

## NONAPPROPRIATED FUND CONTRACT CLAUSES

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CLAUSES MADE INAPPLICABLE BY THE TYPE OF ORDER OR CONTRACT ARE SELF-DELETING.

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## PART II, SECTION I

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### NONAPPROPRIATED FUND CONTRACT CLAUSES

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

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

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

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

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

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

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

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

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

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

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

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

7. Examination of Records

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

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

## 8. Gratuities

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

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

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

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

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

11. Insurance

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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### CLAUSES INCORPORATED BY REFERENCE

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

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

**ADDITIONAL NONAPPROPRIATED FUND CONTRACT  
CLAUSES FOR SERVICES**

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

**ADDITIONAL NONAPPROPRIATED FUND CONTRACT  
CLAUSES FOR SERVICES**

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