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NAMSA PROCUREMENT REGULATIONS



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NAMSA PROCUREMENT REGULATIONS

RÈGLEMENT DES ACHATS NAMSA

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Le présent règlement annule et remplace le
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NAMSA PROCUREMENT REGULATIONS

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NAMSA PROCUREMENT REGULATIONS

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NAMSA PROCUREMENT REGULATIONS

0.1 PURPOSE

Functional Directive No. 251

11. Procurement Regulations

11.1 The General Manager shall issue NAMSAs Procurement Regulations necessary to implement this Directive. In these Regulations, the clauses of this Directive shall be reproduced and identified in accordance with applicable ISO requirements, accompanied by a cross-reference to the specific clause being reproduced. This applies also to clauses derived from any other Directive approved by the BOD. Any clause so identified and cross-referenced may be changed only by prior approval of the BOD.

These regulations cover the procedures to be followed by the NATO Maintenance and Supply Agency (NAMSA) in implementation of Functional Directive No. 251 (Policies to Govern NAMSAs Procurement).

To facilitate reference, the text from the Functional Directive No. 251 is shown in boxed text, in italics.

0.2 SCOPE

These regulations cover the rules to be followed from the time a purchase requisition (PR) is received for procurement of materiel and/or services, until the obligations of each party under the contract have been fulfilled.

0.3 APPLICABILITY

Functional Directive No. 251

2. Applicability

2.1 This Directive applies to all NAMSAs procurement activities in execution of tasks and logistic support missions entrusted to NAMSAs. Exceptions shall be approved by the NAMSAs Board of Directors (BOD).

2.2 The policy is applicable in time of peace, crisis or war.

Procurement of all materiel and services funded from the Administrative and Operational Budgets and the related contracts by whatever means such procurement may be performed, whether conventional or electronic (Internet –based and / or by dedicated networks) will be the responsibility of the Procurement Division under these regulations.

0.4 AMENDMENTS

Functional Directive No. 251

11.2 Any proposed changes to clauses of the NAMSAs Procurement Regulations other than those referred to in paragraph 11.1 above and not affecting the provisions of this Functional Directive, which the General Manager deems appropriate in the light of experience, shall be sent to the members of the NAMSAs BOD and the members of the NAMSAs Finance and Administration Committee.

11.3 The proposed changes shall be placed on an Agenda of a meeting of the NAMSAs Finance and Administration Committee for unanimous approval, but discussed only if a member desires that any of the proposed changes be reviewed. Unless otherwise decided by the said Committee, they shall come into force the day following the meeting.

Any regulatory requirement must be promulgated as an interim instruction and must be incorporated by an amendment to these regulations within a period of one year, failing which such interim instruction or measure shall cease to have effect. Furthermore, any approved BOD decision or instruction that has an impact on the NAMSAs procurement operations shall come into force immediately and must be expeditiously included in the NAMSAs Procurement Regulations. Such amendments do not require prior approval of the NAMSAs Finance and Administration Committee.

0.5 DEVIATIONS

Functional Directive No. 251

12. Deviations

12.1 Whenever, in the opinion of the General Manager, the strict application of the principles in this Directive (notably those in paragraph 3.5) would distort their intention and time does not permit reference of the problem to the BOD, he is authorized to vary the application of these principles. Such exceptions shall not be considered precedents and shall be subject to full and prompt reporting to the BOD. If any related, follow-on decisions are required, they will be taken by the BOD.

Functional Directive No. 251

12.2 Upon receipt of advice from competent authority of the existence of crisis or war, or in support of NATO Council approved operations, the General Manager may, to the extent that he deems necessary, authorize the procurement of materiel and services without adherence to one or more of the provisions contained in the following paragraphs of this Directive:

- | | | |
|---------------|-------------------------------------|---|
| <i>12.2.1</i> | <i>Paragraphs 3.1 and 3.5</i> | <i>(Objective and Distribution of Production)</i> |
| <i>12.2.2</i> | <i>Paragraph 3.6</i> | <i>(Procurement from US Military Sources)</i> |
| <i>12.2.3</i> | <i>Paragraphs 3.4.1 and 3.4.5.2</i> | <i>(Procurement from firms located NAMS member states and outside NATO member states)</i> |
| <i>12.2.4</i> | <i>Paragraph 4.4</i> | <i>(Directed procurement)</i> |
| <i>12.2.5</i> | <i>Paragraph 4.6</i> | <i>(Pre-award survey)</i> |
| <i>12.2.6</i> | <i>Paragraph 4.7</i> | <i>(NAMSA customer price approval)</i> |

Exercise of authority under this provision shall be reported to the BOD as appropriate.

0.6 IMPLEMENTATION

These regulations shall be implemented by appropriate operating procedures promulgated by the Procurement Division. Such operating procedures and all modifications and amendments thereto shall be subject to review and approval by the Procurement Directorate prior to adoption.

0.7 INSPECTION OF OPERATIONS AND PROCUREMENT REPORT

0.7.1 Inspection of Operations

The Chief of the Procurement Division is responsible to ensure that all NAMSA procurement operations are carried out with efficiency and effectiveness and in full compliance with applicable rules and regulations.

To ensure that NAMSA's procurement operations are being conducted properly and efficiently, the Procurement Division will perform internal inspections. Reports of the findings resulting from these inspections will be provided to the Director of Procurement.

0.7.2 Procurement Report

Functional Directive No. 251

10. Procurement Report

Contract awards with a value of Financial Level E and above shall be published periodically on the pertinent NAMSA Electronic Information System, mentioning the purpose of the contract, the contractor's name and country of origin and the total amount of the contract. This procedure will not apply to classified contracts.

1. PROCUREMENT – GENERAL PRINCIPLES

1.1 Objective

Functional Directive No. 251

3.1 Objective

The principal objective of the Agency, by virtue of the NAMSO Charter, is to obtain, through international competitive bidding, the most economical prices for materiel and services and to carry out planning, under the guidance of the BOD, for the distribution of production balanced among states to the greatest practicable extent. The most economical proposal meeting the technical and contractual requirements stipulated in the Requests for Proposal (RFPs) shall be accepted, except as provided for in paragraph 3.5.

1.2 Operations

1.2.1 Procurement shall be performed by the Procurement Division in accordance with its operating procedures; such procedures shall comply with the general rules set forth in these regulations and with individual management instructions issued by NAMSA. Unless otherwise stated, exceptions or deviations from these regulations may not be made unless authorized and approved on a case-by-case basis by the Procurement Directorate or the General Manager. Any request for exception or deviation shall be submitted in writing to the Procurement Directorate, and state in detail the circumstances considered to justify any proposed exception or deviation.

1.2.2 Procurement shall be accomplished only by NAMSA staff specifically having received delegated authority and exercising same within the designated value limit. Purchases accomplished by staff in excess of their delegated authority, or by persons without any such authority are "unauthorized purchases". When and if such actions occur they must be brought to the attention of the Chief, Procurement Division. Depending on the circumstances they can be legalized or "ratified" by the Chief, Procurement Division and/or may result in disciplinary action. The appropriate contract or purchase order format will be utilized for this ratification process.

1.2.3 Contract/RFP records shall be preserved for five (5) years after completion of the procurement action.

1.3 Balancing of Production

Functional Directive No. 251

3.5 *Distribution of Production*

NAMSA shall balance the distribution of production exclusively among NAMSOS member states to the greatest practicable extent possible. The following shall apply:

3.5.1 *the industrial return position of each NAMSOS member state is determined using the ratio between the value of contracts placed in the country and the value of sales made to the country. Depending on their ratio, countries fall into one of the following categories:*

- well-placed,*
- less-well placed,*
- poorly placed.*

3.5.2 *When selecting firms for bid solicitation, the NAMSOS member states' position in terms of the industrial return shall be taken into consideration.*

3.5.3 *The most economical RFP-compliant offer will be accepted. However, when making financial comparison of offers, the NAMSOS member states' position in terms of industrial return shall be taken into consideration under the conditions defined in the NAMSOS Procurement Regulations.*

The implementation of this process is described in paragraph 5.7 below.

1.4 Other National/NATO Procurement Services

Functional Directive No. 251

6. *National/NATO Procurement Services*

NAMSA shall maintain appropriate contacts with the National procurement services of each NAMSOS member state and the NATO procurement services with a view to availing itself of their knowledge and experience.

1.5 Conclusion and Signature of Contracts

Functional Directive No. 251

8. Conclusion and Signature of Contracts

8.1 *NAMSO is, by virtue of Charter provisions, authorized within the scope of its mission to:*

8.1.1 *conclude agreements and contracts, and acquire and dispose of property on behalf of NATO, and*

8.1.2 *conclude administrative agreements with other NATO bodies.*

8.2 *Authority to perform the above procurement functions is hereby delegated to the General Manager, who however, shall not conclude:*

8.2.1 *Agreements and contracts beyond the purview of routine management and business intercourse, except when authorized by the BOD on a case-by-case basis.*

8.2.2 *International Agreements.*

8.3 *The General Manager's re-delegation of his authority to approve and sign contracts on the basis of the amounts, or extended line item value in case of materiel, is further detailed in the NAMSA Procurement Regulations.*

The re-delegation of authority to approve and sign contracts is described in paragraph 6.3.4 below.

1.6 Administrative Procedures

Functional Directive No. 251

9. Administrative Procedures

9.1 *Procurement contracts shall provide for follow-up surveillance.*

9.2 *All financial limits and thresholds are subject to change in accordance with the financial levels as determined in accordance with NAMSO Functional Directive No. 410.*

2. POTENTIAL SOURCES

2.1 The Source Identification Section

2.1.1 The Source Identification Section of the Procurement Division is responsible for developing and maintaining a centralized "source file" to support the Agency's procurement operations.

Functional Directive No. 251

4.1 Source File

The primary purpose of the source file is to facilitate an efficient and effective source selection process to enhance the chance of successful competitive procurement and to achieve an appropriate distribution of NAMSA's requirements to industry.

2.1.2 The source file shall include past, present and potential vendors, including vendor performance data, as well as vendor materiel and service cross-references.

Functional Directive No. 251

4.2 Inclusion of Firms

Inclusion of firms in the source file shall be governed by the following factors:

4.2.1 Firms Located in NAMSO Member States

NAMSA will accept and retain in its source file and consider for NAMSA contracts commercial firms, military and governmental entities.

The qualifications required for commercial firms, to be included in the NAMSA source file, will be as described in the NAMSA Procurement Regulations.

For matters related to security and general inquiries about firms, BOD members shall designate a focal point to NAMSA.

4.2.2 Firms Located in Non-NAMSO Member States

4.2.2.1 When the General Manager determines that it is in the best interest of NAMSO member states to deal with firms in countries not members of NAMSO, he, or his designated representative, may decide, on a case-by-case basis, to include such firms in the source file temporarily; that is, for the duration of a specific contract (see also 3.4).

4.2.2.2 Firms from PfP states with whom NAMSO has signed an MOU and which are associate states of a Weapon System Partnership (WSP) or which contribute to a PfP Trust Fund project, may, for WSP or Trust Fund project requirements, be included in the NAMSA source file (see also 3.4.3).

2.2 Supplier Qualification for Registration in the Source File

2.2.1 Supplier's eligibility will be based on the following factors: residency, national eligibility status, present capability and past performance.

2.2.2 Firms whose legal residence or main production facilities are located outside a NAMSO member state shall be considered as "firms in countries which are not members of NAMSO". When the Procurement Division determines that it is in the best interests of NAMSO member states to deal with such a firm, the Procurement Division will send a request to the Procurement Directorate, for authorization to do so. The Procurement Directorate will examine such requests and, if agreed, will forward a recommendation to the General Manager. Such recommendations shall be in writing and state in detail the reasons believed to justify the inclusion of that firm in the source file. The request for inclusion of such a firm in the source file will not be considered if that firm has its legal residence or main production facility in a country presently under Communist control.

2.3 Vendor Evaluation

The Source Identification Section shall maintain a database containing information on the performance of suppliers with whom NAMSA has concluded contracts. The information should as a minimum cover cases of late delivery and discrepancies.

2.4 Qualified Products Lists

The Procurement Division shall arrange to be kept informed of developments regarding the Qualified Products Lists of NAMSO member states in order to utilize any information which may be useful for improving the source file.

3. INITIATION OF PROCUREMENT ACTION

3.1 Purchase Requisitions (PRs)

3.1.1 Procurement action to effect the purchase of materiel and/or services shall be commenced by the Contracting Officer/buyer only after receipt of a PR for materiel and/or services from an activity authorized to issue such a PR.

3.1.2 PRs shall be accepted for execution only when presented in a manner which will permit prompt procurement action. PRs, upon receipt by the Contracting Officer/buyer, shall be checked for processability. PRs which are considered totally or partially non-processable or which may be processable only after research and investigation, shall be referred to the requiring activity for refinement, clarification, and further appropriate action.

3.1.3 PRs should contain an accurate and detailed description of each required item and/or service, including, as appropriate, NATO stock number, manufacturer's part number, nomenclature, necessary drawings and specifications, quantity to be purchased [definite or (exceptionally) indefinite], estimated unit price, the customer, the required delivery date, if any, shipping instructions, and other pertinent information. If an estimate of the unit price has been given by the customer, or if the customer has requested specific sources to be included in a solicitation, the PR shall be accompanied by appropriate information to this effect.

3.1.4 Consolidation of requirements is, as a matter of principle, a logistics responsibility. Nonetheless the Contracting Officer/buyer should make every effort to consolidate requirements where appropriate during the procurement cycle.

3.1.5 The originator of a PR may at any time amend the PR when changes thereto are required, e.g. regarding materiel and/or services requested, additions, cancellations, changes of the required delivery date, etc. The Contracting Officer/buyer will inform the originator of the PR of the consequences of the requested action, if any, and obtain concurrence thereto. Thereafter, the Contracting Officer/buyer will alter the procurement action accordingly.

3.1.6 PRs for services and complex materiel are to be submitted early enough to provide the Contracting Officer/buyer with sufficient procurement lead time. Such PR packages shall, whenever possible, provide known and unambiguous specifications including, where necessary, reference to technical documentation. In the absence of such specifications, the work required will be clearly stated in detail and such statement will constitute in itself an attachment to the draft contract Schedule.

3.2 Requests for Price and Availability (P&A)

The general NAMSAs policy is to solicit bids or proposals in respect of requirements only when there is a definite intention to award a contractual instrument. If solicitation is necessary for other reasons, i.e. for procurement planning or information (exploratory) purposes, the Contracting Officer must approve it. However, the request must clearly state its purpose. It must also clearly state that neither contract award nor payment for the information solicited is intended by NAMSAs.

