA. This information will be forwarded to the appropriate accounting officer upon contract award.

USNA NAF PROCUREMENT POLICY

CHAPTER 3

PROCUREMENT PROCESS AND PLANNING


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# USNA NAF PROCUREMENT POLICY

## CHAPTER 3

## PROCUREMENT PROCESS AND PLANNING

3000. GENERAL

1. Procurement planning and process control are the keys to successful development of a requirement and subsequent execution of the procurement. Based on the complexity of the requirement, procurement plan participants will include representatives from contracting, accounting, legal, and activity management. Contracting personnel will be involved in all phases of the procurement process, including procurement planning.

2. As part of the procurement planning process, USNA NAF activity managers will research the market as a means of getting information on sources of supply and current state-of-the-art products and services. Suppliers/vendors will be advised that any requests for information are for research purposes only and that any inquiries by USNA will not be construed as a representation that a contract will be awarded.

3001. RESPONSIBILITY OF THE REQUESTING ACTIVITY. Determining requirements is the responsibility of the requesting activity or user; it is not a function of contracting personnel. The requesting activity will determine which supplies or services most adequately meet its needs and must clearly define those supplies or services on the purchase request/worksheet. Specifications, purchase descriptions, and statements of work will be as precise as possible without unduly restricting competition. Where technical specifications are required, assistance may be obtained from the contracting office or contracting personnel.

3002. PROCUREMENT ORGANIZATION.

1. NABSD shall operate a consolidated NAF procurement office that provides contracting officer and purchasing agent support for all NABSD activities.

2. NABSD's consolidated NAF procurement office shall provide support as requested by MWF, MRA and NAPS BAF.

3003. PURCHASE REQUEST/WORKSHEET. Requesting activities will forward their requirements to the procurement office (or in the case of MWF and MRA, to authorized contracting personnel) on a purchase request/worksheet. This request will describe the supplies and services required, identify any recommended sources, indicate the amount budgeted for the procurement, and the account number to which the purchase action will be charged. Additionally, any special information pertaining to receipt and delivery, invoice and payment, and required delivery date should be included. The request must certify that funds are available and that all required approvals have been obtained. In the case of NABSD, the purchase request/worksheet must be signed by the NABSD manager who has been delegated written funds approval authority. Receipt of the purchase request/worksheet by authorized contracting personnel begins the procurement process.

3004. AVAILABILITY OF FUNDS.

1. Contracting officers and purchasing agents are prohibited from making purchases unless funding has been previously approved. If for any reason the originally certified funds become insufficient, additional funds must be certified as available from the requesting officer before the purchase order or contract can be awarded or modified.

2. Other instruments such as Indefinite-Delivery type contracts, Basic Ordering Agreements (BOA's), and Blanket Purchase Agreements (BPA's) may be established prior to obtaining funding. Funds availability, however, will be certified prior to placing an order against these agreements.

3. Subsistence procurements executed by the MRA via a purchase order generated utilizing the Navy's Food Service Management (FSM) system are exempt from this requirement and do not require NAF funds approval.

3005. LEAD TIME

1. Requesting activities will make every effort to establish a realistic delivery date in order that the purchase can be properly accomplished. Purchase requests will be submitted to contracting personnel in sufficient time to allow for the procurement process to be completed and delivery of the supplies and services received by the required delivery date.

2. Contracts awarded after contract performance has commenced subject USNA to numerous liability issues and will be avoided.

3006. CONTRACTS VERSUS PURCHASE ORDERS. The administrative cost of establishing and administering two-party (bilateral) contracts is not warranted for much of the equipment, supplies, and merchandise purchased by USNA. The preferred method will be by purchase order, delivery order, or purchase card.

1. Purchase Orders/Delivery Orders will be used for the following:

a. Purchase of commercial equipment, supplies, and support services;

b. Purchase of food products not supplied under an existing contractual vehicle;

c. Orders against existing NAF contracts or other Government agency contracts;

d. Customer special orders;

e. Generally for supplies and services <$5K.

2. Bilateral contracts will be established for purchase of equipment, supplies, and services under the following circumstances:

a. When the items or services require detailed specifications, statements of work, performance standards, drawings, or special provisions;

b. When it is a revenue-generating concession, vending, or agency contract;

c. When a contract is desirable or needed to ensure product availability during periods of shortages, or to guarantee firm prices for the contract period;

d. When an Indefinite-Delivery contract is needed or desirable;

e. When for any other reason the contracting officer determines that a bilateral negotiated contract rather than a unilateral purchase order would best serve USNA interests;

f. Generally for supplies and services ≥$5K.

3. Resale items may be purchased by purchase order, delivery order, or bilateral contract.

3007. SPECIFICATIONS

1. Specifications, including statements of work and purchase descriptions, will not be so restrictive as to improperly restrict competition. Since specifications must be understood by both parties, commercial specifications should be used when possible.

2. In the event of a dispute between the contractor and USNA concerning ambiguous specifications, it is a general contract law principle that the specification ambiguity will be construed against the drafter, usually USNA. It is therefore imperative that specifications be clear and that all sections of a contract be consistent with each other to effect timely and economical procurements.

3008. INSURANCE REQUIREMENTS

1. When determined necessary by the contracting officer, contractors will be required to carry insurance in amounts sufficient to protect the interest of USNA NAFI's and the United States.

2. The contractor must provide a copy of the required Certificate of Insurance to the contracting office prior to beginning performance.

3. Due to the nature of some contracted activities, additional insurance may be required. To determine the amount of additional insurance, USNA will consider the following circumstances:

a. The type of contract and the risks associated with the requirement (i.e., aerobics, martial arts, fireworks demonstrations);

b. Whether government or USNA NAF property is involved;

c. Whether the contractor has coverage for the specified type of business and the amount is acceptable to USNA;

d. Whether USNA elects to assume the risks and/or obtain the type of insurance required.

3009. APPROPRIATED FUND CONTRACTING AND OTHER NAF CONTRACTING OFFICES. USNA procurement personnel are encouraged to request assistance of appropriated fund and other NAF procurement offices on source list development, local vendor information, etc.

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CHAPTER 4

PROCUREMENT SOURCES


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USNA NAF PROCUREMENT POLICY

CHAPTER 4

PROCUREMENT SOURCES

4000. MANDATORY SOURCES

1. Federal Prison Industries. The Federal Prison Industries (FPI), also referred to as UNICOR, is a mandatory source of products listed in the Schedule of Products made in Federal Penal and Correctional Institutions at prices not to exceed current market prices. Purchase from FPI is not mandatory and a waiver is not required if the contracting officer makes a determination that the FPI product or service is not comparable to supplies available from the private sector that best meet USNA needs in terms of price, quality, and time of delivery; acquiring listed items totaling $3,000 or less; or; acquiring services. The following procedures will be followed prior to purchasing products listed in the FPI schedule:

a. Conduct market research to determine whether the FPI item is comparable to products or services available from the private sector that best meet USNA needs in terms of price, quality, and time of delivery. This is a unilateral determination made at the discretion of the contracting officer;

b. Prepare a written determination that includes supporting rationale explaining the assessment of price, quality, and time of delivery, based on the results of market research comparing the FPI item to products or services available from the private sector.

c. If the FPI item is comparable, purchase the item from FPI following the ordering procedures at http://www.unicor.gov, unless a waiver is obtained. Requests for waivers to purchase supplies or services listed in the FPI Schedule from another source shall be processed in accordance with the procedures as http://www.unicor.gov.

d. If the FPI item is not comparable in one or more of the areas of price, quality, and time of delivery:

(1) Acquire the item using competitive procedures.

(2) Include FPI in the solicitation process and consider a timely offer from FPI for award in accordance with the requirements and evaluation factors in the solicitation.

2. National Industries for the Blind (NIB) and National Industries for the Severely Handicapped (NISH). The Government, to include military NAFIs, is required to purchase products (commodities) and services, if they are available within the period required, from sources on the "Procurement List". The Committee for Purchase from People Who Are Blind or Severely Disabled (the Committee) is an independent Federal agency that administers the Javits-Wagner-O'Day (JWOD) program and publishes the Procurement List. Additions to and deletions from the Procurement List are published in the Federal Register as they are approved by the Committee. Public Law 92-28, 85 Stat. 77 (1971), as amended, 41 U.S.C. 46-48c, and 41 C.F.R. Ch. 51 refers.

a. The Procurement List identifies the item designation for each commodity, including military resale commodities, and any limitation on the portion of the commodity that must be procured under the JWOD Act.

b. When identical commodities or services are on the Procurement List and the Schedule of Products issued by Federal Prison Industries, Inc., ordering activities will purchase supplies and services in the following priorities:

(1) Commodities:

(a) Federal Prison Industries, Inc. (41 U.S.C. 48).

(b) JWOD participating nonprofit agencies.
(c) Commercial sources.

(2) Services:

(a) JWOD participating nonprofit agencies.
(b) Federal Prison Industries, Inc.
(c) Commercial Sources.

c. The "Procurement List" may be obtained at http://www.jwod.gov/jwod/index.html.

4001. SMALL BUSINESS ACT. The provisions of the Small Business Act (15 U.S.C. Section 631 et seq.) do not apply to NAF acquisitions. Small business, small disadvantaged business, and minority business concerns will be encouraged to compete for USNA requirements.

4002. U.S. GOVERNMENT SOURCES

1. Other Government activities, both appropriated fund and NAF, are authorized sources for goods and services. The agencies that may be in position to supply USNA requirements include but are not limited to the General Services Administration (GSA) at www.gsa.gov, Defense Logistics Agency (DLA), Defense Personnel Support Center (DPSC), Defense Commissary Agency (DeCA), and other military exchange services and Morale, Welfare and Recreation (MWR) activities. GSA and DeCA will not be used as a source for resale items.

2. Per 10 U.S.C. Section 2482(a), USNA NAFIs may enter into a contract or other agreement with another element of the DOD or other Federal department, agency, or instrumentality to provide or obtain goods and services beneficial to the USNA NAFI. Consult USNA Counsel for additional guidance.

4003. COOPERATIVE EFFORTS. USNA NAF activities are encouraged to combine their requirements and to enter into local contracts. These consolidated buys help reduce costs and standardize products throughout USNA.

1. To the maximum extent possible, contracting officers will include contract clauses in their contracts that permit other USNA activities to participate in their contracts. Each USNA activity will fund and place individual delivery orders against these contracts.

2. In addition to informal cooperative agreements, USNA may enter into Memorandums of Agreement (MOA) with fellow NAFI exchanges and MWR organizations that allow participation in selected contracts.

4004. COMMERCIAL SOURCES. USNA policy is to purchase standard commercial products readily available in commercial trade whenever feasible. Purchasing of standard commercial products does not normally involve development of specifications. Specifications will only be used when determined necessary to establish quality standards as a basis for competition when brand is not a factor. Specifications or purchase descriptions that establish minimum quality standards may also be used in the purchase of food, except when brand-name products may be justified. When specifications are needed, performance specifications are preferred over manufacturing specifications.

4005. PURCHASING ALCOHOLIC BEVERAGES

1. Alcoholic beverages purchased for resale will be bought from the most competitive source and distributed in the most economical manner, price and other factors considered. Malt beverages and wine will be purchased from, and delivery accepted from, a source located in Maryland.

2. The types of alcoholic beverages purchased for military resale are determined by market share of specific brands. Single source negotiation will be conducted with the approved distributors for the supply of the desired items to USNA.

3. The U.S. alcoholic beverage industry is highly regulated with the production, distribution and sale governed by Federal and State laws and regulations. Questions concerning the purchase or resale of alcoholic beverages will be referred to the USNA Counsel.

4006. PURCHASING FROM OTHER THAN THE MANUFACTURER

1. USNA activities will purchase from the manufacturer when possible, unless industry practice deems it more appropriate to purchase from vendor representative firms. Factors to consider include, but are not limited to, a comparison of prices, minimum reorder quantities, distribution, freight terms, reduction in USNA administrative and operational expenses, and delivery time.

2. Procurement from vendor representative firms may be necessary to obtain the following services:

a. Information on new products, upcoming promotions, product knowledge, etc;

b. Shelf counts, shelf stocking, and rotation of merchandise;

c. Authorization for return of damaged or dated merchandise;

d. Training sales personnel, and providing product demonstrations and displays.

4007. BUY AMERICAN ACT. The Buy American Act (10 U.S.C. Section 2533a) requires that DOD acquisitions over the simplified acquisition threshold, currently $100,000, must be grown, reprocessed, reused, or produced in the United States or its possessions. It is applicable to the purchase of food, supplies or equipment for use by USNA. The Buy American Act does not apply to purchases for resale in DOD NAFIs (Public Law 107-107, Title VIII, sec 832, DOD Authorization Act of 2002 and the Berry Amendment, 10 U.S.C. Section 2533a(g)).

4008. TRADE AGREEMENTS ACT. The Trade Agreements Act (19 U.S.C. Section 2501 et seq.) exempts products of designated countries from the application of the Buy American Act in acquisitions over certain dollar thresholds.

1. The Act does not apply to:

a. Purchases of resale merchandise;

b. Purchases from Federal Prison Industries or from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled.

2. The Act does apply to the purchase of goods and services equal to or exceeding $175,000. The dollar thresholds are adjusted approximately every two years to reflect the value of the U.S. dollar against the currencies of other nations. These thresholds are published in the Federal Register.

4009. NORTH AMERICAN FREE TRADE AGREEMENT ACT. The North American Free Trade Agreement Act (NAFTA) (19 U.S.C. Section 3301) exempts products from Canada and Mexico from the application of the Buy American Act in acquisitions over certain dollar thresholds.

1. The Act does not apply to:

a. Purchases of resale merchandise;

b. Purchases from Federal Prison Industries or from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled.

2. The Act does apply to:

a. Canadian supplies and services equal to or exceeding $25,000;
b. Mexican supplies and services equal to or exceeding $58,550.

3. The above dollar thresholds are adjusted approximately every two years to reflect the value of the U.S. dollar against the currencies of other nations. These thresholds are published in the Federal Register.

4010. FOREIGN SOURCES. Contracting officers will not purchase any items that cannot be lawfully imported into the United States because of governmental restrictions, such as counterfeit trademarked items or copyright limitations on trade names.

4011. PURCHASES OF FOREIGN GOODS IN THE UNITED STATES

1. Purchases in the U.S. of duty-paid foreign goods physically located in the U.S. are authorized. Importers having an exclusive franchise for distribution in the U.S. of foreign items are considered the prime source for these items.

2. A tax "drawback" will be applied for, when applicable. Drawback is a refund of U.S. customs duty paid on goods imported and later exported; for example, when a contractor imports sugar for a product that is later exported to overseas activities. The contract should include a tax drawback provision. In such cases, the contractor agrees to process claims for drawback of customs duty or refund Federal excise tax and to remit proceeds, less the cost of processing the claim, to USNA. Contracting officers may use drawback information (amount of duty paid) to compute the cost of an item excluding duty.

4012. TRADEMARK ITEMS. U.S. registered trademarked items will be bought directly from trademark owners or from authorized, designated or franchised distributors. USNA will not buy and sell counterfeit items bearing registered trademark logos.

4013. SOURCE FILES

1. Source files are required for items or services purchased by competitive solicitation. Source files are not required to purchase brand-name products from prime sources.

2. Names of sources may be developed from market research, including but not limited to the internet, trade publications, associations, interviews, telephone directories, Chambers of Commerce, Small Business Administration, Minority Business Development Agencies, other NAFI or Government purchasing offices, the Thomas Register of American Manufacturers at http://www.thomaspublishing.com, and other directories of association members.

4014. SOURCE LISTS

1. A source list is required for each competitive solicitation. It is developed prior to each solicitation from the source files and is retained in the solicitation file. The source list will contain a reasonable number of eligible sources to ensure adequate competition. Determining a reasonable number of sources is a contracting officer's judgment decision. It is based on the dollar amount of the purchase, competitiveness of the market, and number of interested offerors. There is no requirement to solicit all available sources for each purchase.

2. Generally, but at the contracting officer's discretion, an incumbent contractor should be solicited unless the incumbent has clearly indicated no interest, becomes ineligible, or had a default termination on the prior contract. In that case, the defaulting contractor may be given the solicitation only on specific request.

3. State licensing agencies that provide rehabilitation services to the blind and other handicapped may, upon request, be placed on source lists to receive solicitations for services.

4. Minority Business Development Agencies (MBDA), or firms they identify, should be placed on appropriate source lists if requested.

4015. INELIGIBLE SOURCES. USNA requirements will not be purchased from individuals or firms who:

1. Are on the GSA publication "Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs" http://www.epls.gov.

2. Are active duty military personnel or civilian employees of the Government, unless the contracting officer determines there is no potential for or apparent conflict of interest. Contracting officers may also use immediate family members of military personnel or USNA employees as sources if there is no potential for or apparent conflict of interest. In making this determination, contracting officers will consider the position of the individual, any relationship with USNA, and the potential for the appearance of favoritism or undue influence. Solicitation and contract files will be documented to show the contracting officer's determination. USNA Counsel will be consulted in questionable situations. USNA may not award contracts to military personnel to perform the same work under contract as they perform for USNA in their USNA or military position.

4016. REMOVAL OF SOURCES FROM SOURCE LISTS. Firms or individuals in a source file or on a source list who are later debarred or suspended, or who are otherwise determined to be ineligible, will be removed from source files and lists to the extent required by such debarment, suspension, or other determination of ineligibility.

USNA NAF PROCUREMENT POLICY

CHAPTER 5

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# USNA NAF PROCUREMENT POLICY

## CHAPTER 5

## CONTRACT TYPES

5000. GENERAL. A contract defines the legal rights and obligations of the contracting parties. Contracts may, under specified conditions, be established on simple documents such as purchase orders, or they may be complex in nature, containing detailed specifications and performance standards. The following must be present for a valid contract: Competent parties, legal subject matter, legal consideration, mutual agreement, and mutual obligation.

5001. CONTRACT TYPES

1. Firm-fixed-price contracts are the preferred contract type for most NAF procurements. Other contract types can be utilized at the contracting officers discretion.

2. USNA NAF contracts are not subject to federal court jurisdiction and should not be drafted in such a manner as to imply such jurisdiction. See paragraph 7108 for additional guidance.

### SECTION 1: EQUIPMENT, SUPPLY AND MERCHANDISE CONTRACTS

5100. GENERAL. This section primarily addresses contracts for off-the-shelf commercial equipment, supplies, and merchandise that are purchased for use or resale by USNA. An off-the-shelf item is produced and placed in stock by a supplier before orders are received. Much of the following, however, is also applicable to the section on consumable items. Purchases of equipment, supplies, merchandise, and consumables should be made through an approved electronic purchase systems, or in the case of NABSD through (1) electronic Point-of-Sales (POS) systems, (2) through approved automated food service ordering system, or (3) through the NABSD centralized accounting system unless the complexity of the procurement or length of contract period requires negotiation of a two-party contract.

5101. INSPECTIONS. The NAF contracting officer or purchasing agent will ensure that equipment, supply, and merchandise contracts contain a clause giving USNA the right to inspect and accept or reject items in order to ensure that USNA receives exactly what it purchased. The extent of the inspection depends upon the item being inspected. The inspection should be thorough enough to determine whether the item conforms to the specifications.

5102. DEFECTS. Defects in the product can constitute grounds for rejection of the item. Patent defects, such as items damaged in shipment or items with parts clearly missing, are generally evident upon first visual inspection. Latent defects are not often evident upon first visual inspection and may not be noted until after the item has been accepted and paid for. If an inspection cannot be performed upon receipt, the receiving ticket should be noted "received and accepted pending inspection". A full inspection should be accomplished promptly in order to ensure that any defects are reported to the contractor within a reasonable period of time. A prompt inspection should also reveal concealed damage that was not evident upon initial receipt. Any defects or damages noted will be reported to the contracting officer immediately to allow the contracting officer to reject the items and to require corrective action.

5103. NONCONFORMING ITEMS

1. Nonconforming items are not necessarily defective. For example, a product in a 12-ounce bottle is ordered, but 24-ounce bottles are delivered. Accepting nonconforming items is discouraged but not prohibited, and the contracting officer is responsible for their acceptance or rejection. In determining whether to accept or reject them, the contracting officer will base his or her decision on the following:

a. An explanation as to how the item nonconforms to specifications and how extensive the nonconformance is;

b. Advice from the receiving activity on whether the item is acceptable to use and will perform its intended function;

c. A recommendation from the receiving activity (with supporting documentation) on whether to accept or reject the item;

d. The nature and extent of the contractual adjustment that will result from either decision.

2. If the decision is made to accept the item, the contracting officer will seek an equitable adjustment in the price of the item and negotiate any other adjustments necessary as a result of acceptance. If the decision is made to reject the item, the contracting officer will so notify the contractor and give the contractor the opportunity to correct the problem within the required delivery schedule.

5104. REJECTION PROCEDURES. The contracting officer will notify the contractor promptly in writing when items are being rejected, giving the reasons for the rejection. Whenever any items are rejected, the contract file will be documented to reflect that a rejection occurred, the basis on which the items were rejected (i.e. nonconforming or defective items), and the corrective action taken.

5105. ACCEPTANCE. Once items have been accepted, the acceptance is considered final (unless otherwise provided in the contract) except for latent defects, fraud, or gross mistakes amounting to fraud. Consequently, once USNA has accepted the shipment, it cannot be rejected later unless the acceptance can be voided because of one of these exceptions. If a defective or nonconforming item is not rejected within the time provided for in the contract or in the absence of such a provision, within a reasonable amount of time, USNA is considered to have accepted it.

5106. RECEIVING REPORTS

1. Upon receipt, inspection and acceptance of goods and services, the receiving activity will prepare a receiving report for all goods received and services performed. The receiving report must contain the name and signature of the receiving person, and the date received and accepted. Receiving reports will be forwarded to the appropriate accounting office and retained with the invoice document.

2. When goods and services are received as a result of an Open Purchase Order, Blanket Purchase Agreement call, or a utility services-type contract, receiving activities may utilize the vendor's delivery ticket or invoice as the receiving report document. Receiving activities will review the delivery ticket or invoice to ensure that it accurately reflects the quantity, quality, and pricing data of the goods and services ordered and received.

