

Approved Common Clauses for NAF Procurement

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LEGAL STATUS (NAFI 1001 – 18 Aug 2014)

The Nonappropriated Fund Instrumentality (NAFI), which is party to this contract, is an integral part of the Department of Defense and is an instrumentality of the United States Government. No appropriated funds of the United States shall become due or be paid the Contractor by reason of this contract.

(End of Clause)

DEFINITIONS (NAFI 1002 – 4 Nov 2013) [For use in invitations for bids and requests for proposals.]

As used throughout this contract, the following terms and abbreviations have the meanings set forth below:

- a. Contract. An agreement that creates a legal obligation. The elements of a contract are a mutual agreement; between competent parties; for a legal purpose; involving the exchange of legal consideration; and that creates a mutuality of obligation to perform between the parties. The term contract, as used herein, includes without limitation, formal bilateral contracts, purchase orders, consignment sales agreements, amendments and modifications thereto, as well as other agreements entered into by an authorized Contracting Officer acting within his or her authority.
- b. Contracting Officer. An individual delegated the authority to legally bind the NAFI by entering into, modifying, administering, and terminating contracts.
- c. Contractor. Any legal entity that is awarded a contract. The Contractor is the party responsible for and agrees to furnish supplies and/or services at specified prices/rates and/or to pay the NAFI mutually agreed to commissions and/or fees in conjunction with providing services to NAFI customers under this contract. Contractor may include, but is not limited to the following terms "vendor," "seller," "supplier," "manufacturer," "distributor," "concessionaire" and/or "licensee."
- d. Contracting Officer's Representative (COR). An individual authorized in writing by a Contracting Officer to monitor Contractor performance and/or help administer a contract. Definition applies to Contracting Officer's Technical Representative (COTR) and Alternate COR (ACOR).
- e. Day. A day means, unless otherwise provided, a 24 hour period of time denoted as midnight to midnight of a calendar day, unless the last day of a specified number of days within which the contractor must file a claim or notice with the contracting officer falls on Saturday, Sunday or a federal holiday, in which case the last day shall be the next business day denoted as Monday through Friday.
- f. Nonappropriated Fund Instrumentality (NAFI). A DoD organizational and fiscal entity supported in whole or in part by Nonappropriated Funds. A NAFI, as an instrumentality of the

U.S. Government, enjoys the same immunities and privileges as the U.S. Government in the absence of specific Federal statute. It is not incorporated under the law of any State, but has the legal status of an instrumentality of the United States. References to United States, the Government, and other related references will generally be implied to mean the NAFI throughout this contract.

(End of Clause)

CLAIMS (NAFI 1003.1 – 26 Mar 2014)

- a. The contract is not subject to the Contract Disputes Act of 1978 (41 U.S.C. 7101-7109). All disputes arising under or relating to this contract shall be resolved under this clause.
- b. "Claims," as used in this clause, means the inability of a contractor and the contracting officer to reach a mutual agreement related to contractual issues in controversy resulting in the filing of a written demand or assertion seeking payment of money, adjustment or interpretation of contract, or other relief, and issuance of a contracting officer's final decision. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under this clause. The submission may be converted to a claim under this clause, by complying with the submission requirements of this clause. if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- c.
 - (1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the NAFI against the Contractor shall be subject to a written decision by the Contracting Officer.
 - (2) For Contractor claims exceeding \$150,000, the Contractor shall submit with the claim a certification that contains the following statement: "Subject to the False Claim Act, 31 USC 3729, I certify the claim is made in good faith; that the supporting data is accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the NAFI is liable; and that I am duly authorized to certify on behalf of the Contractor."
- d. For contract claims of \$150,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$150,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- e. The Contracting Officer's decision shall be final unless the contractor appeals as provided in paragraph (f) of this clause.
- f. The Contracting Officer's final decision on claims may be appealed by submitting a written appeal to <Insert Appellate authority> with a copy to the Contracting Officer, within 90 days of

receipt of the Contracting Officer's final decision. Decisions of the <Insert Appellate authority> are final and are not subject to further appeal.

g. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of Clause)

CLAIMS - EXCHANGES (NAFI 1003.2 – 26 Mar 2014)

a. This contract is subject to the Contracts Disputes Act of 1978, as amended (41 U.S.C. 7101-7109), hereinafter called “The Act.”

b. Except as provided in the Act, all claims arising under or relating to this contract shall be resolved under this clause.

c. “Claim” as used in this clause, means the inability of a contractor and the contracting officer to reach a mutual agreement related to contractual issues in controversy resulting in the filing of a written demand or assertion, by one of the contracting parties seeking, as a matter of right, payment of money in a certain sum, adjustment or interpretation of contract terms, or other relief, arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by Paragraphs e. and f. below. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under this clause. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

d. A claim by the contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the <Insert NAFI Name> against the Contractor shall be made by a written decision by the Contracting Officer.

e. For Contractor claims exceeding \$100,000, the Contractor shall submit with the claim a signed certification that, subject to the False Claim Act, 31 USC 3729:

(1) The claim is made in good faith;

(2) Supporting data are accurate and complete to the best of the Contractor’s knowledge and belief; and

(3) The amount requested accurately reflects the contract adjustment for which the Contractor believes the <Insert NAFI Name> is liable.

f. The claim must be executed and certified by an individual with authority to bind the Contractor.

(1) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(2) The Contracting Officer shall mail, or otherwise furnish, a written decision in response to a Contractor claim within the time periods specified by law. Such decision will be final and conclusive unless:

(a) Within 90 calendar days from the date of the Contractor's receipt of the final decision, the Contractor appeals the decision to the Armed Services Board of Contract Appeals (ASBCA).

(b) Within 12 months from the date of the Contractor's receipt of the final decision, the Contractor brings an action in the United States Court of Federal Claims.

g. The NAFI shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

h. Pending final resolution on any request for relief, claim, appeal, or action arising under or relating to this contract, the Contractor will proceed diligently with the performance of this contract and will comply with the Contracting Officer's decision.

(End of Clause)

REPRESENTATIONS (NAFI 1004 – 4 Nov 2013)

a. This written contract, including identified attachments, enclosures and documents incorporated by reference, is the entire agreement between the parties. The NAFI will not be bound by any oral or written representation not included or incorporated in the written contract or a written modification thereto. The NAFI will not be bound by any terms on Contractor forms or letters unless such terms are specifically agreed to and incorporated in the contract and signed by the Contracting Officer. Except as otherwise specifically provided in this contract, all additions, changes or deletions to this contract must be prepared in writing as a modification and signed either unilaterally by the Contracting Officer or bilaterally by both parties in accordance with applicable regulations.

b. The Contractor shall not represent itself to be an agent or representative of the NAFI or any other agency or instrumentality of the United States.

(End of Clause)

ADVERTISEMENTS (NAFI 1005 – May 2013) [Use when applicable.]

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, including the NAFI. All Contractor advertisements that refer to the NAFI or a NAFI activity will contain a statement that the advertisement was neither paid for nor sponsored, in whole or in part, by the U.S. Government or the NAFI.

(End of Clause)

EXAMINATION OF RECORDS (NAFI 1006 – 26 Mar 2014) [For use in all solicitations and contracts.]

a. The Contractor agrees that the Contracting Officer or a duly authorized representative(s) 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 expiration of three (3) years after the final payment under the contract

b. The Contractor shall include this clause in all subcontracts.

(End of Clause)

HOLD HARMLESS (NAFI 1007 – 28 Apr 2014)

The Contractor agrees to indemnify and hold harmless the NAFI and any other agency or instrumentality of the United States, and their officers, agents, and employees, from any loss, expense, damage, injury, claim, suit or judgment (including administrative actions taken against the NAFI by other federal, state or local agencies) arising from the contractor's (employee's, agent's or subcontractor's) acts or omissions or the items/services provided pursuant to the contract (including any patent, copyright, or trademark infringement claimed by a third party in connection with the items/services provided by the contractor). Nothing contained herein, however, shall relieve or be construed as relieving the NAFI or any other agency or instrumentality of the United States from any liability resulting from its negligence

(End of Clause)

INSURANCE (NAFI 1008 – 21 Oct 2013) [For overseas contracts, coordinate clause language with the NAFI headquarters procurement office.]

a. The Contractor shall, at its own expense, provide and maintain during the entire performance period of this contract at least the insurance coverage as stated in this contract. In no event shall the coverage be less than the minimum requirements established by applicable state and local regulations and laws for the risk associated with the services to be provided by the contract. The Contractor shall be fully responsible to the NAFI for errors and omissions of its associates' and subcontractors' under this contract.

b. The Contractor shall furnish to the Contracting Officer a current certificate of insurance prior to the commencement of performance under the contract. The "INSURED" block of the Certificate of Insurance must list both the Contractor's name / (or Contractor's d.b.a. name) and the contract number. The Certificates of Insurance shall evidence that all lines of insurance coverage required by the contract are in effect, and that not less than thirty (30) days prior written notice shall be provided to the Contracting Officer in the event of modification, cancellation, or non-renewal of any portion of the insurance coverage(s). All certificates of insurance must list the NAFI as the certificate holder, name the NAFI and the United States as additional insureds, and carry an endorsement waiving the Contractor's rights to subrogation against the NAFI and the United States.

(End of Clause)

PROCUREMENT INTEGRITY (NAFI 1009 – 4 NOV 2013)

By submission of an offer or performance of this contract, the offeror or Contractor certifies with respect to this NAFI contract action:

a. That no discussion, offer, or promise of future employment or business opportunity has nor will be made to NAFI civilian or military personnel who personally and substantially participated in the contract action.

(1) That no offer, promise, or gift of any gratuity, entertainment, money, or other thing of value has nor will be made to any NAFI civilian or military personnel or any other employee of the U.S. Government or member of their family or household.

(2) That no information proprietary to other offerors or other contracting information (offeror list, prices offered, technical evaluations, rankings, etc.) is sought or obtained until it is available to the public under NAFI procedures.