3.3 Letter of Interest

3.3.1 It is frequently necessary to contact prospective contractors prior to solicitation. Information may be required for a number of reasons, e.g. to determine interest of various firms in forthcoming procurements, to examine the scope and details of the materiel and/or services to be purchased, to help evaluate potential plans for facility development or to keep abreast of the technical capabilities of the market place. Contacts with prospective contractors may be made either through the use of a Letter of Interest or pre-solicitation conferences.

3.3.2 The Letter of Interest (or telephonic contact) should only solicit an expression of interest or technical information. They shall not be used to solicit detailed costs or prices of a "quotation" nature that could serve as an offer. Letters of Interest shall only be issued by the Contracting Officer.

3.3.3 Pre-solicitation conferences permit NAMSA technical personnel to discuss the proposed work with prospective contractors and to determine whether they are interested in responding to such requirements. The Contracting Officer shall chair such conferences.

4. SOLICITATION

4.1 Competitive Solicitation from Commercial Sources

Functional Directive No. 251

3.2 Competitive Solicitation from Commercial Sources

NAMSA shall normally acquire materiel and services on a competitive basis applying international competitive bidding rules described in this Directive.

Military and other governmental sources of NAMSO member states may be utilized in NAMSA competitions.

4.2 Redistribution

Functional Directive No. 251

3.3 Redistribution

With respect to materiel, the international competitive bidding process shall only be applied in case materiel is not available from NAMSA's own stocks nor from redistribution of military resources of NAMSO member states.

4.3 Non-Competitive Solicitation

Functional Directive No. 251

3.7 Non-Competitive Solicitation

NAMSA shall promote and provide for full and open international competition in soliciting offers and awarding contracts. However, under specific circumstances, solicitation procedures other than full and open international competitive bidding may be utilized.

Circumstances under which competitive bidding rules need not be followed are:

Functional Directive No. 251

3.7.1 Sole Source

There is only one known source capable of providing the materiel or service required.

3.7.2 Single Source

Procurement circumstances, noted below, may justify a decision to restrict the solicitation process to only one responsible source, although other potential sources may exist.

3.7.2.1 Urgency

Urgency conditions exist where competitive bidding rules would delay the supply of goods or services, defined by the customer as emergency requirements, beyond the delivery date specified by that customer.

3.7.2.2 Options

If an existing contract contains a valid option beneficial to NAMSAs customers.

3.7.2.3 Low Value

If the extended contract value involved is below 0.4 Financial Level A.

3.7.2.4 Security

If security requirements prohibit or limit distribution of the RFP data.

4.3.1 If materiel and/or services are known to be available from only one authorized source (Sole Source), a certificate signed by the Chief, Source Identification Section, stating that the source selected for solicitation is the only one known to be available, is required. Once certified, sole sources shall be solicited under the authority of the Contracting Officer. All cases of sole source solicitations shall be reported to the Competition Advocate.

4.3.2 Requests for single source procurements with an estimated value less than 4 X Financial Level A but more than 0.4 Financial Level A, shall be submitted by the requiring activity to the responsible Contracting Officer for approval.

4.3.3 Requests for single source procurements with an estimated value in excess of 4 X Financial Level A, shall be submitted in writing by the requiring activity to the Competition Advocate, with copy to the Market Research & Competition Advocacy Section and Contracting Officer concerned. The approval of the Competition Advocate must be obtained prior to releasing the PR to the Contracting Officer.

4.3.4 Requests for single source procurements shall clearly describe the reasons and justification for the request.

4.3.5 The above described approval process is not required for sole/single source procurements in the event of an option exercise or due to security requirements.

4.3.6 In cases of Emergency Procurement and/or Small Value Purchases, where there is no competitive solicitation, the most advantageous, appropriate and reliable source shall be selected, based upon best judgment and past experience.

4.4 Procurement from US Military Sources (FMS)

Functional Directive No. 251

3.6 Procurement from US Military Sources (FMS)

3.6.1 Subject to approval of an FMS Case, procurement from US military sources may be made when the extended line item value does not exceed Financial Level A. Approval of FMS Cases will be subject to the procedure that governs the approval of sole/single source procurements.

3.6.2 FMS requisitions, with an extended line item value that exceeds Financial Level A, must be the subject of a commercial solicitation provided that commercial suppliers of the requirement can be identified.

3.6.3 In the event that no viable commercial offer(s) is obtained, the requirement may be acquired under an existing FMS Case with the express approval of the responsible Contracting Officer.

3.6.4 FMS requirements that deviate, in any way, from the approved FMS Case, require the further approval of the authority that approved the initial FMS Case.

3.6.5 Requirements must not be split so as to fall within the financial limitations outlined above.

3.6.6 Procurement from US military sources under a Cooperative Logistics Supply Support Arrangement (CLSSA) is subject to approval by the BOD on a case-by-case basis. The procedure for obtaining such approvals is reflected in the NAMSAs Procurement Regulations.

New FMS cases under the concept of a Cooperative Logistics Supply Support Arrangement (CLSSA) shall observe a period of notification of 30 days to the NAMSO BOD before signature (silence procedure).

4.5 Selection of Sources for Competitive Solicitation

Functional Directive No. 251

3.8 *Selection of Sources for Competitive Solicitation*

3.8.1 *NAMSA shall normally select the sources from the NAMSA source file.*

3.8.2 *The number of sources to be solicited shall be reasonable in relation to the total estimated value of the order to be processed. Competitive proposals shall normally be sought from at least three (3) potential suppliers.*

3.8.3 *The above does not apply when NAMSA publishes its requirements on eBid or by other electronic means.*

Functional Directive No. 251

3.4 *Geographical Limits of Procurement*

3.4.1 *Procurement shall normally be limited to firms located within NAMSO member states.*

3.4.2 *Firms in all NAMSO member states shall have equal opportunities to submit proposals. Therefore, in selecting its procurement sources, NAMSA shall ensure that an appropriate number of sources from the various NAMSO member states are invited to participate in RFPs issued by NAMSA.*

3.4.3 *Firms located in a Partnership for Peace (PfP) state with whom NAMSO has signed a Memorandum of Understanding (MOU) and which is an associate state of a Weapon System Partnership or firms located in a PfP state which contributes to a PfP Trust Fund project may, within the limitations set by Functional Directive No. 090, also be invited to submit proposals for requirements that are covered by their specific agreements or contribution.*

3.4.4 *In case a Weapon System Partnership so decides, RFPs may, subject to approval by the BOD of the pertinent NAMSO Programme Directive containing such provision:*

3.4.4.1 *be issued only to firms in specified geographical areas, and/or*

3.4.4.2 *be subject to the application of certain criteria designed to give preference to firms located in such geographical areas.*

3.4.4.3 *in the instance of paragraph 3.4.4.2 the criteria must be clearly stated to permit standing application by NAMSA and paragraph 3.5 will not be applicable.*

In addition to manufacturers, any other responsible potential suppliers should be solicited where it is believed that their proposals may be responsive and competitive. In selecting sources, due consideration shall be given to the following factors:

4.5.1 The Contracting Officer/buyer is responsible for determining which of the sources registered in the Source File will be contacted for solicitations. Where the number of such sources makes it possible, solicitations shall in principle be rotated among them so that an equitable balancing of solicitations among all sources over a period of time will be assured. The foregoing notwithstanding, if experience shows that a source is consistently among the lowest responsive bidders there should be no restriction placed upon its solicitation. However, for procurements with an estimated value or for materiel with an extended line item value of Financial Level C or above, all known qualified sources will be solicited.

4.5.2 The NAMSA Procurement Directorate shall make special efforts to stimulate competition. In this connection, the Competition Advocate will periodically request the requiring activities to submit their anticipated future requirements, with a value in excess of Financial Level D, to the Market Research & Competition Advocacy Section for publication on the NAMSA website. In addition, the Procurement Division will periodically report "sole source" contracting situations to the Procurement Directorate. The Competition Advocate will investigate the possibility of stimulating competition through for example, encouraging firms in NAMS member states to acquire the data or licenses necessary to permit competition.

4.5.3 The activity issuing the PR or P&A Request may recommend sources to be included in the competitive solicitation.

4.5.4 If the sources as determined above are not considered adequate to ensure effective competition, the Contracting Officer/Buyer may, prior to initiating competition, request the Competition Advocate to contact the appropriate authorities of NAMS member states for information on additional qualified sources.

Functional Directive No. 251

4.4 Indication of Potential Bidders by NAMS Member States

A customer may request that a particular source be included amongst the potential bidders for a requirement.

However, NAMSA shall not comply with requests which intend to direct particular procurement contracts to particular sources.

4.6 Requests for Proposals (RFPs)

Functional Directive No. 251

4.3 Requests for Proposals (RFPs)

RFPs shall be designed in such a way to avoid the need for pre-award negotiations so that the resulting offers can, on acceptance by NAMSA, constitute the basis for a binding, and if possible, fixed price, contract.

RFPs shall be as informative as possible and contain an accurate and detailed description of each item and/or service required.

4.6.1 RFPs for materiel shall stipulate the delivery dates, that fixed unit prices are to be provided and shall indicate any other condition to be met.

4.6.2 RFPs for services shall normally establish the minimum and maximum order quantity expressed in terms of units or hours. Fixed prices, delivery schedule and other terms shall be requested for each unit or man-hour and for materiel, other than spare parts, required for the performance of the services. For services which cannot be so defined or specified, or for which no unit of services can be established, the RFP shall request quotations based on fixed man-hour rates.

4.6.2.1 The RFP may indicate that prices are subject to increase/decrease in line with the official price and wage indices of the country in which the services will be performed, or may be fixed as a result of the offer and acceptance process. Firm fixed prices however are preferred. RFPs for maintenance services, and the contracts resulting therefrom, shall be drawn up in compliance with the provisions of NI 231-01 as well as with these regulations.

4.6.2.2 Spare parts required for the performance of services shall normally be furnished by the contractor and only in exceptional cases by NAMSA. In either case, the RFP shall specify the categories of spare parts to be furnished by NAMSA and/or by the contractor. When spare parts are to be furnished by the contractor, the RFP shall stipulate the requirement that the contractor must identify all the costs associated with those parts, to include handling, transportation, packing and crating, etc.

4.6.2.3 RFPs for maintenance/repair services where the contractor will have to provide spare parts to prevent or terminate a work stoppage, shall indicate that NAMSA approval is required in advance of purchase. Reimbursement of costs will be as indicated above.

4.6.3 RFPs for materiel shall request delivery in accordance with the appropriate INCOTERMS established by the International Chamber of Commerce.

4.6.4 If a subsequent requirement for the materiel and/or services is anticipated, the RFP will request quotations including a scale of prices for increased quantities and/or extended delivery terms. The increased quantities and/or extended delivery terms should be established as "options" within the contract.

4.6.5 RFPs shall contain detailed information on all the criteria to be used in the evaluation of proposals and contract award process. This information shall include, but not necessarily be limited to, an explanation of NAMSA's "balancing of production" policy (see paragraph 5.7).

4.6.5.1 In the award of contracts exceeding Financial Level C, NAMSA shall implement a "balancing of production" policy.

4.6.5.2 Under this policy, when offers from firms of different NAMSO member states are otherwise similar, contract award is made to that bidder whose country, at time of award, is worse placed in terms of balance, provided that his offer does not exceed the lowest offer by more than 10 or 20 % depending on the relative position of the countries in terms of balancing and provided he agrees to match such lowest offer.

4.6.5.3 Relative positions of the countries in terms of production balancing are determined using the ratio "R": value of the contracts placed by NAMSA in these countries compared with the value of sales to these same countries. In the NAMSA scale of balancing, the worst-placed country is that in which this ratio is lowest.

4.6.6 RFP's will contain adequate provisions for liquidated damages based on payment to NAMSA of a percentage of the price of materiel and/or services which are not delivered by the contractual delivery date. Such liquidated damages provisions should normally not be included in RFPs with an estimated value less than 4 X Financial Level A (extended line item value for materiel).

4.6.7 The RFP shall specify the closing date for the submission of proposals to the Procurement Division. In fixing this closing date, due consideration shall be given to the urgency of the procurement action, the anticipated date of receipt of the RFP by all addressees and the estimated time required by them to prepare a realistic proposal.

4.6.8 The RFP shall inform any addressee that the relevant NAMSA General Provisions shall be applicable to any resulting contractual instruments, and shall specify the required duration of the validity of any proposal.

4.6.9 Any authorised bidder may, before the bid closing date, submit one or more proposals.

4.6.10 The means to be used for submitting proposals is left to the discretion of the bidder. Proposals may be sent in the post, by private mail service, by telefax, by e-mail or on the Internet. The RFP must clearly indicate these possibilities. A proposal that is received "incomplete" when the closing date deadline is reached, cannot be accepted.

4.6.11 Oral solicitations and oral proposals, except for Small Value Purchases and emergency requirements, are not allowed and shall not be utilized.

4.6.12 Changes to proposals shall not be accepted unless submitted in writing before the bid closing date.

4.6.13 Each RFP will indicate that copies of the NAMSA Procurement Regulations are available in hard copy or on magnetic media, for EUR 25, or on the NAMSA Website.

4.6.14 Currency: the RFP will indicate that bidders may quote in any of the currencies of NAMSO Member States (see paragraph 9.1.3).

4.6.15 Contracting Period: RFPs for services and for materiel Outline Agreements shall specify the anticipated contracting period (i.e. the period in which Purchase Orders can be issued).

4.6.16 Solicitation

Offers shall be solicited among sources selected in accordance with the requirements of Article 4 above by distributing the RFPs by the safest and most suitable means, which may include:

4.6.16.1 transmission by fax of the complete RFP to the selected source(s);

4.6.16.2 transmission by fax of the RFP, supplemented by the publication in a dedicated, password protected, web page of bulky attachments; the password granting access to the web page to be a part of the RFP;

4.6.16.3 publication in a dedicated, password protected, web page of the entire RFP, with notification of the invitation to participate in the bid and communication of the required password addressed to all selected sources by fax requesting proof of receipt.

4.7 Integrity of the Procurement Process

Special care shall be exercised to preserve the integrity of the procurement process between the time the RFP is issued and the time the contract is awarded. Only the Contracting Officer or the designated buyer shall deal with prospective contractors during this period. The RFP will name the person to be contacted for information and who will represent NAMSA for this purpose. Other personnel shall deal, as necessary, with prospective contractors only through the Contracting Officer or the designated buyer. This policy is necessary as any answer to one firm's question during the solicitation period could give that firm a competitive advantage. In the event of an informal inquiry from a bidder being made and additional details or data being provided to that bidder, the same information must be supplied to all firms solicited.

