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From: Commander, Navy Installations Command

Subj: PROCUREMENT POLICY UPDATE 03 FOR COMMANDER NAVY INSTALLATIONS
COMMAND NONAPPROPRIATED FUND ACTIVITIES

Ref: (a) CNICINST 7043.1 CH-1
(b) CNICINST 5300.2

Encl: (1) Revised Contents Page
(2) New 2-1 through 2-28 Pages
(3) New Appendices Page
(4) New E-2 Page (Appendix E)
(5) New Appendix F
(6) New Index Page (Appendix G)

1. Purpose. To authorize the entering into of nonappropriated fund (NAF) non-personal services (NPS) contracts with government employees for hard-to-fill Fleet and Family Readiness (FFR) contracts at OCONUS and officially designated isolated and remote Installations, subject to certain conditions.

a. A conflict in the provisions of references (a) and (b) currently requires Regions to request an exception to policy from Commander, Navy Installations Command (CNIC) when seeking to utilize current government employees to provide NPS under certain hard-to-fill NAF contracts. This change resolves that conflict by recognizing that these are contracting decisions as opposed to human resources actions, and thus subject solely to the terms of reference (a).

b. This change further addresses the concerns of all Regions that are unable to timely source hard-to-fill NAF NPS contracts at OCONUS and officially designated isolated and remote installations only by making these contracting actions a local decision, while the NAF NPS contracting requirements will safeguard the integrity of the process. Requests to enter into NAF NPS contracts with current government employees at all other Installations shall still require a waiver request to be approved by CNIC N94 in accordance with reference (a).

2. Action. Remove Contents page, pages 2-1 through 2-28, and Appendix F and add pages from enclosures (1) through (6).

A handwritten signature in black ink, appearing to read "M. A. Greenwood", is located below the text.

M. A. GREENWOOD
By direction

Copy to: (see next page)

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CONTENTS

NONAPPROPRIATED FUND PROCUREMENT

Chapter 1	AUTHORITIES AND CONTROLS
Chapter 2	COMMON CONTRACTING PROCEDURES
Chapter 3	SPECIAL CONTRACT TYPES
Chapter 4	CONTRACTS \$150,000 OR LESS
Chapter 5	CONTRACTS OVER \$150,000
Chapter 6	CONTRACT EXECUTION
Chapter 7	CONTRACT ADMINISTRATION
Chapter 8	CONSTRUCTION AND ARCHITECT/ENGINEER CONTRACTING

Appendices

- A. NONAPPROPRIATED FUND CONTRACT CLAUSES
- B. CLAUSES INCORPORATED BY REFERENCE
- C. SUPPLEMENTAL CLAUSES
- D. REPRESENTATIONS, CERTIFICATIONS AND ACKNOWLEDGEMENTS
- E. PROCUREMENT POLICY UPDATES
- F. NONPERSONAL SERVICES CONTRACT APPROVAL FORM
- G. INDEX

CHAPTER 2
COMMON CONTRACTING PROCEDURES

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

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

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

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

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

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

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

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

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

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

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

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

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

f. Payment

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

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

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

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

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

c. Termination, suspension, or debarment proceedings.

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

e. Commercial sponsorship agreements.

f. Substantive changes to standard contract clauses.

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

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

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

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

available for many products, including food, furniture, furnishings, equipment, and supplies.

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

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

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

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

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

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

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

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

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

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

e. GSA Stock Program

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

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

f. Federal Prison Industries, Inc. (FPI). FPI, usually referred to by its trade name UNICOR, is a government corporation under the Department of Justice, providing supplies and services to the federal government. These goods and services are listed in the Schedule of Products Made in Federal Penal and Correctional Institutions, referred to as the "Schedule." FPI has priority, under 18 United States Code (U.S.C.) 4124, over

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

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

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

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

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

210. Brand Name Only. A brand name only purchase is useful when only one product, not a substitution, meets the needs of the requesting activity, such as for resale items, where requirements are based on customer preference. No written justification for a

brand name is required when the purchase request so indicates that the purchase is for resale and is based on customer preference. However, a brand name only purchase description allows for the possibility of competition in that it may be able to be procured from sources other than the brand name manufacturer (e.g. distributor). Written justification for brand name only purchase of items, other than resale/customer preference, which exceeds \$5,000, is required from the requestor and must be furnished with the purchase request. The justification will state what specific need makes this particular brand necessary over others and state specifically why other sources are not acceptable. Brand name items shall be competed from other suppliers carrying that brand, when possible.