3. Activities using electronic purchasing systems will enter receipt of goods and services into the system. In the case of NABSD, receipt processing will be documented in activity Standard Operating Procedures (SOPs) taking into account NABSD automated systems.

5107. RETURNING EXCESS EQUIPMENT, SUPPLIES OR MERCHANDISE. Unless provided for in the contract, if excess equipment, supplies, or merchandise is ordered, USNA has no contractual right to return the excess, unless it is defective or nonconforming to contract requirements. This does not prevent USNA from negotiating with a contractor for the return of excess items.

5108. WARRANTIES

1. The requiring activities are responsible for monitoring warranties to ensure that when a repair or service is required, the warranty is invoked. Contracting officers will ensure warranty provisions and clauses are incorporated in contracts. In addition, contractors are required to provide copies of warranties associated with the procurement of services and supplies. When the supplier requires that forms be returned in order to enforce the warranty, the requiring activities will complete and return.

2. The basic remedy provided under a typical warranty clause requires the contractor to replace or correct defective supplies, or to reduce the price if USNA wishes to keep the supplies without correction or replacement. If USNA requires correction or replacement, any transportation charges involved will be borne by the contractor. If USNA decides to keep the items without correction, an appropriate equitable adjustment will be sought.

3. Contracting officers will not agree to contractor proposed open-ended indemnity clauses. Consult USNA Counsel for guidance.

5109. ONE-TIME-BUYS. A one-time-buy is defined as a nonrecurring purchase of resale items not regularly carried. Examples include items for promotional purposes, seasonal requirements, emergencies because of shortages or non-availability of regular stock, or to satisfy unique requirements of command, military or Government sponsored programs. The term "one-time-buy" doesn't limit the purchase to a single purchase order or single source. The requirement may involve more than one delivery destination or multiple suppliers.

5110. GUARANTEED SALES CONTRACTS

1. A purchase on a guaranteed sale is a purchase where USNA receives resale items into inventory and the contractor agrees to accept returns for credit for all unsold quantities after a set period. Guaranteed sales contracts may be used for short-term promotions such as sidewalk/truckload sales and in addition for the following items or categories.

a. Periodicals, books, maps, hobby items, sporting goods, sunglasses, seasonal items, etc.

b. Products that expire and have date codes, such as packaged food items, medicine and vitamins, when guaranteed sales are the industry practice.

2. Each contract awarded for guaranteed sale will provide that the contractor agrees to accept the return of unsold quantities by a specified date, for reimbursement or credit at the option of USNA. Title to the merchandise initially passes to USNA under the prescribed FOB terms in the contract. However, the contract should specify that when returns are made, title (and risk of loss) pass back to the contractor. Transportation and handling costs for returning items to the contractor will be negotiated by the contracting officer before contract award and incorporated into the contract. Normally, the contractor is responsible for return costs. Before awarding a contract on a guaranteed-sale basis and before starting a return, the contracting officer must insure the contractor is financially capable of repaying USNA for items returned under the guaranteed sale provision. The requesting activity is responsible for ensuring that items are returned by the specified date and that a request is made to the contractor for reimbursement or credit.

5111. PURCHASES ON CONSIGNMENT. A purchase on consignment is a purchase where the contractor retains title to the merchandise until it is sold. Title first passes to USNA and then to the customer at the time of sale. USNA pays the contractor for the quantities sold.

5112. INDEFINITE DELIVERY, INDEFINITE QUANTITY (IDIQ) CONTRACTS. Indefinite delivery contracts are used when the exact times and/or exact quantities of future deliveries are not known at the time of award. There are three types of these contracts: indefinite quantity, definite quantity, and requirements. These contracts are often referred to as (IDIQ) contracts. Delivery orders placed against these contracts must be within the scope, issued within the period of performance, and be within the maximum value of the contract.

1. Indefinite-quantity contracts provide for an indefinite quantity, within stated limits, of supplies or services during a fixed period. Individual delivery orders are placed against the contract when quantities are defined. A minimum order amount must be specified in the solicitation and resulting award, as well as the maximum the contractor is expected to provide.

2. Definite-quantity contracts provide for a definite quantity, within stated limits, of supplies or services during a fixed period when delivery times and destinations cannot be predetermined. Individual delivery orders are placed against the contract as they are identified.

3. A requirements contract provides for the filling of all actual purchase requirements of designated supplies or services with one provider during the specified period. Individual orders are placed against the contract for deliveries or performance. The estimated quantity is not a representation to the offeror that the estimated supplies or services will be required or ordered. Requirements contracts are primarily used when faster delivery of production items is required, as the contractor is usually willing to maintain limited stocks when USNA will obtain all of its actual purchase requirements from the specified source.

5113. LEASE OR PURCHASE OF EQUIPMENT

1. It is frequently more economical to acquire certain equipment by short-term lease rather than by purchase. A service contract format will be used for equipment leases. The decision to lease rather than to purchase must be made on a case-by-case basis, applying the following criteria:

a. USNA need is short-term or intermittent, and purchase would be costlier than leasing;

b. It is likely that the equipment will become obsolete within a short period and replacement will become necessary;

c. The lessor will provide the equipment, as well as maintenance and repair service, at a price lower than would otherwise be available through an outright purchase.

2. Documentation as to the rationale used for lease versus purchase will be retained in the contract file.

5114. CAPITAL LEASES. USNA NAF activities are authorized to enter into capital leases. For a lease to be classified as a capital lease versus an operating lease or rental contract, the agreement must meet any one of the following criteria:

1. The lease transfers ownership of the equipment to USNA by the end of the lease term.

2. The lease term is equal to 75 percent or more of the estimated economic life of the leased equipment.

3. The lease contains a bargain purchase provision allowing USNA, at its option, to purchase the leased equipment for a price that is sufficiently lower than the expected fair market value of the item. This option is made known at the inception of the lease.

## SECTION 2: CONSUMABLE AND SUBSISTENCE CONTRACTS

5200. GENERAL

1. Consumable items are products that lose their identity during use or are consumed during the course of daily business. These are classified as non-edible items. Consumable items include, but are not limited to, paper products, fuel, postage stamps, and airline tickets.

2. Subsistence includes all food and beverage items. These are classified as edible or drinkable items.

5201. SUBSISTENCE FOOD PROCUREMENT. Specifications for subsistence food items will be written per generally accepted industry standards. While it is important to define exactly what is needed, the specifications should not be so stringent as to limit the choice of suppliers. For meat products, the Institutional Meat Purchase Specifications (IMPS), and the National Association of Meat Purveyors (NAMPS), approved by the United States Department of Agriculture (USDA), are generally sufficient.

5202. FOOD SOURCES. "The Directory of Sanitarily Approved Food Establishments for Armed Forces Procurement (In CONUS)" is published under provisions of NAVSUPINST 4355.4F and lists establishments that have been approved by Headquarters, U.S. Army Health Services Command, as processors of food procured for the Armed Forces. A copy of this Directory may be obtained by writing the U.S. Army Health Services Command, Fort Sam Houston, Texas 78234-6000, or calling DSN 471-6510 or (210) 221-6510. A complete listing of approved commercial sources should be available through installation veterinarians, or website http://vets.amedd.army.mil/vetcom. Questions concerning approved food sources may be forwarded to the installation veterinary representative. Sources which indicate interest in doing business with USNA, and which are not on the approved list, should be encouraged to apply for approval.

5203. FOOD INSPECTIONS

1. All food processing and sanitation at USNA, whether a direct or indirect (contract) operation, will comply with the requirements of NAVMED P-5010-1, Manual of Naval Preventative Medicine, located at http://www/vnh.org/PreventiveMedicine/PreventiveMedicine.html. Contracting officers will include this requirement in all USNA contracts for food services. To ensure compliance, food service activities are subject to random inspection by the installation Veterinary Service representative. The decision with respect to the wholesomeness and acceptability of food products, as well as food storage, preparation, and disposal procedures, the cleanliness of food service spaces, equipment, and utensils, and the medical screening of food service personnel, remains with the USNA Preventive Medicine Unit (PMU). In the event of a conflict between the NAVMED, or the contractor's own food processing and sanitation requirements, the NAVMED P-5010-1 will take precedence, unless one of the others is more stringent.

2. When a wholesomeness problem not creating an imminent health hazard is reported by the USNA food facility manager or PMU, the contracting officer will immediately send a cure letter to the contractor requesting corrective action be taken within 10 calendar days and to provide a report of the actions taken. If the contractor's action is considered inadequate as evidenced by subsequent veterinary reports, a show-cause letter will be initiated by the contracting officer and followed by contract termination if appropriate.

3. Whenever a veterinary inspector reports that fresh dairy food(s) create or appear to create an imminent health hazard, the contracting officer will immediately issue a cure letter to the contractor. The letter will state that corrective action is required within 24 hours, or within three (3) calendar days of receipt of the notice, depending on type of health hazard. Should the contractor fail to take the designated action, the contracting officer will issue a show-cause letter, followed by contract termination if appropriate for those item(s) creating or appearing to create an imminent health hazard. Emergency purchases from another approved source can be made during the period deliveries cannot be accepted from a contractor.

4. Contract personnel employed in USNA food facilities will comply with introductory and annual food service sanitation and food safety training requirements specified in NAVMED P-5010-1. The resulting Food Safety Training Certificate (NAVMED 4061/1) will be retained on site at the food facility.

5204. BRAND NAME RETAIL FOOD PRODUCTS

1. USNA NAF activities may stock and sell brand-name food items. Requirements are generally based on customer preference and/or demand and therefore require no formal competition, however competition will be obtained when the brand name is available from multiple sources.

2. The conditions established above for purchasing institutional food products from approved sources and related sanitary and wholesomeness requirements apply to purchasing retail food items. Brand name food manufacturers or distributors will notify USNA activities if food products are recalled.

## SECTION 3: SERVICE CONTRACTS

5300. GENERAL. A service contract is a contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. A

service contract can cover services performed by either professional or nonprofessional personnel and can be performed by an individual or an organization. Services operations may sell ancillary products similar to those sold in commercial firms. If product sales are permitted, the contract will include this requirement (or option) and address product pricing.

5301. PERSONAL AND NONPERSONAL SERVICE CONTRACTS

1. A nonpersonal service contract is a contract under which the personnel rendering the service are not subject, either by the contract terms or by the manner of its administration, to the supervision and control of USNA.

2. A personal service contract is a contract that, by its express terms or as administered, makes the contractor personnel appear, in effect, USNA employees. USNA may not enter into personal service contracts.

3. To ensure that nonpersonal service contracts do not become personal service contracts by the manner of its administration, USNA will adhere to the following:

a. Contracts shall not be used for performance of "inherently governmental functions." An "inherently governmental function" is one so closely related to the public interest as to mandate performance by Government employees. These functions imply the use of Government discretion or authority, or the making of decisions on behalf of the Government.

b. All contractor personnel attending meetings, answering USNA telephones, and working in other situations where their contractor status is not obvious to third parties are required to identify themselves as such to avoid creating an impression in the minds of members of the public and any non-USNA officials or employees that they are USNA officials or employees.

c. All documents and reports produced by contractor personnel will be marked as contractor products or ensure that contractor participation is appropriately disclosed.

5302. CONTRACT PERSONNEL REQUIREMENTS. USNA contractors and their employees performing tasks and services in the United States must be U. S. Citizens or lawfully admitted aliens for permanent residence. Questions regarding personnel requirements will be directed to the USNA Counsel; questions concerning specific contract personnel will be directed to the USNA security office.

5303. SERVICE CONTRACT ACT OF 1965

1. The Service Contract Act of 1965 (41 USC 351 through 358, as amended) requires that contractors pay not less than prevailing wages and fringe benefits and provide safe conditions of work under contracts for the performance of services in the U.S. through the use of service employees.

2. The Service Contract Act (SCA) applies to service contracts that exceed $2500. Prevailing wage rates are established by the Department of Labor (DoL) upon receipt of a Standard Form 98 and 98a, "Notice of Intention to Make a Service Contract and Response to Notice" from a contracting officer. The contracting officer will request a wage determination for each new contract and extension to an existing contract. Copies of applicable Collective Bargaining Agreements (CBA) will also be submitted to the DOL. Refer to Department of Labor, Wage and Hour Division, web site for more information at http://www.dol.gov/esa/public/whd.

3. The DOL Wage and Hour Administrator will issue wage determinations in response to the Notice of Intention if the Act applies. The contracting officer will include the wage determinations in solicitations and existing contracts (via contract modification) every two years through the life of the contract. Where a CBA is in place the DOL will require the contractor to comply with it.

4. The SCA is applicable to support service contracts (such as janitorial, landscaping, maintenance, etc) and to revenue generating service contracts (such as concession, vending, special events, etc). The SCA also has special requirements for service contracts where the contract employees receive tips from patrons.

5. The SCA is not applicable to contracts with companies of less than five employees, contracts for professional, consultant or administrative services, and contracts for construction. There are other exemptions from the Act contained in 41 U.S.C. Sec. 356. If a wage determination or CBA is not applicable to the USNA contract, employees of the contractor are required to be paid not less than minimum wage under the Fair Labor Standards Act.

6. Questions regarding the applicability or implementation of the SCA will be directed to the USNA Counsel.

5304. LABOR DISPUTES. When a labor dispute arises between a contractor and the contractor's employees, USNA personnel will remain impartial and will refrain from the conciliation, mediation, or arbitration of any such dispute. USNA personnel will cooperate, and encourage contractors to cooperate, with Federal and State agencies responsible for enforcing requirements concerning safety, health, and sanitation; maximum hours and minimum wages; equal pay for equal work; child and convict labor; and equal employment opportunity. The contracting officer will require the contractor to report any ongoing or potential labor dispute that might have an impact on delivery or performance.

5305. EQUAL EMPLOYMENT OPPORTUNITY (EEO) REQUIREMENTS. The EEO provisions of Executive Order 11246, as amended, will be included in contracts over $10,000 per year in the U.S. Contact the USNA Counsel for additional guidance.

5306. USNA USE OF PRIVATE SECTOR TEMPORARIES. Contracting officers may enter into contracts or basic ordering agreements with temporary help service firms for the brief or intermittent use of the skills of private sector temporaries consistent with the regulatory requirements contained in 5 CFR Part 300 Subpart E. Services furnished by temporary help firms will not be regarded or treated as personal services. These services will not be used in lieu of regular recruitment under USNA direct-hire practices or to displace a USNA employee. The NAF contracting officer will require the activity to submit a statement giving the circumstances of the project for which the short-term services are needed. For any extension beyond the initial period of services, an exception must be obtained from the supporting personnel office. The personnel officer will determine whether a direct-hire is the appropriate method versus temporary services.

5307. INDIVIDUAL SERVICE CONTRACTS

1. An Individual Service Contract (ISC) is a nonpersonal services contract where payment is made on a per job or per student/patron basis. ISCs are for temporary or intermittent requirements of less than one year; examples include arts and crafts or aerobics instructors.

2. USNA activities may contract with USNA employees and enlisted active duty members for individual services, such as recreational instructors and entertainers, when no conflicts of interest exist and it is necessary to obtain the services of an individual with unique skills, experience, or knowledge.

3. Contracts with individuals are not subject to the Service Contract Act (paragraph 5302). Refer to paragraph 2016 for contractor tax requirements.

5308. PROFESSIONAL AND CONSULTANT SERVICES. Professional services are provided by members of a recognized profession, such as accounting or information technology. Consulting services are those of a purely advisory nature. Professional and consultant services are provided by persons and/or organizations that have knowledge and special abilities not generally available within USNA.

1. Using professional and consultant services is a legitimate way to improve USNA services and operations. These services are used to help managers achieve maximum effectiveness or economy in their operations.

2. USNA may not contract for professional or consultant services:

a. To perform work of a policy-making, decision-making, or managerial nature that is the direct responsibility of USNA officials; or

b. To bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures.

3. The contracting officer is responsible for determining whether the requested contractual action, regardless of dollar value, is for professional or consultant services. Before processing any contractual action for these services, the contracting officer will ensure that the required documentation is complete and included in the contract file. Questions concerning such contracts will be referred to the USNA Counsel.

4. USNA may not contract for legal services without express authorization from the USNA Counsel who will obtain the necessary approvals from Navy OGC.

5309. SPORTS PROFESSIONALS. The services of sports professionals (i.e., golf, tennis, etc.) may be obtained by direct-hire NAF employment or by professional service contract when determined to be in the best interest of USNA. Negotiation of contracts for sports professionals may be conducted on a limited or single source basis if it is documented that:

1. The professional's competence, such as teaching ability, past accomplishments, and technical expertise is of greater importance than price or fee considerations, and;

2. There are a limited number of professionals with the technical expertise to meet USNA needs.

5310. ENTERTAINMENT CONTRACTS. Contracts for entertainment will be solicited and awarded based on the following criteria:

1. The popularity of the entertainers and/or groups, patron preference, availability, participatory draw, profit margin, and past performance. These types of contracts are considered revenue-generating contracts when awarded on a percentage basis. When booking entertainment, the use of an entertainment agency is encouraged when feasible.

2. Since an entertainer is usually available through only one agent, and because the selection is based in large part on customer preference, competition is generally not required. Where there is more than one agent who can provide entertainment of equivalent quality at comparable prices in a given geographical area, the use of available agents will be rotated.

5311. SPECIAL EVENT CONTRACTS.

1. Special events in support of the Brigade of Midshipmen are rare and require advance approval from the Superintendent. Requirements for USNA support, such as law enforcement, first aid, and traffic control personnel, will be documented in advance of the event.

2. Since operators of these events often schedule their bookings months in advance, solicitation planning should begin eight to twelve months in advance of the desired event date(s). To determine contractor responsibility, the contracting officer will require a minimum of three references from each offeror. References from a public institution, such as a county government are preferred. Prior to award, the police department of the city or county where the offeror recently performed should be contacted for information on safety issues such as property damage, personal injuries, and control of money.

3. Special event contracts will identify types and number of rides, acts, exhibits, or games, and ticket prices or fees charged. Contracting officers will ensure special events with potentially unsafe practices, such as riding devices, animal shows, or food sales, meet applicable safety and sanitation requirements. Contracts shall include provisions to indemnify USNA and the U.S. Government.

4. Recurring special events will be competitively solicited and awarded via multi-year contracts (i.e. a one-year contract with four one-year renewal options, or a three or five year contract specifying events in alternating years).

5. The Service Contract Act is applicable to providers of special events, and its provisions will be included in special event contracts. Entertainment and short-term commodity sales concessions, held in conjunction with special events, will comply with requirements of paragraphs 5308 and 5320.

6. Air Shows, including the Commissioning Week Blue Angels demonstration, are command-sponsored events and as such should be funded by appropriated funds; however, most air shows have a significant USNA NAF component, (concessions, entertainment, etc.) which support the command event. USNA contracts issued to support air shows will be coordinated with the air show point of contact.

5312. INTERIOR DESIGN CONTRACTS.

1. To preserve the integrity of the design process, procurements for all interior and kitchen design requirements, regardless of whether design was done in-house or by contract (i.e., Architect-Engineer or interior design firm) will not be competed. In addition, interior design packages that are specified as part of a construction project will also not be competed. The contracting officer is encouraged to negotiate contract terms, conditions and pricing.

2. Items specified for purchase may be procured without further comparison or substitution, unless such a substitution is due to non-availability, and is first approved by the designer.

3. Interior designers developing an office design will consider office furniture manufactured by the Federal Prison Industries (FPI). Should FPI products be considered acceptable, for purposes of the design, a market survey will be conducted to ensure that the FPI products are comparable to the private sector in price, quality, and delivery. The designer will include a memorandum of record detailing the considerations given the FPI products and the basis of the decision if FPI products are not incorporated in the design.

4. A market survey for purchase of office furniture not a part of a design package will be accomplished prior to purchase. If it is determined that an FPI product is not comparable in price, quality and delivery to the private sector product, the product will be acquired competitively and the FPI given the opportunity to compete.

5313. MAINTENANCE CONTRACTS. Facilities maintenance contracts cover the upkeep of USNA facilities (buildings, grounds, and interior facilities) or the regular care and reconditioning of USNA tools and equipment (including but not limited to computers, typewriters, photocopy machines, forklifts, etc.). NAF maintenance contracts are service contracts and are awarded when appropriated fund monies or support is not authorized. Services such as routine building/grounds maintenance and equipment/systems maintenance may also be contracted.

5314. CONSTRUCTION CONTRACTS. All USNA facilities construction, repair, and maintenance projects will be coordinated with the USNA Public Works Officer prior to execution.

1. USNA NAF construction requirements may be accomplished by the USNA NAF contracting officer if granted a special delegation of construction contracting authority by the Naval Facilities Engineering Command (NAVFAC).

2. If a delegation of construction contracting authority has not been issued, USNA NAF requirements exceeding $2,000 will be forwarded to the USNA Officer-In-Charge (OIC) or Resident-Officer-In-Charge of Construction (ROICC) for procurement action, or to an activity with NAF construction contracting authority.

3. Construction contracts over $2,000 are subject to the Davis-Bacon Act, which requires prevailing wage rates that must be paid to laborers and mechanics employed by contractors and subcontractors working on public works and buildings.

4. USNA NAF contracting officers may contract for minor repair or maintenance projects up to $2,000 and should not split requirements to avoid this threshold.

5315. PATRON SERVICE CONTRACTS. These revenue-generating contracts involve contractor sale of goods and services to authorized patrons within the military community. (Non-revenue generating service contracts, by contrast, normally provide a service to USNA, it is not sold directly to the military community, and USNA pays the contractor). Patron service contracts are designed to ensure contractor-operated activities provide the desired level of customer service. To do this, various types of contracts are used. The concession contract is the most common; others include vending, agency, and short-term commodity sales contracts.

5316. CONCESSION CONTRACTS

1. Concession contracts grant a concessionaire the right to sell selected items or to provide a specific service in a designated location for a specific period of time. The actual work may be done inside or outside USNA, or a combination of the two.

2. In concession contracts, the contractor (concessionaire) pays a fee to USNA. Commissions from concession contracts will be based on a percentage of sales. Concession contracts are usually awarded for a minimum of one year, and are generally subject to the Service Contract Act.