4.8 Contractor's Responsibility

The responsibility for the performance of the contract arising from the RFP will be defined in each RFP and contract as follows:

"The contractor is solely responsible for the performance of the contract resulting from this request for proposals. The fact that NAMSA allows the contractor to subcontract or to call upon a third party for the performance of any part of the contract does not relieve the contractor of his responsibility".

4.9 Duration of Contracts

Functional Directive No. 251

7. *DURATION OF CONTRACTS*

7.1 NAMSA will normally conclude contracts of such duration as to ensure completion of the requirements. The duration of these contracts will normally not exceed a 5-year period, including eventual option periods.

7.2 If, after consultation with the customer, it is determined that it would be in the best interest of the customer to conclude a contract with a duration longer than 5 years, the General Manager will request the BOD to approve the award of such a contract.

5. RECEIPT AND SELECTION OF PROPOSALS

5.1 Safeguarding of Proposals

Functional Directive No. 251

4.8.1 Safeguarding of Proposals

All proposals shall be regarded as commercially sensitive and details thereof shall only be communicated to persons with a need to know, except insofar as the requirements of paragraph 3.5 may necessitate disclosure of the most economical offer to another offerer.

5.1.1 The Procurement Division shall take appropriate measures to ensure that all incoming proposals are adequately safeguarded, that no persons without special authorization from the Chief of the Procurement Division have access to them and that if they are sent by post they remain unopened until the official opening time. When proposals are sent by other means (e.g. by telefax or e-mail), all necessary steps shall be taken to ensure that they are properly safeguarded.

5.1.2 Only personnel with a "need-to-know" shall have access to them. This generally means those personnel directly involved in that specific procurement action.

5.2 Two Envelope Procedure

When the RFP stated that 'a two envelope procedure' would be utilized for evaluation purposes (one envelope for the technical proposal and one envelope for the price proposal) the price proposal envelope shall not be opened until the compliancy of the technical proposal has been determined. In the event the technical proposal is determined to be non compliant, the price envelope will be returned to the bidder unopened.

5.3 Opening of Proposals

5.3.1 After the closing date of a competitive solicitation, the proposals received shall be opened and pre-registered by designated staff in Central Procurement.

5.3.2 For bids received in response to competitive RFPs with an estimated value exceeding Financial Level E formal and public opening proceedings will take place during which bids will be opened, stamped and names of bidders will be made public. Date, time, place and purpose of these proceedings will be specified in the RFP. The Procurement Division will be responsible for conducting the proceedings. Attendance at the proceedings will be restricted to bidders and officials of NAMSO member states. This procedure will not apply to classified and/or urgent procurements.

5.4 Late Proposals

Functional Directive No. 251

4.8.2 Late Proposals

Proposals received after the closing date for competitive solicitations shall not be considered for award, except in exceptional circumstances as provided for in the NAMSAs Procurement Regulations. However, proposals received after the bid closing date but before a contract has been awarded and which have a postage stamp dated before the bid closing date, will not be considered late proposals.

If a competitive solicitation is made and the only proposal received is a late proposal from a qualified source and the Chief of the Procurement Division determines that there is no evidence to suggest that a re-solicitation of proposals would produce any different result, the award process may be continued without re-solicitation. In this instance, cost and price analysis may be required to determine the fairness and reasonableness of the price. For amounts below Financial Level A, the award process may be continued using the late offer under the authority of the Contracting Officer.

5.5 Evaluation of Proposals

Functional Directive No. 251

4.8.3 Evaluation of Proposals

Proposals received shall be evaluated to determine the most economical amongst those that are technically and contractually compliant.

5.5.1 Timely received proposals shall be examined and compared by the Contracting Officer and/or buyer. The activity having issued the PR shall furnish any required technical assistance.

5.5.2 If a bidder has submitted more than one proposal, the most advantageous to NAMSAs shall be considered as his effective proposal.

5.5.3 In examining the proposals, care shall be taken to verify that the bidder's terms are consistent with any outstanding and valid general commitment he has made to NAMSAs by separate contractual instrument or otherwise, e.g. preferential prices or limitation clauses in contracts for custodianship of NAMSAs furnished special tooling, etc.

5.5.4 Comparison of the price quotations shall be made in euro; the exchange rates to be used for the purposes of such price comparison shall be the mean between buying and selling rates of the Brussels "Marché Réglementé" on the first banking day of the week of the bid closing date, as reported by the Banque et Caisse d'Epargne de l'Etat, Luxembourg. These means shall be calculated by the Agency Finance Division and sent to the Procurement Division at the beginning of the week.

5.5.5 If any proposal is judged to be unrealistic or uneconomical, or contains obvious errors, or if a proposal is not based upon exactly the same criteria as set forth in the RFP and, therefore, a realistic comparison cannot be made, the Contracting Officer may (and, where proposals are in excess of Financial Level C, shall) ask for additional information and clarification with the objective of obtaining comparable proposals.

5.5.6 Proposals shall be evaluated to determine whether or not they are compliant with the requirements specified in the RFP. A proposal is compliant if it meets the requirements specified in the RFP.

Functional Directive No. 251

4.5 Pre-Award Contacts with Suppliers (Competitive Solicitations)

4.5.1 Pre-award negotiations may be held in exceptional cases as defined in the Procurement Regulations.

4.5.2 In any case, pre-award negotiations shall be conducted in such a manner as to retain the integrity of the procurement process.

5.5.7 Pre-award negotiations of contractual terms may exceptionally be conducted when all proposals received are considered unsatisfactory. They shall be conducted individually with all bidders in a manner which does not give one bidder an advantage over another.

5.6 Selection of Proposals

5.6.1 After comparison of proposals, the most economical one shall be selected from the responsive, responsible bidders except as indicated in paragraphs 5.6.2, 5.6.3 and 5.7 below. When evaluating proposals with the objective of selecting the most economical, due consideration shall be given to prices, delivery schedules and technical capability. Transportation costs will be taken into consideration if so specified in the RFP.

5.6.2 When evaluating multiple-line item offers to determine the successful bidder, the administrative costs associated with awarding and administering multiple contracts as opposed to a single contract should be considered. It may be more advantageous, for example, to award one contract for all the line items even though multiple awards would result in lower prices for some line items.

5.6.3 When a proposal is made conditioned upon NAMSA's agreement to waive one or more of NAMSA's General Provisions, or other contractual provisions, in principle, such proposals shall not be considered for award if another proposal exists which is fully responsive to the RFP. However, if the price is lower and with the approval of the Chief of the Procurement Division, the proposal requesting a waiver to the NAMSA General Provisions may be accepted. This principle shall not be applicable to proposals received from governmental entities of NAMSO member states when the waiver is required by national regulations.

5.7 Balancing of Production

5.7.1 With a view to balancing the production among countries to the greatest practicable extent, the following criteria shall be applicable when the lowest offer exceeds 4 X Financial Level B (extended line item value for materiel contracts). When making the financial comparison of offers, account shall be taken of the countries' positions in terms of the categories defined hereafter.

5.7.2 Each country's position in terms of industrial return is determined by using the ratio "R": value of contracts placed in a country / value of sales made to a country. Countries fall into one of three categories, depending on their "R" ratio:

- Well-placed countries: "R" ratio equal to or greater than 0.80;
- Less-well placed countries: "R" ratio equal to or greater than 0.25 and less than 0.80;
- Poorly placed countries: "R" ratio less than 0.25.

5.7.3 The country of the bidder is determined by the location of his production facilities.

5.7.4 The price to be matched is the price quoted in accordance with the requirements of the RFP.

5.7.5 If the lowest offer comes from a firm located in a well-placed country and if higher offers are submitted by bidders from poorly-placed countries, the Agency shall give such bidders, beginning with the originator of the next best offer, the opportunity to match the lowest offer provided that the next best offer does not exceed the lowest one by more than 20%.

5.7.6 If necessary, a second phase shall be initiated in which offers from bidders in less-well-placed countries shall be taken into account. The Agency shall give such bidders, beginning with the originator of the next best offer, the opportunity to match the lowest offer, provided that the next best offer does not exceed the lowest one by more than 10%.

5.7.7 If the lowest offer comes from a less-well-placed country and if higher offers are submitted by bidders from poorly-placed countries, the Agency shall give such bidders, beginning with the originator of the next best offer, the opportunity to match the lowest offer, provided that the next best offer does not exceed the lowest one by more than 10%.

5.8 Award of Contracts to Non-NAMSO Member States

Functional Directive No. 251

3.4.5 Award of Contracts to Non-NAMSO Member States

3.4.5.1 The General Manager has authority to place contracts with commercial firms in NATO member states not members of NAMSO. Contracts awarded to such firms shall be reported to the BOD annually.

3.4.5.2 Contracts shall not be placed with non-NATO Governments or with firms from non-NATO member states or with firms whose legal residence or main production facilities are located outside NATO member states except when the provisions of paragraph 3.4.3 apply.

3.4.5.3 The NAMSA General Manager may however approve awards of contracts to firms whose legal residence or main production facilities are located outside NATO member states (but not in countries under Communist control) that are sole sources for the materiel and or services to be furnished provided that for each firm the total cumulative monetary value of such contracts shall not exceed the Financial Level D as specified in the NAMSO Functional Directive No. 410 during any calendar year. This authority may be re-delegated by the General Manager to the Director of Procurement.

3.4.5.4 Such practice shall be reported by NAMSA to the BOD annually concerning contracts awarded during the preceding year.

3.4.6 Deviations from the above rules require advance approval of the BOD. The BOD may request advance approval of the NATO Council if it so decides.

5.9 Pre-Award Survey

Functional Directive No. 251

4.6 Pre-Award Survey

Before awarding a contract, NAMSA shall make a determination concerning the responsibility, capability and financial stability of the prospective contractor.

No proposal shall be recommended for award until a written affirmative determination has been made based either on information in the source file or, in case that is insufficient, on a Pre-Award Survey. Pre-award surveys will normally not be performed for contracts with a value less than Financial Level D.

5.10 NAMSA Customer Price Approval

Functional Directive No. 251

4.7 NAMSA Customer Price Approval

4.7.1 In order to streamline administration and reduce costs for routine NAMSA customer materiel requirements submitted under the brokerage procedure, transactions equivalent to or below 0.1 of Financial Level A for quoted unit price, or Financial Level A for extended line item value, do not require that NAMSA obtain final price approval, unless a nation requests such price approval in the purchase requisition.

Functional Directive No. 251

4.7.2 For services the customer price approval rules will be specified in the maintenance plan established for each programme.

4.7.3 Customers shall respond to NAMSA price approval requests within 28 days. If no response is received within this period, NAMSA will assume that the customer decided to cancel the requirement.

4.7.4 For "high priority" and "urgent" requirements, no price approval will be sought by NAMSA, unless a nation requests such price approval in the purchase requisition.

6. AWARD

6.1 Authority

The acceptance of a proposal for which the award has been approved by a Contract Award Committee will be made by the official having delegated contract signature authority as per paragraph 6.3.4.

6.2 Contract Award Committee (CAC)

Functional Directive No. 251

4.9 Contract Award

Contract Award Committee

Proposals shall be considered by an award committee as defined in the NAMSAs Procurement Regulations. The award committee shall authorize award of the contract to the winning bidder.

A CAC shall not be required for the award of contracts of a value lower than Financial Level C.

6.3. Composition of the CAC

6.3.1 The CAC is responsible for identifying and approving the proposal to be accepted. The CAC shall be composed of NAMSAs officials holding the position and appropriate level of authority in accordance with a scale related to financial value.

6.3.2 The Chairman of the CAC will invariably be a NAMSAs Procurement Official. Decisions will be based on unanimity. Should unanimous agreement not be reached, then the matter will be referred to the NAMSAs Procurement Official who is superior to the Chairman of the CAC for final decision.

6.3.3 The acceptance of the approved proposal shall be contractually undertaken by the Contracting Officer/buyer having the authority to do so. The Contracting Officer/buyer is responsible for the contractual sufficiency of the contractual instruments used to accept the proposal that has been approved for award by the CAC. At his discretion, the Contracting Officer/buyer may seek the coordination of the CAC, NAMSAs Legal Advisor, the Contract Quality Control Officer or other NAMSAs officials to the text and/or content of the contractual instrument in question, particularly for more complex contracts. Contracts with a value in excess of 3 X Financial Level C shall be submitted to the Contract Quality Control Officer for review prior to the CAC meeting, except when the terms and conditions of the contract were approved by the Contract Quality Control Officer during the RFP review process, and have been accepted without any change by the successful bidder.

6.3.4 The composition of CAC and the signature levels for proposal acceptance (as re-delegated by the General Manager through the Director of Procurement and Procurement Division Chief) are as follows:

Amount	CAC Approval	Signature (acceptance)
>2,5 X Financial Level E	P (Chairman), PP, PP Branch Chief, CO, PMO	CO
≤2,5 X Financial Level E	PP (Chairman), PP Branch Chief, CO, PMO	CO
<1,5 X Financial Level E	PP Branch Chief (Chairman), CO, PMO	CO
<2,5 X Financial Level C	CO (Chairman), Buyer, PMO	Buyer
Financial Level C	CO approval only	Buyer
Financial Level B	Buyer only	Buyer

6.4 Responsibility of the CAC

6.4.1 Verifying that the PR, the RFP and the proposal to be authorized for award coincide as regards the service and/or materiel to be purchased, and also any special terms and conditions relating thereto and that the award decision is in consonance with the RFP evaluation criteria.

6.4.2 Verifying whether or not quality assurance requirements have been duly considered.

6.4.3 Verifying whether balancing of production rules have been complied with, if applicable.

6.4.4 Verifying whether customer price approval was required and obtained, if applicable.

6.4.5 Verifying whether customer approval was required for any advance and/or progress payments, if applicable (see paragraphs 9.1.8 and 9.1.9).

6.4.6 Ascertaining that the proposal to be authorized for award was submitted in due time.

6.4.7 Verifying whether customs duties were taken into consideration in establishing the most economical proposal, if applicable.

6.4.8 Ensuring, in more general terms, that the NAMSA Procurement Regulations have been duly complied with regarding the authorization of award in question.

6.5 Approval of the Award

For awards the authorization of the CAC shall be evidenced by a record of the name, date and signature of each member following a statement “The award of contract is authorized to be made to: (name of company) in the amount of: ...”. This record of award authorization may be on the abstract of proposals or other appropriate document forming part of the procurement file.