211. Contractor Qualifications

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

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

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

(3) Having a satisfactory performance record.

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

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

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

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

sources of information to support determinations of responsibility or nonresponsibility:

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

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

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

212. Contracting with Government Employees at OCONUS and Officially Designated Isolated and Remote Navy Installations. At OCONUS and officially designated isolated and remote installations, it can be difficult to find contractors with the requisite skills and certifications required to fill certain contracts. The types of contracts contemplated under this paragraph include those for sports officials and instructors for sports, arts and crafts, and other MWR activities. This paragraph describes the requirements that must be met in order to authorize entering into these non-personal services contracts with government employees (military or civilian, including NAF personnel) at OCONUS and officially designated isolated and remote locations only. At all other Navy installations, before such contracts may be entered into with any government employees, a waiver request must be submitted to CNIC N94 for approval.

a. Contracting with government employees (military or civilian) can create a number of problems, both from a contractual

and ethical standpoint. It is essential that the contracting officer ensure:

- (1) There is adequate competition for each award;
- (2) Contract pricing is fair and equitable for both the employee and the NAFI;
- (3) The employee is in an off-duty status and is thus not being paid their government salary while performing under the contract;
- (4) The employee's supervisory chain has been notified and is aware of the contract;
- (5) There is no conflict of interest between the employee's duties and the contract performance.

As mentioned above, the types of contracts contemplated under this paragraph include those for sports officials and instructors for sports, arts and crafts, and other MWR activities. The contract must be written, awarded and administered in a manner so as to avoid creating a legally prohibited employer-employee relationship and a personal services contract (See the provisions of Section 310). In order to address these concerns, the following contracting policies and procedures shall apply to NAF contracts awarded to Government employees.

b. NAF Contracting Officers may enter into a contract with government employees (military or civilian, including NAF personnel) only if all of the following conditions are met:

(1) The contract expressly provides that the employee will be in an off-duty/leave status at all times during contract performance;

(2) The Non-Personal Services Approval form found in Appendix F to CNICINST 7043.1 CH-1 is completed and signed by the MWR Director;

(3) A formal, written determination has been made by the Contracting Officer that:

(a) Exceptional and compelling reasons exist to justify entering into the contract;

(b) The requirement for services has been publically advertised and no other sources were found to exist;

(4) The total length of the contract is for a period no longer than 12 months and no contract may include option periods;

(5) The requirement for services is advertised and competed annually among all sources even when those sources are NAFI employees; and,

(6) A copy of the signed contract shall be provided to the Region's Internal Review Officer (IRO).

c. The current CNICINST 5300.2 (May 2011) contains language regarding the ability to enter into contracts with government employees (military and civilian), including NAF personnel. This language may be considered in conflict with CNICINST 7043.1 CH-1 and PPU-03. It has been determined that contracting with government employees as set forth above is a procurement matter and not an employment action. Therefore, CNICINST 5300.2 is undergoing revision at this time to ensure it conforms to this determination. Any apparent or actual conflict between the two documents is to be resolved in favor of this provision of CNICINST 7043.1 CH-1, PPU-03.

213. Trade Agreements Act

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

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

e. Reportable contract actions include:

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

(2) An indefinite-delivery type contract or BPA that may result in obligations during the fiscal year that accumulate to

more than \$190,000 (orders against these contracts or orders against BPAs are not to be reported individually).

