

<b>SOLICITATION, OFFER, AND AWARD</b> <i>(Construction, Alteration, or Repair)</i>	1. SOLICITATION NUMBER	2. TYPE OF SOLICITATION <input type="checkbox"/> SEALED BID (IFB) <input type="checkbox"/> NEGOTIATED (RFP)	3. DATE ISSUED	PAGE OF PAGES

**IMPORTANT** - The "offer" section on the reverse must be fully completed by offeror.

4. CONTRACT NUMBER	5. REQUISITION/PURCHASE REQUEST NUMBER	6. PROJECT NUMBER
7. ISSUED BY	CODE	8. ADDRESS OFFER TO

9. FOR INFORMATION CALL:	a. NAME	b. TELEPHONE NUMBER (Include area code) (NO COLLECT CALLS)
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**SOLICITATION**

**NOTE:** In sealed bid solicitations "offer" and "offeror" mean "bid and "bidder".

10. THE GOVERNMENT REQUIRES PERFORMANCE OF THE WORK DESCRIBED IN THESE DOCUMENTS (Title, identifying number, date)

11. The contractor shall begin performance within \_\_\_\_\_ calendar days and complete it within \_\_\_\_\_ calendar days after receiving  
☐ award, ☐ notice to proceed. This performance period is ☐ mandatory ☐ negotiable. (See \_\_\_\_\_).

12a. THE CONTRACTOR MUST FURNISH ANY REQUIRED PERFORMANCE AND PAYMENT BONDS? (If "YES", indicate within how many calendar days after award in Item 12b.) <input type="checkbox"/> YES <input type="checkbox"/> NO	12b. CALENDAR DAYS
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13. ADDITIONAL SOLICITATION REQUIREMENTS:
- a. Sealed offers in original and \_\_\_\_\_ copies to perform the work required are due at the place specified in Item 8 by \_\_\_\_\_ (hour) local time \_\_\_\_\_ (date). If this is a sealed bid solicitation, offers will be publicly opened at that time. Sealed envelopes containing offers shall be marked to show the offeror's name and address, the solicitation number, and the date and time offers are due.
- b. An offer guarantee ☐ is, ☐ is not required.
- c. All offers are subject to the (1) work requirements, and (2) other provisions and clauses incorporated in the solicitation in full text or by reference.
- d. Offers providing less than \_\_\_\_\_ calendar days for Government acceptance after the date offers are due will not be considered and will be rejected.

**OFFER (Must be fully completed by offeror)**

14. NAME AND ADDRESS OF OFFEROR (Include ZIP Code)


15. TELEPHONE NUMBER (Include area code)

16. REMITTANCE ADDRESS (Include only if different than Item 14.)

CODE

FACILITY CODE

17. The offeror agrees to perform the work required at the prices specified below in strict accordance with the terms of this solicitation, if this offer is accepted by the Government in writing within \_\_\_\_\_ calendar days after the date offers are due. (Insert any number equal to or greater than the minimum requirement stated in Item 13d. Failure to insert any number means the offeror accepts the minimum in Item 13d.)

AMOUNTS 

18. The offeror agrees to furnish any required performance and payment bonds.

**19. ACKNOWLEDGMENT OF AMENDMENTS**

(The offeror acknowledges receipt of amendments to the solicitation -- give number and date of each)

AMENDMENT NUMBER										
DATE.										

20a. NAME AND TITLE OF PERSON AUTHORIZED TO SIGN OFFER (Type or print)

20b. SIGNATURE

20c. OFFER DATE

**AWARD (To be completed by Government)**

21. ITEMS ACCEPTED:

22. AMOUNT

23. ACCOUNTING AND APPROPRIATION DATA

24. SUBMIT INVOICES TO ADDRESS SHOWN IN  
(4 copies unless otherwise specified)ITEM 

25. OTHER THAN FULL AND OPEN COMPETITION PURSUANT TO

☐ 10 U.S.C. 2304(c) ( ) ☐ 41 U.S.C. 3304(a) ( )

26. ADMINISTERED BY

27. PAYMENT WILL BE MADE BY

**CONTRACTING OFFICER WILL COMPLETE ITEM 28 OR 29 AS APPLICABLE**

☐ 28. NEGOTIATED AGREEMENT (Contractor is required to sign this document and return \_\_\_\_\_ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all work requirements identified on this form and any continuation sheets for the consideration stated in this contract. The rights and obligations of the parties to this contract shall be governed by (a) this contract award, (b) the solicitation, and (c) the clauses, representations, certifications, and specifications incorporated by reference in or attached to this contract.