6.6 Award to other than Lowest Compliant Bidder

6.6.1 When the Agency intends to authorize award of a contract to a bidder other than the one who submitted the lowest compliant bid (except in cases where this arises due to implementation of the rules of balancing of production), the reason(s) for rejection of the lower bid(s) will be thoroughly documented as part of the award authorization.

6.6.2 If the value of a contract to be awarded in these exceptional circumstances exceeds 5 X Financial Level C, the F&A Committee member (or the member of the Board when the country has no member on the Finance & Administration Committee) of the country of the non selected lowest compliant bidder will be advised of the situation.

6.6.3 Award of the contract will be withheld for a maximum of three weeks from the date of the receipt by the Finance & Administration Committee (or Board) member of the advice mentioned at paragraph 6.6.2 above. Within such period of time, the Finance & Administration Committee (or Board) member may, if he so desires, notify NAMSA of his protest against the intended award, stating his reasons. Should the matter not be resolved to the satisfaction of the said member within three weeks of the receipt by NAMSA of the aforesaid protest from the Finance & Administration Committee (or Board) member, the latter may initiate the Protest of Award Procedure provided for in Annex V to these Procurement Regulations. If the Protest of Award Procedure is not initiated in writing within 5 days after the expiration of the three week period, the protest will be considered withdrawn.

6.6.4. The Agency shall provide annual statistics to the Finance and Administration Committee on all cases in which awards are made to bidders other than the lowest bidder, showing the number of contracts awarded to bidders other than the lowest responsible responsive bidder versus the total number of contracts let, the value of contracts so awarded versus the value of all contracts let, and a statistical resume of the reasons justifying such awards.

6.7 Refusal of Liquidated Damages Provision

No contract awards shall be made to a firm which refuses to accept a liquidated damages provision without prior written authorization of the Director of Procurement. Awards of sole/single source contracts and awards of Small Value Purchase Orders are excepted from this provision.

6.8 Awards of Sole/Single Source Contracts and Extensions

Awards of Sole/Single Source contracts and extensions of any type of contracts will be supported by findings that the prices are fair and reasonable. Such findings shall be justified by the results of price and/or cost analyses and/or by comparison with previous prices and/or prices for similar contracts, if any.

6.9 Notification of Unsuccessful Bidders

Functional Directive No. 251

4.10 Notification of Unsuccessful Offerers

4.10.1 Unsuccessful offerers shall be informed that their proposal has not been accepted, as outlined in NAMSA's Procurement Regulations.

4.10.2 BOD members may require additional clarification from NAMSA requesting free access to the pertinent documents, safeguarding the confidentiality of bids.

6.9.1 Except for purchases under the Small Value Purchase Procedure, a standard letter will be sent to all unsuccessful bidders stating that their proposal has not resulted in an award.

6.9.2 For proposals that exceed two times Financial Level D, additional general information will be provided upon request of unsuccessful bidders, and will indicate that their proposal exceeded the offer accepted by 10%, 10-20%, or 20-30%.

6.10 Information

Once the contract has been awarded, copies (if formally requested and approved unanimously by the customer and contractor involved) may be provided to officials of NAMSO member states who are or were directly involved in that procurement.

7. WITHDRAWAL OF SOLICITATION

If a contract cannot be awarded, either because the solicitation failed to produce an acceptable offer, or the customer cancelled the PR etc., the RFP shall be officially cancelled and official notice given to all sources solicited.

8. TYPES OF CONTRACTUAL INSTRUMENTS

8.1 General

Functional Directive No. 251

5.1 NAMSA shall normally use standard terms and conditions in its contracts.

5.2 Contracts that depart from the NAMSA general provisions shall be approved by the Director of Procurement or his delegated representative.

Contracts shall be written in accordance with good commercial practices, giving due consideration to the peculiarities of the procurement involved and, in general, to the purchase of materiel and/or services for military use; further, the utmost care shall be taken to ensure that the risk involved for NAMSA in each contractual action is kept to the minimum.

8.2 Standard Types of Contractual Instruments

Depending upon the specific terms required, the following standard types of contractual instruments shall be utilized exclusively:

8.2.1 Fixed-Price Contracts

Fixed-Price contractual instruments provide for acquisition of materiel and/or services at fixed unit prices. This type of contractual instrument shall be utilized unless another type is more appropriate.

8.2.2. Outline Agreements

8.2.2.1 Outline agreements establish the specifications, nature and price of deliverables or the method according to which these are determined; they establish the minimum value or quantity of such goods or services.

Outline agreements are implemented by issuing successive purchase orders as required. Each individual purchase order specifies which of the goods and services described in the outline agreement are required and determines the quantity.

8.2.2.2 Via a duly substantiated waiver, where the volume and occurrence of the requirement cannot be assessed in advance, an outline agreement may be concluded without a minimum or a maximum amounts.

8.2.2.3 In the cases described in paragraphs 8.2.2.1 and 8.2.2.2 above, when on the duly substantiated grounds that it is impossible for a single company to provide all the deliverables in most advantageous conditions or that it is necessary to provide for guaranteed provisioning, outline agreements covering batches of identical deliverables may be concluded with several contractors provided the agreements explicitly set out the conditions under which purchase orders may be issued to the various contractors involved.

8.2.3 Cost Reimbursement Contracts

8.2.3.1 There are many different types of cost reimbursement contracts and fixed-price contracts that contain some cost reimbursement features. Generally, NAMSA does not use "cost reimbursement" contracts. NAMSA does use, however, contracts with a mixture of fixed price and cost reimbursement features.

8.2.3.2 Cost reimbursement contracts have a reimbursement concept that guarantees the contractor payment of all his allowable, allocable and reasonable costs incurred in the accomplishment of his tasks. The contractor is reimbursed for his efforts rather than for the quality of his product. Contracts of this type, or any contract with a cost reimbursement feature, require the approval of the Chief of the Procurement Division.

8.2.3.3 Time-and-material and fixed man-hour rate contracts are varieties of cost reimbursement contracts. The contractor in these contracts is generally entitled to reimbursement for expending his time and effort rather than delivering a specified product of a specified quality within a specific delivery schedule. These contracts require considerably more effort to administer. Great care must be taken in establishing contract administration plans for them and a post award conference must be utilized to review all salient contract elements prior to contract performance.

8.2.3.3.1 All contracts of this type (regardless of their reimbursement methodology) shall have performance objectives or specified end products identified as contract deliverables. Service type cost reimbursement contracts, wherein NAMSA will pay simply for time expended, should be avoided. In those rare cases where they must be utilized, they must be approved by the Chief of the Procurement Division.

8.2.3.3.2 Services contracts of an administrative nature containing this type of reimbursement feature (i.e., non maintenance/repair type contracts) shall be administered by the Central Procurement Section of the Procurement Division..

8.2.4 Other features of Cost Reimbursement type contracts

8.2.4.1 They require the establishment of a total estimated cost plus fixed fee or profit. The profit may be a part of the fixed rate in fixed rate per hour type arrangements.

8.2.4.2 The total estimated cost shall not be exceeded by the contractor without the express consent of the Contracting Officer.

8.2.4.3 Reimbursement amounts relating to materiel or travel, transportation or other such costs (handling costs for example) can be expressed as a fixed amount or percentage amount to be added to the cost of the material or travel expense. The supplementary costs must be carefully analysed (review by NAMSA's cost/price analyst is required). This is not to be construed as being a "Cost Plus a Percentage of Cost" type contract, which is prohibited. This type of contract would allow a contractor to be reimbursed all his allowable, allocable and reasonable costs plus a predetermined percentage of those costs as his fee or profit.

8.2.4.4 When a contract includes the provision of a stock of spares by NAMSA, additional spare parts required to prevent a work stoppage may be furnished by the contractor at cost plus a handling charge, plus transportation, if any. The approval of the Contracting Officer is required prior to allowing the contractor to purchase such parts. The supplementary amount in this instance shall be without profit.

8.2.4.5 A services contract may contain a price escalation clause based on the official price and wage indices of the NAMSO member state in whose currency the contract price is expressed.

8.2.5 Ceiling Price Contracts

8.2.5.1 Ceiling Price contractual instruments provide for acquisition of materiel and/or services at ceiling prices, i.e. prices that cannot be exceeded.

8.2.5.2 The ceiling price shall be converted into a Fixed Firm Price following provision of price justifications that were not available at the time of award.

8.2.5.3 Such price justifications shall be furnished by the contractor or by official pricing authorities of the country in which the contractor's facilities are located. In exceptional cases, NAMSA may opt to verify prices at the contractor's site.

8.2.5.4 Following price verifications, the ceiling price can only be confirmed or reduced, not augmented.

8.2.6 Basic Contractual Instruments

8.2.6.1 Basic contractual instruments (BCIs) set forth the negotiated contract clauses which shall be applicable to future procurements entered into during the term of the BCI.

BCIs are appropriate for use when:

- past experience and future plans indicate that a substantial number of separate contracts may be entered into with a contractor during the term of the BCI, and;
- substantial recurring negotiating problems exist with a particular contractor.

8.2.6.2 BCIs shall in no way commit NAMSA to place future orders or contracts with the contractor.

8.2.6.3 Awards of contracts to commercial firms with whom NAMSA has negotiated BCIs containing deviations from NAMSA General Provisions will be limited to those situations where the materiel and/or services in question are known to be available only from such firms.

8.2.7 Other Types of Contractual Instruments

Other types of contractual instruments may not be utilized except upon authorization and approval by the Procurement Directorate. Appropriate requests shall be submitted in writing and state in detail the circumstances believed to justify their use.

8.2.8 Letter Contracts

8.2.8.1 A letter contract is a written preliminary contractual instrument, that authorizes the contractor to begin performance immediately. It is used:

- when NAMSA's interest demand that the contractor be given a binding commitment so that work can start immediately; and
- when completing a definitive contract is not possible in time to meet the requirement. However, the letter contract should be as complete and definite as feasible under the circumstances.

8.2.8.2 Letter Contracts shall contain a mutually agreed definitization schedule to include:

- date for the contractor's price or cost proposal;
- date for the start of negotiations;
- target date to conclude (definitize) all contract terms and conditions. This date shall not be more than 180 days from the date of contract issuance, or, prior to the completion of 40% of the work to be performed, whichever ever occurs first;

NAMSA's maximum liability (the estimated amount necessary to cover the contractor's requirements for funds before definitization) shall not exceed 50% of the estimated cost of the definitive contract.

8.2.8.3 Letter Contracts require the specific approval of the Chief, Procurement Division.

8.2.9 Letters of Intent

Letters of Intent, i.e. the written statement of the intent to enter into a formal contract, shall not be used unless approved by the Director of Procurement.

8.2.10 On-line Outline Agreements

8.2.10.1 On-line outline agreements establish the specifications, nature and price of deliverables without establishing the minimum quantity of such goods or services to be supplied. These agreements are made accessible to authorized customers either through a password protected Internet portal or through a dedicated network.

8.2.10.2 Ordering under on-line outline agreements is performed directly by authorized NAMSA customers by issuing successive call orders as required. Each individual call order specifies which of the goods and/or services described in the agreement are required, the quantity and the delivery terms.

8.2.10.3 All financial liabilities deriving from the implementation of on-line outline agreements are vested in the authorized customer that has issued the call orders.

8.3 Parties to the Contractual Instrument

The parties to the contractual instrument shall be indicated as:

NORTH ATLANTIC TREATY ORGANIZATION
Maintenance and Supply Agency (NAMSA)

and a Contractor (full name and address of legal residence).

9. TERMS OF CONTRACTUAL INSTRUMENTS

9.1 Special Terms

9.1.1 The contract shall specify the materiel and/or services to be provided; prices, delivery schedule and any/all other specific terms necessary to accurately reflect the terms and conditions of the RFP, the contractor's technical proposal, and the results of any subsequent negotiations. Additionally, the responsibility for the performance of the contract will be defined in the contract as stated in paragraph 4.8 above.

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5.3 NAMSA contracts shall specify the contractor's responsibility for obtaining manufacturing licenses from the holders of proprietary rights and for indemnifying NAMSA against claims for infringement of patent rights, etc., with regard to the materiel to be delivered to NAMSA. NAMSA will inform the contractor when it is aware of existing proprietary rights.

9.1.2 In the event agreement cannot be reached on the terms of a contractor's broad responsibility, his responsibility may be limited.

9.1.3 Contract Prices

Contract prices and payments to be made under contracts should normally be expressed in the currency of the country of the contractor or in the currency of that country in which the main contract performance is to take place. Contracts may be priced in the currency of any NAMSO member state. However, the currency chosen by contractors in which to bid and that used for the resulting contract and payments there under must be the same.

9.1.4 Delivery Terms

The Special terms shall provide for delivery of materiel by using the INCOTERMS appropriate to the nature of the purchase and the risks inherent to each delivery. Particular attention shall be given to the need of complying with national export licensing arrangements and to ensure that assumption of transportation risks by NAMSA take place only when necessary.

Provision shall be made for the delivery of equipment incident to services performed at or near contractor's or subcontractor's facilities, as appropriate. Return of the equipment after completion of the services shall be delivery FCA named place, or DDU named place of destination as appropriate (applicable INCOTERMS). Special terms may provide for authorization to "ship-in-place" which means that passage of title occurs on acceptance by the Government Quality Assurance Representative, if required, but that the contractor is financially responsible for protecting the NAMSA property, at his premises after transfer of ownership.

9.1.5 Marking and Shipping Instructions

Marking and shipping instructions shall be complete, unambiguous and readily understandable, in order to permit delivery without unnecessary delay.

9.1.6 Bid/Performance Bonds

At the discretion of the Contracting Officer, the contractor may be required to furnish a bond or equivalent security for the purpose of assuring adherence to his bid and / or the performance and/or fulfilment of his obligations under either the RFP or the contractual instrument as the case may be.

9.1.7 Payment

Provision shall normally be made for payment to the contractor within sixty (60) days after submission of a properly substantiated invoice.

9.1.8 Advance Payments

Advance payments are advances of money by NAMSA to a contractor before and in anticipation of complete performance under a contract. They are to be liquidated from payments due to the contractor incident to his performance. Since they are not measured by performance, they may be used only when:

- adequate consideration is received from the contractor;

- they are backed-up by a bond or other adequate security;
- they do not exceed 30% of the (estimated) contract costs;
- they are approved by the customer (for nationally funded brokerage requirements); or when
- there is a sole source offering the materiel required and “cash with order” is the only method to obtain the materiel. In this last case, payment may be made up to Financial Level A.

9.1.9 Progress Payments

Progress payments are made on the basis of costs incurred by the contractor as work progresses under the contract. Combined total of advance and progress payments shall not normally exceed 80% of the contract value.