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

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

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

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

215. Small Business Act. The Small Business Act provisions (15 U.S.C 631 et. seq.) are not mandatory when contracting with NAF; however, NAFIs shall ensure that small and disadvantage enterprises are given the maximum opportunity to compete for NAF contracts.

216. Buy American Act

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

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

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

ii. The Buy American Act does not apply to purchases of resale items.

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

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

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

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

- i. The first six positions can be any six characters. For example, the first three positions might be the letters NAF to denote nonappropriated funds. The fourth, fifth, and sixth positions might be the first three letters of the installation name or the first six positions might be the first six letters of the installation name or the Unit Identification Code (UIC).
- ii. The seventh and eighth positions shall be the last two digits of the fiscal year in which the PIIN is assigned.
- iii. The ninth position shall be a capital letter assigned to indicate the type of instrument as follows:

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

iv. The tenth through thirteenth positions shall be the serial number of the instrument. Each series of serial numbers shall commence with the number 0001 at the start of each fiscal year. Alphanumeric serial numbers shall be used when more than 9999 numbers are required, i.e., A001 through A999, then B001 through

B999, etc. The letters "I" and "O" will not be used to eliminate potential confusion and typographical errors.

v. Example: NAFJAX-99-M-0001.
Modifications to contracts and agreements will be numbered supplementary to the 13 position PIIN, as follows:

vi. The first position will be a capital letter "P" identifying the modification as being issued by the contracting x

vii. The second through sixth positions will be a serial number commencing with 00001.

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

219. Forms

- a. Forms prescribed for NAFI use are listed below. All NAFI contracts/purchase and delivery orders shall contain, as applicable, the following minimum information:
 - i. Current date;
 - ii. Contract/purchase/delivery order number;
 - iii. Address of issuing office, point of contact, and telephone number;

JUL 6 2011

- iv. Contractor name and address;
- v. Required delivery date;
- vi. Quantities;
- vii. Payment terms; address, point of contact, and telephone number.

- i. Clear and precise delivery address (no post office box numbers);
- ii. Statement that the funds are NAF;
- iii. Description of supplies/services or statement of work;
- iv. Contract clauses; and
- v. Signature of contracting officer.

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

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

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

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

221. Contract Duration

a. NAFI contracts for supplies and services shall not exceed 5 years (including options, extensions, or renewals). Contracts will normally be written for a period of 1 year with four 1-year options. Contracts with option years, when used, will contain the Option to Extend clause (appendix C).

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

i. Agricultural outleases with a term not to exceed 10 years.

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

iii. Leases for mobile antennas with a term of up to 20 years.

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

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

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

Review shall be requested via the Region NAVFAC office, the NAFIs Region Command, and CNIC N944, and forwarded to NAVFACENGCOM.

222. Unsolicited Proposal. An unsolicited proposal is a written proposal that is submitted to the NAFI for the purpose of obtaining a contract and which is not in response to a formal or informal request from the NAFI. Advertising materials, commercial product offers, contributions, or technical correspondence are not unsolicited proposals. Unsolicited proposals can provide innovative and unique methods of approach; however, NAFI personnel will not encourage vendors to submit unsolicited proposals. A proposed award resulting from an unsolicited proposal must receive legal review and approval if over \$5,000.

- a. Validity. A valid unsolicited proposal must:
 - i. Be innovative and unique.
 - ii. Be independently originated and developed by the offeror.
 - iii. Be prepared without NAFI or government personnel supervision.
 - iv. Include sufficient detail to permit determination that the NAFI would benefit.
 - v. Not be an advance proposal for a known NAFI requirement that can be obtained by competitive methods.
- b. Evaluation. A valid, unsolicited proposal will be forwarded to technical personnel for evaluation. If, however, the unsolicited proposal is not related to the NAFI mission, it may be returned to the offeror without evaluation, citing reasons. A favorable evaluation does not in itself warrant negotiation on a noncompetitive basis. The NAFI shall return the unsolicited proposal if its substance:
 - i. is available to the NAFI without restriction from another source;
 - ii. closely resembles a pending competitive solicitation; or
 - iii. is not sufficiently innovative or unique to justify acceptance.