5317. PATRON SERVICE TEST CONTRACTS

1. Patron service test contracts may be negotiated on a noncompetitive basis when a potential concessionaire presents a unique patron service operation to USNA. If USNA is unsure of the business viability of the operation, a one-year or lesser term test contract may be negotiated.

2. The purpose of the contract is to test the feasibility and profitability of the operation for both USNA and the concessionaire. If after one year the test is successful based on patron response and return to USNA, USNA will:

a. Competitively solicit the service and award any follow-on contract using standard procurement practices, or;

b. Choose to operate the service on a direct basis.

3. If the contract is not successful USNA will cancel the requirement.

4. The contracting officer will determine offeror responsibility and price reasonableness prior to award of the test contract. Findings will be documented in the Justification for Award memorandum. The contract will state the contract period is limited to one year.

5. The USNA Counsel will review all patron service test contracts prior to award.

5318. DIRECT PATRON CONTACT. Solicitations and resulting contracts for concession services with direct patron contact will include:

1. Whether the operators will be required to have state licenses and/or certificates of training;

2. Specific sanitation requirements concerning the use of clean brushes, towels, etc.;

3. Procedures for handling customers who have communicable diseases (such as scalp irritation).

5319. VENDING CONTRACTS. Vending contracts are similar to concession contracts in that they also generate revenue and are subject to the Service Contract Act, although many large vending firms have Collective Bargaining Agreements in place.

1. Under a Vending Machine Rental and Service contract, USNA rents machines, purchases restocking services, and buys a product from the contractor. USNA sets the prices of the items vended. Competition is on the product cost and machine rental and service charge.

2. Contracts for video and arcade games are usually similar to the Vending Rental and Services contract. Contracts for rented machines will specify the frequency of the machine rotation.

5320. AGENCY CONTRACTS. In an agency contract, USNA acts for or represents the contractor in a transaction with the customer. The contractor is the principal, and USNA is the agent. USNA accepts patron orders for services or items on behalf of the contractor who then fills the order. In some cases, USNA may rent the contractor's items to the patron. In both cases, USNA accepts payment from the patron and USNA liability is limited to that of an agent. USNA will not contract to perform any obligations of the principal. USNA forwards monies and taxes collected minus commission to the contractor. The commission to USNA will be competed in agency contracts. Agency contracts will be considered an indirect operation for USNA reporting purposes.

5321. LETTER CONTRACTS. If failure to award a contract by a specific date will result in the loss of USNA property or assets, a Letter Contract may be negotiated. A Letter Contract authorizes the contractor to begin performance prior to award of the standard contract. It is signed by the contracting officer and contractor, must specify the maximum liability of USNA, and must indicate the time period in which the contract will be definitized (awarded by a standard contract). Letter Contracts will be avoided if another procurement instrument is available.

5322. SHORT TERM COMMODITY SALES/CONCESSIONS. This is a noncompetitive concession contract for the display and sale of merchandise from temporarily assigned space. It is primarily used for the sale of handicraft items and other merchandise customarily sold at craft fairs or in conjunction with promotional programs at commercial shopping centers and malls. These concessions generally operate for 15-30 days or less; however, the contract may be negotiated for intermittent or regularly scheduled periods during a one-year period. Concessions offering the same or similar commodities will be rotated. Item restrictions and cost price limitations applicable to Exchange retail facilities apply to commodity concessions. Refer to DOD Instruction 1330.21.

5323. CONCESSION CONTRACT REQUIREMENTS. In addition to the contract requirements listed at paragraph 2006, clauses concerning the following, regardless of the supply or service under contract, will be included in each concession contract. Most of these requirements are also applicable to vending, agency, and short-term commodity sales concession contracts:

1. Service Contract Act Wage Determination, when applicable.

2. Identify the commission as a percentage of total sales, and the method and time of payment.

3. Require the concessionaire to conspicuously post a price list for all goods or services available. The concessionaire must adhere to the prices specified.

4. Require the concessionaire to furnish cash registers, similar business machines, pre-numbered sales slips approved by the activity manager, or use equipment and/or sales slips furnished by USNA.

5. Require the concessionaire to keep complete and accurate records of all transactions and to ring all sales in the customer's view.

6. Identify reports that the concessionaire must provide to USNA.

7. Require the concessionaire to safeguard all assets in his or her possession in which USNA or the Government has an interest.

8. Require the concessionaire to certify the integrity of his or her financial records and reports.

9. Provide USNA the authority to audit or inspect (or to have audited or inspected) the records, premises, and operations of the concessionaire for the purpose of ensuring contract compliance.

10. Require separate physical inventories to be taken of all USNA and Government owned equipment at the time that the concessionaire occupies the premises and annually thereafter, and on the final day of contract performance.

11. Require notice of veterinary inspection when food products are sold in the activity (Refer to paragraph 5203).

5324. CONTRACTOR FINANCED BUILDING IMPROVEMENTS. If the contractor is required to provide the capital for improvements to the contractor-operated facility, the commission payment to USNA may be lower than if the contractor does not incur these costs. If this option is chosen, the solicitation will clearly state what improvements are required. The USNA NAF activity will assist the contractor in obtaining all required command approvals.

5325. CONTRACTOR CAPITAL INVESTMENT

1. Revenue generating service contracts requiring contractor capital investment will normally not exceed a contract period of five (5) years. A contract period of up to 25 years may be considered, if the contractor's capital investment:

a. Is largely unrecoverable at the end of a five (5) year contract period (i.e., contractor-financed construction or renovation of Government property); and

b. Is of such magnitude that a longer period is necessary to allow reasonable return to USNA and the contractor, and is consistent with industry amortization standards.

2. USNA NAF activities having a requirement that meets the above criteria will document the basis for their decision. The supporting payback analysis will be retained in the contract file.

3. All contracts with a contract period in excess of five (5) years will receive USNA Counsel review and approval prior to award. Approval documentation will be retained in the contract file.

5326. PUBLIC – PRIVATE VENTURES (PPVs). PPVs offer an alternative source of funding for large capital projects, and must be considered prior to investment of NAF funds. USNA NAF activities will follow the procedure in SECNAVINST 7010.7 for review and approval. Upon contract award, the PPV contractor may provide a portion or all of the financing, design, construction, services or facilities to USNA.

5327. USNA SUPPORT AGREEMENTS. In certain situations, USNA NAF activities may provide support services (i.e. food services, tour guide support, etc.) to USNA. Agreements of this type will be reviewed and approved by the USNA Counsel prior to award.

5328. INFORMATION TECHNOLOGY

1. Requirements for the procurement of Information Technology (IT) hardware, software, or support systems will be coordinated with USNA Information Technology Services Division to determine compatibility with existing systems and the USNA NAF network.

2. Contracting officers will request a complete copy of the company warranty and software licensing agreement as part of the offeror's proposal. IT license, support, and services agreements will receive close review to ensure they are in compliance with USNA NAF contract clauses.

# USNA NAF PROCUREMENT POLICY

## CHAPTER 6

## NEGOTIATED PROCUREMENT


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# USNA NAF PROCUREMENT POLICY

## CHAPTER 6

## NEGOTIATED PROCUREMENT

6000. CONDUCTING NEGOTIATED PROCUREMENT. USNA NAF procurement is accomplished by competitive negotiation. The manner in which USNA conducts its business with industry directly shapes its image and reputation in the business community. Negotiation with suppliers will be consistent with these guidelines: obtain the best possible prices, terms and conditions that are fair to the seller, giving consideration to the cost factors of both USNA and the supplier, and negotiate procurements that are in the best interest of USNA. It may also be appropriate to consider factors such as the effect on future negotiations, maintenance of sources of supply, incentives to good performance, and performance under unique circumstances.

6001. RESPONSIBILITY

1. Responsibility refers to an offeror's ability to perform a contract. No USNA NAF contract or purchase order may be awarded to any person or firm unless the contracting officer determines that the prospective contractor is responsible within the meaning of this paragraph. A determination of responsibility is made prior to the time of award. To be considered responsible, the potential contractor must:

a. Have adequate financial resources;
b. Be able to meet the proposed delivery or performance schedule;
c. Have a satisfactory performance record;
d. Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

2. For each procurement over $5,000, the contracting officer's determination of responsibility will be documented and retained in the contract file.

3. When a negative responsibility determination is made against a prospective contractor, a written determination of nonresponsibility will be prepared, signed by the contracting officer, and retained in the contract file. Documented reasons must be included in any determination of nonresponsibility. The contracting officer will coordinate all proposed determinations of nonresponsibility with the USNA Counsel.

4. To assist in determining an offeror's responsibility, written solicitations for multi-year contracts will be accompanied by a request for a financial statement. Solicitations for multi-year, revenue-generating contracts will also request a projected operating statement.

6002. SOURCES OF INFORMATION REGARDING RESPONSIBILITY

1. Information on prospective contractors may be obtained from the following sources:

a. The GSA publication Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs;

b. The prospective contractor;

c. Existing information within DOD including records on file and knowledge within the activity making the purchase, other purchasing offices, or other NAF activities;

d. Dunn and Bradstreet reports;

e. Other sources including suppliers, subcontractors and customers of the prospective contractor; banks and financial institutions; commercial credit agencies; Government departments and agencies; purchasing and trade associations; Better Business Bureaus; and Chambers of Commerce.

2. All information regarding prospective contractors must be put in writing, the source of information identified and retained in the contract file.

6003. FAIR AND REASONABLE PRICE DETERMINATION

1. USNA NAF contracts and purchase orders will include a fair and reasonable price determination based on the following considerations:

a. Price is acceptable to the buyer and to the seller.
b. Price is competitive with other vendors providing similar products or services;
c. Price is not excessive for the time that delivery is required or that the service be performed;
d. Cost of administering the purchase is not excessive.

2. For each non-resale procurement over $5,000, the contracting officer's determination of fair and reasonable pricing will be documented and retained in the contract file. For simple procurement actions, this documentation may be made on the Record of Negotiations Form. For complex procurement actions (i.e., revenue generating or multi-year contracts), this determination will be documented in the Justification for Award memorandum.

3. The Robinson-Patman Act (15 U.S.C. Section 13) prohibits vendors from discriminating among their commercial customers by offering different prices to different customers for commodities of like quality and grade (other factors being equal, i.e. quantity, date of delivery, etc.). However, it is not applicable to the U.S. Government. Therefore, vendors may legally negotiate lower prices with USNA activities than what they offer to their commercial customers. Evidence of the contractor's prices being equal to or lower than those offered to commercial customers (other factors being equal) will be used to document price reasonableness.

6004. COMPETITION THRESHOLD

1. The preferred method of USNA NAF procurement is by requesting quotations or soliciting proposals from multiple sources. However, the following requirements may be solicited from only one source if the price is determined fair and reasonable, and:

a. The requirement is for a brand-name resale item.

b. The purchase is for packaged beverages to be obtained from the franchised distributor in the area;

c. The estimated cost of equipment, supplies, or services is below the competition threshold (currently $5,000). See paragraph 5303 for applicable Service Contract Act requirements;

d. When no competitive interest is apparent in contracts for services, including revenue-generating services, having average monthly sales of $2,500 or less;

e. When contracting for short-term commodity sales concessions (see paragraph 5322);

f. When the purchase is made from a prescribed mandatory source such as the Federal Prison Industries (FPI), the National Industries for the Blind (NIB) or the National Industries for the Severely Handicapped (NISH);

g. When the purchase is made from a source that has already met the competition requirement, such as GSA;

h. When negotiating for the purchase of training requirements up to $25,000, providing:

(1) Training courses will be commercially available through a regular dealer;

(2) Prices are determined fair and reasonable;

(3) Training managers must document their reasons for selecting training sources, regularly survey the market to ensure USNA obtains the best value for their training programs, and rotate training sources as appropriate.

i. When the purchase is in support of a cooperative effort with other DOD NAFIs and has been approved by the Superintendent;

j. When the purchase is made from a nonprofit institution or federally funded research and development center.

2. Under no circumstances will a requirement be split to avoid contracting procedures or competition requirements.

6005. NONCOMPETITIVE PROCUREMENT. Noncompetitive procurement is a contract for the purchase of supplies or services after negotiating with only one source.

1. Competition is not required when the supplies or services are only available from a sole source, the source is determined responsible, and no other type of supplies or services will satisfy USNA requirements. Such determination will be based on the following:

a. USNA's minimum needs can only be satisfied by unique supplies, services, or capabilities available from one source, and no other types or sources of supplies or services will satisfy USNA requirements; or

b. The items or services are protected by limited rights in data, patents, copyrights, secret processes, trade secrets, or other proprietary restrictions, and are available only from the originating source; or

c. The requester has determined that only specified brands or models of equipment, components, or accessories, or only specific academic or professional credentials will satisfy the requirement; or

d. The requirement is for unique repair or replacement parts for existing equipment for which substitutions cannot be made; or

e. Access to such utility services as electric power or energy, gas (natural or manufactured), water, cable or satellite television or other utility services, is restricted by local law, custom, or availability, and only one supplier can furnish the service within that geographical area.

f. Supplies or services may be considered to be available from only one source if the source has submitted an unsolicited proposal (see paragraph 6012).

2. Supplies or services are also exempt from competition when there is reasonable justification to conclude that USNA minimum needs can only be satisfied by one single source, as a result of:

a. The specific performance, technical, functional or aesthetic characteristics of a particular brand, model, or style of supplies or services is unavailable from another source;

b. The added cost to USNA of duplicating design or development efforts already performed by the source selected;

c. The added cost to USNA of training, briefing, or otherwise educating an alternate source on the progress of the project or program in which the source selected has already participated;

d. The documented inability of other potential sources to meet the stated delivery requirements;

e. The unique credentials of a firm or other technical consultant or expert.

3. Noncompetitive procurement actions must be justified as required in paragraph 6006.

6006. JUSTIFICATION FOR NONCOMPETITIVE PROCUREMENT ACTIONS

1. A contracting officer will not commence negotiations for noncompetitive procurements, unless he or she:

a. Ensures technical personnel and requiring activities provide documentation to support their recommendation for noncompetitive procurement;

b. Ensures the justification contains sufficient facts and rationale to justify noncompetitive procurement.

2. For each procurement action over $5,000, the contracting officer's justification for noncompetitive procurement, including follow-on noncompetitive procurement actions, will be documented and retained in the contract file. For simple procurement actions, this justification may be made on the Record of Negotiations. For complex procurement actions (i.e. contracts for revenue-generating services or multi-year contracts), this justification will be documented in the Justification for Award memorandum.

3. Given the fact that the majority of USNA procurements involve commercial off-the-shelf equipment and supplies, noncompetitive procurements will be discouraged.

6007. FOLLOW-ON NONCOMPETITIVE PROCUREMENT REQUIREMENTS

1. Equipment and supplies may be deemed to be available only from the original source in the case of a follow-on contract for continued development or production (for example, additional units, replacement items, or for integration with existing systems) when it is likely that award to any other source would result in:

a. Substantial duplication of cost to USNA that is not expected to be recovered through competition;
b. Unacceptable delays in fulfilling USNA requirements.

2. Services may be deemed to be available only from the original source in the case of follow-on contracts for the continued provision of highly specialized services, to include professional services, when it is likely that award to any other source would result in:

a. Substantial duplication of cost to USNA that is not expected to be recovered through competition;
b. Unacceptable delays in fulfilling USNA requirements.

3. In addition to the above, follow-on contracts for equipment, supplies, or services may be deemed available only from the original source when multiple quotations are not reasonably obtainable or when competitive negotiation is otherwise impractical.

4. Justification for follow-on noncompetitive procurement actions will comply with paragraph 6006 requirements.

6008. REQUESTS FOR QUOTATION

1. A request for quotation (RFQ) is a request for pricing and delivery data for the future purchase of standard commercial goods or services, and is used for informational purposes. A quotation is not an offer and cannot be accepted by USNA to form a binding contract. An order issued by a contracting officer or purchasing agent in response to a supplier's quotation does not establish a contract. The order is an offer by USNA to the supplier to buy certain supplies or services upon specified terms and conditions and only becomes a contract when the supplier accepts the offer (usually by performance).

2. Orders for service requirements may not be issued if the requirement is subject to the Service Contract Act (Refer to paragraph 5303 for specific Service Contract Act requirements applicable to NAF contracts).

6009. TELEPHONIC REQUESTS FOR QUOTATION

1. As provided below, price quotations may be solicited over the phone if the equipment, supplies, or services to be purchased are simple enough to only require a price quote, and award is made by purchase order or delivery order. The purchasing agent will keep records of telephonic price quotations to show the basis of placing the order at the price paid with the supplier concerned. These records will consist of the date, names, and phone numbers of the suppliers contacted, the names of the persons quoting, the prices, and other applicable terms quoted by each. If time permits, an electronic or fax confirmation of each supplier's price quote should be requested.

2. Competitive requests for quotation via the telephone is authorized under the following conditions:

a. Estimated cost of equipment or supplies is under $5,000; or

b. Estimated cost is over $5,000 but under $10,000 for standard off-the-shelf items that can be easily identified and oral quotation involves only a price and delivery offer; or

c. Quotations for prices against blanket purchase agreements for fresh meats and poultry, eggs, frozen products, fresh fruits and vegetables, and other food products; or

d. Due to urgency, sufficient lead-time is not available to permit an electronic or mailed request for quotation for items over $10,000. In this case the requiring activity must document the short lead time in the purchase requisition.

6010. FACSIMILE (FAX) OR ELECTRONIC REQUESTS FOR QUOTATION

1. Use of the facsimile (fax) machine or e-mail to issue electronic Requests for Quotation (RFQ) in writing is preferred over telephonic price quotes.

2. The RFQ faxed or e-mailed to each source, the price quotations and terms and conditions received from each offeror, and all cover sheets and receipt confirmation pages will be retained in the purchase file. All faxed or e-mailed correspondence will clearly identify the date, company name, phone number, fax number or e-mail address, and the name of the individual submitting the fax or electronic quote. Negotiations between the purchasing agent and offeror(s) concerning the electronic RFQ will be documented and retained in the purchase file.

6011. MAILED REQUESTS FOR QUOTATION

1. Mailed requests for quotation may be used for any purchase action, and will be used when obtaining oral or electronic quotes is not considered economical or practicable (i.e., some companies will not give telephonic or electronic price quotes).

2. Published price lists, such as those provided with a vendor's catalog are considered to be mailed quotes. However, contracting personnel will contact the vendor to ensure price information is current and USNA obtains the benefit of applicable discounts before placing an order.

6012. UNSOLICITED PROPOSALS

1. An unsolicited proposal is a written proposal submitted to USNA for the purpose of obtaining a contract with USNA and is not in response to a formal or informal request. Upon receipt, unsolicited proposals will be forwarded to the contracting officer for coordination, evaluation and disposition.

2. Advertising material, commercial product offers, or technical correspondence are not unsolicited proposals. An unsolicited proposal must:

a. Be innovative and unique, and not generally available from a competitive source;

b. Be independently originated and developed by the offeror;

c. Be prepared without Government or USNA input;

d. Include sufficient detail so USNA can determine if the service is worthwhile, and the proposed work could benefit the USNA mission; and

e. Does not resemble a pending competitive procurement requirement.

3. An unsolicited proposal will be evaluated based upon:

a. The unique or innovative method, approach, or concept demonstrated by the proposal, and the potential benefit to USNA's mission.

b. The offeror's capabilities, related experience, and the qualifications of key personnel assigned to the project.

4. If the unsolicited proposal is determined acceptable for award without competition, the contracting officer and potential contractor will use the proposal as the basis for negotiation of price and terms.

5. Contracts for studies, analyses, or consulting services will not be entered into without competition on the basis of an unsolicited proposal without the prior approval of the Superintendent.

6. Unsolicited proposals will receive legal review prior to commencement of negotiations.

6013. BUY-INS

1. "Buying-in" refers to the practice of offerors trying to obtain a contract award by knowingly offering a price that is below or approximate to anticipated costs, or a fee that is so high as to preclude a reasonable return. USNA policy does not prohibit buy-ins if performance of the contract will not be jeopardized. If a contract is awarded at a buy-in price or fee, the contracting officer will be alert to any inappropriate attempt to increase the contract price, lower the fee, substitute items or provide less service than that prescribed by the contract, or failure to deliver buy-in priced items.

2. When a price or fee appears unrealistic, the contracting officer will outline the actions taken and summarize the decision on why the offer was accepted in the Justification for Award memorandum.

6014. ELECTRONIC COMMERCE. Use of electronic commerce in executing purchase orders, delivery orders, and contracts is recommended for USNA NAF contracting officers and purchasing agents.

1. Electronic commerce is a paperless process including electronic mail, electronic bulletin boards, electronic funds transfer, electronic data interchange, and similar techniques accomplishing business transactions

2. Electronic data interchange (EDI), is electronically transferring information between computers, using established and published formats and codes, as authorized by the applicable Federal Information Processing Standards (FIPS).

## SECTION 1: RETAIL BUYING

6100. ITEM SELECTION

1. Insofar as practical, the selection of resale items should be comparable to practices and procedures in the commercial retail trade. Market research techniques include review of trade publications, attendance at trade shows, and vendor product presentations.

2. USNA's objective is to stock items and brands most in demand by customers. Broad consumer acceptance of an item in the commercial sector is adequate evidence of customer demand for the item to be stocked.

3. Products will be evaluated based on selection factors such as quality, price, consumer trends, customer acceptance, and past sales experience.

4. Eligible sources may present products for purchase consideration. Products will be evaluated on a fair and impartial basis along with all others. When products are not selected, and if requested, the vendor will be told the reasons why.

6101. BRAND-NAME MERCHANDISE. Because of the nature of USNA's mission, most resale items will be purchased on a noncompetitive basis from the prime sources of brand-name products. Identification of brand name items in the stock assortment justifies noncompetitive purchase from the prime source.

6102. NON BRAND-NAME MERCHANDISE. Unless otherwise justified, competitive procedures will be used when buying non brand-name items. The resale items will be standard commercial products readily available in the retail trade.

## SECTION 2: PURCHASING

6200. GENERAL. This section applies to procurement actions made through the use of a purchase order or similar document. It is applicable to the purchase of equipment, supplies, merchandise and support services.