9.1.10 Liquidation of Advance/Progress Payments

Advance and progress payments are recouped by NAMSA through proportional deductions from payments that would otherwise be due to the contractor for completed contract items. The liquidation rate shall be included in the contract.

9.1.11 NAMSA furnished property

Any contract entered into between NAMSA and another organization or a contractor, whereby it is contemplated that property shall be entrusted to such organization or contractor, shall provide for the assumption by that organization or contractor of full responsibility as accounting officer and/or custodian and/or administrator, as appropriate, and the related property management responsibility, as more fully described in current directives applicable to Property Accounting.

9.1.12 Service contracts containing provisions for repair and overhaul of scheduled workloads at contractor's facilities will also contain provisions for fixed turn-around-times within which such repair and overhaul is to be accomplished.

9.1.13 Service contracts shall contain the following provisions in their Schedules. However, where prior to the issuance of an RFP a NAMSA customer whose property is to be worked on under the resultant contract has indicated its desire that its property be insured against loss or damage caused by the perils excepted by the following provisions, the RFP and the Schedule of the contract shall specifically fix the responsibility for such loss or damage on the contractor, require him to obtain insurance therefore and make the following provisions inapplicable to such customer's property.

PART NAMSA PROPERTY UPON WHICH WORK IS TO BE PERFORMED.

A. The term "NAMSA property upon which work is to be performed" as used in this PART refers to those end-items or equipment, object of this contract, furnished by NAMSA for overhaul/repair, modification etc. The NAMSA property upon which work is to be performed, under this PART, is to be considered as distinct from NAMSA-furnished property to be used in the performance of such work. NAMSA property upon which work is to be performed by the Contractor pursuant to this contract is hereby identified as:

.....
.....
.....

B. The Contractor's liability for NAMSA property upon which work is to be performed shall be subject to the provisions of paragraph 12.8 of the General Provisions clause of this contract entitled "NAMSA-Furnished Property". However, the end-items or equipment identified in paragraph A. of this PART shall not be considered as "property" or "NAMSA-furnished property" within the meaning and for the purpose of any other paragraph of the clause of the General Provisions of this Contract entitled "NAMSA-Furnished Property".

C. Title to NAMSA property upon which work is to be performed shall remain with NAMSA. The Contractor shall protect such property in accordance with sound industrial practice. For the purposes of this PART, it shall be assumed that title to NAMSA property upon which work is to be performed under this Contract is vested in NAMSA even though it may, in actual fact, be owned by one or more NAMSA customers or NATO member states. NAMSA shall at all reasonable times have access to the premises wherein such NAMSA property is located.

D. The Contractor shall maintain adequate property control records of NAMSA property upon which work is to be performed in accordance with the requirements of this Contract."

"E. Except as otherwise provided in this Contract, should the NAMSA property upon which work is to be performed not be delivered to the Contractor by the time or times specified in the Contract, NAMSA shall, upon timely written request made by the Contractor, make a determination of the delay occasioned the Contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by such delay, in accordance with the procedures provided for by the clause in the General Provisions of this contract entitled 'CHANGES'.

9.1.14 When applicable, the following codification clause will be included in contracts:

- the contractor will furnish the agency designated by the National Codification Authority of the producing country with engineering drawings, specifications and related documentation conveying item identification data, and also draft item identification if required, as specified by the producing country, for those items designated by NAMSA to support the equipment covered by the contract, and for which new item identification must be prepared.

- for items procured by the contractor from a subcontractor or vendor, the contractor will furnish the name of the actual manufacturer(s) and his/their drawings or part numbers or applicable technical data, plus draft item identification if required. All necessary data and related draft item identification required will be submitted at the earliest practicable date but in all instances not later than forty-five (45) days prior to delivery, unless otherwise specified in the contract.

- for the life of the contract, the contractor will provide updating information regarding all modifications or design changes made to the equipment or spare parts. When draft item identification is to be furnished, it will be provided in accordance with the guide for the preparation of item identification furnished by the designated agency of the producing country. The contractor will contact the National Codification Authority in the producer country without delay for further particulars.

9.2 General Terms

9.2.1 Every formal contract and letter contract shall include the appropriate NAMSA General Provisions for Contracts (see Annexes I-II). Deviations from standard clauses in any contractual document shall be indicated specifically.

9.2.2 All deviations from the General Provisions shall be approved by the Chief of the Procurement Division.

10. SMALL VALUE PURCHASES

10.1 Application of Small Value Purchase Procedures

10.1.1 The objective of the simplified purchase procedures described herein is to reduce administrative costs in accomplishing small value purchases and to eliminate costly and time-consuming processes. Utilization of these procedures is not restricted to purchases effected in the locality surrounding NAMSA's premises.

10.1.2 For purchase requisitions with an estimated value below 0.4 Financial Level A single source procurement is acceptable provided that the prices quoted by this single source are considered reasonable. The price quotation may be obtained by telephone, however, a fax is preferred, and be directly entered into the purchase order, i.e., there is no requirement for an RFP.

10.1.3 For purchases estimated not to exceed Financial Level A, but more than 0,4 X Financial Level A, reasonable solicitation of proposals from qualified sources shall be secured in order to ensure that the procurement is made to the advantage of the customer, price and other factors considered, including the administrative cost of the purchase. Solicitations should be limited to three (3) sources, but solicitations should be distributed equitably whenever possible over a period of time among qualified sources in all NAMSO member states. Oral solicitation procedures may be utilized where appropriate to expedite and/or reduce the administrative costs. Buyers must clearly document the sources contacted and quotes received. In order to do this, the Buyer must create an RFP, but does not have to necessarily send it out, and then register the quotations as per standard quotation processing. A purchase order can then be created for the lowest bidder, while the appropriate procurement data relative to this solicitation is maintained.

10.1.4 The Procurement Division's Central Procurement Section is responsible to provide support to Agency customers not supported by a Material Management Center. However, the Division Chief, AA the Commander SOC and Chief HLM have delegated procurement authority for purchases the estimated value of which does not exceed Financial Level A.

10.1.5 With the exception of paragraphs 5.1 and 5.5.5, small value purchases shall not be subject to the provisions of paragraph 4.6 and paragraph 5 of these regulations. The delivery terms contained in paragraph 9.1.4 shall not be applicable to small value purchases.

10.1.6 Small value purchase order files must be supported by:

- the PR, with proof of commitment of credits, upon the authority of which the purchase was accomplished, and
- a sales document of the vendor such as an original bill, sales slip or invoice;
- certification by the Contracting Officer, or his designated representative, to the effect that the sales document is true evidence of a purchase effected under the NAMSA small value purchase procedures and is in the amount agreed; a statement by the buyer that the price paid was fair and reasonable;
- evidence of shipment or receipt of the items described in the sales document;
- written evidence in the form of memoranda for the record or correspondence giving detailed information of solicitations made and justifying the award. This is not required for purchases originally estimated to be in the amount of 0,4 X Financial Level A or less;

- when, in order to secure tax and/or customs credits or rebates, the vendor has need of documentary evidence of the sale of supplies and/or services to NAMSA, he will be furnished with a statement of the order as appropriate. The statement of the order will be signed by the Contracting Officer or his designated representative.

10.2 Restrictions on the Use of Small Value Purchase Procedures

Simplified, small value purchase procedures shall not be used:

10.2.1 where the materiel and/or services to be furnished are classified or where the vendor would require access to classified information;

10.2.2 where the procurement requires vendor's adherence to complicated specifications not readily available to the contractor;

10.2.3 where the required quality level exceeds the requirements of AQAP 130, or equivalent, and/or where GQA services are required.

10.3 Price Exceeds Financial Level A

If a procurement estimated to exceed 0,4 X Financial Level A in price, but not to exceed Financial Level A has been started under these small purchase procedures and if, after solicitation, it appears that the total price will exceed Financial Level A, but not exceed 2 X Financial Level A, the procurement will be finalized under the small value purchase procedures.

10.4 Price Exceeds 0.4 X Financial Level A

Similarly, where the procurement is estimated not to exceed 0,4 X Financial Level A and after solicitation it appears that the price will not exceed Financial Level A the procurement will be concluded under the small purchase procedures applicable to procurements not to exceed 0,4 X Financial Level A (see 10.1.2).

10.5 Splitting of Requirements

NAMSA requirements shall not be divided for the purpose of using these less complex procedures or to avoid the requirement being reviewed or processed by a higher approval authority and/or the NAMSA Procurement Division.

11. AVAILABILITY AND COMMITMENT OF BUDGETARY CREDITS

11.1 Availability

Arrangements to ensure that budgetary credits are available for the purchase must be made by the activity creating the PR. No liability shall be incurred without prior commitment of the corresponding budgetary credits. Contractual instruments will only be awarded after certification that the necessary credits to cover the liability to be incurred have been committed. The authority authorized to request the commitment shall identify the liability to be incurred and any advance / progress payments required. The certification of the commitment of credits may be provided by electronic means.

11.2 Processing of Advance and/or Progress Payments

Advance and/or progress payments will be processed in accordance with paragraphs 9.1.8 – 9.1.10 hereof.

12. AMENDMENTS TO CONTRACTUAL INSTRUMENTS

12.1 Requirements for Amendment

Contractual instruments may be amended as necessary to reflect changes in requirements or to implement changes of NAMSA policy.

12.2 Policy

12.2.1 Only Contracting Officers/buyers acting within the scope of their delegated authority are empowered to execute contract modifications on behalf of NAMSA. Other NAMSA staff shall not:

- execute contract modifications;
- direct or encourage the contractor to perform work that should be the subject of a contract modification.

12.2.2 Contract modifications, including changes that could be issued unilaterally, shall be priced before their execution. If a significant cost increase could result from a contract modification and time does not permit negotiation of a price, at least a ceiling or not to exceed price shall be negotiated.

12.3 Types of Contract Amendments

Contract amendments are categorized as follows:

12.3.1 Supplemental Agreements

A supplemental agreement is a bilateral contract modification signed by both the contractor and NAMSA. Supplemental agreements are used to:

- make equitable adjustments resulting from the issuance of change order;
- definitize letter contracts, and
- reflect other agreements of the parties modifying the terms of the contract.

12.3.2 Change Orders

A change order is a unilateral contract modification signed only by the Contracting Officer/buyer. Change orders are used to:

- make administrative changes;
- make changes authorized by contract clauses, such as exercise of options.

12.4 Processing of Amendments

12.4.1 Amendments shall be expeditiously processed. If the contractor refuses to agree to a supplemental agreement, or if he agrees subject to an increase in price for the materiel and/or services, or subject to an important change of other essential terms of the contractual instrument, the Contracting Officer/buyer shall notify the requisitioner accordingly.

12.4.2 Supplemental agreements and change orders shall be signed by the person having signed the basic contract, or by his replacement.

12.4.3 Authorization to award a supplemental agreement which changes or extends the scope of the initial contract is covered by the same approval/authorization process as applies for basic contracts (e.g. authorization by the appropriate award committee).

13. ADMINISTRATION OF CONTRACTUAL INSTRUMENTS

13.1 Manner

Contractual instruments shall, under the responsibility of the Contracting Officer, be administered in such a manner as to ensure that the contractual obligations of the contractor and NAMSA are correctly and promptly fulfilled, and that NAMSA's rights under the terms of the contractual instrument are exercised lawfully and in the best interests of NAMSA and its customers.

13.2 Surveillance of Contractor Performance

13.2.1 Whenever there is an indication that the contractor will not meet essential contract conditions, e.g. the delivery schedule, the Contracting Officer shall issue a "cure notice" in the form of a registered letter to the contractor to the effect to inform him that he is running the risk of failing to perform his contractual obligations. Such letter will provide for a certain interval, e.g. 10 days, during which the contractor will make delivery or show to the satisfaction of NAMSA that his prospective delinquency will be "cured".

13.2.2 If the contractor has failed to respond to, or has unsatisfactorily responded to a cure notice, the Contracting Officer shall, with the prior concurrence of the Chief, Procurement Division, issue a registered "Show Cause" letter to the contractor notifying him that he is delinquent in the performance of his contract and requesting him to furnish within a specified time the reasons why he should not be held to be in default under the terms of the contract.

13.2.3 In the event that a contractor fails to respond to a Show Cause letter within the time specified, or if the facts adduced by him in his timely response to a Show Cause letter to justify his delinquency do not, in fact, justify his delinquency under the terms and conditions of the contract, the Contracting Officer shall so notify the Chief, Procurement Division who will take other appropriate measures he deems necessary, which may include Default action.

13.3 Liquidated Damages

13.3.1 The authority to waive the application of a Liquidated Damages clause is vested in the Chief of the Procurement Division who delegates this authority for up to 2,3 X Financial Level A per case to the Procurement Division Branch Chiefs.

13.3.2 The authority delegated by virtue of this paragraph may not be re-delegated. If the Procurement Division Branch Chiefs, to whom such authority has been delegated are prevented from exercising the latter, it shall be exercised by the Chief, Procurement Division.

13.4 Quality Assurance

Contracts shall contain appropriate Quality Assurance provisions to ensure that the quality of materiel and/or services called for is properly controlled and inspected, when required, by the appropriate Government Quality Assurance Representative in accordance with the NAMSA Quality Assurance Regulation (NR 254-01) and instructions issued by the Quality Assurance Office.

13.5 Transportation and Insurance

13.5.1 Transportation

Transportation of materiel and equipment shall be effected through shipping agents, common carriers, or military services of NAMS member countries or NAMSA subordinate activities, when appropriate. In selecting the means of transportation, i.e. air, ship, rail, truck or postal service, due consideration shall be given to the urgency of the procurement action, costs and other related factors.

13.5.2 Insurance

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5.4 All materiel and services to fulfil customer requirements stemming from a procurement activity will not be insured unless such insurance has been specifically requested by the customer.

A valuation charge made by a commercial airline is not considered insurance, and if the items can be insured for a premium that is less than such valuation charge, this shall be done instead of paying the latter valuation charge. Losses of equipment shall be recorded and reported to the General Manager by the Programme Managers and the Chief of the Transportation and Warehousing Division through the Director of Logistics Programmes and Operations.

13.6 Examination and Certification of Invoices

13.6.1 Invoices submitted by the contractor for materiel and/or services shall be examined and verified for compliance with the appropriate provisions of the contractual instrument. Such examination and verification shall be extended to the supplementary documents which are required to support the invoice, and shall cover the unit and total prices, advance/progress payments, quantities of materiel and/or services specified by the contractual instrument, proof of satisfactory inspection, evidence of delivery, and the fulfilment of such other obligations by the contractor as may be set forth in the contractual instrument.