☐ 29. AWARD (Contractor is not required to sign this document.) Your offer on this solicitation is hereby accepted as to the items listed. This award consummates the contract, which consists of (a) the Government solicitation and your offer, and (b) this contract award. No further contractual document is necessary.

30a. NAME AND TITLE OF CONTRACTOR OR PERSON AUTHORIZED TO SIGN  
(Type or print)

31a. NAME OF CONTRACTING OFFICER (Type or print)

30b. SIGNATURE

30c. DATE

31b. UNITED STATES OF AMERICA

31c. DATE

BY

## **Section A - Solicitation/Contract Form**

JFSD201808 ADD/RPR CDC FOR COMPL & RECP B168

Proposal Identifier: FA465923R0002

Date: 10 Mar 2023

## Section B - Supplies or Services & Prices or Costs

### Additional Information/Notes

Item	Supplies/Service	Quantity	Unit	Unit Price	Amount
0001	<p>Perform all work as specified in the project manual and shown on the project drawings for JFSD201801, Add/Repair CDC For Compliance &amp; Recapitalization B168</p> <p>Pricing Arrangement: Firm Fixed Price</p>	1	Lot		

## **Section C - Description/Specifications/Statement of Work**

### **Requirements**

This contract will be a firm-fixed price (FFP) contract to renovate the existing Child Development Center (CDC) at Grand Forks AFB, North Dakota. This is a construction contract; a design/project manual is provided in the solicitation. The contractor shall perform all work as specified in the project manual and shown on the project drawings for the project.

This is a nonappropriated fund (NAF) purchase and it does not obligate appropriated funds of the United States Government. Nonappropriated funds are generated by the military community through the sale of goods and services and the collection of fees and charges for participation in military community programs. This purchase does not involve federal tax dollars

## **Section D - Packaging and Marking**

## Section E - Inspection and Acceptance

### Overall Contract Inspection/Acceptance Locations

0001	<p>Inspection and Acceptance Location</p> <p>Both Destination Instructions: Project Manager will inspect and accept the progress and completed construction project.</p> <p>There will be two Notices to Proceed Issued. The first Notice to Proceed will be issued at the pre-construction meeting, allowing the contractor to order materials. The second Notice to Proceed will be issued once the contractor has determined that all long lead time items that would prolong the proposed construction time are received. The second Notice to Proceed will allow the contractor to proceed with construction.</p> <p>DoDAAC: F2A3E1 CountryCode: USA</p> <p>319 CES CEC AF BPN NO MILSBILLS PROCESSES 525 TUSKEGEE AIRMEN BVD BL410RM155A GRAND FORKS AFB, ND 58205-6219 UNITED STATES</p> <p>Kate Kvamme Email: katie.kvamme@us.af.mil Telephone: (701) 747-4581</p>
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## Section F - Deliveries or Performance

Overall Contract Delivery Period

From date of lead time event to beginning of performance

1 Calendar Days

Date of Notice to Proceed Receipt

From date of lead time event to completion of performance

274 Calendar Days

Date of Notice to Proceed Receipt

Line Item	Delivery Schedule	QTY	Address and POC
0001	Delivery Schedule From date of lead time event to completion of performance 274 Calendar Days Date of Notice to Proceed Receipt	1 Lot	Place of Performance DoDAAC: F2A3E1 CountryCode: USA 319 CES CEC AF BPN NO MILSBILLS PROCESSES 525 TUSKEGEE AIRMEN BVD BL410RM155A GRAND FORKS AFB, ND 58205-6219 UNITED STATES



## Section G - Contract Administration Data

### G-1 CONTRACTOR'S INFORMATION

To Be Completed by the Contractor:

Name and Title: \_\_\_\_\_

Responsible Office: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email: \_\_\_\_\_

Cage Code: \_\_\_\_\_

DUNS Number: \_\_\_\_\_

Tax Identification Number: \_\_\_\_\_

### G-2 AUTHORIZED INDIVIDUALS

To be completed by the Contractor:

The below individuals are authorized to negotiate or discuss this proposal:

Name of Primary: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Alternate Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Fax: \_\_\_\_\_

Name of alternate: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Alternate Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Fax: \_\_\_\_\_