(3) That no person or selling agency has been employed or retained to secure this contract for a commission, percentage, brokerage, or contingent fee except bona fide employees or bona fide established commercial selling agencies retained by the Contractor for the purpose of securing business.

b. The Contractor certifies that no gratuities (entertainment, gifts, money, kickbacks, or other things of value) were nor will be solicited or accepted by the Contractor or Contractor representative, nor from any Subcontractor or Subcontractor representative, for the purpose of obtaining or rewarding favorable treatment in connection with this contract or any subcontract under it.

c. The Contractor will report in writing to the Contracting Officer any possible violation of this clause when there are reasonable grounds to believe a violation may have occurred. The Contractor will cooperate fully with any federal agency investigation of a possible violation of this clause.

d. For breach of any of these certifications, the NAFI may terminate this contract for default, and/or deduct from amounts due under this or other contracts, or charge the Contractor for the total value of any contingent fee, gratuity, kickback or other loss to the NAFI arising out of the breach.

(End of Clause)

ASSIGNMENT OF CLAIMS (NAFI 1010 – 5 Sep 2013) [For use in ALL NAF contracts.]

a. No claims for monies due or to become due shall be assigned by the Contractor unless:

(1) approved in writing by the Contracting Officer;

(2) made in accordance with the laws and regulations of the United States of America;
and

(3) permitted by the laws and regulations of the Contractor's country.

b. In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive same. However, a copy of any part, or all, of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

c. Any assignment under this contract shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing. On each invoice or voucher submitted for payment under this contract to which any assignment applies and for which direct payment thereof is to be made to as assignee, the Contractor shall identify the assignee by name and complete address and shall acknowledge the validity of the assignment and the right of the named assignee to receive payment in the amount invoiced or vouchered.

(End of Clause)

ASSIGNMENT OF CLAIMS (NAFI 1010.1 – 4 Nov 2013) [For use in ALL NAF contracts.]

The contractor shall not assign any right or delegate any obligations under this contract without the prior written permission of the Contracting Officer.

(End of Clause)

ASSIGNMENT OF CLAIMS (NAFI 1010.2 – 4 Nov 2013) [For use in ALL NAF contracts.]

a. No claims for monies due or to become due shall be assigned by the Contractor unless (i) approved in writing by the Contracting Officer; (ii) made in accordance with the laws and regulations of the United States of America; and (iii) permitted by the laws and regulations of the Contractor's country.

b. Any assignment under this contract shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing. On each invoice or voucher submitted for payment under this contract to which any assignment applies and for which direct payment thereof is to be made to as assignee, the Contractor shall identify the assignee by name and complete address and shall acknowledge the validity of the assignment and the right of the named assignee to receive payment in the amount invoiced or vouchered.

(End of Clause)

CHANGES (NAFI 1012.1 – 4 Nov 2013) [For use in solicitations and fixed-price contracts for supplies.]

a. The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this Contract in any one or more of the following:

(1) If the requirement is for supplies and/or services: drawings, designs, or specifications; method of shipment or packing; description of services to be performed; time of performance (i.e., hours of the day, days of the week, etc.); place of delivery or place of performance of services.

(2) If the requirement is for concession services (including public private ventures): specifications (including drawings and designs); method or manner of performance of work; NAFI-furnished facilities, equipment, materials, services, or site; and/or directing acceleration in the performance of work.

(3) If the requirement is for transportation services: specifications; work or services; place of origin; place of delivery; tonnage to be shipped; and/or amount of NAFI-furnished property.

- b. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, the Contracting Officer will make an equitable adjustment in the Contract price, the delivery schedule, or both, and modify the Contract.
- c. The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order; however, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the Contract.
- d. If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.
- e. If the requirement is for architect-engineer or other professional services, no services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Contracting Officer.
- f. If the requirement is for concession services (including public private ventures), the Contractor shall notify the Contracting Officer in writing within seven (7) days of the occurrence of any event that the Contractor considers a change to the Contract that has not been authorized in writing signed by the Contracting Officer. The Contractor will be deemed to have waived any right to an adjustment if timely notice is not provided to the Contracting Officer as required herein. For purposes of this clause, "event" shall include, but not be limited to, an order or direction by a NAFI or other Government official, a contested contract interpretation, interference with or interruption of the contract work, or any other event that increases the cost or time to perform the contract as compared to the cost or time that would be required if the Contractor performed the Contract in accordance with its terms.
- g. Failure to agree to any adjustment shall be a "claim" under either the "Claims" or "Disputes Resolution" clause of this Contract; however, nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

(End of Clause)

CHANGES AND CHANGED CONDITIONS (NAFI 1012.2 – 4 Nov 2013) [Use this clause applies only to contracts for construction, when the contract amount is not expected to exceed the simplified acquisition threshold.]

- a. The Contracting Officer may, in writing, order changes in the drawings and specifications within the general scope of the Contract.
- b. The Contractor shall promptly notify the Contracting Officer, in writing, of subsurface or latent physical conditions differing materially from those indicated in this Contract or unknown unusual physical conditions at the site before proceeding with the work.

c. If changes under paragraph “a.” or conditions under paragraph “b.” increase or decrease the cost of, or time required for performing the work, the Contracting Officer may be requested to make an equitable adjustment (see paragraph “d.”) upon submittal of a “proposal for adjustment” (hereafter referred to as proposal) by the Contractor before final payment under the Contract.

d. The Contracting Officer may not make an equitable adjustment under paragraph “a.” unless—

(1) The Contractor has submitted and the Contracting Officer has received the required written notice; or

(2) The Contracting Officer waives the requirement for the written notice.

e. If the requirement is for architect-engineer or other professional services, no services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Contracting Officer.

f. Failure to agree to any adjustment shall be a “claim” under either the “Claims” or “Disputes Resolution” clause of this Contract; however, nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

(End of Clause)

SOCIAL RESPONSIBILITY AND LABOR STANDARDS – NONRESALE (NAFI 1013 – 12 MAY 2014)

By performance of this contract, the Contractor and any subcontractors shall comply with the Social Responsibility requirements addressed herein:

a. Combating Trafficking in Persons (CTIP). Applicable to all contracts, regardless of location performed.

(1) Definitions. The meanings of the terms coercion, commercial sex act, debt bondage, forced labor, involuntary servitude, severe forms of trafficking in persons, and sex trafficking are as is defined in the Trafficking Victims Protection Act of 2000, Public Law 106-386, October 28, 2000

<<http://www.state.gov/documents/organization/10492.pdf>>.

(2) Policy. DoD NAFIs have adopted the U.S. Government’s zero tolerance policy regarding trafficking in persons. During the contract period of performance, Contractor and contractor employees shall not:

(a) Engage in severe forms of trafficking;

(b) Procure commercial sex; or

(c) Use forced labor.

(3) Contractor Requirements. Contractor shall:

(a) Notify its employees of: Zero tolerance policy described in this clause; and actions that will be taken against employees for violations of this policy. (Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment); and

(b) Take appropriate action against employees or subcontractors that violate policy in paragraph a.(2) of this clause, up to and including termination.

(4) Notification. Contractor shall inform the Contracting Officer immediately of:

(a) Any information it receives from any source (including host country law enforcement) alleging a Contractor employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy; and

(b) Any actions taken against Contractor employees, subcontractors, or subcontractor employees pursuant to this clause.

(5) Remedies. In addition to other remedies available to the NAFI, Contractor's failure to comply with the requirements of this clause may result in:

(a) Requiring the Contractor to remove a Contractor employee or employees from performance under the contract;

(b) Requiring the Contractor to terminate a subcontract;

(c) Suspension of contract or fee payments;

(d) Termination of the contract for default or cause, in accordance with the termination clause of this contract; and/or

(e) Suspension or debarment.

(6) Mitigating Factors. The Contracting Officer may consider whether Contractor had a Trafficking in Persons awareness program at the time of any violation as a mitigating factor when determining remedies.

(7) Additional information about Trafficking in Persons and examples of awareness programs can be found on the U.S. Department of State, Office to Monitor and Combat Trafficking in Persons (OMCTP) website < <http://www.state.gov/j/tip/index.htm> >.

b. Labor; Work Hours, Compensation and Benefits; Discipline; Freedom of Association; Discrimination; and Workspaces. Applicable to all contracts, regardless of location performed.

(1) Contractor Requirements.

(a) Labor. Contractor shall not employ any person under the age of 14 years, unless local and national laws stipulates a higher age for work or mandatory schooling, in which case the higher age will apply. Contractor shall not use force or other compulsory labor in performance of this contract, nor require employees

to lodge "deposits" or identity papers upon commencing employment with the Contractor or subcontractor.

(b) Working Hours, Compensation and Benefits. Contractor shall comply with applicable local and national laws on maximum daily/weekly working hours. Contractor shall ensure that wages paid for a standard workweek are consistent with local national laws.

(c) Safe and Healthy Workplace. Contractors shall provide employees with a safe and healthy workplace in compliance with all local and national laws.

(d) Discipline. Contractor shall not engage in or support the use of corporal punishment, mental or physical coercion, verbal abuse, or withholding passports or travel documents.

(e) Freedom of Association & Right to Collective Bargaining. Contractor shall respect the right of all employees to form and join trade unions of their choice, consistent with prevailing local and national laws and to bargain collectively without any activity that impedes or suppresses freedom of association. Contractors shall ensure that representatives of such employees are not subject to discrimination and that such representatives have access to their members in the workplace.

(f) Discrimination. Contractors shall comply consistently with local and national laws with regard to discrimination in hiring, compensation, access to training, promotion, termination, or retirement based on race, caste, national origin, religion, disability, sex, maternity status, union membership, or political affiliation.

c. U.S. Labor Statutes.

(1) Applicable to all contracts, performed within the United States. Where a statute specifies where within the U.S. it applies, the definition in the statute supersedes definitions in this clause.

(2) Definitions.