13.6.2 In services contracts of an administrative or management support nature involving a type of reimbursement scheme where time/effort expended incurs an obligation for NAMSA to pay, the contractor's "time cards" shall be examined as partial validation that the claimed effort expressed in man-hours/days, etc. was indeed expended. These time records shall be certified as accurate and complete by the contractor at the time of submission. The Contracting Officer/buyer, as appropriate, will certify these documents along with the invoices for payment.

13.6.3 The examination and verification of invoices shall be performed expeditiously in order to ensure that payment can be made to the contractor promptly, and within the period specified in the discount provisions, if any.

13.6.4 If the result of such examination and verification is not satisfactory, the Contracting Officer/buyer shall take appropriate action to correct the deficiencies.

13.6.5 If the result of such examination and verification is satisfactory, the invoice shall be certified as true and correct according to established procedures and submitted for payment to the appropriate finance activity.

13.7 Discrepancies

Discrepancies as to quantity or quality between the materiel and/or services invoiced and those actually delivered and which are discovered after payment has been made to the contractor shall be rectified by the Contracting Officer/buyer under the terms of the contractual instrument at the request of the appropriate activity. If any claim against the contractor results therefrom, the appropriate finance activity shall be fully informed.

13.8 Termination for Convenience of NAMSA

13.8.1 When the requiring activity (PMO) determines it necessary to terminate for the convenience of NAMSA an order for materiel and/or services, immediate notification shall be provided to the responsible Contracting Officer. The Contracting Officer shall take such actions as are necessary and appropriate under the terms of the contractual instrument to effect settlement at the lowest possible cost to NAMSA and customer countries.

13.8.2 Termination action will be approved by the person responsible for approving and signing the contract or his duly designated replacement.

14. DEFAULT BY THE CONTRACTOR

If the contractor fails to comply with the delivery schedule as to dates and/or quantities, or otherwise does not fulfil his obligations according to the terms of the contractual instrument, the Contracting Officer shall take such action as he/she deems appropriate within the terms of the contractual instrument. In such cases, the Contracting Officer shall first exert its best efforts to arrive at an amicable solution of the difficulty. If there is a failure to arrive at an amicable solution, the Contracting Officer will follow the procedures of paragraph 13.2 to terminate the contractual instrument owing to default, invoking the appropriate provisions of the NAMSA General Provisions for Contracts.

15. DISPUTES

If the Contracting Officer anticipates that a dispute may arise within the meaning of the appropriate Disputes Clause of the NAMSA General Provisions for Contracts, or if the contractor desires to resort to arbitration, the Contracting Officer shall immediately submit a detailed written report to the Legal Adviser through the Procurement Directorate, accompanied by complete documentation related to the dispute.

16. ETHICS AND STANDARDS OF BEHAVIOUR

Functional Directive No. 251

13. *ETHICS AND STANDARDS*

Transactions relating to the expenditure of NAMSA customer nations' funds require the highest degree of trust and an impeccable standard of conduct.

16.1 Standard of Conduct

Transactions relating to the expenditure of NAMSA customer nations funds require the highest degree of trust and an impeccable standard of conduct. It is therefore of the utmost importance to the mission entrusted to NAMSA that all personnel who may come into contact with procurement matters maintain unquestionable integrity and impartiality and avoid strictly any conflict of interest or even the appearance of a conflict of interest in NAMSA contractor relationships. The application of this policy concerns not only NAMSA procurement personnel but all NAMSA personnel.

16.2 Favours

16.2.1 As a general rule, no NAMSA staff member may solicit or accept, directly or indirectly, any favour from anyone who (a) has or is seeking to obtain NAMSA business, or (b) has interests that may be substantially affected by the performance or non performance of the staff members' official duties.

16.2.2 Specifically no NAMSA staff member shall:

- ask for, accept or agree to receive, directly or indirectly, any money, gratuity, gift, favour, entertainment, loan or other thing of value from any officer, employee, representative, agent or consultant as defined in 16.2.1 above. The above includes services, conference fees, vendor promotional training, transportation, lodging and meals, as well as discounts not available to the public. It does not include unsolicited items, other than money, having a market value of EUR 25 or less once per year;

- solicit or accept, directly or indirectly, any promise of future employment or business opportunity from, or engage, directly or indirectly, any discussion of future employment or business opportunity with, any officer, employee, representative, agent or consultant as defined in 16.2.1 above;

- disclose directly or indirectly any proprietary or contractor selection information regarding procurement to any person other than a person authorised by the Chief, Procurement Division or the Contracting Officer to receive such information. Proprietary information means information contained in an offer or proposal or otherwise submitted to NAMSA in response to the conduct of a particular NAMSA procurement, or in an unsolicited proposal, that has been marked by the contractor as proprietary information. Contractor selection information is information, including information stored in electronic, magnetic, audio or video formats, which is prepared or developed for use by NAMSA to conduct a particular procurement;

- knowingly award a contract to a NAMSA staff member or to a business concern or other organisation owned or substantially owned or controlled by a NAMSA staff member. This policy is intended to avoid any conflict of interest that might arise between the staff members' interests and their NAMSA duties, and to avoid the appearance of favouritism or preferential treatment by NAMSA toward her staff members.

16.3 Disciplinary Action

Any violation of the above regulations shall be subject to disciplinary action as foreseen in Articles 59 and 60 of the NATO Civilian Personnel Regulations.

GENERAL PROVISIONS FOR FIXED-PRICE CONTRACTS
(MATERIEL)

Clause 1 - DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

1.1 The term "NAMSA" means "NATO Maintenance and Supply Agency", L - 8302 Capellen, Grand-Duchy of Luxembourg.

1.2 All correspondence and contacts concerning contracts for materiels shall be with the Contracting Officer/Buyer unless otherwise directed.

1.3 The term "NAMSO Member State" means a member state of the NATO Maintenance and Supply Organization (NAMSO).

1.4 The term "Customer Country" means that particular NAMSO member state for which NAMSA is obtaining the materiels called for under this contract, or a part thereof.

1.5 The term "Contractor" means the party who has entered into this contract with NAMSA.

1.6 The term "Contract" means the contractual instrument to which these General Provisions apply.

1.7 The term "Subcontract" means, except as otherwise provided in this contract, any agreement, contract or subcontract or order made by the Contractor with any other party in fulfilment of any part of this contract, and any agreement, contract or subcontract or order thereunder.

Clause 2 - CHANGES

2.1 Except as otherwise provided in this contract, NAMSA may at any time within the general scope of this contract, by a written order make changes in any one or more of the following:

2.1.1 stock numbers, part numbers or descriptions, if erroneous, or if a superseding part is desired by NAMSA;

2.1.2 marking, method of shipment or packing;

2.1.3 place of delivery; and

2.1.4 place of inspection and acceptance.

2.2 If any such change causes an increase or decrease in the cost of, or the time required for, the performance of this contract or of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this Clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change, provided, however, that NAMSA, if it decides that the facts justify such action may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be considered a dispute within the meaning of the Clause entitled "Disputes" in these General Provisions. Pending arbitration the Contractor shall proceed with the contract as changed, without delay.

2.3. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, NAMSA shall have the right to prescribe the manner of disposition of such property.

2.4 Any other change in the terms of this contract, including but not limited to, changes in price, quantity, delivery schedules, or performance schedules, may be made only by agreement in writing executed by both parties.

Clause 3 - ASSIGNMENT

Except as otherwise provided in this contract, this contract shall not be assignable by the Contractor or operation of law without the prior approval of NAMSA in writing. No such assignment shall become effective until the assignee has received written approval from NAMSA. Any request for such approval shall be accompanied by a true copy of the intended instrument of assignment. NAMSA will not unreasonably withhold any such approval of assignment.

Clause 4 - PATENT INDEMNITY

Except as otherwise provided in this contract, the Contractor agrees to assume all liability for the infringement, if any, of patents in force in the countries where the items will be manufactured, under this contract and in other countries where the patents are in force; and will be responsible for obtaining any patent licenses necessary for the performance of this contract and for making any other arrangements required to protect NAMSA from any liability for patent infringement in said countries. The Contractor will notify NAMSA of any claims of which it has knowledge, or may be notified, of patent infringement pertaining thereto.

Clause 5 - SECURITY

If any plans, specifications or other similar documents relating to the contract or the performance of same are marked "Cosmic Top Secret", "NATO Secret", "NATO Confidential", or "NATO Restricted", the Contractor shall safeguard NATO security by:

- ensuring that no such document is accessible to any person not entitled to knowledge of such document;
- complying with the national security regulations currently in force in its country;
- complying with any special NATO or NAMSA security regulations which may be supplied by NAMSA.

Clause 6 - TAXES AND DUTIES

6.1 NAMSA, as a subsidiary body of NATO is, by application of the Ottawa Agreement, dated 20 September 1951, exempt from all taxes and duties.

6.2 Goods and services sold to or through NAMSA are to be considered as exports. Consequently, the Contractor is responsible for obtaining any documentation required to permit NAMSA and its customers to benefit from the fiscal regime applicable to exports.

6.3 However, if the Contractor is compelled by application of any governmental law or regulation to pay any readily identifiable tax or duty in relation to this contract, he will indicate such tax or duty as a separate item of cost on his invoice(s). Any such tax or duty shall be fully identified by reference to the governmental law or regulation pursuant to which such tax or duty is enforced.

6.4 Following payment by NAMSA of the amount(s) for taxes and/or duties pursuant to paragraph 6.3 above, should the Contractor receive a rebate or rebates, of any part or all of the said amount(s) so paid by NAMSA, the Contractor shall notify NAMSA promptly and the amount(s) of such rebate(s) shall be credited or paid over by the Contractor to NAMSA at NAMSA's option. The Contractor shall take any action that could be reasonably required in order to obtain such rebate(s) whenever he is aware of the possibility of obtaining it (them).

6.5 The submission of an invoice for taxes and/or duties under the provisions of this Clause shall constitute the Contractor's guarantee that such taxes have or will be paid. If for any reason, the taxes and/or duties are not paid, they shall be refunded in full with any interest earned while the funds for such payment(s) were held by the Contractor.

NOTE: If the contract is to be performed in Luxembourg, the foregoing clause is to be made inapplicable to the contract by mention to that effect in the terms and conditions and the following clause added in lieu thereof :

"Taxes and Duties

The Agreement between NAMSA and the Government of Luxembourg, dated 19 June 1968, entitled 'Agreement regarding exemption from taxes, duties and rates granted to NAMSO by the Luxembourg Authorities' is applicable to this contract and is made a part hereof by reference."

Clause 7 - SPECIAL AREAS

7.1 Except as otherwise provided in this contract, the Contractor shall not acquire for use in the performance of this contract materials originating from sources in countries which are :

7.1.1 subject to a formal trade embargo to be observed by NATO;

7.1.2 known to disregard international trade conventions in respect of copyright;

7.1.3 under communist control:

- China (PRC)
- Cuba
- Laos
- North Korea
- Vietnam.

7.2 Except as otherwise provided in this contract, the Contractor agrees to insert the provisions of this clause in subcontracts hereunder.

Clause 8 - WARRANTY

8.1 Except as otherwise provided in this contract, the items called for by this contract shall be unused and in new condition, of the latest production, and conform to the latest applicable specifications, drawings, and other descriptions, if any, of appropriate military and/or civilian agencies, and, if any, of the Contractor and shall be free from defects in material, design and/or workmanship.

8.2 The provisions of this clause are equally applicable to any item replaced under warranty.

8.3 The warranty period shall be extended by a period equal to the time taken by the Contractor to repair or replace the item under warranty. This warranty is only applicable insofar as NAMSA shall have complied with such conditions of storage, preservation, removal from storage, use and operation, and maintenance of the item as have been reasonably recommended by the Contractor.

8.4 In the event that all or any of the defects enumerated in paragraph 8.1 shall be confirmed in respect of an item covered by the warranty, whenever discovered, the Contractor shall at its own expense, including any transportation costs between the place where replacement or correction will take place and the original point of delivery (INCOTERMS) of material specified in the contract, replace or correct the item, or lots of such item, which is/are defective in material or workmanship or otherwise not in conformity with the requirements of this contract, provided the Contractor is given written notice within six (6) months after acceptance and provided furthermore that the Contractor is not otherwise in this contract relieved from this responsibility.

8.5 Alternatively, the Contractor shall, if NAMSA so wishes, credit or reimburse it with the value of the item at the purchase price paid by NAMSA, plus any costs incurred by it for the delivery of the defective item and its return to the Contractor.

8.6 Within thirty days of the receipt of a warranty claim, or as otherwise agreed, on the item in respect of which the claim is made, the Contractor shall assess the validity of the claim. The repaired or replaced item shall be sent to NAMSA with the minimum of delay and in any case not later than six weeks after receipt of the defective item, or as otherwise agreed. In the event that the Contractor shall not have disputed the validity of the claim within the said thirty days, the claim shall be considered as accepted by the Contractor.

8.7 NAMSA shall have the right, without invalidating the warranty, to repair a defective item in accordance with the overhaul manual or other written instructions of the Contractor. This right shall not prejudice the possibility on the part of the Contractor to dispute the validity of the claim under warranty. To this end all reasonable facilities shall be granted to the Contractor or his representatives.

8.8 The Contractor expressly authorizes that NAMSA may offer the whole or part of these warranty conditions to third parties with the intent that such third parties and the Contractor shall be bound thereby as if both were parties to a contract made between them in which this warranty were expressly set forth.

Clause 9 - DEFAULT

If the Contractor fails to deliver the materiel within the time specified, becomes bankrupt, or otherwise fails to comply with his obligations under this contract, NAMSA may by written Notice of Default to the Contractor terminate the whole or any part of this contract at no cost to NAMSA. Thereafter, NAMSA may procure or otherwise obtain the items so terminated, and the Contractor shall be liable for any damages and/or extra costs incurred by NAMSA and/or its customer(s) as a direct consequence of the Contractor's failure to comply with his obligations under this contract, unless Contractor's failure to perform is due to causes beyond his control and without his fault or negligence. The Contractor shall continue to perform under this contract to the extent not terminated hereunder.

Clause 10 - TERMINATION FOR CONVENIENCE OF NAMSA

In the event NAMSA determines that an item, or items, ordered is (are) no longer required, the Contractor undertakes to use its best endeavours to cancel the supply of such item, or items, on terms as favourable to NAMSA as can be granted or obtained, as more fully set forth in this contract.