## **Section H - Special Contract Requirements**

## Section I - Contract Clauses

### NONAPPROPRIATED FUND STANDARD CLAUSES

#### 1. DEFINITIONS

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

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

#### 2. LEGAL STATUS

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

#### 3. CLAIMS, PROTESTS & APPEALS

- a. This contract is not subject to the Contract Disputes Act of 1978 (41 U.S.C. 7101-7109), and therefore, not subject to the jurisdiction of the Government Accountability Office (GAO). All disputes arising under or relating to this contract shall be resolved under this clause IAW DoDI 4105.67 and AFMAN 64-302.
- b. Protests and/or protest appeals shall be filed with the Contracting Officer that issued the contract, or other designated authority, in strict accordance with the procedures and timelines in AFMAN 64-302.
- c. "Claims," as used in this clause, means the inability of a Contractor and the Contracting Officer to reach a mutual agreement related to contractual issues in controversy resulting in the filing of a written demand or assertion seeking payment of money, adjustment or interpretation of contract, or other relief, and issuance of a Contracting Officer's final decision. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under this clause. The submission may be converted to a claim under this clause, by complying with the submission requirements of this clause. If it is disputed either as to liability or amount or is not acted upon in a reasonable time.
  - (1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the NAFI against the Contractor shall be subject to a written decision by the Contracting Officer.
  - (2) For Contractor claims exceeding \$100,000, the Contractor shall submit with the claim a certification that contains the following statement: "Subject to the False Claims Act, 31 USC 3729, I certify the claim is made in good faith; that the supporting data is accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the NAFI is liable; and that I am duly authorized to certify on behalf of the Contractor."
  - (3) For contract claims of less than \$100,000, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days

of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

d. The Contracting Officer's decision shall be final unless the contractor appeals as provided in paragraph (d) of this clause.

e. The Contracting Officer's final decision on claims may be appealed by submitting a written appeal to Armed Services Board of Contract Appeals with a copy to the Contracting Officer, within 90 days of receipt of the Contracting Officer's final decision. Decisions of the Armed Services Board of Contract Appeals are final and are not subject to further appeal.

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

#### 4. REPRESENTATIONS

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

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

#### 5. ADVERTISEMENTS

The Contractor shall not represent in any manner, expressly or by implication, that items or services purchased or sold under this contract are approved or endorsed by any element of the U.S. Government, including the NAFI. All Contractor advertisements that refer to the NAFI or a NAFI activity will contain a statement that the advertisement was neither paid for nor sponsored, in whole or in part, by the U.S. Government or the NAFI.

#### 6. EXAMINATION OF RECORDS

a. The Contractor agrees that the Contracting Officer or a duly authorized representative(s) shall have the right to examine and audit the books and records of the Contractor directly pertaining to the contract during the period of the contract and until expiration of three (3) years after the final payment under the contract.

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

#### 7. HOLD AND SAVE HARMLESS

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

#### 8. INSURANCE

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

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

#### 9. PROCUREMENT INTEGRITY

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

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

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

(2) That no information proprietary to other offerors or other contracting information (offeror list, prices offered, technical evaluations, rankings, etc.)

is sought or obtained until it is available to the public under NAFI procedures.

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

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

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

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

#### 10. ASSIGNMENT OF CLAIMS

The Contractor cannot assign any right or delegate any obligations under this contract without the prior written permission of the Contracting Officer.

#### 11. TERMINATION FOR CONVENIENCE

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the NAFI. If this contract is for supplies and is so terminated, the Contractor shall be compensated in accordance with FAR, Sub Parts 49.1 and 49.2 in effect on this contract's date. To the extent that this contract is for services and is so terminated, the NAFI shall be liable only for payment in accordance with the payment clauses of this contract for services rendered prior to the effective date of termination, providing there are no Contractor claims covering nonrecurring costs for capital investment. If there are any such Contractor claims, they shall be settled in accordance with FAR, Sub Parts 49.1 and 49.2.

#### 12. CANCELLATION BY MUTUAL AGREEMENT

Should the situation warrant, the parties upon mutual agreement and no costs, may cancel this contract without further recourse to the other and mutual release of any further obligations.

#### 13. TERMINATION FOR CAUSE

a. The NAFI may, subject to paragraphs c. and d. below, by written notice of cause to the Contractor, terminate this contract in whole or in part if the Contractor fails to-

- (1) Deliver the supplies or perform the service within the time specified within this contract or any extension;
- (2) Make progress, so as to endanger performance of this contract (however, see paragraph b. below); or
- (3) Perform any of the other clauses of this contract (however see paragraph b. below).

b. The NAFI's right to terminate this contract under paragraph a.2., and a.3. above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of notice from the Contracting Officer specifying the failure.

c. If the NAFI terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will remain liable to the NAFI for any excess costs for those supplies or services. However the Contractor must continue the work not terminated.