(a) "United States" in general means the 50 States, the District of Columbia, Outlying Areas, and Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.), but does not include any other place subject to U.S. jurisdiction or any U.S. base or possession in a foreign country (29 CFR 4.112).

(b) "Outlying Areas" means: (1) Commonwealths of Puerto Rico and The Northern Mariana Islands; (2) Territories: American Samoa, Guam, and U.S. Virgin Islands; and (3) Minor outlying islands (Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll and Wake Atoll).

(3) The Contractor shall:

(a) Comply with all applicable statutes to include, but not limited to the Fair Labor standards Act (FLSA), Service Contract Act (SCA) and Davis Bacon Act (DBA).

(b) Provide subcontractor names and performance addressees within 24 hours, if requested by the Contracting Officer.

(c) Have an effective program for monitoring compliance with applicable statutes and as applicable ensure U.S. Department of Labor (DoL) Wage and Hour Division posters in workers' language are posted at U.S. work sites.

(d) Ensure compliance with all applicable 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, where Contract is performed.

d. To ensure full compliance with requirements of this clause, the NAFI (or third party designated by the NAFI) has the right to conduct announced or unannounced inspections of any site utilized by the Contractor to perform this Contract.

e. Subcontracts. Contractor shall include this clause in all subcontracts.

(End of Clause)

RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (NAFI 1014 – 17 Nov 2014)

[For use in solicitations and contracts unless an exception applies. (Please note that exceptions are rare and may need to be approved on a case by case basis.)]

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. Lists of countries, entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treasury.gov/resourcecenter/> sanctions. 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 in all subcontracts.

(End of Clause)

DISCOUNTS FOR PROMPT PAYMENT – EQUIPMENT AND SUPPLIES (NAFI 1015.1 – April 28, 2014) [For use with equipment and supply contracts.]

a. Discounts for prompt payment will not be considered in the evaluation of offers; however, any offered discount will form a part of the contract, and will be taken if payment is made within the discount period indicated in the contract. If a discount is offered, Offeror shall include prompt payment discounts on individual invoices.

b. In connection with any discount offered for prompt payment, time shall be computed upon receipt of a proper invoice by the designated billing office. Refer to the Invoice clause for the definition of a proper invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and NAFI/Government financial management activities are not expected to be conducted, payment may be made on the following business day.

(End of Clause)

PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (NAFI 1015.2 – April 28, 2014) [For use with construction contracts.]

a. Notwithstanding any other payment clause in this contract, the NAFI will make invoice payments and contract financing payments under the terms and conditions specified in this clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays).

(1) Invoice Payments. – Types of invoice payments. For purposes of this clause, there are several types of invoice payments, which may occur under this contract, as follows:

(a) Progress payments, if provided for elsewhere in this contract and not more frequently than monthly, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project:

(i) The due date for making such payments shall be 14 days after receipt of the payment request by the designated billing office. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date shall be the 14th day after the date the Contractor's payment request, provided a proper payment request is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(ii) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause entitled, Payments Under Fixed-Price Construction Contracts, shall be as specified in the contract or, if not specified, 30 days after approval for release to the Contractor by the Contracting Officer.

(b) Final payments based on completion and acceptance of all work and presentation of release of all claims against the NAFI arising by virtue of the contract, and payments for partial deliveries that have been accepted by the NAFI (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract):

(i) The due date for making such payments shall be either the 30th day after receipt by the designated billing office of a proper invoice from the Contractor, or the 30th day after NAFI acceptance of the work or services completed by the Contractor, whichever is later. If the designated billing office fails to annotate the invoice with the date of actual receipt, the invoice payment due date shall be deemed to be the 30th day after the date the Contractor's invoice, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(ii) On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(2) Contractor's invoice. The contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in subdivisions a.(2)(a) through a.(2)(i) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice, with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the contractor in the manner described in subparagraph a.(4) of this clause.

(a) Name and address of the Contractor.

(b) Invoice date and identification number. (The contractor is encouraged to date invoices as close as possible to the date of mailing or transmission and to assign an identification number to each invoice).

(c) Contract number or other authorization for work or services performed (including order number and contract line item number).

(d) Description of work or services performed.

(e) Delivery and payment terms (e.g., prompt payment discount terms).

(f) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(g) Name (where practicable), title, phone number, and mailing address of person to be notified in event of a defective invoice.

(h) For payments described in subdivision (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause entitled Payments Under Fixed-Price Construction Contracts.

(i) Any other information or documentation required by the contract.

(3) Interest penalty. An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and NAFI business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

(a) The designated billing office received a proper invoice.

(b) A receiving report or other NAFI documentation authorizing payment was processed and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(c) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the NAFI and the Contractor.

(4) Computing penalty amount. The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611, however other provisions of the Act are not applicable to NAFIs - see NAFI 1003 Claims Clause) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principle payment amount approved by the NAFI until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principle payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective

invoice within the periods prescribed in subparagraph a.(2) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(a) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in subdivision (a)(1)(ii) of this clause, NAFI acceptance or approval shall be deemed to have occurred constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. In the event that actual acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel NAFI officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(b) The following periods of time will not be included in the determination of an interest penalty:

(i) The period taken to notify the Contractor of defects in invoices submitted to the NAFI, but this may not exceed 7 days.

(ii) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(iii) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of this contract.

(c) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the Claims clause, or for more than 1 year. Interest penalties of less than \$1.00 need not be paid.

(d) Interest penalties are not required on payment delays due to disagreement between the NAFI and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the Claims clause.

(5) Prompt payment discounts. An interest penalty shall also be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the

amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(6) Additional interest penalty.

(a) A penalty amount, calculated in accordance with subdivision (a)(6)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor—

(a) Is owed an interest penalty of \$1 or more;

(b) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(c) Makes a written demand to the designated payment office for additional penalty payment, in accordance with subdivision (a)(6)(ii) of this clause, postmarked no later than 40 days after the date the invoice amount is paid.

(b)

(i) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall—

1. Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

2. Attach a copy of the invoice on which the unpaid late payment interest was due; and

3. State that payment of the principal has been received, including the date of receipt.

(ii) Demands must be postmarked on or before the 40th day after payment was made, except that--

1. If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40th day after payment was made; or

2. If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(c)

(i) The additional penalty shall be equal to 100 percent of any original late payment interest penalty except—

1. The additional penalty shall not exceed \$5,000;
2. The additional penalty shall never be less than \$25; and
3. No additional penalty is owed if the amount of the underlying interest penalty is less than \$1.

(ii) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision a.(4)(c) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision a)(6)(c)(i) of this clause.

(iii) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(iv) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

b. Contract financing payments—

(1) Due dates for recurring financing payments. If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the [insert day as prescribed by Agency head; if not prescribed, insert 30th day] day after receipt of a proper contract-financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) Due dates for other contract financing. For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) Interest penalty not applicable. Contract financing payments shall not be assessed an interest penalty for payment delays.

c. Subcontract clause requirements. The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) Prompt payment for subcontractors. A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) Interest for subcontractors. An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause—

(a) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(b) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) (otherwise CDA does not apply to this contract) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) Subcontractor clause flowdown. A clause requiring each subcontractor to include a payment clause and an interest penalty clause conforming to the standards set forth in subparagraphs c.(1) and c.(2) of this clause in each of its subcontracts, and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

d. Subcontract clause interpretation. The clauses required by paragraph c. of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that—

(1) Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) Withholding permitted. Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) Withholding requirements. Permit such withholding without incurring any obligation to pay a late payment penalty if--

(a) A notice conforming to the standards of paragraph g. of this clause previously has been furnished to the subcontractor; and

(b) A copy of any notice issued by a Contractor pursuant to subdivision d.(3)(a) of this clause has been furnished to the Contracting Officer.

e. Subcontractor withholding procedures. If a Contractor, after making a request for payment to the NAFI but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall—

(1) Subcontractor notice. Furnish to the subcontractor a notice conforming to the standards of paragraph g. of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) Contracting Officer notice. Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to subparagraph e.(1) of this clause;

(3) Subcontractor progress payment reduction. Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph e.(1) of this clause;

(4) Subsequent subcontractor payment. Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and—

(a) Make such payment within—

(i) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the NAFI because of a reduction under subdivision e.(5)(a)) of this clause; or

(ii) Seven days after the Contractor recovers such funds from the NAFI; or

(b) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611)(otherwise the CDA of 1978 does not apply to this contract) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) Notice to Contracting Officer. Notify the Contracting Officer upon—

(a) Reduction of the amount of any subsequent certified application for payment;

or

(b) Payment to the subcontractor of any withheld amounts of a progress payment, specifying—

(i) The amounts withheld under subparagraph e.(1) of this clause; and

(ii) The dates that such withholding began and ended; and

(6) Interest to NAFI. Be obligated to pay to the NAFI an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the NAFI until—

(a) The day the identified subcontractor performance deficiency is corrected; or

(b) The date that any subsequent payment is reduced under subdivision e.(5)(a) of this clause.

f. Third-party deficiency reports—

(1) Withholding from subcontractor. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a "second-tier subcontractor") a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under subparagraph e.(6) of this clause—

(a) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph g. of this clause as soon as practicable upon making such determination; and

(b) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subdivision f.(1)(a) of this clause.

(2) Subsequent payment or interest charge. As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall—

(a) Pay the amount withheld under subdivision f.(1)(b) of this clause to such first-tier subcontractor; or

(b) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under

section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611)(otherwise CDA of 1978 does not apply to this contract) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

g. Written notice of subcontractor withholding. A written notice of any withholding shall be issued to a subcontractor (with a copy to the Contracting Officer of any such notice issued by the Contractor), specifying—

- (1) The amount to be withheld;
- (2) The specific causes for the withholding under the terms of the subcontract; and
- (3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

h. Subcontractor payment entitlement. The Contractor may not request payment from the NAFI of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

i. Prime-subcontractor disputes. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute or claim to which the NAFI is a party. The NAFI may not be interpleaded in any judicial or administrative proceeding involving such a dispute or claim.

j. Preservation of prime-subcontractor rights. Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

k. Non-recourse for prime contractor interest penalty. The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the NAFI for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

(End of Clause)

DISCOUNTS FOR PROMPT PAYMENT - CONSTRUCTION CONTRACTS (NAFI 1015.3 - 12 May 2014) [For use with construction contracts.]

a. Notwithstanding any other payment terms/clause in this contract, the NAFI will make invoice payments and contract financing payments under the terms and conditions specified in this

clause. Payment shall be considered as being made on the day a check is dated or the date of an electronic funds transfer. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph a.(3) concerning payments due on Saturdays, Sundays, and legal holidays).