Clause 11 - DISPUTES

11.1 Any dispute arising out of this contract shall be settled by arbitration.

11.2 The party instituting the arbitration proceedings shall advise the other party by registered letter, with official notice of delivery, of his desire to have recourse to arbitration. Within a period of thirty days from the date of receipt of this letter, the parties shall jointly appoint an arbitrator. In the event of failure to appoint an arbitrator, the dispute or disputes shall be submitted to an Arbitration Tribunal consisting of three arbitrators, one being appointed by NAMSA, another by the other contracting party, and the third, who shall act as President of the Tribunal, by these two arbitrators. Should one of the parties fail to appoint an arbitrator during the fifteen days following the expiration of the first period of thirty days, or should the two arbitrators be unable to agree on the choice of the third member of the Arbitration Tribunal, within thirty days following the expiration of the said first period, the appointment shall be made, within twenty-one days, at the request of the party instituting the proceeding, by the Secretary General of the Permanent Court of Arbitration in the Hague.

11.3 Regardless of the procedure concerning the appointment of this Arbitration Tribunal, the third arbitrator will have to be of a nationality different from the nationality of the other two members of the Tribunal.

11.4 Any arbitrator must be of the nationality of any of the member states of NATO and shall be bound by the rules of security in force within NATO.

11.5 Any person appearing before the Arbitration Tribunal in the capacity of an expert witness shall, if he is of the nationality of one of the member states of NATO, be bound by the rules of security in force within NATO, if he is of another nationality, no NATO classified documents or information shall be communicated to him.

11.6 An arbitrator who, for any reason whatsoever, ceases to act as an arbitrator shall be replaced under the procedure laid down in the first paragraph of this article.

11.7 The Arbitration Tribunal will take its decisions by a majority vote. It shall decide where it will meet and, unless it decides otherwise, shall follow the arbitration procedures of the International Chamber of Commerce in force at the date of the signature of the present contract.

11.8 The awards of the arbitrator or of the Arbitration Tribunal shall be final and there shall be no right of appeal or recourse of any kind. These awards shall determine the apportionment of the arbitration expenses.

Clause 12 - DISCREPANT SHIPMENTS

12.1 The Contractor recognizes that the materiel of this contract has been ordered by NAMSA for the purpose of eventual delivery by NAMSA to one or more of the NAMSA customers. For this reason the Contractor agrees that where shipments of materiel susceptible to complete and immediate inspection at the place and time of delivery are concerned, submission by NAMSA of claims to it in the form of Discrepancy Reports relating to (a) overages, (b) shortages, (c) condition, (d) misidentification and, (e) damages will not be protested solely on the basis of failure of timely notification if they are submitted within twelve (12) months of the date of delivery to NAMSA of the said materiel. However, where sealed shipments are concerned, i.e. shipments of materiel which because of their nature must remain in sealed containers until required for use, the Contractor agrees not to protest such Discrepancy Reports solely on the basis of failure of timely submission if submitted within eighteen (18) months of the date of delivery to NAMSA of the said materiel. This provision shall in no way be interpreted so as to modify in any way any guaranty or warranty of any type concerning the said materiel and given by the Contractor elsewhere in this contract or applicable to identical materiel in the normal course of the Contractor's sales to other customers.

12.2 The submission of Discrepancy Reports by NAMSA to the Contractor under the provisions of this clause requires the Contractor to investigate such Discrepancy Reports if submitted within the above-mentioned time limits, but does not imply that the Contractor will accept responsibility for them.

Clause 13 - GOVERNING LAW

Except as otherwise provided in this contract, this contract shall be governed, interpreted and construed in accordance with French law and such law shall govern in the event of arbitration.

Clause 14 - EXAMINATION OF RECORDS

14.1 This clause is applicable to this contract only:

14.1.1 if the price, or any of the prices, to be paid for the materiel to be furnished hereunder is/are other than (a) firm fixed price(s); or

14.1.2 if this contract is terminated by NAMSA, in whole or in part, and the Contractor submits a termination claim as a result thereof; or

14.1.3 in the event a dispute arises between the parties and arbitration proceedings are instituted pursuant to the clause of this contract entitled "Disputes".

14.2 The Contractor agrees that NAMSA or any of its duly authorized representatives shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine any pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

14.3 The Contractor further agrees to include in all his subcontracts hereunder a provision substantially as set forth in this clause, including this paragraph. In addition a provision is to be added in such subcontracts to the effect that the auditing of the subcontractors' books, documents, papers and records involving transactions related to the subcontract may be performed by the subcontractors' national auditing services.

14.4 The period of access and examination described in 14.2. and 14.3 above for records which relate to either appeals under the "Disputes" clause of this contract or litigation, or the settlement of claims arising out of the performance of this contract, shall continue until such appeals, litigation or claims have been disposed of.

Clause 15 - MISCELLANEOUS

15.1 The entire agreement between the contracting parties is contained in this contract and is not affected by any oral understanding or representation whether made previous to or subsequent to this contract.

15.2 The Contractor is considered to have fully read all terms, clauses, specifications and detailed special conditions stipulated in this contract. He unreservedly accepts all the terms thereof.

15.3 In the event of any disagreement between the original text of this contract and any translation into another language, the original text will govern.

15.4 All written correspondence and reports by the Contractor to NAMSA shall be in the language in which this contract is written.

GENERAL PROVISIONS FOR FIXED-PRICE CONTRACTS
(SERVICES)

Clause 1 - DEFINITIONS

As used throughout this contract, the following terms shall have the meaning set forth below:

1.1 The term "NAMSA" means "NATO Maintenance and Supply Agency", L - 8302 Capellen, Grand-Duchy of Luxembourg.

1.2 All correspondence and contacts concerning contracts for services shall be with the Contracting Officer/buyer unless otherwise directed.

1.3 The term "NAMSO Member State" means a member state of the NATO Maintenance and Supply Organization (NAMSO).

1.4 The term "Customer Country" means that particular NAMSO member state for which NAMSA is obtaining the services called for under this contract, or a part thereof.

1.5 The term "Contractor" means the party who has entered into this contract with NAMSA.

1.6 The term "Contract" means the contractual instrument to which these General Provisions apply.

1.7 The term "Subcontract" means, except as otherwise provided in this contract, any agreement, contract or subcontract made by the Contractor with any other party in fulfilment of any part of this contract, and any agreement, contract or subcontract thereunder.

Clause 2 - CHANGES

2.1 Except as otherwise provided in this contract, NAMSA may at any time, within the general scope of this contract, by a written order make changes in any one or more of the following:

2.1.1 specifications, or make additions thereto, issue additional instructions, require modified or additional services, within the scope of this contract; or change the amount of NAMSA furnished property;

2.1.2 marking, method of shipment or packing;

2.1.3 place of delivery; and

2.1.4 place of inspection and acceptance.

2.2 If any such change causes an increase or decrease in the cost of, or the time required for, the performance of this contract or of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this Clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change, provided, however, that NAMSA, if it decides that the facts justify such action may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be considered a dispute within the meaning of the Clause entitled "Disputes" in these General Provisions. Pending arbitration the Contractor shall proceed with the contract as changed, without delay.

2.3 Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, NAMSA shall have the right to prescribe the manner of disposition of such property.

2.4 Any other change in the terms of this contract, including but not limited to, changes in price, quantity, delivery schedules, or performance schedules, may be made only by agreement in writing executed by both parties.

Clause 3 - ASSIGNMENT

Except as otherwise provided in this contract, this contract shall not be assignable by the Contractor or operation of law without the prior approval of NAMSA in writing. No such assignment shall become effective until the assignee has received written approval from NAMSA. Any request for such approval shall be accompanied by a true copy of the intended instrument of assignment. NAMSA will not unreasonably withhold any such approval of assignment.

Clause 4 - PATENT INDEMNITY

Except as otherwise provided in this contract, the Contractor agrees to assume all liability for the infringement, if any, of patents in force in the countries where the services will be performed under this contract and in other countries where the patents are in force; and will be responsible for obtaining any patent licenses necessary for the performance of this contract and for making any other arrangements required to protect NAMSA from any liability for patent infringement in said countries. The Contractor will notify NAMSA of any claim of which it has knowledge, or may be notified, of patent infringement pertaining thereto.

Clause 5 - SECURITY

If any plans, specifications or other similar documents relating to the contract or the performance of same are marked "Cosmic Top Secret", "NATO Secret", "NATO Confidential", or "NATO Restricted", the Contractor shall safeguard NATO security by:

5.1 ensuring that no such document is accessible to any person not entitled to knowledge of such document;

5.2 complying with the national security regulations currently in force in its country;

5.3 complying with any special NATO or NAMSA security regulations which may be supplied by NAMSA.

Clause 6 - IMPORT AND EXPORT FORMALITIES

The Contractor shall be responsible for compliance with all applicable national import and export customs regulations and formalities, including payment of fees incident thereto and the posting of a customs bond, if required, and further, including all required licenses, customs declarations and other documentation, concerning the entry to and the exit from the Contractor's facility, including delivery to final destination, of all items or materiel pertinent to the Contractor's performance under this contract except as otherwise provided herein.

Clause 7 - TAXES AND DUTIES

7.1 NAMSA, as a subsidiary body of NATO is, by application of the Ottawa Agreement, dated 20 September 1951, exempt from all taxes and duties.

7.2 Services sold to or through NAMSA are to be considered as exports. Consequently, the Contractor is responsible for obtaining any documentation required to permit NAMSA and its customers to benefit from the fiscal regime applicable to exports.

7.3 However, if the Contractor is compelled by application of any governmental law or regulation to pay any readily identifiable tax or duty in relation to this contract, he will indicate such tax or duty as a separate item of cost on his invoice(s). Any such tax or duty shall be fully identified by reference to the governmental law or regulation pursuant to which such tax or duty is enforced.

7.4 Following payment by NAMSA of the amount(s) for taxes and/or duties pursuant to paragraph 7.3 above, should the Contractor receive a rebate or rebates, of any part or all of the said amount(s) so paid by NAMSA, the Contractor shall notify NAMSA promptly and the amount(s) of such rebate(s) shall be credited or paid over by the Contractor to NAMSA at NAMSA's option. The Contractor shall take any action that could be reasonably required in order to obtain such rebate(s) whenever he is aware of the possibility of obtaining it (them).

7.5 The submission of an invoice for taxes and/or duties under the provisions of this Clause shall constitute the Contractor's guarantee that such taxes have or will be paid. If for any reason, the taxes and/or duties are not paid, they shall be refunded in full with any interest earned while the funds for such payment(s) were held by the Contractor.

NOTE: If the contract is to be performed in Luxembourg, the foregoing clause is to be made inapplicable to the contract by mention to that effect in the Terms and Conditions and the following clause added in lieu thereof :

"Taxes and Duties

The Agreement between NAMSA and the Government of Luxembourg, dated 19 June 1968, entitled 'Agreement regarding exemption from taxes, duties and rates granted to NAMSO by the Luxembourg Authorities' is applicable to this contract and is made a part hereof by reference."

Clause 8 - SPECIAL AREAS

8.1 Except as otherwise provided in this contract, the Contractor shall not acquire for use in the performance of this contract any materiel and/or services originating from sources in countries which are:

8.1.1 subject to a formal trade embargo to be observed by NATO;

8.1.2 known to disregard international trade conventions in respect of copyright;

8.1.3 under communist control:

- China (PRC)
- Cuba
- Laos
- North Korea
- Vietnam.

8.2 Except as otherwise provided in this contract, the Contractor agrees to insert the provisions of this clause in subcontracts hereunder.

Clause 9 - WARRANTY

9.1 Contractor hereby guarantees that he will perform all services under this contract in a good and workmanlike manner, in accordance with any technical orders or other instructions as specified in this contract and that the items on which the work is performed will be guaranteed for the period of time specified in the contract.

9.2 If Contractor supplies any spare parts hereunder, unless otherwise specified in this contract, such items shall be unused and in new condition, of the latest production, and conform to the latest applicable specifications, drawings, and other descriptions, if any, of appropriate military and/or civilian agencies, and, if any, of the Contractor and shall be free from defects in material, design and/or workmanship.

9.3 If any equipment incident to services or component thereof to which this guarantee applies, fails to provide such service due to defective services of the Contractor or defective spare parts furnished by the Contractor, the Contractor agrees either to repair the equipment, or component, at its own expense, including any transportation costs, or reach an agreement with NAMSA for an equitable settlement. The Contractor shall undertake, if he chooses to carry out the repair work, to grant the same guarantee for the repaired equipment as was applied to the original equipment. Failure to reach such an agreement shall be a dispute within the meaning of the clause entitled "Disputes" in these General Provisions.

Clause 10 - DEFAULT

If the Contractor fails to perform the services within the time specified, becomes bankrupt, or otherwise fails to comply with his obligations under this contract, NAMSA may by written Notice of Default to the Contractor terminate the whole or any part of this contract at no cost to NAMSA. Thereafter, NAMSA may procure or otherwise obtain the services so terminated, and the Contractor shall be liable for any damages and/or extra costs incurred by NAMSA and/or its customer(s) as a direct consequence of the Contractor's failure to comply with his obligations under this contract, unless Contractor's failure to perform is due to causes beyond his control and without his fault or negligence. The Contractor shall continue to perform under this contract to the extent not terminated hereunder.

Clause 11 - TERMINATION FOR CONVENIENCE OF NAMSA

In the event NAMSA determines that services ordered hereunder are no longer required, the Contractor agrees to cease its work hereunder and cancel any subcontracts hereunder and will use its best endeavours to effect such stoppage and/or cancellation on terms as favourable to NAMSA as can be granted or obtained, or as may be more fully set forth in this contract.

Clause 12 - NAMSA FURNISHED PROPERTY

12.1 It is the policy of NAMSA that the Contractor shall furnish all property, including spare parts, necessary for the successful and timely performance of the services required under its maintenance contracts. Therefore, the following provisions are applicable to this contract only if NAMSA furnishes NAMSA property to the Contractor for his use in the performance of this contract, or requires the Contractor to acquire property, to which NAMSA will assume title, for such use.

12.2 NAMSA Furnished Property

NAMSA shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as NAMSA furnished property in the contract, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "NAMSA furnished property"). The delivery or performance dates for the materiel or services to be furnished by the Contractor under this contract are based upon the expectation that NAMSA furnished property suitable for use will be delivered to the Contractor at the times stated in the contract, or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that NAMSA furnished property is not delivered to the Contractor by such time or times, NAMSA shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor hereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by any such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes". In the event NAMSA furnished property is received by the Contractor in a condition not suitable for the intended use the Contractor shall, upon receipt thereof, notify NAMSA of such fact and, as directed by NAMSA, either (i) return such property at the NAMSA expense or otherwise dispose of the property, or (ii) effect repairs or modifications. Upon the completion of (i) or (ii) above, NAMSA upon written request of the Contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by the rejection or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of this contract entitled "Changes". The foregoing provisions for adjustment are exclusive and NAMSA shall not be liable for breach of contract by reason of any delay in delivery of NAMSA furnished property or delivery of such property in a condition not suitable for its intended use.