d. Defaults by subcontractors at any tier for any reason do not constitute causes beyond the control and without the fault or negligence of the Contractor. The Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include:

- (1) Acts of God or of the public enemy
- (2) Act of the NAFI in either its sovereign or contractual capacity
- (3) Fires
- (4) Floods
- (5) Epidemics
- (6) Quarantine restrictions
- (7) Strikes
- (8) Freight embargoes
- (9) Unusually severe weather

e. If this contract is terminated for cause, the NAFI may require the Contractor to transfer title and deliver to the NAFI as directed by the Contracting Officer, any

- (1) completed supplies, and

(2) partially completed supplies and materials, parts, tool dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as manufacturing materials in the clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the NAFI has an interest.

f. The NAFI shall pay the contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Claims Clause. The NAFI may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the NAFI against loss because of outstanding liens or claims of former lien holders.

g. If, after termination, it is determined that the cause by the Contractor was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for convenience of the NAFI.

h. The rights and remedies of the NAFI in this clause are in addition to any other rights and remedies provided by law or under this contract.

i. This contract is automatically terminated for the convenience of the NAFI in the event the NAFI is dissolved.

#### 14. CHANGES

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

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

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

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

b. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer will make an equitable adjustment in the contract price, the delivery schedule, or both, and modify the contract.

c. The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order; however, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

d. If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

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

f. If the requirement is for concession services (including public private ventures), the Contractor shall notify the Contracting Officer in writing within seven (7) days of the occurrence of any event that the Contractor considers a change to the contract that has not been authorized in writing signed by the Contracting Officer. The Contractor will be deemed to have waived any right to an adjustment if timely notice is not provided to the Contracting Officer as required herein. For purposes of this clause, "event" shall include, but not be limited to, an order or direction by a NAFI or other NAFI official, a contested contract interpretation, interference with or interruption of the contract work, or any other event that increases the cost or time to perform the contract as compared to the cost or time that would be required if the Contractor performed the contract in accordance with its terms.

g. Failure to agree to any adjustment shall be a "claim" under the "Claims" clause of this Contract; however, nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

#### 15. SOCIAL RESPONSIBILITY AND LABOR STANDARDS NONRESALE

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

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

(1) Definitions. The meanings of the terms coercion, commercial sex act, debt bondage, forced labor, involuntary servitude, severe forms of trafficking in persons, and sex trafficking are as is defined in the Trafficking Victims Protection Act of 2000, Public Law 106-386, October 28, 2000 < <http://www.state.gov/documents/organization/10492.pdf> >.

(2) Policy. DoD NAFIs have adopted the U.S. Government's zero tolerance policy regarding trafficking in persons. During the contract period of performance, Contractor and Contractor employees shall not: (a) Engage in severe forms of trafficking; (b) Procure commercial sex; or (c) Use forced labor

(3) Contractor Requirements. Contractor shall: (a) Notify its employees of: Zero tolerance policy described in this clause; and actions that will be taken against employees for violations of this policy. (Such actions may include, but are not limited to, removal from the Contract, reduction in benefits, or termination of employment); and (b) Take appropriate action against employees or subcontractors that violate policy in paragraph a.(2) of this clause, up to and including termination.

(4) Notification. Contractor shall inform the Contracting Officer immediately of: (a) Any information it receives from any source (including host

country law enforcement) alleging a Contractor employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy; and (b) Any actions taken against Contractor employees, subcontractors, or subcontractor employees pursuant to this clause.

(5) Remedies. In addition to other remedies available to the NAFI, Contractor's failure to comply with the requirements of this clause may result in (a) Requiring the Contractor to remove a Contractor employee or employees from performance under the contract; (b) Requiring the Contractor to terminate a subcontract; (c) Suspension of contract or fee payments; (d) Termination of the contract for default or cause, in accordance with the termination clause of this contract; and/or (e) Suspension or debarment.

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

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

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

(1) Labor. Contractor shall not employ any person under the age of 14 years, unless local and national laws stipulates a higher age for work or mandatory schooling, in which case the higher age will apply. Contractor shall not use force or other compulsory labor in performance of this contract, nor require employees to lodge "deposits" or identity papers upon commencing employment with the Contractor or subcontractor.

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

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

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

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

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

c. U.S. Labor Statutes.

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

(2) Definitions

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

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

d. The Contractor shall:

(1) Comply with all applicable statutes to include, but not limited to the Fair Labor standards Act (FLSA), Service Contract Labor Standards Statute and Construction Wage Rate Requirements.