(1) Invoice Payments. – Types of invoice payments. For purposes of this clause, there are several types of invoice payments, which may occur under this contract, as follows:

(a) Progress payments, if provided for elsewhere in this contract, and based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project:

(i) The due date for making such payments shall be 14 days after receipt of the payment request by the designated billing office. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date shall be the 14th day after the date the Contractor's payment request, provided a proper payment request is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(ii) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause entitled, Payments Under Fixed-Price Construction Contracts, shall be as specified in the contract or, if not specified, 30 days after approval for release to the Contractor by the Contracting Officer.

(b) Final payments based on completion and acceptance of all work and presentation of release of all claims against the NAFI arising by virtue of the contract, and payments for partial deliveries that have been accepted by the NAFI (e.g., each separate building, public work, or other division of the contract for which the price is stated separately in the contract):

(i) The due date for making such payments shall be either the 30th day after receipt by the designated billing office of a proper invoice from the Contractor, or the 30th day after NAFI acceptance of the work or services completed by the Contractor, whichever is later. If the designated billing office fails to annotate the invoice with the date of actual receipt, the invoice payment due date shall be deemed to be the 30th day after the date the Contractor's invoice, provided a proper invoice is received and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(ii) On a final invoice where the payment amount is subject to contract settlement actions (e.g., release of claims), acceptance shall be deemed to have occurred on the effective date of the contract settlement.

(2) Contractor's invoice. The contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in subdivisions a.(2)(a) through a.(2)(i) of this clause. If the invoice does not comply with these requirements, it shall be returned within 7 days after the date the designated billing office received the invoice, with a statement of the reasons why it is not a proper invoice. Untimely notification will be taken into account in computing any interest penalty owed the contractor in the manner described in subparagraph a.(4) of this clause.

(a) Name and address of the Contractor.

(b) Invoice date and identification number. (The contractor is encouraged to date invoices as close as possible to the date of mailing or transmission and to assign an identification number to each invoice).

(c) Contract number or other authorization for work or services performed (including order number and contract line item number).

(d) Description of work or services performed.

(e) Delivery and payment terms (e.g., prompt payment discount terms).

(f) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(g) Name (where practicable), title, phone number, and mailing address of person to be notified in event of a defective invoice.

(h) For payments described in subdivision a.(1)(a) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause entitled Payments Under Fixed-Price Construction Contracts.

(i) Any other information or documentation required by the contract.

(3) Interest penalty. An interest penalty shall be paid automatically by the designated payment office, without request from the Contractor, if payment is not made by the due date and the conditions listed in subdivisions a.(3)(a) through a.(3)(c) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and NAFI business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

(a) The designated billing office received a proper invoice.

(b) A receiving report or other NAFI documentation authorizing payment was processed and there was no disagreement over quantity, quality, Contractor

compliance with any contract term or condition, or requested progress payment amount.

(c) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the NAFI and the Contractor.

(4) Computing penalty amount. The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611, however other provisions of the Act are not applicable to NAFIs - see NAFI 1003 Claims Clause) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the "Renegotiation Board Interest Rate," and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principle payment amount approved by the NAFI until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principle payment amount and be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in subparagraph a.(2) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(a) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in subdivision a.(1)(b) of this clause, NAFI acceptance or approval shall be deemed to have occurred constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. In the event that actual acceptance or approval occurs within the constructive acceptance or approval period, the determination of an interest penalty shall be based on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel NAFI officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(b) The following periods of time will not be included in the determination of an interest penalty:

(i) The period taken to notify the Contractor of defects in invoices submitted to the NAFI, but this may not exceed 7 days.

(ii) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(iii) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of this contract.

(c) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the Claims clause, or for more than 1 year. Interest penalties of less than \$1.00 need not be paid.

(d) Interest penalties are not required on payment delays due to disagreement between the NAFI and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the Claims clause.

(5) Prompt payment discounts. An interest penalty shall also be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(6) Additional interest penalty.

(a) A penalty amount, calculated in accordance with subdivision a.(6)(c) of this clause, shall be paid in addition to the interest penalty amount if the Contractor—

(a) Is owed an interest penalty of \$1 or more;

(b) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(c) Makes a written demand to the designated payment office for additional penalty payment, in accordance with subdivision a.(6)(b) of this clause, postmarked no later than 40 days after the date the invoice amount is paid.

(b)

(i) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall—

1. Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

2. Attach a copy of the invoice on which the unpaid late payment interest was due; and

3. State that payment of the principal has been received, including the date of receipt.

(ii) Demands must be postmarked on or before the 40th day after payment was made, except that--

1. If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40th day after payment was made; or

2. If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(c)

(i) The additional penalty shall be equal to 100 percent of any original late payment interest penalty except—

1. The additional penalty shall not exceed \$5,000;

2. The additional penalty shall never be less than \$25; and

3. No additional penalty is owed if the amount of the underlying interest penalty is less than \$1.

(ii) If the interest penalty ceases to accrue in accordance with the limits stated in subdivision a.(4)(c) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision a.(6)(c)(i) of this clause.

(iii) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(iv) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

b. Contract financing payments—

(1) Due dates for recurring financing payments. If this contract provides for contract financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the [insert day as prescribed by Agency head; if not prescribed, insert 30th day] day after receipt of a proper contract-financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) Due dates for other contract financing. For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) Interest penalty not applicable. Contract financing payments shall not be assessed an interest penalty for payment delays.

c. Subcontract clause requirements. The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) Prompt payment for subcontractors. A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) Interest for subcontractors. An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause—

(a) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(b) Computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) (otherwise CDA does not apply to this contract) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) Subcontractor clause flowdown. A clause requiring each subcontractor to include a payment clause and an interest penalty clause conforming to the standards set forth in subparagraphs c.(1) and c.(2) of this clause in each of its subcontracts, and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

d. Subcontract clause interpretation. The clauses required by paragraph c. of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that—

(1) Retainage permitted. Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) Withholding permitted. Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) Withholding requirements. Permit such withholding without incurring any obligation to pay a late payment penalty if--

(a) A notice conforming to the standards of paragraph g. of this clause previously has been furnished to the subcontractor; and

(b) A copy of any notice issued by a Contractor pursuant to subdivision d.(3)(a) of this clause has been furnished to the Contracting Officer.

e. Subcontractor withholding procedures. If a Contractor, after making a request for payment to the NAFI but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall—

(1) Subcontractor notice. Furnish to the subcontractor a notice conforming to the standards of paragraph g. of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) Contracting Officer notice. Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to subparagraph e.(1) of this clause;

(3) Subcontractor progress payment reduction. Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph e.(1) of this clause;

(4) Subsequent subcontractor payment. Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and—

(a) Make such payment within—

(i) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the NAFI because of a reduction under subdivision e.(5)(a)) of this clause; or

(ii) Seven days after the Contractor recovers such funds from the NAFI; or

(b) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611)(otherwise the CDA of 1978 does not apply to this contract) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) Notice to Contracting Officer. Notify the Contracting Officer upon—

(a) Reduction of the amount of any subsequent certified application for payment; or

(b) Payment to the subcontractor of any withheld amounts of a progress payment, specifying—

(i) The amounts withheld under subparagraph e.(1) of this clause; and

(ii) The dates that such withholding began and ended; and

(6) Interest to NAFI. Be obligated to pay to the NAFI an amount equal to interest on the withheld payments (computed in the manner provided in 31 U.S.C. 3903(c)(1)), from the 8th day after receipt of the withheld amounts from the NAFI until—

(a) The day the identified subcontractor performance deficiency is corrected; or

(b) The date that any subsequent payment is reduced under subdivision e.(5)(a) of this clause.

f. Third-party deficiency reports—

(1) Withholding from subcontractor. If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor

(hereafter referred to as a "second-tier subcontractor") a written notice in accordance with section 2 of the Act of August 24, 1935 (40 U.S.C. 270b, Miller Act), asserting a deficiency in such first-tier subcontractor's performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under subparagraph e.(6) of this clause—

(a) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph g. of this clause as soon as practicable upon making such determination; and

(b) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subdivision f.(1)(a) of this clause.

(2) Subsequent payment or interest charge. As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall—

(a) Pay the amount withheld under subdivision f.(1)(b) of this clause to such first-tier subcontractor; or

(b) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and published in the Federal Register, for interest payments under section 12 of the Contracts Disputes Act of 1978 (41 U.S.C. 611)(otherwise CDA of 1978 does not apply to this contract) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

g. Written notice of subcontractor withholding. A written notice of any withholding shall be issued to a subcontractor (with a copy to the Contracting Officer of any such notice issued by the Contractor), specifying—

(1) The amount to be withheld;

(2) The specific causes for the withholding under the terms of the subcontract; and

(3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

h. Subcontractor payment entitlement. The Contractor may not request payment from the NAFI of any amount withheld or retained in accordance with paragraph d. of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

i. Prime-subcontractor disputes. A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph c. of this clause does not constitute a dispute or claim to which the NAFI is a party. The NAFI may not be interpleaded in any judicial or administrative proceeding involving such a dispute or claim.

j. Preservation of prime-subcontractor rights. Except as provided in paragraph i. of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

k. Non-recourse for prime contractor interest penalty. The Contractor's obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph c. of this clause shall not be construed to be an obligation of the NAFI for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

(End of Clause)

COMMERCIAL WARRANTY (NAFI 1017 – 7 Apr 2014) [For use in solicitations and contracts for supplies and services when a fixed-price contract is contemplated.]