6201. PURCHASE ORDERS

1. A purchase order (PO) is a purchase instrument for the future delivery of equipment, supplies, merchandise or for the future performance of services. The contracting officer will incorporate all contract clauses required for or applicable to the particular procurement. A PO obligates USNA to pay the supplier the amount stated on the purchase order, if the contractor performs in accordance with the terms and conditions of the purchase order.

a. A unilateral purchase order is one that is signed only by the contracting officer. It constitutes an offer by USNA to pay for the future delivery of supplies or performance of services and does not require written acceptance by the supplier. It gives USNA the opportunity to cancel the order at any time before the supplier initiates performance without liability to USNA. It does not, however, create a contract nor ensure that the supplier will perform in accordance with the terms of the order. When a unilateral telephone order is placed, a written order will be prepared and documented as a confirming order to avoid duplicate shipments. When a unilateral order is accepted by the supplier (usually by performance), the PO becomes a binding contract and may only be changed or terminated by modification.

b. A bilateral purchase order is one that is signed by both the contracting officer and the supplier. It creates a binding contract between USNA and supplier and cannot be changed or terminated without a written modification.

2. Direct Delivery Agreements, Open Purchase Orders, and Blanket Purchase Orders are bilateral purchase orders open for an extended period of time during which multiple product deliveries or the performance of services are scheduled. These purchase agreements are generally used for the purchase of resale merchandise and performance of related support services such as shelf stocking.

6202. UNPRICED PURCHASE ORDERS. An unpriced purchase order is an order for supplies or services, the price of which is not set at the time the purchase order is issued. Unpriced purchase orders will not be used when the price of an item or service is available. Unpriced purchase orders will only be used if the total anticipated (or actual) price of the transaction will not exceed $5,000 and it is impractical or

impossible to obtain the exact price in advance (i.e., repair or maintenance services). The unpriced purchase order will specify a "Not To Exceed" amount. The necessity for use of an unpriced purchase order will be documented on the Record of Negotiations.

6203. DELIVERY ORDERS

1. A delivery order (DO) is an order for the future delivery of equipment, supplies, merchandise or services, placed against an existing contract or agreement. It may be used for orders of any dollar amount. It obligates USNA to pay the supplier the amount on the DO, if it is placed per the terms and conditions of the basic contract, and if the supplier performs per the terms and conditions of the contract.

a. Most DOs are placed against contracts awarded by the General Services Administration, other nonappropriated fund instrumentalities or other Government contracts. Each DO will include the contract number that the DO is placed against.

b. A task order is similar to a DO, but is an order for services (vs. for products) placed against an existing contract. For simplicity, USNA has elected to use the term delivery order for all orders placed against existing contracts.

2. Prior to issuing a DO, the contracting officer will:

a. Ensure the basic contract authorizes DOs to be placed against it.

b. Review the prices, specifications, and terms of the basic contract, and all modifications to that contract, to ensure it will meet the needs of USNA.

3. USNA procurement personnel and/or the supplier may not change the prices, specifications, or terms of the basic contract. If such a change is desired, it must be requested from and negotiated by the original contracting office and the supplier. Once the basic contract has been modified, the USNA contracting officer may issue a DO against the contract, as modified.

6204. BASIC ORDERING AGREEMENTS(BOA)

1. A Basic Ordering Agreement (BOA) is a written document containing terms and conditions of performance that have been negotiated by the contracting officer and the supplier. It contains clauses that apply to future orders between the parties. It is not a contract in and of itself, but serves as a tool intended to simplify purchasing procedures. In addition, a BOA contains a description of the supplies or services to be covered under the agreement, their prices, and the method by which future orders may be issued.

2. A BOA may be used when precise requirements are not known but a significant number of requirements are expected to be purchased against the agreement. The BOA will contain no guarantees that purchases will be made against it and will not be used to restrict competition.

6205. BLANKET PURCHASE AGREEMENTS(BPA)

1. Blanket Purchase Agreements (BPAs) provide a simplified method of purchasing recurring requirements by establishing monthly charge accounts with qualified sources. BPAs reduce administrative costs since separate purchase orders and multiple payments are not necessary.

2. The contracting officer negotiates BPAs to provide sources of supply for USNA activities. The BPA must include a list of the items or services furnished, dollar limitation of the orders that may be placed against it, and the names and/or job titles of the individuals authorized to place calls against the BPA. USNA contracting officers designate individuals to serve as BPA callers per paragraph 6206.

against it, and the names and/or job titles of the individuals authorized to place calls against the BPA. USNA contracting officers designate individuals to serve as BPA callers per paragraph 6206.

3. To encourage competition, BPAs will be issued to more than one supplier for requirements of the same type. Orders should be rotated amongst suppliers. A BPA is complete when the purchases under it equal the amount funded or its term expires.

4. Use of the purchase card is preferred over BPAs.

6206. APPOINTMENT/DELEGATION OF BPA CALLERS OR ORDERING OFFICERS. USNA contracting officers may appoint BPA callers or ordering officers who are authorized to place orders against blanket purchase orders or open purchase orders. These individuals may be delegated specific ordering authority by the contracting officer to place small dollar value orders against existing contracts. Appointments will be in writing and must specify the maximum dollar limitation on orders authorized against the agreement. Placement of individual orders in excess of $5,000 will be limited to contracting officers acting within the limits of their authority. BPA callers and ordering officers may place individual orders of $5,000 or less.

6207. APPOINTMENT/DELEGATION OF ORDERING OFFICERS FOR THE SUBSISTENCE PRIME VENDOR PROGRAM

1. In accordance with the provisions of section G-2 of the current Joint Service Prime Vendor Program (JSPVP) Baltimore/Washington D.C. Metro Area contract, NAFBA1-07-D-0036, ordering officers may be appointed by a duly appointed NAF contracting officer at an installation or regional NAF contracting office. The ordering officer's limitations for CONUS shall be $50,000 maximum per order placed.

2. Appointment/delegation of ordering officers for this contract and its eventual successor are exempt from the $5,000 value limitation of paragraph 6206, and such appointments and delegations may be made up to the $50,000 limit stipulated by the contract.

3. Appointments shall be made by a NAF contracting officer (within the limits of their own appointment) in writing and must specify the maximum dollar limitation on orders, as well as specify that the appointment applies only to the JSPVP subsistence contract.

4. Ordering Officers are required to meet the training requirements of paragraph 1007, if their authority will exceed $5,000.

6208. EMERGENCY PURCHASE PROCEDURES

1. Emergency purchases by personnel without a procurement warrant, or designation as a BPA caller or ordering officer, are authorized for emergency-type services or repairs or for purchase of goods that are needed immediately due to unforeseeable circumstances requiring immediate action. To be considered an emergency, such requirements cannot be obtained through the use of normal purchase procedures and the delay of action may cause destruction or loss of USNA property or assets. Emergency purchase procedures will not be used to alleviate the need for prior planning or to circumvent normal procurement procedures.

2. Emergency purchase actions require approval by the respective Head of NAFI.

3. Emergency purchase actions will be reported in full detail to the USNA contracting office the next duty day after the emergency action. The contracting officer will complete the procurement action by preparing an after the fact PO or DO. Documentation explaining the emergency procurement action will be retained in the purchase file. In the absence of valid emergency criteria and prompt formalization of the purchase, actions will be handled as unauthorized commitments and will be processed per Paragraph 1014.

SECTION 3: COMPETITIVE NEGOTIATION

6300. GENERAL. Competitive negotiation, as distinguished from sealed bidding, allows the contracting officer more flexibility in arriving at a fair and reasonable price and mutually-agreed-upon contract terms. Competitive negotiation is a method of contracting that involves soliciting proposals, receiving proposals without a public opening, and further negotiation to allow for revision of offers prior to contract award. Contract award may also be made from initial proposals received without further negotiation.

6301. SOLICITATION AND REQUEST FOR PROPOSALS (RFP)

1. A Request for Proposals (RFP) is a written solicitation that provides a potential contractor with the opportunity to offer a price and a plan for accomplishing a particular procurement action. RFPs are used in negotiated procurements to communicate USNA requirements to prospective contractors and to solicit proposals to meet these requirements. RFPs will contain the information necessary to enable prospective contractors to prepare proposals properly. Solicitation provisions and contract clauses will be included in the solicitation or incorporated by reference. A proposal received in response to an RFP is an offer that may be accepted by USNA to create a binding contract following negotiations.

2. By contrast, an Invitation for Bid (IFB), using sealed bid procedures, furnishes a requirement and potential contractors provide only prices. With an IFB, there is no opportunity for the bidder to negotiate the terms of the contract and no deviations from the terms of the IFB are allowed. IFBs are an appropriated fund procurement method and will not be used by USNA NAF activities.

3. RFPs may be used at the discretion of the contracting officer for any procurement, however, they will be used when:

a. Support or service type contracts in excess of $2,500 and/or the Service Contract Act applies;
b. Complex requirements, drawings and/or detailed specifications are involved.

4. Contracting officers will ensure identical information concerning the procurement action is furnished to all prospective offerors.

6302. SOURCE LIST DEVELOPMENT. To promote competition, contracting officers will ensure an appropriate number of sources are solicited; the minimum number is three. Sources may be found in the local community, through industry websites, and business/trade associations. To achieve competition, contracting officers may advertise their requirement in a Government medium, such as FedBizOps or GSA eBuy, or through websites designed to promote commercial business opportunities.

6303. PRESOLICITATION NOTICES. If a source file is excessively long or if a solicitation is complex, the contracting officer may send a presolicitation notice to the firms in the source file to determine interest. Those indicating no interest, or failing to respond, will not be solicited. Responses to presolicitation notices will be retained in the contract file.

6304. SOLICITATION FORMAT. Contracting officers will normally prepare solicitations and resulting contracts using the uniform contract format. Alternate contract formats may be used at the discretion of the contracting officer. Rationale for use of alternate contract formats will be documented in the file. Legal review of all solicitations using alternate contract formats shall be obtained to ensure the NAFI's rights are protected. The contracting officer may, when no other reasonable alternative exists, accept and incorporate a contractor's standard terms and conditions into the contract. Legal review of the contract and the contractor's forms must be sought to ensure the rights and remedies to the NAFI are maintained.

| Uniform Contract Format | |
|---|---|
| Section | Title |
| Part I – The schedule | |
| A | Solicitation/contract form |
| B | Supplies or services and prices/cost |
| C | Description/specifications/statement of work |
| D | Packaging and Marking |
| E | Inspection and acceptance |
| F | Deliveries or performance |
| G | Contract administration data |
| H | Special contract requirements |
| Part II – Contract clauses | |
| I | Contract clauses |
| Part III – List of documents, exhibits, and other attachments | |
| J | List of attachments |
| Part IV – Representations and instructions | |
| K | Representations, certifications, and other statements of offerors or respondents |
| L | Instructions, conditions, and notices to offerors or bidders |
| M | Evaluation factors for award |

6305. CONTRACT CLAUSES

1. All USNA NAF contracts and purchase orders require specific clauses be included. USNA NAF contracts will include the following mandatory clauses: Changes, Examination of Records, Dispute Resolution, and Terminations (see DOD 4105.67).

2. All USNA NAF contracts will identify the responsible NAFI, and will state that no appropriated funds of the U.S. will be obligated, due or payable to the contractor.

3. Federal law also mandates USNA and our contractors comply with statutes such as the Buy American Act, Trade Agreements Act, Service Contract Act, etc., when applicable. Contracting officers and purchasing agents will ensure clauses supporting the necessary statutes are included in USNA NAF contracts.

6306. EVALUATION FACTORS. Factors considered in evaluating offers will be tailored to each procurement and include only those factors that will have an impact on selecting the source. Price or fee is a factor in all procurements, as is past performance and/or experience. Other evaluation factors that may apply are technical, management capability, personnel qualifications, and present ability to meet the performance schedule.

6307. SOLICIATION DISTRIBUTION. The RFP and any subsequent amendments will be distributed as follows:

1. One complete copy will be sent to each offeror;

2. One complete copy will be retained in the contracting office;

3. One complete copy will be provided to the requesting activity. Prior to issuing the solicitation, the contracting officer will coordinate the RFP with the requesting activity and obtain their concurrence on whether the solicitation meets their needs.

6308. AMENDMENTS. After the solicitation has been issued, but before the closing date, it may become necessary to make changes to the solicitation. Such changes may include changes in quantity,

specifications, or delivery schedule; correcting defects or ambiguities; or changing the closing date for receipt of proposals. Such changes will be made by issuing a solicitation amendment to all firms who were sent the original solicitation. Before issuing an amendment, the contracting officer will decide whether the closing date for receiving proposals needs to be extended and will coordinate this change with the requiring activity. Solicitation amendments with significant changes will be coordinated with the USNA Counsel.

6309. SOLICITATION PROTESTS AND PROTEST APPEALS BEFORE AWARD. Any interested party may forward a written objection to a solicitation. This objection is a Protest, and may be received either before or after award. Refer to paragraphs 7101 through 7105 for guidance.

6310. TWO-STEP NEGOTIATION

1. Two-step procurement procedures may be used for the purchase of services, equipment and supplies when specifications are inadequate for usual solicitation procedures.

2. The two-step procedure will be considered when all of the following conditions exist:

a. Specifications or purchase descriptions are indefinite or incomplete, or are too restrictive; and

b. Definite criteria exist for evaluating technical proposals and deciding which is to the best advantage of USNA; and

c. More than one technically qualified source is available; and

d. Sufficient time is available for the two-step method.

3. Step one is getting unpriced technical proposals. After evaluating proposals, the contracting officer advises offerors if they're acceptable. The contracting officer may clarify or resolve related requirements such as management approach, facilities, or conformity to technical requirements; however, data related to the subsequent negotiation (step two) will not be discussed.

6311. PREPROPOSAL CONFERENCES. Preproposal conferences may be used as a means of briefing prospective offerors after a solicitation has been issued but before offers are prepared. Generally, preproposal conferences are used in complex procurements to explain or clarify requirements. The preproposal conference will be conducted by the contracting officer; technical and legal personnel will attend as appropriate. All prospective offerors will be furnished identical information on the proposed procurement, regardless of whether or not they attend the conference. A complete record, including names, organizations, and mailing addresses of the conference attendees, will be prepared and retained in the contract file.

6312. CLOSING DATE. The specified date, time and time zone for receipt of proposals will be clearly stated in the solicitation. The time is computed from the date of mailing of the solicitations to the date set for the receipt of proposals.

6313. RECEIPT OF PROPOSALS

1. At each contracting office, one person and an alternate will be designated to receive and safeguard all proposals until opening. Proposals will remain unopened in their original envelopes and kept in a locked drawer, cabinet, or safe until the scheduled time and date of the official opening. Proposals will not be left unattended on desks, in mail trays or in work areas.

2. Proposals opened by mistake before the official opening will be resealed immediately and delivered to the person designated for receipt. The individual who opened the proposal will make a notation on the envelope indicating the circumstances.

6314. OPENING PROPOSALS

1. On or soon after the date and time specified for receipt of proposals, the contracting officer will open the proposals in the presence of two USNA witnesses. The contracting officer will prepare a summary or abstract of proposals noting the time and date of receipt, the proposed price or fee, and any other pertinent information contained in the proposal. The summary will be signed by the contracting officer and witnesses, verifying the accuracy of the information it contains. Complex proposal data may be entered onto an electronic spreadsheet for further analysis and evaluation. The completed spreadsheet will be signed and dated in ink by the contracting officer and USNA witnesses.

2. Fax proposals, electronic proposals, amended/confirmed proposals, and proposals submitted in response to requests for Best and Final Offers will be received in accordance with the above.

3. Prior to contract award the contracting officer will prepare a Justification for Award memorandum. Refer paragraph 6324.

6315. SAFEGUARDING PROPOSALS. After opening and recording proposals, the contracting officer is responsible for safeguarding proposals until contract award is made and ensure proposal data is released only to people having a need to know. Individuals performing review and approval of proposed awards must safeguard proposal data while in their possession. Before award, proposals and summaries or abstracts of proposals must be kept in a locked drawer, cabinet or safe at all times. If personnel not having a need to know have access to these spaces, the documents must be kept in sealed envelopes. Disclosure of proposal information to any unauthorized person before award of the contract is a violation of USNA policy and business ethics and may subject the violator to disciplinary action.

6316. LATE PROPOSALS. A late proposal is defined as any proposal or amendment that is received after the time and date set in the solicitation for receipt of proposals. The contracting officer reserves the right to consider late proposals or late revisions to proposals when it would be to NAFI's advantage to do so.

1. Late proposals (including revisions) will be reviewed to determine if it would be to the NAFI's advantage to consider them.

2. A late proposal or late revision should not be considered if it appears that the integrity of the competitive negotiation process might be jeopardized. Proposals that are substantially late (i.e., 2 days or more) are more likely to jeopardize the integrity of the process.

3. Late proposals and revisions of proposals not considered will be retained with other unsuccessful proposals.

6317. CANCELLATION OF SOLICITATIONS. A solicitation may be cancelled at any time before award when the contracting officer determines it is in the best interest of USNA. All firms that submitted a proposal will be advised in writing (letter, fax, or solicitation amendment may be used) and all proposals will be returned. The Justification for Award memorandum will be destroyed. If a new solicitation is to be issued, the offerors will be advised in the cancellation notice. Offers received under the cancelled solicitation will not be disclosed.

6318. DISCLOSURE OF PRE-AWARD PROPOSAL INFORMATION. Information contained in any proposal will not be disclosed until after contract award. Limited information about the successful proposal may be released after contract award, and is usually limited to the successful contractor's name and the dollar value of the contract. Disclosure of other information will be coordinated with the USNA Counsel prior to release.

6319. EVALUATION PANELS. Complex, technical, or high dollar procurement actions may call for the establishment of an evaluation panel to assist the contracting officer in evaluating offeror proposals.

1. With the assistance of the requesting activity, the contracting officer will appoint several individuals to a technical or price evaluation panel. Panel members will be chosen based on their experience and understanding of the functional or technical requirements of the solicitation, their ability to analyze the proposed offers, and their integrity and understanding of the procurement process.

a. Usually two or more representatives from the requesting activity will be appointed to the technical evaluation panel. Technical evaluation panel members may not review price proposals.

b. If price proposals consist of unusual or complex pricing, the contracting officer may determine a price evaluation panel is necessary. The price evaluation panel usually consists of members with financial or business management experience. Price evaluation panel members may not review technical proposals.

c. In addition to USNA NAF activity personnel, evaluation panel members may include other USNA representatives, or personnel from other NAFIs, or DOD activities.

d. Evaluation panel members may not consist of individuals from the private sector.

e. The contracting officer will not normally be a member of the evaluation panel.

2. To ensure the integrity of the procurement process, the contracting officer will prepare evaluation forms using the evaluation factors stated in the solicitation. A copy of the solicitation and evaluation form will be provided to the panel members. The contracting officer will instruct evaluation panel members on the evaluation process. Upon completion of their evaluation, panel members will submit documentation explaining their recommendation. The contracting officer may require evaluation panel members to reach a consensus decision, or require each member submit an individual recommendation without consultation of other panel members. In both cases, documentation supporting the recommendation will be signed and dated by each panel member, and will include all work papers used during the evaluation process.

3. Evaluation panel members may not divulge or discuss proposal data with anyone other than the contracting officer or other evaluation panel members. Procurement Integrity Act training and non-disclosure forms may be submitted for legal review prior to commencing an evaluation panel for large competitions at the contracting officer's discretion.

4. The contracting officer will use the specified evaluation data in determining contract award, however the contracting officer is not required to follow panel recommendations. The contracting officer will document the findings of the evaluation panel(s), and the basis for his or her decision, in the Justification for Award memorandum. Refer to paragraph 6325.

5. All evaluation panel recommendations and supporting documentation will be retained in the contract file.

6320. <u>ORAL PRESENTATIONS</u>

1. Oral presentations by offerors may be used to supplement written information. Use of oral presentations as a substitute for portions of a proposal can be effective in streamlining the source selection process. Oral presentations may occur at any time in the procurement process, and are subject to the same restrictions as written information, regarding timing and content. Oral presentations provide an opportunity for dialogue among the parties in competitive, single, and sole source acquisitions.

2. Oral presentations usually provide the methods that prospective offerors will use, and allow for questions and answers. Oral presentations may also allow the evaluation panel members to speak directly with the personnel who will perform the contract.

3. The contract file will contain a record of oral presentations to document what USNA relied on in making the award decision. The method and level of detail of the record (i.e., USNA notes, written minutes,

videotaping, copies of offeror briefing slides or presentation notes) will be at the discretion of the contracting officer. If the oral presentation includes information that the parties intend to include in the contract, the information will be in writing.

6321. PRICE/FEE ANALYSIS

1. The procurement objective is to promptly satisfy a USNA requirement at a fair and reasonable price or fee. Determining a fair and reasonable price or fee requires sound judgment by the contracting officer based on pertinent facts. A higher price, or lower fee, compared to other offerors may still be found to be fair and reasonable, and to the best advantage of USNA.

2. Price or fee analysis is required with every contract, and will be documented in the Justification for Award memorandum. Adequate competition is the most common, but not the only, basis for determining the proposed price or fee is fair and reasonable.

6322. EVIDENCE OF POSSIBLE COLLUSION BY OFFERORS. If responses to multiple-source solicitations appear to have been arrived at by collusion of the offerors (for example, artificially high or identical prices), the contracting officer will inform the USNA Counsel.

6323. MISTAKES BEFORE AWARD. Contracting officers will review proposals for minor informalities, irregularities and clerical errors. Discussions with offerors to clarify these matters do not constitute negotiation, and usually resolve the inaccuracies. When an award without discussion is considered, the contracting officer will comply with the following:

1. If the contracting officer suspects a mistake, the contracting officer will inform the offeror and request verification. If the offeror verifies the proposal, award may be made;

2. If an offeror alleges a mistake, the contracting officer will advise the offeror that the proposal may be withdrawn, or that correction may be sought as explained in paragraph 3 below;

3. If an offeror requests permission to correct a mistake, the contracting officer may make a written determination permitting the correction, provided that it can be proven that a mistake was made, and provided a legal review is obtained prior to making the determination;

4. If the determination cannot be made and the contracting officer is still considering award without discussion, the offeror will be given final opportunity to withdraw or verify the proposal;

5. If correcting a mistake, however, requires the use of documents, worksheets, or other data outside the solicitation and proposal in order to establish the existence of the mistake, its correction will be considered a matter for negotiation and will open negotiation with other offerors as described in paragraph 6325.