c. Prohibitions. The NAFI must safeguard the content of the unsolicited proposal as it would solicited proposals. NAFI personnel shall not use any data, concept, idea, or other part of an unsolicited proposal as the basis, or part of the basis, for a solicitation or in negotiations with any other firm, unless the offeror is notified of and agrees to the intended use, or unless the information is available from other sources without restriction.

223. Protests, Disputes, Claims and Appeals

a. Definitions

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

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

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

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

v. Protest. A protest is a written objection by an interested party filed to the Contracting Officer concerning any one of the following: a solicitation or other request for offers

for a contract or purchase order for the procurement of property or services; the cancellation of solicitation or other request; the award or proposed award of a contract or purchase order; or the termination or cancellation of an award of a contract or purchase order, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract or purchase order. A protest may be filed either pre-award or post-award. To be considered by the contracting officer, a protest must be filed in a timely manner, as defined in these procedures, and must be clearly identified by the interested party as a protest. Oral and written complaints not clearly identified as protests are not considered to be protests within the meaning of this paragraph. In addition to a protest not filed in a timely manner, protests involving other issues set forth at 4 C.F.R. § 21.5 are not for consideration by the Contracting Officer on the merits and may be dismissed.

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

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

b. General

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

ii. Protest Consideration. Only interested parties may

file protests. Contracting officers shall consider all timely protests filed by interested parties, whether submitted before or after award. The protester shall be notified in writing of the final decision by the contracting officer. Where the protest is not filed timely, the contracting officer shall dismiss the protest, without the need for further consideration of the merits of the protest. Where the protest is not filed by an interested party, the contracting officer shall dismiss the protest without the need for further consideration of the merits of the protest. In either case, however, the contracting officer shall issue a final decision stating that the protest is being dismissed, state the reasons for the dismissal, and advise the protester of the appeal procedures contained herein.

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

iv. Appeal of a Contracting Officer Final Decision

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

2. Appeals from NAF COFDs shall be as follows:

Contracting Officer's Activity

Appeal Authority

CNIC Millington (N94)
Region
All others

CNIC HQ (N9)
Region N9
Installation CO

c. Timeliness

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

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

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

d. Protests: Required Content

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

1. the name, address, and telephone number of the protester;

2. sufficient details regarding the protest, to include relevant documents, so that the contracting officer can

make a thorough and well-reasoned decision on the matter;

3. when necessary to resolve the protest, a copy of the offer or proposal submitted by the protester; copies of the specifications or portions of the solicitation relevant to the protest; and

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

e. Processing Protests

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

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

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

1. the supplies or services are urgently required;
2. delivery or performance will be unduly delayed by failure to make award promptly; or

3. a prompt award will otherwise be in the best interest of the NAFI.

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

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

f. Notification to Interested Parties

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

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

iii. Claims of Procurement Sensitive Information. The burden to show that information is procurement sensitive or otherwise protected from disclosure rests with the party making the claim for protection from disclosure. Where the protest or comments filed by an interested party contain information clearly marked as being procurement sensitive or otherwise protected from disclosure, the contracting officer should take steps to safeguard the information pending further investigation into the matter. For example, when notifying a party of a protest, the

contracting officer should delete or "redact" any such information before sending a copy of the protest. Where this cannot be done effectively, the contracting officer should summarize the grounds of the protest, avoiding the information claimed as protected.

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

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

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

h. Issuance of Decisions

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

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

1. be in writing to the appropriate appeal authority and contain an original and two copies;
2. be received by the appropriate appeal authority within 10 calendar days from the date of your receipt of the contracting officer's final decision forming the basis for appeal;
3. clearly indicate that an appeal is intended;
4. reference the contracting officer's final decision, the solicitation and/or contract number, and the date that the contracting officer's final decision was first received; and
5. contain a full factual and legal explanation of why the contracting officer's final decision is wrong and should be overturned."