The Contractor agrees supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies or services. 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. Contractor shall provide printed terms and conditions of such warranty and comply with the Magnuson-Moss Warranty Act (15 U.S. CODE § 2302). Warranty shall commence upon acceptance of the items and is in addition to other warranties of additional scope given by the Contractor.

(End of Clause)

TAXES (NAFI 1018.1 – 17 Nov 2014) [For use in solicitations and contracts if the contract is to be performed wholly or partly within the United States, its possessions, or Puerto Rico, when a fixed-price contract is contemplated.]

a. Except as may be otherwise provided in this contract, the contract price includes all taxes, duties, or other public charges in effect and applicable to this contract on the contract date, except any tax, duty or other public charge which by law, regulation or governmental agreement is not applicable to expenditures made by the NAFI or on its behalf: or any tax, duty, or other public charge from which the Contractor, or any subcontractor hereunder, is exempt by law, regulation or otherwise. If any such tax, duty, or other public charge has been included in the contract price, through error or otherwise, the contract price shall be correspondingly reduced.

b. If for any reason, after the contract date of execution, the Contractor or subcontractor is relieved in whole or in part from the payment or the burden of any tax, duty or other public charge included in the contract price, the contract price shall be correspondingly reduced; or if the Contractor or a subcontractor is required to pay in whole or in part any tax, duty, or other public charge which was not included in the contract price and which was not applicable at the contract date of execution the contract price shall be correspondingly increased.

c. No adjustment of less than \$250 shall be made in the contract price pursuant to this clause unless otherwise waived at the unilateral discretion of the Contracting Officer.

d. With respect to foreign taxes, NAFI's located in foreign countries will neither pay to nor collect for any foreign country or political subdivision any tax unless the United States has consented to levy collection by treaty, convention, or executive agreement.

(End of Clause)

TAXES FOR RESALE MERCHANDISE CONTRACTS (NAFI 1018.2 – 17 Nov 2014)
[Use this tax clause for resale merchandise contracts.]

Contractor will be responsible for payment of all taxes applicable to the Contractor. That amount will be included in the price offered and will not be charged separately to the Exchange or its customers. The Contractor may charge customers the applicable sales taxes only.

(End of Clause)

INVOICE, PAYMENT AND DISCOUNT FOR EARLY PAYMENT (NAFI 1019.1 – 22 Sep 2014) [This clause applies to all commercial item acquisitions of items of supply, equipment and services, but not for construction. Paragraphs (c) and (d) may be removed from clause at the discretion of the individual NAFI.]

- Paragraph (c) “Chargebacks” usually used in the processing of invoices for resale merchandise; however, they occasionally may be used in other areas.
- Paragraph (d) is also a resale merchandise related tool; however, it is also useful anytime a “contract closeout” process is not utilized.]

a. Invoice. An invoice is a written request for payment under the Contract for items delivered or for services rendered. The Contractor shall submit an original invoice (marked “original” and ___ copies (or electronic invoice, if authorized) to the address designated in the Contract to receive invoices. Improper invoices may be returned without being paid. In order to be proper, an invoice must include, as applicable, the following:

- (1) Contractor/Vendor invoice number and date (unless otherwise allowed by Contract terms, invoices shall not be dated prior to shipment of items or performance of services);
- (2) Contractor/Vendor name, address, and when required, Taxpayer Identification

Number (TIN) latter included on invoice if Contract specifically requires;

(3) Contract number or other authorization (e.g., Delivery or Task Order (DO/TO)) for supplies delivered, services performed (including order number and contract line item number) and Contract or DO/TO date;

(4) Department number and/or account number, and/or any other identifying number required by the Contract;

(5) Line item number and description of supplies delivered or services performed; quantity; unit of measure, unit price, and extended price; payment terms; trade discount and allowances (all trade discounts and allowances must be shown as both a percentage figure and a numerical total, the latter of which must be deducted from the invoice total);

(6) Shipping terms to include shipment number and date of shipment (bill of lading number and weight of shipment will be shown for shipments on Government/NAFI bill of lading);

(7) Proof of shipment on prepaid invoices for items destined to overseas locations;

(8) Payment terms of any discount for prompt payment offered

(9) Correct "remit to" name and address, to which payment is to be sent (which must be the same as in the Contract or on a proper "notice of assignment");

(10) Name (where practicable), title, phone number and mailing address of person to be notified in event of defective invoice;

(11) Any other information or documentation required by other provisions of the Contract (such as evidence of shipment);

(12) Electronic Funds Transfer (EFT) banking information. The Contractor shall include EFT banking information on the invoice only if required elsewhere in this Contract. If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the "EFT" provisions of this Contract.

b. Invoices will be handled and payments made in accordance with the Prompt Payment Act (PPA), 31 U.S.C. 3903 and prompt payment regulations at 5 CFR 1315. Payment terms offered by the contractor are not considered to be required payment dates; however, the NAFI may avail itself, to any early or prompt pay discounts, distribution allowances, or other special discounts or allowances offered by the contractor.

(1) Payment will be made for items that have been delivered to, and/or services performed at the delivery destinations set forth in this Contract and accepted by the NAFI.

(2) Discount. In connection with any discount offered for early payment, time shall be computed from the date of receipt of a proper invoice by the designated billing office. If invoice does not have a date, time shall be computed from date the designated billing office receives a proper invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made. If the discount date falls on a day the billing office is closed, payment may be made on the next day the billing office is open.

(3) Overpayments. If the Contractor becomes aware that the NAFI has overpaid, the Contractor shall remit the overpayment amount to the payment office cited in the Contract along with a description of the overpayment including the type (e.g., duplicate or erroneous payment); date(s) of overpayment; affected Contract and/or DO number; and Contractor point of contact. The Contractor shall provide a copy of the remittance and supporting documentation to the Contracting Officer.

c. A Chargeback (CB) is considered final and non-reviewable unless a written notice of “dispute” from the Contractor is received within 12 months from the date of the CB. Chargeback (CB) means an amount determined by the NAFI is owed by the Contractor. The CB briefly explains why the CB was applied (for example, due to return of merchandise for repair, replacement, or credit; errors in filling and/or shipping an order; invoice overcharge, etc.; as well as any applicable handling fees incurred as a result). CBs are automatically deducted from any pending Contractor payment.

d. Invoices submitted more than 12 months after delivery of goods and services will not be considered for payment.

(End of Clause)

ELECTRONIC FUND TRANSFER PAYMENTS / ELECTRONIC SUBMISSIONS (NAFI 1020 – 3 Jan 2014) [For use in solicitations and contracts when the payment office will make payment by EFT.]

a. Army NAF Contracting

(1) BI.077 MANDATORY INFORMATION FOR ELECTRONIC FUNDS TRANSFER (NOV 2004) [For use in solicitations and contracts when the payment office will make payment by EFT.]

(a) Method of payment. All payments by the NAFI under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (b) of this clause.

(b) Exceptions to the EFT are as follows:

(i) Contracts awarded to companies located in OCONUS

- (ii) Contracts denominated or paid in other than US currency
- (iii) Classified contracts when such payments would compromise national security
- (iv) Contracts executed by deployed Contracting Officers in the course of military operations
- (v) Contracts executed by any Contracting Officer in the course of emergency operations, e.g., responses to natural disaster or national or civil emergencies

(c) Waiver. The servicing accounting office may waive payment by EFT under the following situations:

- (i) Sole Proprietorship Contractors. Sole Proprietorship Contractors may elect, in writing, to be designated as individuals and paid by check. Waiver will be granted to all such Contractors.
- (ii) Infrequently used Contractors. The servicing accounting office will make a determination, at its own discretion, whether or not to use EFT to pay infrequently used Contractors. Generally, this will apply only to those Contractors paid no more than once a year.
- (iii) Advance checks for Entertainers. Entertainers may be paid by check when the servicing accounting office determines this to be the most appropriate method of payment.

(d) Mandatory submission of Contractor's EFT information.

(i) The Contractor is required to provide the payment office with the following information required to make payment by EFT.

1. Name and address of the Contractor
2. Nine-digit Routing Transit Number of the Contractor's financial agent
3. Contractor's account number, title of account, and the type of account (checking or savings)

(ii) Any changes to the Contractor's original information, to include the closure of account, must be provided to the payment office at least 30 days prior to the effective date of payment.

(e) Mechanisms for EFT payment. The NAFI may make payment by EFT through the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association.

(f) Suspension of payment.

(i) The NAFI is not required to make any payment under this contract until after receipt, by the designated office, of the correct EFT payment information from the Contractor. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(ii) If the EFT information changes, the NAFI shall begin using the new information no later than 30 days after receipt by the designated office. However, the Contractor may request that no further payments be made until the payment office implements the updated EFT information. If such suspension would result in a late payment under the prompt payment terms of this contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(g) Liability for uncompleted or erroneous transfers.

(i) If an uncompleted or erroneous transfer occurs because the NAFI used the Contractor's EFT information incorrectly, the NAFI remains responsible for-

1. Making a correct payment;
2. Paying any prompt payment penalty due; and
3. Recovering any erroneously directed funds.

(ii) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, and-

1. If the funds are no longer under the control of the payment office, the NAFI is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or
2. If the funds remain under the control of the payment office, the NAFI shall not make payment and the provisions of paragraph (f) shall apply.

(h) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if the date specified for settlement of the payment is on or before the prompt payment due date.

(i) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee

shall provide the EFT information required by paragraph (d) of this clause to the designated office, and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor.

(j) Liability for change of EFT information by financial agent. The NAFI is not liable for errors resulting from changes to EFT information provided by the Contractor's financial agent.

b. Air Force Services

(1) ELECTRONIC FUND TRANSFER (EFT) PAYMENTS - Federal law 31 USC requires Federal payments to be made by electronic fund transfer. Any payment made on this contract will be made using the Nonappropriated Funds Purchase Card as the method of EFT (unless otherwise specified within the contract or exempted by law).

c. CNIC

(1) MANDATORY INFORMATION FOR ELECTRONIC FUNDS TRANSFER
(Construction)

(a) Method of Payment. All payments by the NAFI under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (b) of this clause.