6324. COMPETITIVE RANGE. The contracting officer will determine which proposals are in the competitive range for the purpose of conducting written or oral negotiation. Competitive range is determined by price and other evaluation factors stated in the solicitation and will include all proposals that have a reasonable chance of being selected for award.

6325. CONDUCTING NEGOTIATIONS. Negotiation is a flexible contracting procedure that permits contracting personnel to bargain in the sense of clarification of initial assumptions and positions, give-and-take, and persuasion. These negotiations may apply to price, schedule, technical requirements, or other terms of a proposed contract.

1. The contracting officer may conduct written or oral negotiations with the most competitive offeror, or all offerors in the competitive range (paragraph 6322), without considering the lower technically ranked proposals.

2. The content and extent of the negotiations will be determined by what the contracting officer decides is appropriate.

3. Negotiations will encompass those elements of the solicitation imposing substantial costs on the contractor that may not have been considered or anticipated by the contracting officer when developing the solicitation. If the negotiations fail to achieve a reasonable price, the requiring activity may recommend that the solicitation be canceled.

4. Contracting officers will document the results of negotiations in the Justification for Award memorandum.

6326. JUSTIFICATION FOR AWARD. At the conclusion of evaluation and negotiations, but prior to award, the contracting officer will prepare a Justification for Award memorandum documenting the award decision. All appropriate information regarding the solicitation, solicitation amendments, evaluation findings, any subsequent discussions and negotiations, and the basis for award will be included or referenced in this memorandum. Memorandum content and level of detail is the decision of the contracting officer, but at a minimum, must include a positive determination of contractor responsibility and that the proposed prices or fee are fair and reasonable. Where required, documentation of legal review and award concurrence by a senior USNA official will be included. The Justification for Award memorandum will be signed by the contracting officer and retained in the contract file.

6327. MAKING THE AWARD. Contracts will be awarded by the contracting officer by signing and dating the contract and mailing or otherwise furnishing a signed copy of the complete contract to the successful offeror. The contracting officer's signature on the contract affirms that a determination of offeror responsibility and technical acceptability have been made.

1. The contracting officer is responsible for making sure the proposal and/or contract has been signed by an individual having authority to bind the offeror's firm contractually before making the award.

2. Strikeovers, pasteovers, erasures or pen-and-ink changes to the contract document will be avoided, and may only be used for minor changes. If used, such changes will be initialed by the contracting officer and the contractor on the contractor's copy of the contract and the official file copy.

3. The contract becomes effective on the date of award unless a different date is given in the contract itself. Backdating an award date is prohibited.

6328. POST AWARD NOTIFICATION TO OFFERORS. When an award is made using competitive solicitation procedures, the contracting officer will give written notice of award to the successful offeror. When this notice has been issued, the contracting officer will then give written notice to the unsuccessful offerors that their proposals were not accepted. This post award notification will include the name of the successful offeror, and may include the award price. Technical information will not be provided. Upon request of an unsuccessful offeror, the contracting officer will conduct a debrief.

6329. DEBRIEFINGS. A debriefing is an explanation why an offeror did not win a competitive solicitation. During the debrief, the contracting officer should discuss weaknesses in the unsuccessful proposal. However, no unauthorized release of confidential or privileged information may be made during such a discussion. Debriefings will be requested within seven (7) calendar days after notice of contract award. In complex or high dollar procurement actions, the contracting officer will coordinate debrief material with the USNA Counsel prior to the debriefing. The contracting officer will document results of the debriefing and retain in the contract file.

6330. MISTAKES ALLEGED OR DISCOVERED AFTER CONTRACT AWARD

1. When a nonsubstantive mistake is discovered after award, it may be corrected by a modification to the contract, if the correction is favorable to USNA and if it does not change the essential requirements of the

contract. In all other cases, the contracting officer will review the documentation provided by the contractor and coordinate findings with the USNA Counsel. The contracting officer will consider:

a. Advice from the requiring activity on whether the item is acceptable to use and will perform its intended task.

b. A recommendation from the requiring activity (with supporting documentation) on whether to accept or reject the item.

c. The nature and extent of the contractual adjustment that will result from either decision.

2. If the decision is made to accept the item, the contracting officer will seek an equitable adjustment in the price of the item and negotiate any other adjustments necessary as a result of acceptance. If the decision is made to reject the item, the contracting officer will so notify the contractor and give the contractor the opportunity to correct the problem within the required delivery schedule.

## SECTION 4: PURCHASE CARD

6400. PURCHASE CARD USE. The Superintendent has authorized participation in a NAF commercial purchase card program, which includes NAF travel card centrally billed accounts (other than the Defense Travel System).

6401. PURCHASE CARD PROGRAM. The purchase card program provides a streamlined method of purchasing commercially available supplies and services.

1. Head of Activity (HA). The USNA NAF HA is the Director, NABSD. The HA is the appointed individual with overall responsibility for managing the USNA NAF purchase card program. Specific responsibilities include appointing the Agency Program Coordinator, establishing effective internal management controls over the local program, identifying disciplinary action to be taken for noncompliance and abuse, and ensuring all participants in the purchase card program have specific performance requirements and evaluation for their purchase card roles.

2. Agency Program Coordinator (APC). A senior NAF contracting employee should be designated as the USNA NAF APC. The APC will be appointed in writing to manage the purchase card program for USNA. The APC will develop internal purchase card policy, approve who participates in the purchase card program, and issue a delegation of authority to each cardholder who may then obligate NAF funds as a purchase cardholder. The APC will suspend or terminate accounts as necessary due to misuse, and report actual or suspected cases of fraud or intent to commit fraud to the Superintendent via the chain of command and in accordance with other DoD instructions.

3. Delegation of Authority

a. Cardholders and approving officials will be appointed in writing. Cardholders will be appointed with specific levels of procurement authority identifying their single and monthly purchase limits. Both approving officials and cardholders will complete training and be appointed prior to receiving a NAF purchase card account.

b. In limited circumstances cardholders may also be appointed as an approving official; however, the cardholder may not be his or her own approving official.

4. Approving Officials. Approving officials will review and sign their cardholders' monthly purchase card statements prior to certifying and forwarding the invoice for payment.

5. Purchase Cardholders. The single purchase limit for cardholders may not exceed $5,000 per order for cardholders, or otherwise the warrant authority level for USNA contracting officers when utilized as a method of payment supported by a contract. Example: Payment in support of NAF centrally billed travel

authorized under formal contracting arrangements. All purchases are subject to mandatory sources (UNICOR, NIB/NISH), and purchases in excess of $5,000 must be competed. (Note: The purchase card may not be used to purchase services in excess of $2,500 when the Service Contract Act applies, nor purchase construction in excess of $2,000 when the Davis-Bacon Act applies).

6. Training. All participants (HA, APC, approving officials, and cardholders) will complete required training prior to appointment. Training requirements are to be included in the internal purchase card policy and must at a minimum address initial and annual refresher training to ensure program officials have the knowledge and tools to be effective in their card responsibilities. Proper training of card program participants is important to prevent fraud, waste, and abuse. HA and APC are required to ensure appropriate training is established, maintained, and tracked.

7. Ethics Standards. The purchase card is embossed with the cardholder's name and will only be used by that individual. Cardholders in one USNA branch or activity may not use their card to purchase for another branch or activity unless authorized by the USNA APC. APCs, approving officials, and cardholders will complete annual ethics training as applicable. Questions will be directed to the local Ethics Counselor or the USNA Counsel.

8. Prohibited Purchases. The purchase card will not be used for the following:

a. Personal purchases;

b. Cash advances;

c. Rental or lease of land or buildings;

d. Purchases that require signing of a contract or agreement;

e. Purchases of official NAF travel related expenses (transportation, lodging, meals, etc.), except as authorized under NAF travel card centrally billed accounts.

9. Regulated Purchases. Purchase card purchases of the following items are regulated. Refer to your Agency Program Coordinator for specific guidance.

a. Conference room rentals, A/V equipment, and refreshments;
b. Merchandise for resale;
c. Personal clothing or footwear when required by work requirements;
d. Maintenance and repair services;
e. Supplies or services to be obtained from designated sources.

10. Authorized Purchases. The purchase card may be used for official purchases at the military exchange and commissary.

11. Conditions for Use. Cardholders are authorized to use the purchase card only when the following conditions are met:

a. Appropriate approvals have been obtained prior to making a purchase;

b. The supplies and services do not require technical inspection;

c. Equipment does not require the purchase of extended service warranties or maintenance agreements. These items will be purchased by the USNA NAF contracting office;

d. Purchases may not be split into smaller buys to avoid procurement limitations. Requirements exceeding the single purchase limit will be forwarded to the USNA contracting office;

e. Purchases are for official U.S. Government/USNA purposes and are exempt from state and local taxes. Each card is embossed with the words "U.S. Govt. Tax Exempt" for additional clarification.

12. Fixed Asset Exception. Fixed Assets (FA) may not be purchased with the purchase card, unless purchased by a cardholder who is a contracting officer (see paragraph 2008).

USNA NAF PROCUREMENT POLICY

CHAPTER 7

CONTRACT ADMINISTRATION


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USNA NAF PROCUREMENT POLICY

CHAPTER 7

CONTRACT ADMINISTRATION

7000. GENERAL. Contract administration is the management of a contract from the time of award through its expiration or termination and final retirement of records. The purpose of contract administration is to ensure that the contractor performs according to the contract provisions and that USNA receives the quantity and quality of the goods or services for which it contracted.

7001. DESIGNATION OF CONTRACTING OFFICER'S REPRESENTATIVE. To aid in the contract administration function, especially where contract performance is remote from the contracting officer's location or program expertise is required, the contracting officer may appoint a Contracting Officer's Representative (COR).

1. COR's are primarily liaisons between the contractor and the contracting officer on technical matters relating to the contract. COR's have no authority other than that which has been delegated to them by the contracting officer.

2. The COR will be selected by the head of the requiring activity, subject to approval by the contracting officer, and is usually an individual involved in developing the solicitation specifications and may have participated in the contract evaluation process.

3. A COR appointment will be made in writing and designated by name and title of position. When it is necessary to change the terms of the appointment, it will be done in an amendment to the appointment or by the issuance of a new appointment. The COR will certify acknowledgement of the appointment letter to indicate an understanding and acceptance of the COR duties and responsibilities.

4. A COR is not delegated authority to make any commitments or changes that affect price, quality, quantity, delivery or other terms and conditions of the contract and may not award a contract or agree to or issue a change to a contract. A contracting officer may authorize a COR to make minor changes, not involving the above items, and to resolve problems as long as such authorizations are not prohibited by the contract. The COR will refer contract interpretation questions to the contracting officer.

5. Upon designating a COR, the contracting officer will provide the COR with a complete copy of the contract, the appointment letter, and any other relevant materials. The contracting officer and COR should jointly develop a contractor surveillance plan to ensure the contractor's performance conforms to contract requirements, is periodically evaluated based on contract criteria, and shortcomings are dealt with expeditiously. The surveillance plan may include such items as timeliness, cleanliness, courtesy to patrons, etc, as required by the contract.

6. COR duties and responsibilities may not be transferred or redelegated to another, unless designated by the contracting officer. Completion of at a minimum COR training with the contracting officer with respect to duties and responsibilities shall be completed and documented in the contract file.

7002. EQUAL EMPLOYMENT OPPORTUNITY AND MINIMUM WAGE NOTICES. The contracting officer will provide Equal Employment Opportunity (EEO) and Minimum Wage notices to the contractor at the time of award.

1. EEO Poster. Every employer covered by the non-discrimination and EEO laws is required to post the "Equal Employment Opportunity is the Law" poster on its premises. The notice must be posted prominently, where it can be readily seen by employees and applicants for employment. The notice provides information concerning the laws and procedures for filing complaints of violations of the laws with the Office of Federal Contract Compliance Programs (OFCCP). [See Executive Order 11246, as

amended]. Posters may be obtained from the Internet at http://www.dol.gov/esa/regs/compliance/posters/eeo.htm.

2. Fair Labor Standards Act (FLSA) Minimum Wage Poster. Every employer of employees subject to the Fair Labor Standards Act's minimum wage provisions must post, and keep posted, a notice explaining the Act in a conspicuous place in all of their establishments so as to permit employees to readily read it. The content of the notice is prescribed by the Wage and Hour Division of the Department of Labor. An approved copy of the minimum wage poster is made available for informational purposes or for employers to use as posters at http://www.dol.gov/esa/regs/compliance/posters/flsa.htm.

7003. CONTRACTOR PERFORMANCE FEEDBACK. Contractor nonconformance is usually discovered during quality inspection or as a result of USNA user or customer complaint. Contractor nonconformance is the failure of a contractor to comply with delivery schedules, performance standards, or other provisions of the contract. The contracting officer must be made aware of the nonconformance, act within the framework of the contract to correct the deficiencies, maintain a suspense file of all deficiencies noted, and follow through with required action until resolved. Documentation of the nonconformance and action taken will be retained in the contract file.

7004. CONTRACT MODIFICATIONS. Contracts may be modified using a SF-30. All contract modifications begin at number one (1) regardless of any solicitation amendments. Modifications to contracts are either unilateral (signed by only the contracting officer) or bilateral (signed by both the contractor and contracting officer) actions. All modifications will be documented in a memorandum explaining the action. The memorandum will be signed by the contracting officer and retained in the contract file.

7005. OPTION CLAUSES

1. An option clause may allow USNA to purchase additional supplies or services or to extend the period of the contract, if the action is taken within the time specified in the contract's option clause, and when determined to be in the best interest of USNA. Option clauses will not be used when:

a. The supplies or services are readily available on the open market at better prices;

b. The contractor will incur undue risk, such as the inability to estimate the price or availability of required materials and labor for future requirements;

c. Market prices for supplies or services are likely to change substantially.

2. Prior to exercising an option clause, the contracting officer and COR will review the quality and timeliness of the supplies or services provided. The results of this review will be documented and retained in the contract file.

7006. CHANGE ORDERS. The Changes clause of the contract permits the contracting officer to make unilateral changes in those areas identified in the clause, and provides an equitable adjustment to the contractor if the change causes an increase or decrease in the cost of the work or in the time required for performance. Change orders can place undue hardships on contractors, and should not be used if a mutually agreeable modification can be negotiated, which is the preferred method.

7007. CONSTRUCTIVE CHANGES. Constructive changes are defined as any conduct by a contracting officer or other authorized representative, other than a formal change order or supplemental agreement, which has the effect of requiring the contractor to perform new work or different work from that required by the contract. Such changes entitle the contractor to relief under the Changes clause and will be avoided.

7008. NOVATION AGREEMENT. A Novation Agreement is used to transfer the operation or performance of a contract to another party. In the novation, the NAF contracting officer agrees to recognize the third party as a successor in interest to the USNA contract. Novations may be approved where it would provide

advantages such as continued performance of the contract. Novations should not be used where it appears the contractor's motive is to sell the contract soon after award or otherwise gain a profit from a "buy in."

1. A novation agreement is not used to change the name of a contractor when no change in ownership occurs. A contract modification is used for this purpose.

2. Under a novation agreement, the new party (transferee), with USNA consent, takes over from the contractor (transferor) and assumes responsibility for performance of the contract and provides certificates of insurance as required. Based on the terms of the novation, the former contractor may be relieved of all future responsibility for prior actions under the contract.

3. USNA may recognize a third party as a successor in interest to a USNA contract under any of these circumstances:

a. The third party's interest is incidental to the transfer of all assets of the contractor;

b. The third party's interest is incidental to the transfer of that part of the contractor's assets involved in the performance of the contract;

c. The contractor requests to transfer interest in a contract to a successor for continued performance. Examples of such circumstances include, but are not limited to, sale of assets by a contractor, transfer of such under a merger or consolidation, and incorporation of a proprietorship or partnership;

d. Novating the contract is more advantageous to USNA than terminating the contract and resoliciting or allowing the contract to expire.

4. When a contractor requests USNA recognize a successor in interest, the contractor will be required to furnish the contracting officer with documentary evidence that the successor in interest is a responsible contractor, such as:

a. Evidence of experience, financial and technical ability, or other capability of the transferee to perform the contract;

b. Written consent of the sureties on contracts where bonds are required;

c. In the case of patron or retail service contracts involving processing customer owned property or customer orders, an inventory of unclaimed customer orders or orders in progress, acknowledged by the transferee.

5. When the novation is due to a contractor transferring or selling its assets, the contractor will be required to provide evidence of the sale, such as a bill of sale, certificate of merger, resolution of the board of directors, or copy of the certificate and articles of incorporation.

6. When the decision has been made to recognize a successor in interest to a USNA contract, the contracting officer will execute a novation agreement with the transferee and transferor. This three-way contract modification will be assigned a consecutive contract modification number. The contracting officer will complete a Memorandum for the Record to document the action.

7. A contract in which a novation has been executed will be considered to have been in force from the effective date of the original contract.

7009. <u>DELAYS IN DELIVERY OR PERFORMANCE</u>

1. Excusable delays are due to causes beyond the control of the contractor. The standard procedure to be used in the case of an excusable delay is to extend the delivery or performance schedule by a bilateral

modification to the contract. If the goods or performance are required before the contractor can deliver, the contract may be terminated for convenience.

2. Inexcusable delays are not due to causes beyond the control of the contractor. A thorough analysis of the situation and possible courses of action should be made to determine the most efficient and economical method of resolution. USNA Counsel will be consulted for any situation involving an inexcusable delay.

7010. FINANCIAL OBLIGATIONS. All USNA financial obligations will be processed in a timely manner as called for by the Prompt Payment Act (31 U.S.C. Section 3901 et. seq.). Failure to meet contract payment obligations will result in the requirement for USNA to pay interest to the contractor. Failure to make interest payments on time may result in the accrual of additional penalties for USNA.

## SECTION 1: CONTRACT PROTESTS, CLAIMS, DISPUTES AND APPEALS

7100. RELEASING INFORMATION. In all instances of protests, claims, disputes or appeals regarding a procurement action, there will be no release of information regarding the procurement when a simple explanation (such as name of the awardee or contract price) will resolve the inquiry. If detailed information or procurement documents are sought, the approval of USNA Counsel will be obtained prior to release.

7101. PROTESTS. 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 decision. Where the concern or issue cannot be resolved through informal discussion between the contracting officer and offeror, the offeror must file a written protest for the matter to be considered further.

1. Only interested parties may file protests. An interested party is an actual or prospective offeror whose direct economic interest would be affected by the award or failure to award a particular contract.

2. The contracting officer is responsible for promptly processing or resolving all protests received. Protests may be received either before or after contract award. Any protest lodged with other than the contracting activity will be referred or sent immediately to the appropriate contracting officer.

3. Upon receipt of a protest, the contracting officer will notify the USNA Counsel.

4. Protests that cannot be resolved by meeting with the protester or that the contracting officer determines have no merit, require a written decision and reply to the protester by the contracting officer explaining the rationale for the decision.

5. The contracting officer will document the results of all protest actions, including advice of Counsel, in a memorandum and retain in the solicitation or contract file.

7102. PROTESTS BEFORE AWARD

1. Protests based on alleged improprieties in a solicitation that are apparent on the face of the solicitation must be filed with the contracting officer, in writing, before the closing date for receipt of proposals. Protests to the contents of an amendment to the solicitation must be filed, in writing, before the closing date (or amended closing date) for receipt of proposals of the amendment.

2. When a protest is received before contract award, the award will be delayed until the protest (including appeals) is resolved, unless the contracting officer determines that one of the following applies:

a. The supplies or services are urgently required;
b. Delivery or performance will be unduly delayed by failure to make a prompt award;

c. The current contract is expiring and continued service is required;
d. A timely award will otherwise be advantageous to USNA.

3. Before awarding a contract under the above-cited circumstances, the advice of USNA Counsel will be obtained. The Justification for Award memorandum will fully document the award decision and be retained in the contract file.

4. If the contracting officer delays award of the contract, he or she will conduct discussions or convene whatever meetings or conferences are necessary to determine the merits of the protest. When the contracting officer finds a protest has merit (e.g., ambiguous specifications, flawed evaluation process), he or she will promptly take action to correct the situation. Such possible actions include rejecting all proposals and issuing a new or amended solicitation, revising specifications, or changing evaluation criteria. In amended solicitations, the receipt date of proposals will be extended accordingly. If resolution of the protest makes previously ineligible offerors eligible for award, appropriate notification will be given to the offerors concerned.

7103. PROTESTS AFTER AWARD

1. All protests will be handled expeditiously. The contracting officer may give a copy of the protest to the awardee, to any interested party, and to appropriate USNA personnel. The contracting officer may allow any party so notified to submit written comments regarding the protest for consideration by the contracting officer. The time limit for such comments to be filed should be established 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, unless the protester or contracting officer has redacted the protected information (refer to paragraph 7104). USNA personnel in procurement and requirements positions may not disclose protected information or procurement sensitive information.

2. A protest will be lodged in writing within ten (10) days of notification of contract award to be considered. When a protest is received by the contracting officer after the contract has been awarded, contract performance need not be suspended or terminated, unless it appears likely the award may be invalidated and non-delivery or non-performance is not prejudicial to the activity's interest. If the protester presents compelling reasons why contract performance is to be postponed or suspended, the contracting officer will promptly notify the awardee, in writing, and will provide instructions regarding the postponement or suspension of contract performance. If the protester presents compelling reasons why the award should be invalidated, the contracting officer will attempt to negotiate a mutual agreement with the awardee for performance to be suspended at no-cost, until the protest is resolved. If a no cost suspension cannot be negotiated, seek the advice of USNA Counsel.

7104. CLAIMS OF PROCUREMENT SENSITIVE INFORMATION. The burden to show that information is procurement sensitive or otherwise protected from disclosure is on the party making the claim for withholding. 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. The contracting officer will coordinate offeror claims of procurement sensitive information with the USNA Counsel prior to action.