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

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

i. Appeals of Contracting Officer's Final Decisions

(1) Contents of Appeal. A protester or an interested party adversely affected may appeal a final decision of the contracting officer by filing a written appeal with the appropriate appeal authority. The appeal shall:

(a) be in writing with an original and two copies;

(b) be sent to the appropriate appeal authority, (insert complete address);

(c) be reviewed by the appropriate appeal authority within 10 calendar days from date of receipt of the contracting officer's final decision by the party filing the appeal;

(d) clearly indicate that appeal of the contracting officer's decision is intended;

(e) reference the contracting officer's final decision, the solicitation and/or contract number, and the date that the final decision was first received by the party filing the appeal; and

(f) contain a full factual and legal explanation of why the contracting officer's final decision is wrong.

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

(a) if mailed, record the date of mailing (postmark date) on the notification as well as the date of receipt;

(b) record the date and time received on the notification;

(c) record the manner of delivery of the notification (e.g., hand delivered, facsimile, overnight courier, etc.); and

(d) record the identify the individual making the entries.

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

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

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

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

APPENDICES

- A. NONAPPROPRIATED FUND CONTRACT CLAUSES
- B. CLAUSES INCORPORATED BY REFERENCE
- C. SUPPLEMENTAL CLAUSES
- D. REPRESENTATIONS, CERTIFICATIONS AND ACKNOWLEDGEMENTS
- E. PROCUREMENT POLICY UPDATES
- F. NONPERSONAL SERVICES CONTRACT APPROVAL FORM
- G. INDEX

PROCUREMENT POLICY UPDATES

<u>UPDATE</u>	<u>PPU #</u>	<u>ISSUED BY</u>	<u>POLICY UPDATES</u>
01 Nov 2012	01	Ed Cannon, N9 Director, Fleet and Family Readiness	Applicability of Buy American Act (41 USC 8301) to NAF construction contracts.
30 May 2014	02	Ed Cannon, N9 Director, Fleet and Family Readiness	Insert Chapter 8 CONSTRUCTION AND ARCHITECT/ENGINEER CONTRACTING into CNICINST 7043.1 CH-1
24 Jun 2016	03	Mike Greenwood, N9 Director, Fleet and Family Readiness	Change to Chapter 2, Section 212, Government Employees

From: MWR Director
To: Installation Commanding Officer
Via: **{Employee's Supervisor}**

Subj: NON-PERSONAL SERVICES CONTRACT IN THE CASE OF **{NAME OF EMPLOYEE}**

Ref: (a) CNICINST 7043.1 CH-1

1. The services to be performed under this contract by **{name of employee}** consist of **{specifically describe services that the employee will provide}**.

2. **{Name of employee}** has been instructed that while performing these contracted services that they:

a. Are an independent contractor;

b. Will not be covered under the Longshore and Harbor Workers' Compensation Program, group life, accident or health insurance, or any other NAFI employee benefits;

c. Shall be paid on a fee basis per reference (a).

d. Shall provide these services on a not-to-interfere basis with the performance of their current employment/military service and that all work under the contract will be performed only while in a leave status or during off-duty hours.

3. Before entering into this contract, the Contracting Officer has taken all reasonable efforts to secure these services through the normal contracting procedures required by reference (a) but has been unable to procure a suitable contractor. These efforts included: **{description of the length, breadth, difficulties and results of the command's contracting efforts for these services and any other factors demonstrating that a satisfactory solicitation for these services cannot otherwise be met; e.g., the purchase request should describe any unusual position qualification and location requirements of the position and how they have impacted the ability to otherwise recruit qualified individuals, and why continued recruiting efforts are not feasible}**.