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

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

(4) Ensure compliance with all applicable hours, wages, labor relations (including collective bargaining), workmen's compensation, working conditions and other matters pertaining to labor standards of the country, or political matters pertaining to labor standards of the country, or political subdivision thereof, where contract is performed.

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

f. Prohibition on Illicit Substance. The Contractor, its employee(s) or representative(s) working under this contract agree(s) not to possess, or use any

illicit substance(s) while performing on the site(s) of this contract whether on military installation(s) or Federal property(s). Any noncompliant or finding of violation of this paragraph, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

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

## 16. INSPECTION AND ACCEPTANCE

Inspection and acceptance will be at destination, unless otherwise provided in this contract. Notwithstanding the requirements for any NAFI inspection and test contained in specifications applicable to this contract, except where specialized inspections or tests are specified for performance solely by the NAFI, the Contractor, shall perform or have performed the inspections and tests required to substantiate that the supplies provided under the contract conform to the drawings, specifications, and contract requirements listed herein, including if applicable the technical requirements for the manufacturer's part numbers specified herein. The Contractor shall only tender for acceptance only those items that conform to the requirements of this contract. The NAFI reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The NAFI may require repair or replacement of nonconforming supplies or performance of nonconforming services at no increase in contract price. Acceptance of the supplies or services or a written notice of rejections must be accomplished on or before the first working day following delivery of the supplies or services, unless otherwise specified in this contract.

## 17. COMMERCIAL TERMS AND CONDITIONS

a. Commercial terms and conditions are not inherently enforceable under NAFI contract(s). The Contractor shall not unilaterally obligate or bind the NAFI to pay any future services, subscriptions, fees, penalties, interest, legal costs or require the NAFI indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability. Contractor shall not unilaterally revoke, terminate or suspend any rights granted to the NAFI. The Contractor agrees any updates, changes or addendums to the contract shall be bilaterally agreed upon by the Contractor and the Contracting Officer, via written modification.

b. The Contractor agrees supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies or services. The rights and remedies provided herein are in addition to and do not limit any rights afforded to the NAFI by any other clause of this contract. Contractor shall provide printed terms and conditions of such warranty and comply with the Magnuson-Moss Warranty Act (15 U.S. Code (S) 2302). Warranty shall commence upon acceptance of the items and is in addition to other warranties of additional scope given by the Contractor.

## 18. TAXES

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

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

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

d. NAFIs located in foreign countries will not pay foreign taxes nor collect for any foreign country or political subdivision any tax unless the United States has consented to levy collection by treaty, convention, or executive agreement.

## 19. INVOICES

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

(1) Invoice date;

(2) Name of Contractor;

(3) Contract number (including order number, if any), contract line item number, contract description of supplies or services, quantity, contract unit of measure and unit price, and extended total;

(4) Shipment number and date of shipment (Bill of Lading number and weight of shipment will be shown for shipments on NAFI Bills of Lading);

(5) Name and address to which payment is to be sent (which must be the same as that in the contract or on a proper notice of assignment);

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

(7) Any other information or documentation required by other clauses of the contract (such as evidence of shipment). Invoices shall be prepared and submitted in duplicate (one copy shall be marked "Original") unless otherwise specified.



b. For purposes of determining if interest begins to accrue under the Prompt Payment Act (Public Law 97-177):

(1) A proper invoice will be deemed to have been received when it is received by the office designated in the contract for receipt of invoices and acceptance of the supplies delivered or services rendered has occurred.

(2) Payment shall be considered made on the date on which a check for such payment is dated.

(3) Payment terms (e.g., "Net 20") offered by the contractor will not be deemed required payment dates.

(4) The following periods of time will not be included:

(a) After receipt of improper invoice and prior to notice of any defect or impropriety, but not to exceed three days for meat and meat food products, five days for perishable agricultural commodities, and 15 days in all other cases, and

(b) Between the date of a notice of any defect or impropriety and the date a proper invoice is received. When the notice is in writing, it shall be considered made on the date shown on the notice.

## 20. LAW GOVERNING CONTRACTS

This contract shall be construed and interpreted in accordance with the Federal laws of the United States of America. NAF procurement is governed by Department of Defense Instruction (DODI) 4105.67, NAF Procurement Policy and Procedure, available at <http://www.dtic.mil/whs/directives/> (or any successor website).