7105. APPEALS OF THE CONTRACTING OFFICER'S PROTEST DECISION

1. Protests that cannot be resolved at a conference or that the contracting officer determines have no merit require a written decision by the contracting officer to the protester explaining the rationale for the decision. The contracting officer's decision must inform how it may be appealed. The protester's appeal should reference the contracting officer's decision and explain that an appeal is intended. The notice to the protester will include the following: "You are advised that you may appeal this decision within ten (10)

calendar days from receipt of this letter by mailing or otherwise furnishing a written appeal addressed to (insert the full mailing address of the Superintendent). The Superintendent's protest decision is final and may not be further appealed."

2. Only matters raised in the original protest may be appealed. An offeror may not raise new issues or grounds for protest not considered by the contracting officer. Appeals raising new issues or grounds for protest will be dismissed by the appeal authority.

3. Upon notification of a protest appeal the contracting officer will forward a completely documented solicitation or contract file to the USNA Counsel to include:

a. The letter or document that initiated the protest and all supporting evidence submitted by the person making the protest;

b. A copy of the proposal of the protesting offeror and a copy of the proposal of the offeror who is being considered for award, or the successful proposal;

c. Any other documents relevant to the protest;

d. A copy of the contracting officer's protest decision; and,

e. A statement signed by the contracting officer setting forth a preliminary analysis of the matter, together with any additional information or evidence considered necessary in determining the validity of the protest.

4. The Superintendent or designee will obtain the written advice of USNA Counsel and/or USNA SJA before deciding the appeal. The standard of review for the decision on the protest appeal is whether the contracting officer's denial of the protest was arbitrary, capricious, an abuse of discretion, or a violation of applicable law or regulation. The Superintendent or designee must respond to the appeal in writing within 30 days of receipt.

7106. INVALIDATED AWARD. If a contract award is to be terminated as a result of the protest decision, or protest appeal decision, the contracting officer will seek a mutual agreement with the awardee to stop performance on a no-cost basis. Should this not be possible, a termination for convenience will be initiated.

7107. CONTRACT CLAIMS

1. Whenever a contractor requests a change in the terms of the contract, whether monetary or otherwise, the contracting officer will determine whether it is a claim or merely a routine request for contract modification. A claim is defined as a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of a specific amount of money ("a sum certain"), the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. Contractor claims must be submitted to the contracting officer per the Disputes clause contained in the contract. Upon receipt of a claim, the contracting officer will immediately forward a copy of the claim to USNA Counsel.

2. USNA may also submit claims against the contractor. Prior to submitting any such claim, the contracting officer will coordinate with USNA Counsel.

7108. DISPUTES

1. Disputes are a disagreement between the contractor and the contracting officer regarding the rights and obligations of the parties under a contract. It is the duty of the contracting officer to make every reasonable attempt to resolve the dispute amicably without resort to the Disputes clause. Due to the unique nature of USNA, two different versions of the Disputes clause are used. The contracting officer will ensure the correct contract Disputes clause is included in the solicitation and resulting contract.

7109. DISPUTE PROCEDURE

1. If attempts to resolve the dispute fail, the contracting officer will first request the contractor to state the facts of the dispute in writing. The contracting officer will review all available facts pertinent to the dispute, and obtain the assistance of legal, technical, and professional experts. The contracting officer will render a final decision after an independent review of all the facts.

2. The contracting officer's decision must be in writing. It will include a statement of all facts sufficient to enable the contractor to understand both the decision and the basis for the determination. Normally, the decision will be in the form of a statement of the claim or other description of the nature of the dispute, with necessary references to pertinent contract provisions. It will include a statement of the relevant facts to which the parties agree and, as clearly as possible, the area of disagreement. The contracting officer's statement will include his or her decision, and advise the contractor on the process to appeal the decision.

3. The contracting officer's decision will be mailed to the contractor by certified mail, return receipt requested or other traceable means. Dispute decisions will be reviewed by USNA Counsel prior to release to the contractor.

7110. APPEALS OF THE CONTRACTING OFFICER'S DISPUTE DECISION. Under the Disputes clause in the contract, the contractor may appeal the decision of the contracting officer.

1. The appeal process for USNA NAF contracts requires the contractor to appeal the contracting officer's dispute decision by mailing or otherwise furnishing the written appeal to the Superintendent and furnishing a copy of the appeal to the contracting officer within 90 days of receipt of the contracting officer's decision. The Superintendent's decision, which should be made expeditiously, is final and not appealable.

3. If coordinated with USNA Counsel prior to contract award, an Alternate Dispute Resolution (ADR) clause may be included in the contract.

4. The decision reached in the appeal (or ADR) process is final.

5. Pending final decision on an appeal in any dispute, the contracting officer will advise the contractor of his duty to proceed with contract performance and in accordance with the contracting officer's decision.

6. The contracting officer will document the result of all disputes and appeals, including the advice of the USNA Counsel and the basis for the contracting officer's decision, in a memorandum and retain in the contract file.

## SECTION 2: CONTRACT TERMINATION

7200. TERMINATION OF CONTRACTS

1. Generally, USNA contract clauses provide that contracts may be terminated for contractor default, USNA convenience, or inactivation of installation or USNA activity; or

2. If included in the contract, USNA contracts may also be terminated by written notice by either party to the other party within a designated period of time or by mutual consent of both parties. Refer to paragraph 7209.

3. Since termination of a contract may cause a lapse of service, a shortage of supply, or require a quick response by other USNA NAF activities, the contracting officer will notify appropriate offices of pending termination actions.

7201. CONTRACTOR DEFAULT. A contracting officer's major objective is to ensure that USNA receives the goods or services required in the quality, quantity and at the time and place required. If a contractor does not comply with contract terms, it may be appropriate to terminate the contract for default. A contract may be terminated for default only after coordination with USNA Counsel.

7202. CORRECTIVE ACTIONS PRIOR TO TERMINATION FOR DEFAULT. Minor operational deficiencies not amounting to a breach of contract which exist because of the contractor's failure to comply with contractual requirements, but do not seriously affect USNA operations or patron service, should normally be resolved by oral requests to the contractor by the contracting officer or the USNA representative responsible for the contract surveillance. At the option of the contracting officer, a warning letter may be issued.

7203. CURE LETTERS. When a contractor fails to comply with oral requests or warning letters and the frequency of noncompliance or the magnitude of contract deficiencies warrants additional action, the contracting officer shall issue a cure letter.

1. A cure letter formally advises a contractor of specific failures to comply with the contract and requires corrective action within a specified time. If the contractor fails to cure the performance, normally the contracting officer will initiate termination action by issuing a show-cause letter.

2. Cure letters shall reference the contract number, contract date, and describe the acts or omissions constituting the default and cite the contract clauses that have been breached.

3. Cure letters should not be issued to contractors when USNA is participating in or issuing delivery orders against other NAF or appropriated fund contracts. The issuing NAF or appropriated fund contracting officer that issued the contract is the official responsible for issuing a cure letter in such an instance. A cure letter for individual delivery orders executed by USNA, however, can be issued.

7204. SHOW-CAUSE AND FORBEARANCE LETTERS

1. If a contractor fails to cure performance, the contracting officer should issue a show-cause or forbearance letter. The show-cause and forbearance letters advise the contractor of the contracting officer's intent to terminate the contract for default unless the failure was due to causes beyond the control and without the fault or negligence of the contractor. Fires, flood, epidemics, quarantine restrictions, freight embargoes, strikes, and other events that preclude performance through no fault of the contractor are normally excusable reasons for nonperformance.

2. Show-cause and forbearance letters shall reference the contract number, contract date, and describe the acts or omissions constituting the default and cite the contract clauses that have been breached. The show-cause and forbearance letters shall require the contractor to respond in writing to the circumstances that caused the breach of contract.

3. For service contracts, if the contractor fails to cure the default within the period specified in the cure letter, the contracting officer may issue a letter of forbearance instead of a show-cause letter. The letter of forbearance will advise the contractor that if the contractor defaults again within the time specified (usually three months), the contracting officer will immediately issue a default termination at that time.

4. The contracting officer shall seek guidance from USNA Counsel prior to issuing show-cause or forbearance letters.

7205. TERMINATION FOR DEFAULT. When termination for default is appropriate, the contracting officer should normally issue a Notice of Termination for Default.

1. The termination notice shall:

a. Include the contract number and contract award date.

b. Describe the acts or omissions constituting the default and cite the contract clauses that have been breached.

c. Cite the fact there has either been no reply to the cure letter, show-cause letter or forbearance letter, or that the contractor has failed to show the default was beyond their control and without fault or negligence.

d. Establish a definite termination date.

2. The contracting officer will obtain from the accounting office the amount of any debts due USNA and coordinate with Counsel and other contracting officers regarding collection of this debt from the contractor's operation(s) at other USNA activities.

3. Other factors to consider include the previous payment of any advance or progress payments, costs on undelivered work, profit on uncompleted items, and reprocurement costs.

4. In revenue-generating patron service or vending contracts, the contracting officer shall coordinate with Counsel regarding exercising USNA's contractual right to take possession of the contractor's equipment on the installation to satisfy these debts.

7206. LEGAL REVIEW AND PROCESSING. The contracting officer shall coordinate cure, show-cause, forbearance and termination actions, and withdrawal of termination letters with USNA Counsel. On coordination with Counsel, cure and show-cause letters may be dispensed with, or a combination of cure and show-cause letters may be issued.

7207. TERMINATION FOR CONVENIENCE

1. Terminations for convenience are normally used when USNA no longer has a need for the supplies or services under contract. The termination for convenience provides for an equitable adjustment to the contractor for work already performed. It does not entitle a subcontractor to a claim against USNA.

2. In the event a contract must be terminated for convenience of USNA, the contracting officer will attempt to terminate the contract on a no-cost basis to either party. If this is not possible, the contractor will be required to submit a claim, request for equitable adjustment, to the contracting officer in writing. A settlement should compensate the contractor fairly for the work done and the preparations made for the terminated portion of the contract, if any, and profit on completed work. If an equitable adjustment cannot be negotiated, the contracting officer will make a final decision concerning the claim, in writing, and provide this to the contractor in a timely manner. Any dispute arising as a result of this process will be resolved using the Disputes process.

3. As a general rule, a Termination for Convenience may not be used to terminate a defaulting contractor, nor be immediately followed by a new contract for the same requirement.

7208. TERMINATION BASED ON INACTIVATION. When a contract is terminated based on inactivation of a USNA NAF activity, the contracting officer should normally advise the contractor in writing at the earliest possible date of termination. The letter should cite the clause that provides for termination of the contract because of inactivation of the installation or USNA activity and the date of termination.

7209. ALTERNATE TERMINATION METHODS

1. Mutual Termination. Contracts may be terminated by mutual consent via a bilateral modification to the contract.

2. Notice termination. A contract may be terminated by USNA or the contractor by written notice to the other party within the specified notice period, provided this termination clause is included in the contract. The specified time period is normally 30 to 90 days, so that USNA has time to negotiate a new contract.

a. Upon receipt of a notice termination, the contracting officer shall acknowledge the notice in writing, clearly establish the time and date of termination, and direct other action as appropriate.

b. If notice is not provided in writing or within the specified time period, and the contractor pursues termination, the contract may be in default.

7210. CONTRACTOR CLAIMS IN CONJUNCTION WITH TERMINATION. Termination of a contract is not in itself a final decision on a contractor claim. If, after a termination notice is received, a contractor requests monetary or other relief, the contracting officer shall coordinate appropriate action with USNA Counsel.

7211. RELEASE OF CLAIMS. USNA shall obtain a Release of Claims, which absolves USNA from further contractor claims, as part of all termination actions. Consult USNA Counsel for additional guidance.

7212. CONTRACT CLOSEOUT. Contracts are considered to be closed when:

1. The contractor has completed the required deliveries and the equipment or supplies have been accepted by USNA; and

2. The contractor has performed all services and they have been accepted by USNA; and

3. All option provisions have expired, or USNA elects not to exercise option provisions; and

4. Final payment has been made.

7213. ELECTRONIC SYSTEM CLOSEOUT. Completed procurement actions in the electronic procurement system will be closed-out and cancelled so the records are purged from the system. Most purchase orders and delivery orders should be closed annually. Multi-year contracts may remain open until contract completion.

7214. RETIRING CONTRACT FILES

1. When a contract expires through termination or otherwise, the file shall be retired through procedures set out in SECNAVINST 5212.5D, Records Disposition Manual. Identify contracts by number on the outside of storage boxes, and in a file retained in the procurement office or other authorized space, so contracts may be easily retrieved should the need arise.

2. If a claim or dispute is involved, the contract file shall not be retired until the claim or dispute is settled.

**GENERAL PROVISIONS (<$25K) FOR SUPPLIES AND SERVICES – July 2011**
**United States Naval Academy (USNA) (Nonappropriated Funds)**

1. **Delivery Instructions**. (a) Include itemized packing list with shipment; (b) Clearly mark order number on the outside of each carton.

2. **Billing Instructions**. (a) Issue separate invoice for each order; (b) Mail invoice under separate cover (do not pack invoice with items shipped); (c) Transportation charges must be identified and added to invoice, if applicable; and (d) Include full name and address of the USNA Activity and order number on all delivery documents.

3. **Prices**. Supplier guarantees that prices quoted, including any discounts and other terms and conditions, do not exceed prices charged the Supplier's other customers for like items in similar quantities under comparable conditions in the same time frame. If the Supplier subsequently agrees to sell the item to another customer at lower prices, Supplier is obligated to promptly offer the lower price in writing to the USNA Activity. In the event the Supplier extends voluntary price reductions, promotional offers, or other special terms to other customers, the Supplier is obligated to extend the same to the USNA Activity.

4. **Backorders**. Backorders shall be shipped prepaid at the expense of the Supplier if the multiple shipment results in a total transportation cost higher than the transportation cost of a single shipment. This paragraph does not apply if this order specifies separate shipments or if shipments are to be made via the USPS, UPS, or other courier service.

5. **Changes/Substitutions**. Only the Contracting Officer has the authority to make changes to this order. All changes will be made by written modification.

6. **Inspection**. Inspection will be made after delivery at the destination specified in the order. Any items or services that do not conform to the order specifications will be rejected and any expense resulting from such non-conformance will be the responsibility of the Supplier. Any item delivered under this order found to have latent defect(s) may be returned to the Supplier for replacement or refund. In the event item(s) are returned for refund, the USNA Activity may purchase the same or similar item(s) as those returned and the Supplier will be liable for all excess costs.

7. **Warranties**. The Supplier warrants that the items delivered under this order are merchantable and fit for use for the particular purpose described in this order. Additionally, the items or services furnished under this order are covered by the most favorable warranties the Supplier gives to any customer for such items or services.

8. **Advertisements**. The Supplier shall not represent in any manner, express or implied, that it is an agent of the U.S. Government, the U.S. Navy, or the USNA Activity. Supplier shall not represent that items or services purchased under this order are approved or endorsed by any element of the United States Government.

9. **Examination of Records**. (a) This 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 the Contracting Officer's 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 until the expiration of three (3) years after final payment under the contract. (b) The contractor agrees to include the clause in (a) above, in all subcontracts hereunder that exceed $10,000.

10. **Non-discrimination Clause**. Each order over $10,000 will comply with the requirements of Executive Order No. 11246, as amended.

11. **Obligations**. Only nonappropriated funds will become due and payable as the result of any claims or liabilities that result from this order. This order shall not be construed to obligate any appropriated funds of the United States.

12. **Disputes**. Any dispute or claim concerning this order which is not settled by agreement shall be decided by the Contracting Officer, who will provide a written decision by mail or otherwise to the Supplier. Within 90 days from the date of receipt, the Supplier may appeal the decision of the Contracting Officer to the Superintendent. When applicable, disputes will be processed in accordance with the Contract Disputes Act of 1978. Pending final decision on any dispute, the Supplier shall proceed diligently with the performance of this order and in accordance with the Contracting Officer's decision.

13. **Termination for Convenience**. The USNA Activity reserves the right to terminate this order, or any part of it, for its convenience. The USNA Activity will only be liable for items or services accepted and for items or services not past due which were scheduled for delivery within ten days after receipt of the termination notice.

14. **Termination for Cause**. The Contracting Officer may, by written notice, terminate this order, or any part of it, for cause in the event of any default by the Supplier. In the event of termination for cause, the USNA Activity shall not be liable for any amount of items or services not accepted, and the Supplier shall be liable to the USNA Activity for any and all rights and remedies provided by law. If it is determined that the USNA Activity improperly terminated this order for default, such termination shall be deemed a termination for convenience.

15. **Taxes**. This purchase is not subject to state or local taxes. Supplier is not an agent of the USNA Activity or the U.S. Government. Supplier is responsible and assumes complete liability for all federal, state, and local taxes applicable to its property, income and transactions relating to this order.

16. **Legal Status and Governing Law**. The Naval Academy Business Services Division (NABSD), the Midshipmen Welfare Fund (MWF), the Midshipmen Ration Account (MRA), the Naval Academy Preparatory School (NAPS) Battalion Activity Fund (BAF), and the Candidate Guidance Fund (CGF) are Nonappropriated Fund Instrumentalities (NAFIs) of the U.S. Government. NAFIs, its officers, offices, annexes, and individual outlets are an integral part of the U.S. Government and share in all privileges and immunities thereto. The laws applied by the federal court in the applicable jurisdiction will govern this order. USNA procurement is governed by Department of Defense Instruction (DODI) 4105.71 available at http://www.dtic.mil/whs/directives/corres/pdf/410571p.pdf.

17. **Labor Relations and Standards**. The Vendor shall be responsible to comply with any and all laws which may from time to time be in effect governing the hours, wages, labor relations (including collective bargaining), workmen's compensation, working conditions and other matters pertaining to labor standards of the country, or political matters pertaining to labor standards of the country, or political subdivision thereof, wherin this contract is to be performed.

18. **Force Majeure**. Neither party shall be liable in damages for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control, but not limited to Acts of God, Government restrictions, wars, terrorism, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

**Supplier Must Notify the USNA Activity Immediately if it is Unable to Complete Order by Required Date**

**GENERAL PROVISIONS (≥$25K) FOR SUPPLIES AND SERVICES – July 2011**
**United States Naval Academy (USNA) (Nonappropriated Funds)**

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1. **DEFINITIONS**. As used throughout this contract, the following terms shall have the meaning set out below:

a. "USNA" identifies the United States Naval Academy. "NABSD" identifies the Naval Academy Business Services Division. "MWF" identifies the Midshipmen Welfare Fund. "MRA" identifies the Midshipmen Ration Account. "NAPS BAF" identifies the Naval Academy Preparatory School Battalion Activity Fund. "CGF" identifies the Candidate Guidance Fund.

b. "Contract" identifies this contract or any modification thereto.

c. "Contracting Officer" means a person authorized in writing to execute and administer the contract on behalf of USNA. It includes said contracting officer's successor or successors. (NOTE: Only the contracting officer may waive or change contract terms; impose additional contract requirements, issue cure, show cause, or termination notices; or render final decisions according to contract terms.) Other USNA and government officials who are by virtue of their positions concerned with the administration and operation of this contract may take certain administrative actions on behalf of the contracting officer. These officials may conduct inspections, process and collect contract payments, make administrative decisions, and perform other duties of an administrative nature. All questions concerning the authority of other USNA or government officials should be referred to the contracting officer.

d. "Contractor" means the individual, partnership, corporation, or other entity which is a party to this contract and who is responsible for all actions, performance and work thereunder, to include that of any subcontractor.

2. **LEGAL STATUS**. USNA activities (NABSD, MWF, MRA, NAPS BAF and CGF) are an integral part of the Department of Defense, and are Non-Appropriated Fund Instrumentalities (NAFIs) of the United States Government. USNA contracts are United States contracts; however, they do not obligate

appropriated funds of the United States except for a judgment or compromise settlement in suits brought under provisions of the Contract Disputes Act (41 USC 601-613), in which event USNA will reimburse the United States Government (31 USC 1304 [c]). USNA procurement is governed by Department of Defense Instruction (DODI) 4105.71 available at http://www.dtic.mil/whs/directives/corres/pdf/410571p.pdf.

(NOTE: The Federal Acquisition Regulation [FAR] published pursuant to the Office of Federal Procurement Policy Act of 1974, as amended, applies to procurements with appropriated funds. It does not apply to USNA procurement except for those provisions of the FAR that have been administratively adopted by USNA.)

3. **EXAMINATION OF RECORDS**

a. This 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 his 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 until the expiration of three (3) years after final payment under the contract.

b. The Contractor agrees to include clause "a" in all subcontracts hereunder which exceed $10,000.

4. **OFFICIALS NOT TO BENEFIT**. No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

5. **GRATUITIES**. USNA activities (NABSD, MWF, MRA, NAPS BAF and CGF) may terminate the right of the Contractor to proceed if, after notice and hearing, the agency head or designee determines that the Contractor, its agent, or another representative—

a. Offered or gave a gratuity (i.e., entertainment or gift) to an officer, official, or employee of the USNA or U.S. Navy; and

b. Intended, by the gratuity, to obtain a contract or favorable treatment under a contract. If this contract is terminated per this clause, the USNA is entitled to pursue the same remedies as in a breach of the contract.

6. **ORAL REPRESENTATIONS**. This written contract includes the entire agreement between the parties. USNA will not be bound by any oral or written representation not included in the written contract or a change or amendments thereto. USNA will not be bound by any terms on Contractor forms or letter unless such terms are specifically agreed to and incorporated in the contract and signed by the Contracting Officer.

7. **CHANGES**. The Contracting Officer may at any time, by a written order, make changes within the general scope of the contract, in any one or more of the following:

a. drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for USNA in accordance with such drawings, designs, or specifications;

b. time of delivery;

c. place of delivery; or

d. method of shipment or packing.

If any such change causes an increase or decrease in the cost of performing this contract, the Contracting Officer shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly. Any claim by Contractor for adjustment under this clause must be asserted no later than 30 days from the date of receipt by the Contractor of the notification of change. Claims for constructive changes to the contract will not be considered.

8. **REPRESENTATIONS**. The Contractor shall not represent itself to be an agent or representative of USNA, one of its NAFIs (NABSD, MWF, MRA, NAPS BAF and CGF), or any other agency or instrumentality of the United States.