12.3 Changes in NAMSA Furnished Property

12.3.1 By notice in writing, NAMSA may (i) decrease the property provided or to be provided by NAMSA under this contract, or (ii) substitute other NAMSA property for property to be provided by NAMSA, or to be acquired by the Contractor for NAMSA under this contract. The Contractor shall promptly take such actions as NAMSA may direct with respect to the removal and shipment of property covered by such notice.

12.3.2 In the event of any decrease in or substitution of property pursuant to paragraph 12.3.1 above, or any withdrawal of authority to use property provided under any other contract, which property NAMSA had agreed in the contract to make available for the performance of this contract, NAMSA, upon the written request of the Contractor (or, if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution or withdrawal, in accordance with the procedures provided for in the "Changes" clause of this contract.

12.4 Title

12.4.1 Title to all property furnished by NAMSA shall remain in NAMSA. In order to define the obligations of the parties under this clause, title to each item of facilities, special test equipment, and special tooling acquired by the Contractor for NAMSA pursuant to this contract shall pass to and vest in NAMSA when it has been fully paid for by NAMSA either through amortization under this contract or otherwise.

12.4.2 All NAMSA furnished property, together with all property acquired by the Contractor title to which vests in NAMSA under this paragraph, is subject to the provisions of this clause and is hereinafter collectively referred to as "NAMSA property". Title to NAMSA property shall not be affected by the incorporation or attachment thereof to any property owned or leased by the Contractor, nor shall such NAMSA property or any part thereof be or become a fixture or lose its identity as a personality by reason of affixation to any realty. For the purposes of this clause, it shall be assumed that title to property furnished under this contract is vested in NAMSA even though it may, in actuality, be owned by one or more NAMSA customers or NATO member countries.

12.5 Property Administration

The Contractor shall comply with the provisions of this contract identified as "Property Administration".

12.6 Use of NAMSA Property

NAMSA property shall, unless otherwise provided herein or approved by NAMSA be used only for the performance of this contract.

12.7 Utilization, Maintenance and Repair of NAMSA Property

The Contractor shall maintain and administer, in accordance with sound industrial practice, and in accordance with any other applicable provision as may be specified in the contract, a program for the utilization, maintenance, repair, protection and preservation of NAMSA property, until disposed of by the Contractor, in accordance with this clause. In the event that any damage occurs to NAMSA property the risk of which had been assumed by NAMSA under this contract, NAMSA shall replace such items or the Contractor shall make such repair of the property as NAMSA directs; provided, however, that if the Contractor cannot effect such repair within the time required, the Contractor shall dispose of such property in the manner directed by NAMSA. The contract price includes no compensation to the Contractor for the performance of any repair or replacement for which NAMSA is responsible and an equitable adjustment will be made in any contractual provisions affected by such repair or replacement of NAMSA property made at the direction of NAMSA, in accordance with the procedures provided for in the "Changes" clause of this contract. Any repair or replacement for which the Contractor is responsible under the provisions of this contract shall be accomplished by the Contractor at his own expense.

12.8 Risk of Loss

12.8.1 Except for losses, destruction or damage resulting from a failure of the Contractor due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel as defined herein, to maintain and administer the program for the maintenance, repair, protection and preservation of NAMSA property as required by paragraph 12.7 hereof, and except as specifically provided in this contract, the Contractor shall not be liable for loss or destruction or damage to the NAMSA property provided under this contract:

12.8.1.1 caused by any peril while the property is in transit off the Contractor's premises; or

12.8.1.2 caused by any of the following perils while the property is on the Contractor's or subcontractor's premises or on any premises where such property may properly be located, or by removal therefrom because of any of the following perils, called "excepted perils":

- fire, lightning, windstorm, cyclone, tornado, hails; explosion; riot, riot attending a strike, civil commotion; vandalism and malicious mischief; sabotage; aircraft or objects falling therefrom; vehicles running on land or tracks; excluding vehicles owned or operated by the Contractor or any agent or employee of the Contractor; smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning

thereby rising of a body of water; nuclear reaction, nuclear radiation or radioactive contamination; hostile or warlike action, including action in hindering, combating, or defending against an actual, impending or expected attack by any government or sovereign power (de jure or de facto), or by any authority using military, naval, or air forces; or by an agent of any such government, power, authority or forces; or,

- other peril, of a type not listed above, as may be specified in the contract.

12.8.2 If the Contractor transfers NAMSA property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of or damage to the property while in the latter's possession or control, except to the extent that the subcontract, with the prior approval of NAMSA, provides for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all NAMSA property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

12.8.3 The term "Contractor's managerial personnel" as used herein means the Contractor's directors, officers and any of his managers, superintendents, or other equivalent representatives who have supervision or direction of:

- all or substantially all of the Contractor's business;
- all or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed;
- a separate and complete major industrial operation in connection with the performance of this contract.

12.8.4 The Contractor represents that he is not including in the price hereunder, and agrees that he will not hereafter include in any price to NAMSA, any charge or reserve for insurance (including any self-insurance funds or reserve) covering loss or destruction of or damage to the NAMSA property caused by any excepted peril.

12.8.5 Upon the happening of loss or destruction of or damage to any NAMSA property caused by an excepted peril, the Contractor shall notify NAMSA thereof and shall take all reasonable steps to protect the NAMSA property from further damage, separate the damaged and undamaged NAMSA property, put all the NAMSA property in the best possible order, and furnish to NAMSA a statement of:

- the lost, destroyed and damaged NAMSA property;
- the time and origin of the loss, destruction, or damage;
- all known interests in commingled property of which the NAMSA property is a part; and
- the insurance, if any, covering any part of or interest in such commingled property.

12.8.6 The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made by him in performing his obligations under this subparagraph 12.8.5 in accordance with the procedures provided for in the "Changes" clause of this contract.

12.8.7 With the approval of NAMSA after loss or destruction of or damage to NAMSA property, and subject to such conditions and limitations as may be imposed by NAMSA, the Contractor may, in order to minimize the loss to NAMSA or in order to permit resumption of business or the like, sell for the account of NAMSA any item of NAMSA property which has been damaged beyond practicable repair, or which is so commingled or combined with property of others, including the Contractor's, that separation is impracticable.

12.8.8 Except to the extent of any loss or destruction of or damage to NAMSA property for which the Contractor is relieved of liability under the foregoing provisions of this clause, and except for reasonable wear and tear or depreciation, or the utilization of the NAMSA property in accordance with the provisions of this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of or damage to NAMSA property, and such property (other than that which is permitted to be sold) shall be returned to NAMSA in as good condition as when received by the Contractor in connection with this contract, or as repaired under paragraph 12.7 above.

12.8.9 In the event the Contractor is reimbursed or compensated for any loss or destruction of or damage to the NAMSA property, caused by an excepted peril, he shall equitably reimburse NAMSA. The Contractor shall do nothing to prejudice NAMSA's rights to recover against third parties for any such loss, destruction or damage and, upon the request of NAMSA, shall at NAMSA's expense, furnish to NAMSA all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favour of NAMSA) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of or damage to NAMSA property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the NAMSA property, for the benefit of NAMSA.

12.9 Access

NAMSA and any person designated by it, shall at all reasonable times have access to the premises wherein any NAMSA property is located, for the purpose of inspecting the NAMSA property.

12.10 Final Accounting and Disposition of NAMSA Property

Upon the completion of this contract, or at such earlier dates as may be fixed by NAMSA, the Contractor shall submit, in a form acceptable to NAMSA inventory schedules covering all items of NAMSA property not consumed in the performance of this contract (including any resultant scrap) or not theretofore delivered to NAMSA, and shall prepare for shipment, deliver f.o.b. origin, or dispose of the NAMSA property, as may be directed or authorized by NAMSA. The net proceeds of any such disposal shall be credited to the contract price or shall be paid in such other manner as NAMSA may direct.

12.11 Restoration of Contractor's Premises and Abandonment

Unless otherwise provided herein, NAMSA:

12.11.1 may abandon any NAMSA property in place, and thereupon all obligations of NAMSA regarding such abandoned property shall cease; and

12.11.2 has no obligation to the Contractor with regard to restoration or rehabilitation of the Contractor's premises, neither in case of abandonment of property, disposition thereof on completion of need of the Contractor, nor otherwise, except for restoration or rehabilitation costs which are properly included in an equitable adjustment under paragraph 12.8.5 above.

12.12 Communications

All communications issued pursuant to this clause shall be in writing.

Clause 13 - DISPUTES

13.1 Any dispute arising out of this contract shall be settled by arbitration.

13.2 The party instituting the arbitration proceedings shall advise the other party by registered letter, with official notice of delivery, of his desire to have recourse to arbitration. Within a period of thirty days from the date of receipt of this letter, the parties shall jointly appoint an arbitrator. In the event of failure to appoint an arbitrator, the dispute or disputes shall be submitted to an Arbitration Tribunal consisting of three arbitrators, one being appointed by NAMSA, another by the other contracting party, and the third, who shall act as President of the Tribunal, by these two arbitrators. Should one of the parties fail to appoint an arbitrator during the fifteen days following the expiration of the first period of thirty days, or should the two arbitrators be unable to agree on the choice of the third member of the Arbitration Tribunal, within thirty days following the expiration of the said first period, the appointment shall be made, within twenty-one days, at the request of the party instituting the proceedings, by the Secretary General of the Permanent Court of Arbitration in the Hague.

13.3 Regardless of the procedure concerning the appointment of this Arbitration Tribunal, the third arbitrator will have to be of a nationality different from the nationality of the other two members of the Tribunal.

13.4 Any arbitrator must be of the nationality of any one of the member states of NATO and shall be bound by the rules of security in force within NATO.

13.5 Any person appearing before the Arbitration Tribunal in the capacity of an expert witness shall, if he is of the nationality of one of the member states of NATO, be bound by the rules of security in force within NATO, if he is of another nationality, no NATO classified documents or information shall be communicated to him.

13.6 An arbitrator who, for any reason whatsoever, ceases to act as an arbitrator shall be replaced under the procedure laid down in the first paragraph of this article.

13.7 The Arbitration Tribunal will take its decisions by a majority vote. It shall decide where it will meet and, unless it decides otherwise, shall follow the arbitration procedures of the International Chamber of Commerce in force at the date of the signature of the present contract.

13.8 The awards of the arbitrator or of the Arbitration Tribunal shall be final and there shall be no right of appeal or recourse of any kind. These awards shall determine the apportionment of the arbitration expenses.

Clause 14 - GOVERNING LAW

Except as otherwise provided in this contract, this contract shall be governed, interpreted and construed in accordance with French law and such law shall govern in the event of arbitration.

Clause 15 - EXAMINATION OF RECORDS

15.1 This clause is applicable to this contract only:

15.1.1 if the price, or any of the prices, to be paid for the supplies and/or services to be furnished hereunder is/are other than (a) firm fixed price(s);

15.1.2 if this contract is terminated by NAMSA, in whole or in part, and the Contractor submits a termination claim as a result thereof, or

15.1.3 in the event a dispute arises between the parties and arbitration proceedings are instituted pursuant to the clause of this contract entitled "Disputes".

15.2 The Contractor agrees that NAMSA or any of its duly authorized representatives shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine any pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

15.3 The Contractor further agrees to include in all his subcontracts hereunder a provision substantially as set forth in this clause, including this paragraph. In addition a provision is to be added in such subcontracts to the effect that the auditing of the subcontractors' books, documents, papers and records involving transactions related to the subcontract may be performed by the subcontractors' national auditing services.

15.4 The period of access and examination described in paragraphs 15.2 and 15.3 above for records which relate to either appeals under the "Disputes" clause of this contract or litigation, or the settlement of claims arising out of the performance of this contract, shall continue until such appeals, litigation or claims have been disposed of.

Clause 16 - MISCELLANEOUS

16.1 The entire agreement between the contracting parties is contained in this contract and is not affected by any oral understanding or representation whether made previous to or subsequent to this contract.

16.2 The Contractor is considered to have fully read all terms, clauses, specifications and detailed special conditions stipulated in this contract. He unreservedly accepts all the terms thereof.

16.3 In the event of any disagreement between the original text of this contract and any translation into another language, the original text will govern.

16.4 All written correspondence and reports by the Contractor to NAMSA shall be in the language in which this contract is written.

PROTEST OF AWARD PROCEDURE

Initiation of the Protest of Award Procedure will be made by the member of the Finance and Administration Committee concerned (or by the member of the Board of Directors when the country has no member on the Finance and Administration Committee) by addressing a Protest of Award in the form of registered letters to the Chairman of the Board of Directors and to the General Manager of NAMSA in which such member shall set forth full particulars of his complaint.

Following receipt of such Protest of Award, the Chairman of the Board will provide for its discussion in a Finance and Administration Committee meeting as determined by the Chairman, this meeting to be held within three weeks after receipt of the Protest of Award. The F & A Committee member and Board member of the country whose firm has been tentatively selected for award (a party in interest) will be advised by the General Manager, or his delegate, of the scheduled discussion of the Protest of Award in the said F & A Committee meeting and will, at the same time, be provided by him with full particulars regarding it.

Following discussion of the Protest of Award in the F & A Committee meeting, and if after receiving the advice of the other members no agreement has been reached between the parties in interest, the Chairman of the Board shall request three members of the Board of Directors whose countries are in no manner involved in the Protest of Award to each one appoint a national expert to a Panel of three for the purpose of receiving written evidence from the Agency and the other parties in interest and rendering a decision on the merits of the Protest of Award within the time limit agreed upon by the F & A Committee, not to exceed six weeks.

The Panel's majority decision shall be final and binding on the parties involved.

LIST OF ABBREVIATIONS

BOD	Board of Directors
BCI	Basic Contractual Instrument
CAC	Contract Award Committee
CLSSA	Cooperative Logistics Supply Support Arrangement
FMS	Foreign Military Sales
ISO	International Standardization Organisation
MOU	Memorandum of Understanding
NAMSA	NATO Maintenance and Supply Agency
NAMSO	NATO Maintenance and Supply Organisation
NATO	North Atlantic Treaty Organisation
PfP	Partnership for Peace
PR	Purchase Requisition
RFP	Request for Proposal