(b) Exceptions to the EFT are as follows:

(i) Contracts awarded to companies located OCONUS

(ii) Contracts denominated or paid in other than U.S. currency

(iii) Classified contracts when such payments would compromise national security

(iv) Contracts executed by deployed Contracting Officers in the course of military operations

(v) Contracts executed by any Contracting Officer in the course of emergency operations, e.g., responses to natural disaster or national or civil emergencies

(c) Mandatory submission of Contractor's EFT information

(i) The contractor is required to provide the payment office with information required to make payment by EFT on form in Section J.

(ii) Any changes to the contractor's original information, to include the closure of account, must be provided to the payment office at least 30 days prior to the effective date of payment

(d) Mechanisms for EFT payment. The NAFI may make payments by EFT through the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association.

(e) Suspension of payment

(i) The NAFI is not required to make any payment under this contract until after receipt by the designated office of the correct EFT payment information from the contractor. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

If the EFT information changes, the NAFI shall begin using the new information no later than 30 days after receipt by the designated office. However, the contractor may request that no further payments be made until the payment office implements the updated EFT information. If such suspension would result in a late payment under the prompt payment terms of this contract, the contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(f) Liability for uncompleted or erroneous transfers.

(i) If an uncompleted or erroneous transfer occurs because the NAFI used the contractor's EFT information incorrectly, the NAFI remains responsible for

1. Making a correct payment;
2. Paying any prompt payment penalty due; and
3. Recovering any erroneously directed funds.

(ii) If an uncompleted or erroneous transfer occurs because the contractor's EFT information was incorrect, and

1. If the funds are no longer under the control of the payment office, the NAFI is deemed to have made payment and the contractor is responsible for recovery of any erroneously directed funds; or
2. If the funds remain under the control of the payment office, the NAFI shall not make payment and the provisions of paragraph (e)(2) shall apply.

(g) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if

the date specified for settlement of the payment is on or before the prompt payment due date.

(h) Liability for change of EFT information by financial agent. The NAFI is not liable for errors resulting from changes to EFT information provided by the contractor's financial agent.

(i) EFT and assignment of claims. If the contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (c) of this clause to the designated office, and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the contractor.

(2) EFT VENDOR PAYMENT ENROLLMENT FORM

(a) It is mandatory that the awarded contractor complete and return the form for electronic deposits. The contractor is not required to provide the signature of the official nor the title of the official on the form. For more detailed information, please call Resource Manager, (901) 874-6669.

(3) MANDATORY INFORMATION FOR ELECTRONIC FUNDS TRANSFER (Service & Supplies)

(a) Method of Payment. All payments by the NAFI under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (b) of this clause.

(b) Exceptions to the EFT are as follows:

(i) Contracts awarded to companies located OCONUS

(ii) Contracts denominated or paid in other than U.S. currency

(iii) Classified contracts when such payments would compromise national security

(iv) Contracts executed by deployed Contracting Officers in the course of military operations

(v) Contracts executed by any Contracting Officer in the course of emergency operations, e.g., responses to natural disaster or national or civil emergencies

(c) Mandatory submission of Contractor's EFT information

(i) The contractor is required to provide the payment office with information required to make payment by EFT on the attached form.

(ii) Any changes to the contractor's original information, to include the closure of account, must be provided to the payment office at least 30 days prior to the effective date of payment

(d) Mechanisms for EFT payment. The NAFI may make payments by EFT through the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association or via credit card procedures with Single Use Account (SUA).

(e) Single Use Account (SUA). Single-Use Account (SUA) is a versatile electronic payment tool that eliminates the need for a physical credit card and is an ideal solution for large transactions that would traditionally be paid with a paper check or traditional electronic funds transfer. SUA allows you to customize a single electronic card for each payment. A 16-digit virtual account is provided for each payment and the credit limit is set at the specific payment amount.

(f) Suspension of payment

(i) The NAFI is not required to make any payment under this contract until after receipt by the designated office of the correct EFT payment information from the contractor. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(ii) If the EFT information changes, the NAFI shall begin using the new information no later than 30 days after receipt by the designated office. However, the contractor may request that no further payments be made until the payment office implements the updated EFT information. If such suspension would result in a late payment under the prompt payment terms of this contract, the contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(g) Liability for uncompleted or erroneous transfers.

(i) If an uncompleted or erroneous transfer occurs because the NAFI used the contractor's EFT information incorrectly, the NAFI remains responsible for

1. Making a correct payment;
2. Paying any prompt payment penalty due; and
3. Recovering any erroneously directed funds.

(ii) If an uncompleted or erroneous transfer occurs because the contractor's EFT information was incorrect, and

1. If the funds are no longer under the control of the payment office, the NAFI is deemed to have made payment and the contractor is responsible for recovery of any erroneously directed funds; or

2. If the funds remain under the control of the payment office, the NAFI shall not make payment and the provisions of paragraph (e)(2) shall apply.

(g) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if the date specified for settlement of the payment is on or before the prompt payment due date.

(h) Liability for change of EFT information by financial agent. The NAFI is not liable for errors resulting from changes to EFT information provided by the contractor's financial agent.

(i) EFT and assignment of claims. If the contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (c) of this clause to the designated office, and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the contractor.

(4) EFT VENDOR PAYMENT ENROLLMENT FORM

(a) It is mandatory that the awarded contractor complete and return the attached form (Insert specific attachment #) for electronic deposits. The contractor is not required to provide the signature of the official nor the title of the official on the form.

d. NEXCOM

(1) Electronic Funds Transfer

(a) In accordance with Department of Defense (DoD) policy, all payments to contractors will be made by Electronic Funds Transfer (EFT). As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer. In the event payment cannot be remitted by EFT, payment will be remitted by check or some other mutually agreeable method of payment.

(b) Contractors are required and shall provide NEXCOM the information necessary to make payment by EFT. In the event EFT information changes, the Contractor shall be responsible for providing updated information.

(c) EFT payments are presently remitted through the Automated Clearing House (ACH) Network, subject to the rules of the National Automated Clearing House

Association (NACHA). The following electronic payment data is required to make EFT payments:

- (i) Contractor's name, address, and DUNS Number;
- (ii) Contractor's receiving financial agent (bank) data:
- (iii) Receiving bank name and address;
- (iv) Account number (at receiving bank);
- (v) Receiving bank's routing number (ABA #) or SWIFT code (if applicable); and,
- (vi) Type of bank account (checking, saving, or lock-box) at receiving bank;
- (vii) Contractor personnel authorized to issue changes to EFT data:
- (viii) Name, title and signature; and,
- (ix) Phone number/extension, facsimile (FAX) number, and electronic mail (e-mail) address for each authorized manager.

(d) If the Contractor's bank is unable to provide remittance, the Contractor may select one of the following methods to receive remittance:

- (i) Electronic Data Interchange (EDI) [V]: provided appropriate qualifier, sender/receiver identification (ID),
- (ii) Value Added Network (VAN), IBM account, and user ID are furnished; FAX [F]: provided an appropriate FAX number, contact name, and contact phone number are furnished;
- (iii) E-mail [E]: provided an appropriate e-mail address, contact name, and contact phone number are furnished.

Note: NEXCOM 820 specifications are available at
<www.mynavyexchange.com>.

Qualifier -- 08; Sender/Receiver ID -- 9252671859; VAN -- QRS;
IBM Global Acct -- R0654; User ID -- R0654ED.

(e) NEXCOM is not required to make any payment until receipt of the correct EFT payment information from the Contractor. Until receipt of the correct EFT information, any invoice received will be deemed not proper for the purpose of prompt payment.

(f) If an incomplete or erroneous transfer occurs because NEXCOM used the Contractor's EFT information incorrectly, NEXCOM remains responsible for making a correct payment, paying any prompt payment penalty due, and recovering any erroneously directed funds. If an incomplete or erroneous transfer occurs because the Contractor's EFT information was incorrect, and the funds are

no longer under NEXCOM control, NEXCOM will be deemed as having made payment and the Contractor shall be responsible for recovery of any erroneously directed funds.

(g) A payment shall be deemed to have been made in a timely manner, in accordance with the prompt payment terms of this Contract, if the EFT payment transaction was released on or before the prompt payment due date, provided the specified payment date is a valid date.

(h) If the Contractor assigns the proceeds of this Contract, the Contractor shall require, as a condition of any such assignment, that the assignee shall provide the EFT information required herein. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the NEXCOM, is incorrect EFT information within the meaning of this provision.

(i) NEXCOM is not liable for errors resulting from changes to EFT information provided by the Contractor's financial agent.

(End of Clause)

NONWAIVER OF DEFAULTS (NAFI 1021 – 2 June 2014) [For use in ALL NAF contracts.]

Any failure by the NAFI at any time to enforce or require strict performance of any terms or conditions shall not constitute waiver thereof, and shall not affect or impair such terms or conditions in any way or the NAFI's right at any time to avail itself of such remedies as it may have for any breach or breaches of such terms or conditions.

(End of Clause)

CONTRACTOR TRAVEL (NAFI 1022 – 2 Feb 2015) [For use with solicitations and contracts where the NAFI will reimburse contractor travel in support of contract performance. Contracting Officer or COR should coordinate a Letter of Identification: Vendors of lodging and car rental may extend government rates to eligible Contractors traveling on official government business with a government-issued Contractor Letter of Identification. Note: it is a best practice to request offerors to identify total travel costs as a pricing line item in the solicitation for inclusion in the contract award; this practice serves as an added check-balance to ensure contractor accountability in complying with the JTR rates.]

a. The NAFI will reimburse the Contractor for travel and travel related expenses in performance of this contract in accordance with current federal Joint Travel Regulations (JTR) for travel outside the metropolitan area of the Contractor's office. Refer to allowable per diem rates for lodging, meals, and incidentals at www.gsa.gov > per diem rates. The Contractor shall be

responsible for all expenses exceeding the authorized per diem rates unless otherwise authorized in this contract. The NAFI will not pay salary or wages associated with travel. Prior to travel, the contractor shall coordinate with the Contracting Officer or COR for approval of estimated travel expenses, Letters of Identification, and installation access instructions.