9. **ADVERTISEMENTS**. The Contractor shall not represent in any manner, expressly or by implication, that items or services purchased or sold under this contract are approved or endorsed by any element of the U.S. Government. Any advertisement by the Contractor which refers to a military resale or USNA activity will contain a statement that the advertisement was neither paid for nor sponsored, in whole or in part, by the particular activity.

10. **SUBCONTRACTING**. Contractor shall not subcontract any part of the work to be performed without the prior written consent of the Contracting Officer. Any subcontractor used in connection with this contract is the agent of the Contractor and not the agent of USNA.

11. **ASSIGNMENT**. Contractor shall not assign its rights or delegate its obligations under this contract without the prior written consent of the Contracting Officer.

12. **REPRESENTATIVES**. Contractor is fully responsible for the actions of all contractor employees, agents, and representatives. Books and records of contractor representatives are subject to examination and audit under the Examination of Records clause of the contract.

13. **TAXES**. Contractor assumes complete and sole liability for all federal, state, and local taxes applicable to the property, income, and transactions of the Contractor. The prices charged USNA under this contract will be deemed to include all applicable taxes. The prices charged will not include any amount for taxes which are not applicable:

a. by reason of USNA activities (NABSD, MWF, MRA, NAPS BAF and CGF) legal status as an instrumentalities of the United States government; or

b. by reason of USNA immunity from direct state or local taxation; or

c. by reason of federal, state, or local tax exemptions for sales to the Federal Government; or

d. otherwise, such as items purchased for export.

It will be the sole responsibility of Contractor to demonstrate, to the reasonable satisfaction of the Contracting Officer, the applicability and amount of any taxes which are included in the prices charged USNA. The Contracting Officer, upon request, will furnish additional documentation to support tax exemptions if required by an appropriate tax authority.

14. **PERMITS AND LICENSES**. Contractor shall, at his own expense, obtain all necessary permits, give all notices, pay all license fees and comply with all laws, rules, ordinances, and regulations relating to the preservation of the public health or applicable to the service or business carried on under this contract. The burden of determining applicability of licensing requirements, laws, ordinances, and regulations for Contractor and his employees rests with the Contractor.

15. **NON-WAIVER OF DEFAULTS**. Any failure by USNA at any time or from time to time to enforce or require strict performance of any terms or conditions of this contract will not constitute waiver thereof and

will not affect or impair such terms and conditions in any way or USNA's right at any time to avail itself of such remedies as it may have for breach or breaches of such terms and conditions.

16. **INDEMNIFY AND HOLD HARMLESS**

a. Contractor shall indemnify, hold harmless and defend USNA activities (NABSD, MWF, MRA, NAPS BAF and CGF) and all other agencies and instrumentalities of the United States, their agents, representatives, employees and customers from any and all suits, judgments and claims, including those established by or pursuant to court decisions, to international agreements, or duly promulgated regulations of the United States Government, and all charges and expenses incident thereto which arise out of or in connection with:

(1) The alleged or established violation or infringement of any patent, copyright or trademark rights asserted by any third party with regard to items or services provided by Contractor;

(2) Loss, death, damage or injury alleged or established to have arisen out of or in connection with products, services, or equipment provided by Contractor, unless such loss, death, damage, or injury was caused by or resulted solely from the acts or omissions of USNA, its agents, representatives, or employees.

(3) Any loss, death, damage, or injury alleged or established to have arisen out of or in connection with any other acts or omissions of the Contractor, the Contractor's subcontractors, representatives, agents, or employees.

b. USNA will give Contractor notice and an opportunity to defend.

17. **INSURANCE**. The Contractor shall maintain, during any contract period, insurance coverage as stated in this contract, with insurance company(ies) acceptable to USNA. All liability insurance coverage will name the United States and USNA as additional and several insureds for claims, demands, suits, judgments, costs, charges, and expenses arising out of or in connection with any loss, damage, or injury resulting from the negligence or other fault of Contractor, or Contractor's agents, representatives, or employees.

18. **WARRANTY**. Contractor warrants that:

a. The items furnished shall be merchantable, and fit and sufficient for the use intended and are not "seconds" as the term is normally understood in the trade. This warranty shall survive acceptance by USNA of the items and is in addition to other warranties of additional scope given by the Contractor to USNA.

b. The items or services furnished under this contract are covered by the most favorable warranties the Contractor gives to any customer for such items or services and that the rights and remedies provided in the Contractor's warranties are in addition to and do not limit any rights afforded to USNA by any other clause of this contract.

c. Where applicable, the items furnished under this contract have been manufactured in accordance with Underwriter's Laboratories, Inc. (UL) standards, or if manufactured overseas, the overseas equivalent of UL and the applicable item and/or component items carry the appropriate UL or overseas equivalent Seal of Approval.

d. Items, packing, and packaging provided will comply with all contract terms and with all laws, rules, and regulations applicable to delivery for domestic resale. Contractor shall comply with the Magnuson-Moss Warranty Act on all sales to USNA.

19. **ITEM SUBSTITUTION AND VARIATION IN QUANTITY**. No substitution or variation in the quantity of any item called for by this contract will be accepted unless authorized by the Contracting Officer.

20. **NON-EXCLUSIVE CONTRACT**. Unless specified elsewhere, this contract does not establish Contractor as the sole supplier of goods or services to be provided on this military installation.

21. **INSPECTION AND ACCEPTANCE**. Inspection and acceptance shall be made by the government per Section E of this contract.

a. The Contractor shall maintain an in-process and end-item quantity control program to ensure shipments to USNA activities do not include defective/nonconforming items.

b. Inspection and acceptance shall not be conclusive with respect to latent defects or fraud, or with respect to USNA rights under the warranty provisions contained herein.

c. In case any supplies or services are defective in material or workmanship, or are otherwise not in conformity with the requirements of this contract, USNA shall have the right to reject such supplies or services, or to require replacement or correction. Rejected supplies shall be removed by and at the expense of the Contractor promptly after notice. If required by USNA, the Contractor, after notice of defect or non-conformance, shall with all possible speed, correct or replace the defective or non-conforming supplies or services, or any part thereof. When such rejection, correction or replacement requires transportation of the supplies or part thereof, all shipping and administrative costs to and from the Contractor's plant shall also be borne by the Contractor.

d. In the event the Contractor is unable to replace/reperform products/services and the Contractor refunds the purchase price, the Contractor shall be liable to USNA for the additional costs of reprocurement (if any).

e. The provisions of this clause do not affect the rights or obligations of either party, as they may be provided for in other portions of this contract or otherwise under applicable law.

22. **INVOICING AND PAYMENT**

a. **Invoicing Instructions**. In order to be considered proper invoices for purposes of the Prompt Payment Act, invoices must be submitted as follows:

(1) Contractor must prepare a separate numbered invoice for each order or part of an order. Do not consolidate multiple purchase orders on one invoice. Additionally, when partial shipments are authorized, use a separate invoice. Do not duplicate an invoice number used for prior billings.

(2) Invoices must be issued by the company whose name is on the contract/order (unless otherwise authorized by Contracting Officer) and must contain the following minimum information to enable timely payment:

(a) Name of Contractor.

(b) Invoice date. This cannot be a date earlier than the ship date required by the contract or purchase/delivery order. In the event that the invoice date is a date earlier than the required ship date, USNA retains the right either to return the improper invoice to the Contractor for correction or to change the invoice date to be the required ship date. In the event that an improper invoice is returned to a Contractor because the date on the invoice is earlier than the required ship date or because the invoice is improper for any other reason, the invoice date, for purposes of prompt payment discounts, will be considered to be the date of receipt of the corrected, proper invoice.

(c) Contract or purchase/delivery order number.

(d) Item description and quantity shipped/delivered.

(e) Contract/order line item cost and total.

(f) Shipping and discount terms, including prompt payment discounts, and special allowance(s) if included in the contract. Prompt payment discounts and special allowances must be shown on the invoice using percentage figures only. Do not deduct any of these from the item cost or from the invoice total.

(g) "Ship To" address as shown on order or contract.

(h) Freight charges (on FOB origin shipments).

(i) Name, title and phone number of Contractor's contact person.

(j) Complete "remit to" mailing address on the invoice to indicate where Contractor's payment is to be sent. This address must be the same address as on the contract unless in accordance with paragraph b(7) below.

(3) Correcting invoices and credit memos must be marked as such and must cross-reference the corrected invoice.

b. **Payment**

(1) A proper invoice is an invoice which contains all of the information/documentation specified in paragraph a.(2) above, and is sent to the address specified in the contract or purchase/delivery order for the designated USNA paying office. Improper invoices may be returned without payment to the Contractor.

(2) The net payment date for USNA contracts is established at 30 days after receipt of a proper invoice. Discounts for prompt payment, if included in the contract, will be applied as follows:

(a) If the contract or purchase order specifies a prompt payment discount period of less than 30 days, the discount will be taken if payment can be made within the stated period; otherwise the net payment will be due 30 days after receipt of a proper invoice.

(b) If the contract or purchase order specifies a prompt payment discount period of 30 days or more, the discount will be taken if payment can be made within the stated period; otherwise the net payment will be due 30 days after the prompt payment discount period ends.

(c) If the contract fails to specify any prompt payment discount, then net payment will be due 30 days after receipt of a proper invoice.

(3) In the event that a prompt payment discount, or other special discounts or allowances specified on Contractor's invoice are better than that specified in the contract or purchase order, USNA may take the more favorable discounts and/or allowances.

(4) For the purpose of determining whether payment is timely made by USNA, a "day" is counted for each calendar day. When payments fall due on Saturday, Sunday or legal Federal holidays, payments made the following business day will not incur late payment interest penalties.

(5) A discount for prompt payment can be taken by USNA if the discounted payment is made within the discount period specified. The prompt payment discount period begins to run on the date of the invoice. Computation of the period for prompt payment discounts begins with the date of invoice; computation for net payment begins with receipt of a proper invoice.

(6) Payment is made:

(a) the date a check for payment is dated.

(b) the date an electronic fund transfer is received, regardless of the date the financial institution posts the transfer.

(c) the date a withholding authorized by the contract is initiated by USNA.

(7) Payment will be made by mailing a check to the address shown on the contract, unless the Contractor provided a different "remit to" address to the Contracting Officer at the time the terms were negotiated or the contract was issued.

(a) If a Contractor wishes to change the address (e.g., street, P.O. box, city/state) to which payment should be sent or wishes its payments to also reflect a factor's name and be sent to the factor's address, the request must be in writing, signed by a responsible official of the Contractor, and submitted to the Contracting Officer. All such requests must clearly establish which division or subsidiary of a corporation such changes apply to and the address which is superseded by the changes. These changes will become effective on the date determined by USNA, normally 30 days after approval. Changes will be done on an accommodation basis only, with the understanding that no legal obligation is imposed on USNA for failure to make payment to the new payee/address.

(b) Any request by the Contractor to change the name shown on the contract or to delegate its obligation under the contract must be sent to the Contracting Officer.

(8) Any questions or inquiries concerning invoice payments should be directed to the USNA paying office designated on the contract or purchase/delivery order.

(9) Any interest penalties due to Contractors will be computed in accordance with the Prompt Payment Act, 31 U.S.C. 3901-3906, as amended.

23. **WITHHOLDING**. USNA may withhold payment for:

a. Amounts due or creditable to USNA under this contract, e.g., returns, damages.

b. Amounts otherwise due or creditable to USNA. Any dispute will be processed under the Disputes clause of this contract unless it became due pursuant to another contract which included a Disputes clause.

24. **DISPUTES**

a. This contract is not subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613). All disputes arising under or relating to this contract will be resolved under this clause.

b. "Claim" as used in this clause means a written demand or written assertion by one of the contracting parties seeking the payment of money in a sum certain or other relief arising under or relating to this contract. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under this clause.

c. Contractor must submit any request for monetary or other relief relating to this contract in writing to the Contracting Officer. The request must specify the amount of money or the other relief requested and include all supporting data. In addition, with the request or any amendment thereto, Contractor must submit a signed certificate reading as follows:

"I certify that this request and any ensuing claim are made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief, and that any amount requested accurately reflects the amount for which Contractor believes USNA is liable.

_____
(Signature of Individual Authorized to Bind Contractor)"

(NOTE: SUBMISSION OF FALSE CLAIMS IS A VIOLATION OF FEDERAL LAW AND MAY RESULT IN CIVIL AND OR CRIMINAL PENALTIES.)

d. Contractor's request for payment of money or other relief is not a "claim" until:

(1) A written request has been received by the Contracting Officer complying fully with subparagraph "c" above,

(2) A dispute arises between the parties after a reasonable time for review and disposition, and

(3) Contractor requests the Contracting Officer to issue a final decision.

e. Contractor's request for a contract modification or for relief that is discretionary with the Contracting Officer will not be considered a "claim."

f. All disputed claims relating to this contract will be decided by the Contracting Officer, who will issue a written Final Decision and mail or otherwise furnish a copy thereof to Contractor.

g. The Contractor may appeal the Contracting Officer's dispute decision by mailing or otherwise furnishing the written appeal (two copies) addressed to the Superintendent, and furnishing a copy of the appeal to the Contracting Officer within 90 days of receipt of the Contracting Officer's decision. The decision of the Superintendent is final and conclusive and not subject to further appeal.

h. Pending final resolution on any request for relief, disputed claim, appeal, or action, related to this contract, Contractor will proceed diligently with the performance of this contract and will comply with the Contracting Officer's decisions.

i. If Contractor cannot support any part of its claim as a result of fraud or misrepresentation of fact, then, in addition to other remedies or penalties provided for by law, Contractor will pay USNA an amount equal to the unsupported part of the claim plus all USNA costs attributable to reviewing that part of the claim.

25. **CONTRACTOR LIABILITY**

a. Except as set out specifically elsewhere in the contract, Contractor shall be liable for costs to USNA and other agencies of the United States associated with termination for default, rejection of items, and breach of warranty, in addition to reimbursement of payment of the purchase price and reprocurement costs.

b. Contractor will not be liable for damages if the failure to perform arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In such case, Contractor shall provide prompt written notice to the Contracting Officer; the Contracting Officer, at his option may accept late, partial or substituted performance, or may terminate the contract in whole or in part effective immediately upon receipt of written notice by Contractor.

26. **TERMINATION**. The rights and remedies of USNA provided in this clause are in addition to any other rights and remedies provided by law or under other clauses of this contract.

a. Termination for Default. USNA 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 costs of reprocuring similar products and services provided that if (i) the Contractor was not in default; or (ii) the Contractor's failure to perform is without his/her or his/her subcontractor's control or negligence, the termination shall be deemed a "Termination for Convenience."

b. Termination for Convenience. USNA by written notice may terminate this contract in whole or in part when it is in the best interest of USNA. If this contract is for products and services and is so terminated, the Contractor shall be compensated in accordance with Federal Acquisition Regulation in effect on this contract's date. To the extent that this contract is for services and is so terminated, the USNA shall be liable for payment as set forth in the payment provisions of this contract for services rendered prior to the effective date of termination.

c. Mutual Termination. This contract may be terminated by mutual agreement of both the USNA and the Contractor at any time by contract modification.

27. **REQUESTS FOR MONETARY OR OTHER RELIEF**. No claim by Contractor may be considered unless submitted in writing to the Contracting Officer within 90 days after termination of performance under the contract. This clause, however, will not extend the period for filing claims which is further limited by another clause of the contract.

28. **NOTIFICATION OF DEBARMENT OR SUSPENSION STATUS**. The Contractor shall provide immediate notice to the Contracting Officer in the event of being suspended, debarred or declared ineligible by any Federal Department or Agency, or upon receipt of a notice of proposed debarment from another DoD Agency, during the performance of this contract.

29. **EQUAL EMPLOYMENT OPPORTUNITY**

a. The Contractor agrees to comply with regulations of the Department of Labor contained in Title 41, Code of Federal Regulations, Chapter 60, which are incorporated herein by reference.

b. A contract award in the amount of $10,000 or more shall not be made unless the Contractor, and each first-tier subcontractor which will receive a subcontract of $10,000 or more, are found on the basis of a review to be in compliance with the Equal Employment Opportunity regulations of the Department of Labor.

30. **EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS.** If this contract equals or exceeds $10,000, and is not otherwise exempt, the Contractor agrees to comply with the regulations of the Department of Labor and the Office of Federal Contract Compliance Program, and the Affirmative Action clause as set out in Title 41, Code of Federal Regulations, Part 60-250, which are incorporated herein by reference.

31. **AFFIRMATIVE ACTION AND NONDISCRIMINATION FOR WORKERS WITH DISABILITIES**. If the contract amount equals or exceeds $10,000, and is not otherwise exempt, the Contractor agrees to comply with the regulations of the Department of Labor and the Affirmative Action clause as set forth in Title 41, Code of Federal Regulations, Part 60-741, which are incorporated herein by reference.

32. **CONVICT LABOR**. Except as provided in 48 CFR 5222-3, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment.

33. **DRUG-FREE WORK PLACE**. To the extent applicable, the Contractor will comply with the requirements of the Drug Free Workplace Act of 1988 (41 USC sec. 701, Pub. L. 100-690, as amended).

34. **ACCIDENT PREVENTION, FIRE PROTECTION, AND SANITATION**. If this contract is performed in whole or in part on premises owned or under the control of the United States Government or USNA, the Contractor shall conform to all safety regulations and requirements concerning such premises in effect any time during the performance of the contract and take all necessary steps and precautions to prevent accidents. Any violation of safety regulations, unless immediately corrected as directed by the Contracting Officer, shall be grounds for termination of the contract under the "Termination For Default" clause.

35. **ENVIRONMENTAL PROTECTION**. The Contractor will comply with all applicable Environmental Protection laws and regulations.

36. **PERSONAL IDENTIFICATION OF CONTRACTOR PERSONNEL**. Contractor and any subcontractors shall be required to comply with applicable USNA identity verification procedures, installation access requirements, and security clearance policies.

37. **RESTRICTIONS ON PURCHASES OF FOREIGN GOODS**

a. Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

b. Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at http://www.treas.gov/offices/enforcement/ofac/sdn. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at http://www.treas.gov/offices/enforcement/ofac.

c. The Contractor shall insert this clause, including this paragraph c., in all subcontracts.

**GENERAL PROVISIONS (≥$25K) FOR RETAIL SUPPLIES AND SERVICES – July 2011**
**United States Naval Academy (USNA) (Nonappropriated Funds)**

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38 ROBINSON-PATMAN ACT
39 PRICES
40 SURVEILLANCE
41 SELL PRICE
42 CONFORMANCE WITH APPLICABLE LAWS AND REGULATIONS

1. **DEFINITIONS**. As used throughout this contract, the following terms shall have the meaning set out below:

a. "USNA" identifies the United States Naval Academy. "NABSD" identifies the Naval Academy Business Services Division.

b. "Contract" identifies this contract or any modification thereto.

c. "Contracting Officer" means a person authorized in writing to execute and administer the contract on behalf of USNA. It includes said contracting officer's successor or successors. (NOTE: Only the contracting officer may waive or change contract terms; impose additional contract requirements, issue cure, show cause, or termination notices; or render final decisions according to contract terms.) Other USNA and government officials who are by virtue of their positions concerned with the administration and operation of this contract may take certain administrative actions on behalf of the contracting officer. These officials may conduct inspections, process and collect contract payments, make administrative decisions, and perform other duties of an administrative nature. All questions concerning the authority of other USNA or government officials should be referred to the contracting officer.

d. "Contractor" means the individual, partnership, corporation, or other entity which is a party to this contract and who is responsible for all actions, performance and work thereunder, to include that of any subcontractor.

2. **LEGAL STATUS**. USNA activities within NABSD are an integral part of the Department of Defense, and are a Non-Appropriated Fund Instrumentalities (NAFI) of the United States Government. USNA contracts are United States contracts; however, they do not obligate appropriated funds of the United

States except for a judgment or compromise settlement in suits brought under provisions of the Contract Disputes Act (41 USC 601-613), in which event USNA will reimburse the United States Government (31 USC 1304 [c]). USNA procurement is governed by Department of Defense Instruction (DODI) 4105.71 available at http://www.dtic.mil/whs/directives/corres/pdf/410571p.pdf.

(NOTE: The Federal Acquisition Regulation [FAR] published pursuant to the Office of Federal Procurement Policy Act of 1974, as amended, applies to procurements with appropriated funds. It does not apply to USNA procurement except for those provisions of the FAR that have been administratively adopted by USNA.)

3. **EXAMINATION OF RECORDS**

a. This 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 his 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 until the expiration of three (3) years after final payment under the contract.

b. The Contractor agrees to include clause "a" in all subcontracts hereunder which exceed $10,000.

4. **OFFICIALS NOT TO BENEFIT**. No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

5. **GRATUITIES**. USNA activities within NABSD may terminate the right of the Contractor to proceed if, after notice and hearing, the agency head or designee determines that the Contractor, its agent, or another representative—

a. Offered or gave a gratuity (i.e., entertainment or gift) to an officer, official, or employee of the USNA or U.S. Navy; and

b. Intended, by the gratuity, to obtain a contract or favorable treatment under a contract. If this contract is terminated per this clause, the USNA is entitled to pursue the same remedies as in a breach of the contract.

6. **ORAL REPRESENTATIONS**. This written contract includes the entire agreement between the parties. USNA will not be bound by any oral or written representation not included in the written contract or a change or amendments thereto. USNA will not be bound by any terms on Contractor forms or letter unless such terms are specifically agreed to and incorporated in the contract and signed by the Contracting Officer.

7. **CHANGES**. The Contracting Officer may at any time, by a written order, make changes within the general scope of the contract, in any one or more of the following:

a. drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for USNA in accordance with such drawings, designs, or specifications;

b. time of delivery;

c. place of delivery; or

d. method of shipment or packing.

If any such change causes an increase or decrease in the cost of performing this contract, the Contracting Officer shall make an equitable adjustment in the contract price and the contract shall be

modified in writing accordingly. Any claim by Contractor for adjustment under this clause must be asserted no later than 30 days from the date of receipt by the Contractor of the notification of change. Claims for constructive changes to the contract will not be considered.