## 21. SUSTAINABILITY

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

a. Where possible utilize environmentally friendly products

b. Where possible promote energy-efficiency and water conservation

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

## 22. PROOF OF SHIPMENT

Applicable to shipments outside the United States through the Surface Deployment and Distribution Command and Parcel Post shipments to overseas destinations.

a. Notwithstanding any clause of this contract to the contrary, payment will be made for items not yet received, upon receipt of an invoice accompanied by an appropriate proof of shipment. If shipment is made by insured parcel post, the Contractor must furnish a copy of the Insured Mail Receipt issued by the US Postal Service. Otherwise, a stamped copy of a Certificate of Mailing issued by the US Postal Service must be furnished. If shipment is made by a common carrier (rail, air or motor freight), the Contractor must furnish a signed copy of the shipping document on which items are receipted for by the common carrier. A signed receipt by a NAFI representative at the delivery point, Consolidation Containerization Point or Port of Embarkation is also acceptable evidence of proof of shipment.

b. Forwarding a proof of shipment and an invoice for payment by the Contractor shall be construed as a certification by the Contractor that the items shipped conform to the specifications.

c. Notwithstanding any provisions of this clause or any payment made pursuant to the terms of this clause prior to receipt of the items contracted for, the NAFI retains the right to inspect upon receipt and the right to reject nonconforming items. The liability of the Contractor with respect to items for which payments have been made will, after inspection by the NAFI or after the expiration of a reasonable time following delivery to the NAFI within which inspection may be made, whichever occurs first, be limited to exceptions taken at the time of inspection, and latent defects, fraud, or such gross mistakes as amount to fraud.

## 23. VARIATION IN QUANTITY

No variation in quantity of any item called for by this contract will be accepted unless authorized by the Contracting Officer.

## 24. PARTIAL DELIVERIES

Partial deliveries are not permitted unless authorized by the terms of the contract or approved by the Contracting Officer.

## 25. PAYMENTS

Partial payments will be made when deliveries are authorized or as approved by the Contracting Officer. Payments and penalties for late payments are subject to the requirements established by the Prompt Payment Act, as amended, and as implemented for NAFIs. If the NAFI makes payment but such payment fails to include a prompt payment penalty due to the Contractor within 10 days from when the contract payment is made, penalty amounts will not be paid unless the Contractor makes a written request within forty days after the date of payment.

## 26. DISCOUNTS FOR PROMPT PAYMENT

a. Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

b. In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the agency annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal NAFI offices are closed and NAFI business is not expected to be conducted, payment may be made on the following business day.

## 27. NOTIFICATION OF DEBARMENT/SUSPENSION STATUS

The Contractor shall provide immediate notice to the Contracting Officer in the event of being suspended, debarred or declared ineligible by any other Federal Department or agency, or upon receipt of a notice of proposed debarment from another DoD Agency, during the performance of this contract.

## 28. NON WAIVER OF DEFAULTS

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

## 29. TRAVEL CLAUSE

Contractors and/or their duly appointed representative will make their own travel arrangements, purchase their own tickets, and submit requests for reimbursement to the issuing office found in Block 12 of the award. Travel costs will be paid by the contracting NAFI, up to the maximum amount authorized in the federal travel regulations. The Contractor shall submit original receipts of airline tickets, lodging, car rental and other expenses exceeding \$75.00. Contractor personnel must acquire airline travel by the most economical methods, to include obtaining coach fares, buy advance purchase tickets (when possible), and plan minimal travel time necessary to accomplish the task. The Contractor is liable for costs associated with unused or changed airline tickets, where non-use is not caused by the NAFI. Documents are required to support payment of travel costs. The Contracting Officer and or their duly appointed representative will approve, in advance, any changes in the itinerary. Contractors must obtain approval before submitting other than lowest airfare travel reimbursement requests from the invoicing office. Local travel for which mileage is claimed; to include travel to and from the airport when air travel is involved must be indicated on the itinerary on form 1351-2 or other approved form.

## 30. INCREASING THE MINIMUM WAGE FOR FEDERAL CONTRACTORS

a. This Contract is subject to Executive Order 14026, the regulations issued by the Secretary of Labor in 29 CFR part 23 pursuant to the Executive Order, and specifically to all the provisions set forth in Appendix A to 29 CFR part 23. The Contractor shall pay to workers, while performing in the United States, and performing on, or in connection with, this contract, the applicable minimum wage per the Executive Order. Accordingly, Appendix A is hereby incorporated by reference and has the same force and effect as if set forth in full in this contract. The full text of the final rule, to include the regulations and clause "Increasing the Minimum Wage for Federal Contractors" at 29 CFR part 23, is available at: <https://www.ecfr.gov/current/title-29/part-23/appendix-Appendix%20A%20to%20Part%2023>.