(1) Government Contract Airline City Pair flights are not authorized for use by government contractors. Contractor will use the NAFI travel office, if available, or book airline flights with the most direct route, and at the lowest possible price (standard coach or economy fares).

(2) Contractor will arrange for lodging and car rental at authorized per diem rates, as available.

b. Upon completing travel, Contractor shall prepare a separate invoice referencing the contract and attach a completed [DD Form 1351-2](#), Travel Voucher or Subvoucher, with all supporting documentation and receipts, to the Contracting Officer or COR within 14 days after the last travel date. Receipts are not required for meals.

c. The NAFI will reimburse the Contractor for properly submitted travel requests. For extended travel (more than 12 hours), per diem for meals will be paid at 75% of the authorized per diem rate. Deviations or delays enroute will be at Contractor's expense (except for deviations or delays beyond the control of the Contractor). Travel costs necessary to correct deficiencies or noncompliance with this contract will not be allowed.

(End of Clause)

SUSTAINABILITY (NAFI 1023 – 2 Jun 2014)

The NAFI encourages contractors/vendors to embrace, establish and promote environmentally sustainable "Green Initiatives." We look to the contractor to accomplish this by:

a. Where possible utilize environmentally friendly products.

b. Where possible promote energy-efficiency and water conservation.

c. Where possible eliminate/reduce the production or generation of hazardous waste and the need for special material processing (including special handling, storage, treatment and disposal).

(End of Clause)

LAW GOVERNING CONTRACTS (NAFI 1024 – 8 Sep 2014)

This contract shall be construed and interpreted in accordance with the Federal laws of the United States of America. NAF procurement is governed by Department of Defense Instruction (DODI) 4105.67, Nonappropriated Fund (NAF) Procurement Policy and

Procedure, available at <http://www.dtic.mil/whs/directives/> (or any successor website).

(End of Clause)

ASSIGNMENT OF CLAIMS (NAFI 1025 – 22 Sep 2014) [For use in all NAF contracts.]

The contractor shall not assign any right or delegate any obligations under this contract without the prior written approval of the Contracting Officer. Contractor may request that the contract be novated and shall submit such requests to the Contracting Officer.

(End of Clause)

ACCIDENT PREVENTION, FIRE PROTECTION AND SANITATION (NAFI 1026 – 22 Sep 2014) [For use in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in these types of contracts when the contract amount is expected to be at or below the simplified acquisition threshold. This clause may also be used for long-term concession contracts, when applicable.]

If this contract is performed in whole or in part on premises owned or under the control of the United States Government, 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.

(End of Clause)

ESTABLISHING A MINIMUM WAGE FOR CONTRACTORS (NAFI 1034.1 - 8 Dec 2014) [For use:

- **General:** The clause applies to solicitations and contracts subject to the Wage Rate Requirements (Construction) statute (formerly known as the Davis Bacon Act) and/or Service Contract Labor Standards statute (formerly known as the Service Contract Act). Also applies to solicitations and contracts where worker's wages are governed by the Fair Labor Standards Act and prime contract exceeds the micropurchase threshold (currently \$3,000). Action: Effective 1 January 2015, insert clause in solicitations and resultant contracts where work is to be performed in whole or in part in the United States (the 50 states and the District of Columbia).
- Does apply to existing contracts where modifications for renewals or extensions result from bilateral negotiations involving contract modifications which would therefore qualify as "new contracts" subject to the EO if they are awarded on or after 1 Jan 2015, even if such negotiations occur during option periods.

- **Does not apply to contracts awarded pursuant to solicitations issued prior to 1 Jan 2015.**
- **Does not apply to modifications to make pricing adjustments based on increased labor costs that result from obligation to include a current wage determination related to Wage Rate Requirements (Construction) statute and/or Service Contract Labor Standards statute where bilateral negotiations that occur are limited those necessary to determine and make those pricing adjustments,**
- **Does not apply to existing contracts when exercising a pre-negotiated unilateral right (that the NAFI has for a specified period of time) to extend the term, including pricing adjustments based on increased labor costs resulting from inclusion of a current wage determination.]**

a. This Contract is subject to Executive Order 13658, the regulations issued by the Secretary of Labor in 29 CFR part 10 pursuant to the Executive Order, and specifically to all the provisions set forth in Appendix A to 29 CFR part 10. The Contractor shall pay to workers, while performing in the United States, and performing on, or in connection with, this contract, the applicable minimum wage per the Executive Order. Accordingly, Appendix A is hereby incorporated by reference and has the same force and effect as if set forth in full in this Contract. The full text of the final rule, to include the regulations and clause “Establishing a Minimum Wage for Contractors” at 29 CFR part 10, is available at:

< <http://www.gpo.gov/fdsys/pkg/FR-2014-10-07/pdf/2014-23533.pdf#page=89> >.

b. The Contractor is responsible for subcontractor compliance with the requirements of this clause and may be held liable for unpaid wages due subcontractor workers. The Contractor shall include this clause, including this paragraph, in all subcontracts, regardless of dollar value, that are subject to Service Contract Labor Standards statute (formerly known as the Service Contract Act) or the Wage Rate Requirements (Construction) statute (formerly known as the Davis Bacon Act), and are to be performed in whole or in part in the United States.

(End of Clause)

PROHIBITION ON CERTAIN PROCUREMENTS FROM THE XINJIANG UYGHUR AUTONOMOUS REGION (APR 2023) (Clause)

[For use in solicitations and contracts, including those for the acquisition of commercial products, services, and COTS items.]

(a) *Definitions.* As used in this clause—

“Forced labor” means all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer themselves voluntarily.

“Person” means—

(1) A natural person, corporation, company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group; or

(2) Any successor, subunit, parent entity, or subsidiary of, or any entity under common ownership or control with, any entity described in paragraph (1) of this definition.

“XUAR” means the Xinjiang Uyghur Autonomous Region of the People’s Republic of China.

(b) *Prohibition.* The Contractor shall not provide any products mined, produced, or manufactured wholly or in part by forced labor from XUAR or from an entity that has used labor from within or transferred from XUAR as part of any forced labor programs throughout the period of performance of the contract.

(c) Subcontracts. The Contractor shall insert this clause, including this paragraph (c), without alteration other than to identify the appropriate parties, in subcontracts including subcontracts for commercial products, and commercially available off-the-shelf items, and commercial services.

(End of Clause)

PROHIBITION ON CERTAIN PROCUREMENTS FROM THE XINJIANG UYGHUR AUTONOMOUS REGION—CERTIFICATION (APR 2023) (Clause)

[For use in solicitations, including solicitations for the acquisition of commercial products, services, and COTS items, that contain the clause at BL159 PROHIBITION ON CERTAIN PROCUREMENTS FROM THE XINJIANG UYGHUR AUTONOMOUS REGION (APR 2023)].

(a) Definitions. “Forced labor”, “Person”, and “XUAR”, as used in this provision, have the meaning given in the “Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region”, clause of this solicitation.

(b) Prohibition. DoD may not knowingly procure any products mined, produced, or manufactured wholly or in part by forced labor from XUAR or from an entity that has used labor from within or transferred from XUAR as part of any forced labor programs, as specified in paragraph (b) of the “Prohibition on Certain Procurements from the Xinjiang Uyghur Autonomous Region”, clause of this solicitation.

(c) Certification.

(1) The Offeror does [] does not [] certify that the Offeror has made a good faith effort to determine that forced labor from XUAR was not or will not be used in the performance of a contract resulting from this solicitation.

(2) Offerors who do not certify having made a good faith effort will not be eligible for award.

(End of provision)

CHILD LABOR-COOPERATION WITH AUTHORITIES AND REMEDIES (MAY 2023) (Clause)

[For use in all solicitations and contracts for the acquisition of supplies that are expected to exceed the micro-purchase threshold].

(a) Applicability. This clause does not apply to the extent that the Contractor is supplying end products mined, produced, or manufactured in-

(1) Israel, and the anticipated value of the acquisition is \$50,000 or more;

(2) Mexico, and the anticipated value of the acquisition is \$92,319 or more; or

(3) Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or the United Kingdom and the anticipated value of the acquisition is \$183,000 or more.

(b) Cooperation with Authorities. To enforce the laws prohibiting the manufacture or importation of products mined, produced, or manufactured by forced or indentured child labor, authorized officials may need to conduct investigations to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under this contract. If the solicitation includes the provision BK.030, Certification Regarding Knowledge of Child Labor for Listed End Products, the Contractor agrees to cooperate fully with authorized officials of the contracting agency, the Department of the Treasury, or the Department of Justice by providing reasonable access to records, documents, persons, or premises upon reasonable request by the authorized officials.

(c) Violations. The Government may impose remedies set forth in paragraph (d) for the following violations:

(1) The Contractor has submitted a false certification regarding knowledge of the use of forced or indentured child labor for listed end products.

(2) The Contractor has failed to cooperate, if required, in accordance with paragraph (b) of this clause, with an investigation of the use of forced or indentured child labor by an Inspector General, Attorney General, or the Secretary of the Treasury.

(3) The Contractor uses forced or indentured child labor in its mining, production, or manufacturing processes.

(4) The Contractor has furnished under the contract end products or components that have been mined, produced, or manufactured wholly or in part by forced or indentured child labor. (The Government will not pursue remedies at paragraph (d)(2) or paragraph (d)(3) of this clause unless sufficient evidence indicates that the Contractor knew of the violation.)

(d) Remedies.

(1) The Contracting Officer may terminate the contract.