8. **REPRESENTATIONS**. The Contractor shall not represent itself to be an agent or representative of USNA, NABSD, or any other agency or instrumentality of the United States.

9. **ADVERTISEMENTS**. The Contractor shall not represent in any manner, expressly or by implication, that items or services purchased or sold under this contract are approved or endorsed by any element of the U.S. Government. Any advertisement by the Contractor which refers to a military resale or USNA activity will contain a statement that the advertisement was neither paid for nor sponsored, in whole or in part, by the particular activity.

10. **SUBCONTRACTING**. Contractor shall not subcontract any part of the work to be performed without the prior written consent of the Contracting Officer. Any subcontractor used in connection with this contract is the agent of the Contractor and not the agent of USNA.

11. **ASSIGNMENT**. Contractor shall not assign its rights or delegate its obligations under this contract without the prior written consent of the Contracting Officer.

12. **REPRESENTATIVES**. Contractor is fully responsible for the actions of all contractor employees, agents, and representatives. Books and records of contractor representatives are subject to examination and audit under the Examination of Records clause of the contract.

13. **TAXES**. Contractor assumes complete and sole liability for all federal, state, and local taxes applicable to the property, income, and transactions of the Contractor. The prices charged USNA under this contract will be deemed to include all applicable taxes. The prices charged will not include any amount for taxes which are not applicable:

a. by reason of USNA activities within NABSD's legal status as an instrumentality of the United States government; or

b. by reason of USNA immunity from direct state or local taxation; or

c. by reason of federal, state, or local tax exemptions for sales to the Federal Government; or

d. otherwise, such as items purchased for export.

It will be the sole responsibility of Contractor to demonstrate, to the reasonable satisfaction of the Contracting Officer, the applicability and amount of any taxes which are included in the prices charged USNA. The Contracting Officer, upon request, will furnish additional documentation to support tax exemptions if required by an appropriate tax authority.

14. **PERMITS AND LICENSES**. Contractor shall, at his own expense, obtain all necessary permits, give all notices, pay all license fees and comply with all laws, rules, ordinances, and regulations relating to the preservation of the public health or applicable to the service or business carried on under this contract. The burden of determining applicability of licensing requirements, laws, ordinances, and regulations for Contractor and his employees rests with the Contractor.

15. **NON-WAIVER OF DEFAULTS**. Any failure by USNA at any time or from time to time to enforce or require strict performance of any terms or conditions of this contract will not constitute waiver thereof and will not affect or impair such terms and conditions in any way or USNA's right at any time to avail itself of such remedies as it may have for breach or breaches of such terms and conditions.

16. **INDEMNIFY AND HOLD HARMLESS**

a. Contractor shall indemnify, hold harmless and defend USNA activities within NABSD and all other agencies and instrumentalities of the United States, their agents, representatives, employees and customers from any and all suits, judgments and claims, including those established by or pursuant to court decisions, to international agreements, or duly promulgated regulations of the United States Government, and all charges and expenses incident thereto which arise out of or in connection with:

(1) The alleged or established violation or infringement of any patent, copyright or trademark rights asserted by any third party with regard to items or services provided by Contractor;

(2) Loss, death, damage or injury alleged or established to have arisen out of or in connection with products, services, or equipment provided by Contractor, unless such loss, death, damage, or injury was caused by or resulted solely from the acts or omissions of USNA, its agents, representatives, or employees.

(3) Any loss, death, damage, or injury alleged or established to have arisen out of or in connection with any other acts or omissions of the Contractor, the Contractor's subcontractors, representatives, agents, or employees.

b. USNA will give Contractor notice and an opportunity to defend.

17. **INSURANCE**. The Contractor shall maintain, during any contract period, insurance coverage as stated in this contract, with insurance company(ies) acceptable to USNA. All liability insurance coverage will name the United States and USNA as additional and several insureds for claims, demands, suits, judgments, costs, charges, and expenses arising out of or in connection with any loss, damage, or injury resulting from the negligence or other fault of Contractor, or Contractor's agents, representatives, or employees.

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a. The items furnished shall be merchantable, and fit and sufficient for the use intended and are not "seconds" as the term is normally understood in the trade. This warranty shall survive acceptance by USNA of the items and is in addition to other warranties of additional scope given by the Contractor to USNA.

b. The items or services furnished under this contract are covered by the most favorable warranties the Contractor gives to any customer for such items or services and that the rights and remedies provided in the Contractor's warranties are in addition to and do not limit any rights afforded to USNA by any other clause of this contract.

c. Where applicable, the items furnished under this contract have been manufactured in accordance with Underwriter's Laboratories, Inc. (UL) standards, or if manufactured overseas, the overseas equivalent of UL and the applicable item and/or component items carry the appropriate UL or overseas equivalent Seal of Approval.

d. Items, packing, and packaging provided will comply with all contract terms and with all laws, rules, and regulations applicable to delivery for domestic resale. Contractor shall comply with the Magnuson-Moss Warranty Act on all sales to USNA.

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21. **INSPECTION AND ACCEPTANCE**. Inspection and acceptance shall be made by the government per Section E of this contract.

a. The Contractor shall maintain an in-process and end-item quantity control program to ensure shipments to USNA activities do not include defective/nonconforming items.

b. Inspection and acceptance shall not be conclusive with respect to latent defects or fraud, or with respect to USNA rights under the warranty provisions contained herein.

c. In case any supplies or services are defective in material or workmanship, or are otherwise not in conformity with the requirements of this contract, USNA shall have the right to reject such supplies or services, or to require replacement or correction. Rejected supplies shall be removed by and at the expense of the Contractor promptly after notice. If required by USNA, the Contractor, after notice of defect or non-conformance, shall with all possible speed, correct or replace the defective or non-conforming supplies or services, or any part thereof. When such rejection, correction or replacement requires transportation of the supplies or part thereof, all shipping and administrative costs to and from the Contractor's plant shall also be borne by the Contractor.

d. In the event the Contractor is unable to replace/reperform products/services and the Contractor refunds the purchase price, the Contractor shall be liable to USNA for the additional costs of reprocurement (if any).

e. The provisions of this clause do not affect the rights or obligations of either party, as they may be provided for in other portions of this contract or otherwise under applicable law.

22. **INVOICING AND PAYMENT**

a. **Invoicing Instructions**. In order to be considered proper invoices for purposes of the Prompt Payment Act, invoices must be submitted as follows:

(1) Contractor must prepare a separate numbered invoice for each order or part of an order. Do not consolidate multiple purchase orders on one invoice. Additionally, when partial shipments are authorized, use a separate invoice. Do not duplicate an invoice number used for prior billings.

(2) Invoices must be issued by the company whose name is on the contract/order (unless otherwise authorized by Contracting Officer) and must contain the following minimum information to enable timely payment:

(a) Name of Contractor.

(b) Invoice date. This cannot be a date earlier than the ship date required by the contract or purchase/delivery order. In the event that the invoice date is a date earlier than the required ship date, USNA retains the right either to return the improper invoice to the Contractor for correction or to change the invoice date to be the required ship date. In the event that an improper invoice is returned to a Contractor because the date on the invoice is earlier than the required ship date or because the invoice is improper for any other reason, the invoice date, for purposes of prompt payment discounts, will be considered to be the date of receipt of the corrected, proper invoice.

(c) Contract or purchase/delivery order number.

(d) Item description and quantity shipped/delivered.

(e) Contract/order line item cost and total.

(f) Shipping and discount terms, including prompt payment discounts, and special allowance(s) if included in the contract. Prompt payment discounts and special allowances must be

shown on the invoice using percentage figures only. Do not deduct any of these from the item cost or from the invoice total.

(g) "Ship To" address as shown on order or contract.

(h) Freight charges (on FOB origin shipments).

(i) Name, title and phone number of Contractor's contact person.

(j) Complete "remit to" mailing address on the invoice to indicate where Contractor's payment is to be sent. This address must be the same address as on the contract unless in accordance with paragraph b(7) below.

(3) Correcting invoices and credit memos must be marked as such and must cross-reference the corrected invoice.

b. **Payment**

(1) A proper invoice is an invoice which contains all of the information/documentation specified in paragraph a.(2) above, and is sent to the address specified in the contract or purchase/delivery order for the designated USNA paying office. Improper invoices may be returned without payment to the Contractor.

(2) The net payment date for USNA contracts is established at 30 days after receipt of a proper invoice. Discounts for prompt payment, if included in the contract, will be applied as follows:

(a) If the contract or purchase order specifies a prompt payment discount period of less than 30 days, the discount will be taken if payment can be made within the stated period; otherwise the net payment will be due 30 days after receipt of a proper invoice.

(b) If the contract or purchase order specifies a prompt payment discount period of 30 days or more, the discount will be taken if payment can be made within the stated period; otherwise the net payment will be due 30 days after the prompt payment discount period ends.

(c) If the contract fails to specify any prompt payment discount, then net payment will be due 30 days after receipt of a proper invoice.

(3) In the event that a prompt payment discount, or other special discounts or allowances specified on Contractor's invoice are better than that specified in the contract or purchase order, USNA may take the more favorable discounts and/or allowances.

(4) For the purpose of determining whether payment is timely made by USNA, a "day" is counted for each calendar day. When payments fall due on Saturday, Sunday or legal Federal holidays, payments made the following business day will not incur late payment interest penalties.

(5) A discount for prompt payment can be taken by USNA if the discounted payment is made within the discount period specified. The prompt payment discount period begins to run on the date of the invoice. Computation of the period for prompt payment discounts begins with the date of invoice; computation for net payment begins with receipt of a proper invoice.

(6) Payment is made:

(a) the date a check for payment is dated.

(b) the date an electronic fund transfer is received, regardless of the date the financial institution posts the transfer.

(c) the date a withholding authorized by the contract is initiated by USNA.

(7) Payment will be made by mailing a check to the address shown on the contract, unless the Contractor provided a different "remit to" address to the Contracting Officer at the time the terms were negotiated or the contract was issued.

(a) If a Contractor wishes to change the address (e.g., street, P.O. box, city/state) to which payment should be sent or wishes its payments to also reflect a factor's name and be sent to the factor's address, the request must be in writing, signed by a responsible official of the Contractor, and submitted to the Contracting Officer. All such requests must clearly establish which division or subsidiary of a corporation such changes apply to and the address which is superseded by the changes. These changes will become effective on the date determined by USNA, normally 30 days after approval. Changes will be done on an accommodation basis only, with the understanding that no legal obligation is imposed on USNA for failure to make payment to the new payee/address.

(b) Any request by the Contractor to change the name shown on the contract or to delegate its obligation under the contract must be sent to the Contracting Officer.

(8) Any questions or inquiries concerning invoice payments should be directed to the USNA paying office designated on the contract or purchase/delivery order.

(9) Any interest penalties due to Contractors will be computed in accordance with the Prompt Payment Act, 31 U.S.C. 3901-3906, as amended.

23. **WITHHOLDING**. USNA may withhold payment for:

a. Amounts due or creditable to USNA under this contract, e.g., returns, damages.

b. Amounts otherwise due or creditable to USNA. Any dispute will be processed under the Disputes clause of this contract unless it became due pursuant to another contract which included a Disputes clause.

24. **Disputes**

a. This contract is not subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613). All disputes arising under or relating to this contract will be resolved under this clause.

b. "Claim" as used in this clause means a written demand or written assertion by one of the contracting parties seeking the payment of money in a sum certain or other relief arising under or relating to this contract. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under this clause.

c. Contractor must submit any request for monetary or other relief relating to this contract in writing to the Contracting Officer. The request must specify the amount of money or the other relief requested and include all supporting data. In addition, with the request or any amendment thereto, Contractor must submit a signed certificate reading as follows:

> "I certify that this request and any ensuing claim are made in good faith, that the supporting data are accurate and complete to the best of my knowledge and belief, and that any amount requested accurately reflects the amount for which Contractor believes USNA is liable.
>
> _____
> (Signature of Individual Authorized to Bind Contractor)"
>
> (NOTE: SUBMISSION OF FALSE CLAIMS IS A VIOLATION OF FEDERAL LAW AND MAY RESULT IN CIVIL AND OR CRIMINAL PENALTIES.)

d. Contractor's request for payment of money or other relief is not a "claim" until:

(1) A written request has been received by the Contracting Officer complying fully with subparagraph "c" above,

(2) A dispute arises between the parties after a reasonable time for review and disposition, and

(3) Contractor requests the Contracting Officer to issue a final decision.

e. Contractor's request for a contract modification or for relief that is discretionary with the Contracting Officer will not be considered a "claim."

f. All disputed claims relating to this contract will be decided by the Contracting Officer, who will issue a written Final Decision and mail or otherwise furnish a copy thereof to Contractor.

g. The Contractor may appeal the Contracting Officer's dispute decision by mailing or otherwise furnishing the written appeal (two copies) addressed to the Superintendent, and furnishing a copy of the appeal to the Contracting Officer within 90 days of receipt of the Contracting Officer's decision. The decision of the Superintendent is final and conclusive and not subject to further appeal.

h. Pending final resolution on any request for relief, disputed claim, appeal, or action, related to this contract, Contractor will proceed diligently with the performance of this contract and will comply with the Contracting Officer's decisions.

i. If Contractor cannot support any part of its claim as a result of fraud or misrepresentation of fact, then, in addition to other remedies or penalties provided for by law, Contractor will pay USNA an amount equal to the unsupported part of the claim plus all USNA costs attributable to reviewing that part of the claim.

25. **CONTRACTOR LIABILITY**

a. Except as set out specifically elsewhere in the contract, Contractor shall be liable for costs to USNA and other agencies of the United States associated with termination for default, rejection of items, and breach of warranty, in addition to reimbursement of payment of the purchase price and reprocurement costs.

b. Contractor will not be liable for damages if the failure to perform arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In such case, Contractor shall provide prompt written notice to the Contracting Officer; the Contracting Officer, at his option may accept late, partial or substituted performance, or may terminate the contract in whole or in part effective immediately upon receipt of written notice by Contractor.

26. **TERMINATION**. The rights and remedies of USNA provided in this clause are in addition to any other rights and remedies provided by law or under other clauses of this contract.

a. Termination for Default. USNA 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 costs of reprocuring similar products and services provided that if (i) the Contractor was not in default; or (ii) the Contractor's failure to perform is without his/her or his/her subcontractor's control or negligence, the termination shall be deemed a "Termination for Convenience."

b. Termination for Convenience. USNA by written notice may terminate this contract in whole or in part when it is in the best interest of USNA. If this contract is for products and services and is so terminated, the Contractor shall be compensated in accordance with Federal Acquisition Regulation in effect on this contract's date. To the extent that this contract is for services and is so terminated, the USNA shall be liable for payment as set forth in the payment provisions of this contract for services rendered prior to the effective date of termination.

c. Mutual Termination. This contract may be terminated by mutual agreement of both the USNA and the Contractor at any time by contract modification.

27. **REQUESTS FOR MONETARY OR OTHER RELIEF**. No claim by Contractor may be considered unless submitted in writing to the Contracting Officer within 90 days after termination of performance under the contract. This clause, however, will not extend the period for filing claims which is further limited by another clause of the contract.

28. **NOTIFICATION OF DEBARMENT OR SUSPENSION STATUS**. The Contractor shall provide immediate notice to the Contracting Officer in the event of being suspended, debarred or declared ineligible by any Federal Department or Agency, or upon receipt of a notice of proposed debarment from another DoD Agency, during the performance of this contract.

29. **EQUAL EMPLOYMENT OPPORTUNITY**

a. The Contractor agrees to comply with regulations of the Department of Labor contained in Title 41, Code of Federal Regulations, Chapter 60, which are incorporated herein by reference.

b. A contract award in the amount of $10,000 or more shall not be made unless the Contractor, and each first-tier subcontractor which will receive a subcontract of $10,000 or more, are found on the basis of a review to be in compliance with the Equal Employment Opportunity regulations of the Department of Labor.

30. **EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS.** If this contract equals or exceeds $10,000, and is not otherwise exempt, the Contractor agrees to comply with the regulations of the Department of Labor and the Office of Federal Contract Compliance Program, and the Affirmative Action clause as set out in Title 41, Code of Federal Regulations, Part 60-250, which are incorporated herein by reference.

31. **AFFIRMATIVE ACTION AND NONDISCRIMINATION FOR WORKERS WITH DISABILITIES**. If the contract amount equals or exceeds $10,000, and is not otherwise exempt, the Contractor agrees to comply with the regulations of the Department of Labor and the Affirmative Action clause as set forth in Title 41, Code of Federal Regulations, Part 60-741, which are incorporated herein by reference.

32. **CONVICT LABOR**. Except as provided in 48 CFR 5222-3, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment.

33. **DRUG-FREE WORK PLACE**. To the extent applicable, the Contractor will comply with the requirements of the Drug Free Workplace Act of 1988 (41 USC sec. 701, Pub. L. 100-690, as amended).

34. **ACCIDENT PREVENTION, FIRE PROTECTION, AND SANITATION**. If this contract is performed in whole or in part on premises owned or under the control of the United States Government or USNA, the Contractor shall conform to all safety regulations and requirements concerning such premises in effect any time during the performance of the contract and take all necessary steps and precautions to prevent accidents. Any violation of safety regulations, unless immediately corrected as directed by the Contracting Officer, shall be grounds for termination of the contract under the "Termination For Default" clause.

35. **ENVIRONMENTAL PROTECTION**. The Contractor will comply with all applicable Environmental Protection laws and regulations.

36. **PERSONAL IDENTIFICATION OF CONTRACTOR PERSONNEL.** Contractor and any subcontractors shall be required to comply with applicable USNA identity verification procedures, installation access requirements, and security clearance policies.

37. **RESTRICTIONS ON PURCHASES OF FOREIGN GOODS**

a. Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

b. Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at http://www.treas.gov/offices/enforcement/ofac/sdn. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at http://www.treas.gov/offices/enforcement/ofac.

c. The Contractor shall insert this clause, including this paragraph c., in all subcontracts.

38. **ROBINSON-PATMAN ACT**

a. NABSD is a Non- Appropriated Fund instrumentality of the U.S. Government at USNA, performing governmental functions, and partakes of all the immunities of the U.S. Government.

b. The Robinson-Patman Act makes it unlawful to discriminate in price between different purchasers if it may substantially lessen competition or create a monopoly. The Robinson-Patman Act does not apply to sales to NABSD or other element of the U.S. Government. Contractors may legally offer NABSD prices more favorable than they offer to other customers. Neither the offer by the contractor nor the acceptance by NABSD is a violation of the Robinson-Patman Act.

39 . **PRICES**

a. Contractor warrants that during this contract, the net price to USNA (considering unit price, discounts, allowances, co-op advertising, rebates, and other terms and conditions) for each item purchased will be as favorable as, or better than, the price the item is being sold by Contractor to other customers under the same or similar conditions and in the same general geographical area pursuant to agreements made during the same period. In the event Contractor subsequently agrees to sell the item to another customer at a lower price, Contractor is obligated to promptly offer the lower price, in writing, to the contracting officer. If requested by the contracting officer, Contractor will provide evidence (invoices, price lists, etc. of recent sales to other customers) to establish that the price meets the warranty.

b. In the event Contractor subsequently extends special offers (e.g., VPR's, rebates, coupons) or other special terms to other customers, Contractor is obligated to promptly extend them, under the same conditions, in writing, to the USNA contracting officer. If the contracting officer accepts, Contractor's obligation under subparagraph a, and this subparagraph, will be to provide a net price as favorable as the terms (as set forth in subparagraph a and herein) extended to other customers. The contracting officer's written acceptance of Contractor's special offer need not be in the form of a contract modification.

c. The above warranty and obligations may be modified only by written agreement between Contractor and the contracting officer, based upon written justification acceptable to the contracting officer.

d. The prices will remain firm for the contract period. However, written requests for adjustments may be considered, when accompanied by documentation substantiating significant and unforeseen cost

increases which occurred after the date of award. Granting of any price increase is at the sole discretion of the contracting officer.

40. **SURVEILLANCE**

a. USNA may perform electronic or other types of surveillance in USNA facilities. Contractor will inform its employee representatives that such surveillance may be conducted and that individuals implicated in improprieties may be found unacceptable for employment in any USNA facility, and prosecuted in Federal court for any resulting law violation. Contractor will obtain written certification from all its personnel, to include employees and representatives performing contract functions at exchange facilities, and will maintain the certification on file for the period of the contract. The form for this certification is shown below.

EMPLOYEE CERTIFICATION

I,_____, certify that _____ has informed me electronic surveillance may be used to verify contract compliance and detect improper handling of funds. If a violation is detected, I understand that I may be found unacceptable for employment in any USNA facility and prosecuted in federal court for any resulting law violation.

Signed_____ Dated_____

b. Contractor is liable and will pay USNA for losses under this contract detected by surveillance or otherwise discovered.

41. **SELL PRICE.** Any reference to USNA sell or retail prices are solely for USNA information and internal purposes and do not constitute an agreement to sell any product at a particular price.

42 . **CONFORMANCE WITH APPLICABLE LAWS AND REGULATIONS.** By supplying merchandise to USNA, contractor warrants that it has complied with all applicable laws and regulations governing the manufacture, sale, packing, shipment, and delivery of the merchandise. Contractor certifies that it, its subcontractors, and its suppliers have complied with applicable labor laws, including, but not limited to, the Fair Labor standards Act (FLSA). Contractor will notify subcontractors that USNA requires merchandise be made in compliance with the FLSA and will provide subcontractors with information regarding the requirements of FLSA. If requested by the contracting officer, Contractor will promptly provide subcontractor names and manufacturing sites. Contractor will have an effective monitoring program for it, and its subcontractors and suppliers, and will display Wage and Hour Division posters in workers' language and other appropriate material, provided by U.S. Department of Labor (DOL), U.S. work sites inviting workers to make inquiries about the Fair Labor Standards Act. Further, Contractor shall be responsible to comply with any and all laws which may from time to time be in effect governing the hours, wages, labor relations (including collective bargaining), workmen's compensation, working conditions and other matters pertaining to labor standards of the country, or political matters pertaining to labor standards of the country, or political subdivision thereof, wherein this contract is to be performed.