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

## 31. ESTABLISHING PAID SICK LEAVE FOR FEDERAL CONTRACTORS

a. This contract is subject to Executive Order (EO) 13706 and to the regulations issued by the Secretary of Labor pursuant thereto at 29 CFR part 13 (Establishing Paid Sick Leave for Federal Contractors). 29 CFR part 13, Appendix A, is hereby incorporated by reference, having the same force and effect as if set forth in full in this contract. Refer to <https://www.gpo.gov/fdsys/pkg/FR-2016-09-30/pdf/2016-22964.pdf>

b. The Contractor shall establish a sick leave policy in full compliance with the applicable provisions of EO 13706 and 29 CFR part 13.

c. This clause applies to all subcontracts where EO 13706 and 29 CFR part 13 apply to the prime contract. Accordingly, the Contractor is responsible for subcontractor compliance with EO 13706, 29 CFR part 13, and the requirements of this clause. The Contractor shall include this clause, including this paragraph, in all subcontracts where applicable.

d. The Contractor may be subject to penalties for noncompliance as described in 29 CFR (S)13.44.

## LIST OF CLAUSES INCORPORATED BY REFERENCE

The provisions of the following clauses are hereby incorporated into this order or contract by reference with the same force and effect as though herein set forth in full. Clauses made inapplicable by the reference or by the kind of order, contract (e.g., orders or contract for services instead of supplies) or dollar amount are self-deleting. The complete text of any clause incorporated in this order or contract by reference may be obtained from the Contracting Officer.

## CLAUSE NO. CLAUSE TITLE

NFC 203-7001 Prohibition on Persons Convicted of Fraud or Other Defense - Contract Felonies (DEC 2008)  
NFC 204-23 Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (JUL 2018)  
NFC 204-25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2020)  
NFC 204-7000 Disclosure of Information (OCT 2016)  
NFC 222-19 Child Labor-Cooperation with Authorities and Remedies (JAN 2020)  
NFC 222-20 Contracts for Materials, Supplies, Articles and Equipment (JUN 2020)  
NFC 222-21 Prohibition of Segregated Facilities (APR 2015)  
NFC 222-26 Equal Opportunity (SEPT 2016)  
NFC 222-35 Equal Opportunity for Veterans (JUN 2020)  
NFC 222-41 Service Contract Labor Standards (AUG 2018)  
NFC 223-3 Hazardous Material Identification & Material Safety Data (JAN 1997)  
NFC 225-11 Buy American - Construction Materials under Trade Agreements (OCT 2019)  
NFC 225-7036 Buy American - Free Trade Agreements - Balance of Payments Program - Basic (DEC 2017)  
NFC 225-7002 Qualifying Country Sources as Subcontractors (DEC 2017)  
NFC 227-7013 Rights in Technical Data - Non-commercial Items (FEB 2014)  
NFC 227-7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (FEB 2014)  
NFC 227-7015 Technical Data - Commercial Items (FEB 2014)  
NFC 228-3 Workers' Compensation Insurance (Defense Base Act) (JUL 2014)  
NFC 242-15 Stop Work Order (AUG 1989)  
NFC 243-1 Changes - Fixed-Price (AUG 1987)  
NFC 246-16 Responsibility for Supplies (APR 1984)

## SPECIAL CLAUSES FOR CONSTRUCTION

### NFC-36-204 - DISCLOSURE OF THE MAGNITUDE OF CONSTRUCTION PROJECTS (NOV 2020)

Advance notices and solicitations shall state the magnitude of the requirement in terms of physical characteristics and estimated price range. In no event shall the statement of magnitude disclose the NAFT's estimate. Therefore, the estimated price should be described in terms of one of the following price ranges:

- (a) Less than \$25,000.
  - (b) Between \$25,000 and \$100,000.
  - (c) Between \$100,000 and \$250,000.
  - (d) Between \$250,000 and \$500,000.
  - (e) Between \$500,000 and \$1,000,000.
  - (f) Between \$1,000,000 and \$5,000,000.
  - (g) Between \$5,000,000 and \$10,000,000.
  - (h) More than \$10,000,000.
- (End of clause)

### NFC-203-14 - DISPLAY OF HOTLINE POSTER(S) (JUN 2020)

#### (a) Definition.

"United States," as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

#### (b) Display of fraud hotline poster(s). Except as provided in paragraph (c)

(1) During contract performance in the United States, the Contractor shall prominently display in common work areas within business segments performing work under this contract and at contract work sites.

- (i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and
- (ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor shall display an electronic version of the poster(s) at the website.

(3) Any required posters may be obtained as follows:

Poster(s) Obtain from  
Defense Hotline Posters <http://www.dodhotline.dodig.mil/Hotline/posters.cfm>

(c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.