(2) The suspending official may suspend the Contractor in accordance with procedures in FAR subpart 9.4.

(3) The debarring official may debar the Contractor for a period not to exceed 3 years in accordance with the procedures in FAR subpart 9.4.

(End of clause)

CERTIFICATION REGARDING KNOWLEDGE OF CHILD LABOR FOR LISTED END PRODUCTS (MAY 2023) (Provision)

[For use in solicitations that are expected to exceed the micro-purchase threshold and are for the acquisition of end products (regardless of country of origin) of a type identified by country of origin on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor. The contracting officer must identify in paragraph (b) of the provision any applicable end products and countries of origin from the List found at the DOL website. For solicitations estimated to equal or exceed \$50,000, the Contracting Officer must exclude from the list in the solicitation end products from any countries identified in BI.160, in accordance with the specified thresholds].

(a) Definition.

Forced or indentured child labor means all work or service-

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

(b) Listed end products. The following end product(s) being acquired under this solicitation is (are) included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, identified by their country of origin. There is a reasonable basis to believe that listed end products from the listed countries of origin may have been mined, produced, or manufactured by forced or indentured child labor.

Listed End Product

Listed Counties of Origin

(c) Certification. The Government will not make award to an offeror unless the offeror, by checking the appropriate block, certifies to either paragraph (c)(1) or paragraph (c)(2) of this provision.

(1) ☐ The Offeror will not supply any end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in a corresponding country as listed for that end product.

(2) ☐ The Offeror may supply an end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The Offeror certifies that it has made a good faith effort to determine whether forced or indentured child

labor was used to mine, produce, or manufacture such end product. On the basis of those efforts, the Offeror certifies that it is not aware of any such use of child labor.

(End of provision)

NAF COMBATING TRAFFICKING IN PERSONS (JULY 2024) (Clause)

[For use in all solicitations, agreements, and contracts. Include as a flow-down to all subcontracts.

Contracting Officers and Buyers additional requirements for purchases of private label and direct import goods from other countries than the USA, must be evaluated based on area of manufacture. Countries receive a risk rating from Tier 1 to Tier 3 on the U.S. Department of State's latest trafficking in persons report (<https://www.state.gov/reports/>). Suppliers whose production facilities are in countries that did not receive a Tier 1 rating, basic Tier 2 rating, or are on the Tier 2 rating Watch List in the U.S. Department of State's latest report must provide the procurement team with this information:

For all such purchases the Contracting Officer/Specialist is to include the appropriate request for compliance in the solicitation, agreement, or contract. It can be singular or a combination of the below, but the Contractor must provide at least one, as proof of compliance:

(2) The supplier's evidence of compliance with the prohibition of forced or child labor that meets or exceeds one of these conditions:

(a) An acceptable forced and child labor audit performed within the last 2 years by other retailers or brands at each production facility.

(b) An acceptable forced and child labor audit performed within the last 2 years at each production facility by a reputable, independent social responsibility certifying organization.

(c) An acceptable forced and child labor audit performed within the last 2 years on each production facility by a reputable, independent social responsibility audit provider.

(d) A supplier's self-audit or self-attestation is based upon a standard questionnaire for the type of product, the responses to which demonstrate the supplier's knowledge of, and compliance with the prohibitions of forced and child labor. The self-attestation must be completed within the last 2 years.

Note: If language is added to the standard clause, it must not be in conflict or change the intent of the language. In addition, it must be reviewed and receive legal sufficiency by General Counsel.

The above information is the prescription and guidance on the contract clause language below.]

(a) Definitions. As used in this clause-

"Agent" means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

"Coercion" means-

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

“Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

“Commercially available off-the-shelf (COTS) item” means-

(1) Any item of supply (including construction material) that is-

(i) A commercial item (as defined in paragraph (1) of the definition);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the NAFI, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

“Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Employee” means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

“Forced Labor” means knowingly providing or obtaining the labor or services of a person-

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

“Involuntary servitude” includes a condition of servitude induced by means of-

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

“Recruitment fees” means fees of any type, including charges, costs, assessments, or other financial obligations, that are associated with the recruiting process, regardless of the time, manner, or location of imposition or collection of the fee.

(1) Recruitment fees include, but are not limited to, the following fees (when they are associated with the recruiting process) for-

(i) Soliciting, identifying, considering, interviewing, referring, retaining, transferring, selecting, training, providing orientation to, skills testing, recommending, or placing employees or potential employees;

(ii) Advertising

(iii) Obtaining permanent or temporary labor certification, including any associated fees;

(iv) Processing applications and petitions;

(v) Acquiring visas, including any associated fees;

(vi) Acquiring photographs and identity or immigration documents, such as passports, including any associated fees;

(vii) Accessing the job opportunity, including required medical examinations and immunizations; background, reference, and security clearance checks and examinations; and additional certifications;

(viii) An employer's recruiters, agents or attorneys, or other notary or legal fees;

(ix) Language interpretation or translation, arranging for or accompanying on travel, or providing other advice to employees or potential employees;

(x) NAFI-mandated fees, such as border crossing fees, levies, or worker welfare funds;

(xi) Transportation and subsistence costs-

(A) While in transit, including, but not limited to, airfare or costs of other modes of transportation, terminal fees, and travel taxes associated with travel from the country of origin to the country of performance and the return journey upon the end of employment; and

(B) From the airport or disembarkation point to the worksite;

(xii) Security deposits, bonds, and insurance; and

(xiii) Equipment charges.

(2) A recruitment fee, as described in the introductory text of this definition, is a recruitment fee, regardless of whether the payment is-

(i) Paid in property or money;

(ii) Deducted from wages;

(iii) Paid back in wage or benefit concessions;

(iv) Paid back as a kickback, bribe, in-kind payment, free labor, tip, or tribute; or

(v) Collected by an employer or a third party, whether licensed or unlicensed, including, but not limited to-

(A) Agents;

- (B) Labor brokers;
- (C) Recruiters;
- (D) Staffing firms (including private employment and placement firms);
- (E) Subsidiaries/affiliates of the employer;
- (F) Any agent or employee of such entities; and
- (G) Subcontractors at all tiers.

“Severe forms of trafficking in persons” means-

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

“Subcontract” means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

“United States” means the 50 States, the District of Columbia, and outlying areas.

(b) The NAFI has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this clause. Contractors, contractor employees, and their agents shall not-

- (1) Engage in trafficking in persons during the period of performance of the contract;
- (2) Procure commercial sex acts during the period of performance of the contract;
- (3) Use forced labor in the performance of the contract;
- (4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee’s identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;
- (5) (i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language understood by the employee or potential employee, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant costs to be charged to the employee or potential employee, and, if applicable, the hazardous nature of the work;
- (ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;
- (6) Charge employees or potential employees recruitment fees;

(7) (i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment-

(A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. NAFI contract or subcontract (for portions of contracts performed outside the United States); or

(B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. NAFI contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that-

(ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to an employee who is-

(A) Legally permitted to remain in the country of employment and who chooses to do so; or

(B) Exempted by an authorized official of the contracting NAFI from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (b)(7)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause apply.

(8) Provide or arrange housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

(c) Contractor requirements. The Contractor shall-

(1) Notify its employees and agents of-

(i) The NAFI's policy prohibiting trafficking in persons, described in paragraph (b) of this clause; and

(ii) The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Post a copy of that notification, translated into the language(s) of the workers, in an accessible central location and visible to all employees, at all production facilities that manufacture goods and merchandise.

(3) Take appropriate action, up to and including termination, against employees, agents, or subcontractors that violate the policy in paragraph (b) of this clause.

(d) Notification and full cooperation.

(1) The Contractor shall inform the Contracting Officer *[fill-in contact info]* and the NAFI or parent organization Inspector General *[fill-in contact info]* immediately of-

(i) Any credible information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also 18 U.S.C. 1351, Fraud in Foreign Labor Contracting, if that clause is included in the solicitation or contract, which requires disclosure to the NAFI or parent organization Office of the Inspector General when the Contractor has credible evidence of fraud); and

(ii) Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.

(2) If the allegation may be associated with more than one contract, the Contractor shall inform all possibly-affected contracting officers.

(3) The Contractor shall, at a minimum-

(i) Disclose to the NAFI or parent organization Inspector General *[fill-in contact info]* information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;

(ii) Provide timely and complete responses to NAFI auditors' and investigators' requests for documents;

(iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting NAFI and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with NAFI authorities.

(4) The requirement for full cooperation does not foreclose any Contractor rights arising in law or the terms of the contract. It does not-

(i) Require the Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;

(ii) Require any officer, director, owner, employee, or agent of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; or

(iii) Restrict the Contractor from-

(A) Conducting an internal investigation; or

(B) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

(e) Remedies. In addition to other remedies available to the NAFI, the Contractor's failure to comply with the requirements of paragraphs (c), (d), or (i) of this clause may result in-

(1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;

(2) Requiring the Contractor to terminate a subcontract;

(3) Suspension of contract payments until the Contractor has taken appropriate remedial action;

(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the NAFI determined Contractor non-compliance;

(5) Declining to exercise available options under the contract;

(6) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or

(7) Suspension or debarment.

(f) Mitigating and aggravating factors. When determining remedies, the Contracting Officer may consider the following:

(1) Mitigating factors. The Contractor had a Trafficking in Persons compliance plan (if required) or an awareness program (if required) at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.

(2) Aggravating factors. The Contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so.

(3) Posting. The Contractor shall post the relevant requirements for Trafficking in Persons employee notification, no later than the initiation of contract performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the Contractor's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the Contractor shall provide the relevant contents of compliance to each worker in writing and to the Contracting Officer upon request.

(i) Subcontracts.

(1) The Contractor shall include the substance of this clause, including this paragraph (i), in all subcontracts and in all contracts with agents. The requirements in paragraph (b) of this clause apply only to any portion of the subcontract that is for supplies, other than commercially available

off-the-shelf items, acquired outside the United States, or services to be performed outside the United States.

(End of clause)