4. By my signature below, I certify the above information and:

a. The requirements of Chapter 8 of CNICINST 5890.1 have been met regarding liability insurance for concessionaires and independent contractors;

b. That I am aware of, and will abide by, the limits to eligible service hours when scheduling the contractor's service.

Signature

Date

MWR Director's printed/typed name, title

Copy to: Internal Review Officer

INDEX

Abstract , para . 320
Acceptance, para . 204, 707
ADP Equipment , para . 311
Agreements, para . 120
Amendments , para . 503
APF Contracting Assistance,
para . 115
Auctioning, para . 506
Award, para . 405, 507
Bilateral Contracts ,
para . 603, 604
Blanket Purchase Agreement,
para . 304
Blanket Purchase Orders ,
para . 305
Brand Name, para . 210
Buy American Act , para . 216
Change Orders, para . 704
Clauses , para 118, App .
A, B, and C
Commercial Sponsorship,
para . 120
Competition, para . 203, 208,
403
Competitive Range , para . 506
Completed Contracts , para .
707
Concession/Percentage
Contracts , para . 318
Consideration, para . 704
Contract Duration, para . 221
Contract Review Board , para .
114, 503
Contracting Officer
Representative , para . 703
Construction, para . 315
Purchase Card , para . 320
Cure Notice, para . 706
Debarred Contractors , para .
211
Delivery Orders , para . 208,
307
Discussions, para . 506
Disputes, para . 705
Documentation (files),
Para . 217
Emergency Procedures , para .
309
Entertainment Contracts,
Para . 319
Ethics , para . 113
Evaluation of Offers, para .
404, 506
Excusable Delay, para . 706
FAR Applicability, para .
117
FOB Origin, para . 204
Freedom of Information Act
(FOIA) , para . 404, 507
Food and Beverage , para .
317
Forms , para . 219, 405, 503,
604
Government Employees , para .
117, 212
Inspection, para . 707
Interior Design Contracts,
para . 316
Lease/Rental , para . 314
Legal Review , para . 205
Letter Contracts , para . 307
Memorandums of Agreement,
para . 103, 120
Modifications , para . 106,
704
Negotiations, para . 502
Oral Quotes , para . 203, 403
Outgrants (lease) , para .
221
Payment , para . 204
Petty Cash , para . 303
PIIN Numbers , para 218
Price Reasonableness , para .
217, 403
Procurement Management
Review (PMR) , para . 119
Prompt Payment Act , para .
204
Preproposal Conference , para .
504

Prime Vendor, para. 203
Property Disposal, para.
311
Protests, para. 223
Purchase Requests, para.
115, 204
Ratification, para. 110
Receiving, para. 707
Reprocurement Costs, para.
Requirements Contract, 306
Resale, para. 208, 203, 213,
210
Request for Proposal (RFP),
Request for Quotation, para.
103
Requestor Responsibilities,
para. 206, 209
Sales Contracts, para. 320
Sealed Bidding, para. 321
Separation of Functions,
para. 112
Service Contracts, para.
117, 310
Show Cause Notice, para.
706
Single Source, para. 209
Small Business Act, para.
215
Small Purchase Limit, para.
105
Solicitations, para. 403,
503
Sources of Supply, para. 117,
208, 211
Specifications, para. 207
Splitting Requirements, para.
106, 206
Standard Contract Formats,
para. 117, 322, 501
Supplemental Agreement s,
para. 704
Tear Down & Quote, para. 318
Technical Review Panel,
para. 506
Terminations, para. 706
Ticket Consignment, para.
120
Trade Agreements Act, para.
213
Trade-In, para. 313
Training, para. 108
Unilateral Contracts, para.
603
Unpriced Purchase Orders,
para. 308
Unsolicited Proposals, para.
222
Unsuccessful Offers, para.
507
Used Equipment, para. 312
Variation in Quantity, para.
224, App. C
Vendor Contracts (signing),
para. 220
Walsh-Healey Act, para. 214
Warrants, para. 106, 107