(d) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts that exceed \$5.5 million,

except when the subcontract

(1) Is for the acquisition of a commercial item; or

(2) Is performed entirely outside the United States.

(End of clause)

#### NFC-211-12 - LIQUIDATED DAMAGES - CONSTRUCTION (SEPT 2000)

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the NAFI in the amount of \$407.24 on first day and \$407.24 for each day thereafter for each calendar day of delay until the work is completed or accepted.

(b) If the NAFI terminates the Contractor's right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(End of clause)

#### NFC-222-36 - EQUAL OPPORTUNITY FOR WORKERS WITH DISABILITIES (JUN 2020)

(a) Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.

(c) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of the threshold specified in Federal Acquisition Regulation (FAR) 22.1408(a) on the date of subcontract award, unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

(End of clause)

#### NFC-225-9 - BUY AMERICAN-CONSTRUCTION MATERIALS (MAY 2014)

(a) Definitions. As used in this clause-- "Commercially available off-the-shelf (COTS) item"

(1) Means any item of supply (including construction material) that is

(i) A commercial item;

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

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

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

"Component" means an article, material, or supply incorporated directly into a construction material.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the NAFI are supplies, not construction material.

"Cost of components" means

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph

(1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

"Domestic construction material" means

(1) An unmanufactured construction material mined or produced in the United States;

(2) A construction material manufactured in the United States, if

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

Components of foreign origin of the same class or kind for which non availability determinations have been made are treated as domestic; or

(ii) The construction material is a COTS item.

"Foreign construction material" means a construction material other than a domestic construction material.

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

(b) Domestic preference.

(1) This clause implements the 41 U.S.C. chapter 83, Buy American, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for construction material that is a COTS item. The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

This requirement does not apply to information technology that is a commercial item or to the construction materials or components listed by the NAFI as follows:

\_\_\_\_\_None\_\_\_\_\_

(2) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the NAFI determines that

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American statute to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American statute.

(1)

(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for NAFI evaluation of the request, including

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the NAFI determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the NAFI determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.

(d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

## Foreign and Domestic Construction Materials Price Comparison

Construction material description Unit of measure Quantity Price (dollars) \*

Item 1

Foreign construction material

Domestic construction material

Item 2

Foreign construction material

Domestic construction material

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[\*Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]

(End of Clause)

## NFC-252-2 - CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Full text is available online at: <https://www.afnafpo.afsv.net/pages/Construction-Support/Construction-Support.aspx> (NAF Contracting).

(End of clause)

## NFC-252-6 - AUTHORIZED DEVIATION IN CLAUSES (NOV 2020)

(a) The use in this solicitation or contract of any NAFI clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.

(b) The use in this solicitation or contract of any NAFI clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of Clause)

## NFC 36-2 -- Differing Site Conditions.

### Differing Site Conditions (Apr 1984)

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of --

(1) Subsurface or latent physical conditions at the site which differ materially from those indicated in this contract; or

(2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in paragraph (a) of this clause for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

(End of Clause)

## NFC 36-3 -- Site Investigation and Conditions Affecting the Work.

### Site Investigation and Conditions Affecting the Work (Apr 1984)

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to

(1) conditions bearing upon transportation, disposal, handling, and storage of materials;

(2) the availability of labor, water, electric power, and roads;

(3) uncertainties of weather, river stages, tides, or similar physical conditions at the site;

(4) the conformation and conditions of the ground; and

(5) the character of equipment and facilities needed preliminary to and during work performance.

The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the NAFI, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the NAFI.

(b) The NAFI assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the NAFI. Nor does the NAFI assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

(End of Clause)

#### NFC 36-5 -- Material and Workmanship.

##### Material and Workmanship (Apr 1984)

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

(End of Clause)

#### NFC 36-6 -- Superintendence by the Contractor.

##### Superintendence by the Contractor (Apr 1984)

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the worksite a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

(End of Clause)

#### NFC 36-7 -- Permits and Responsibilities.

##### Permits and Responsibilities (Nov 1991)

The Contractor shall, without additional expense to the NAFI, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

(End of Clause)

#### NFC 36-8 -- Other Contracts.

##### Other Contracts -- (Apr 1984)

The NAFI may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with NAFI employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by NAFI employees.

(End of Clause)

#### NFC 36-9 -- Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.

##### Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements (Apr 1984)

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities

(1) at or near the work site, and

(2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor.

The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

(End of Clause)

#### NFC 36-10 -- Operations and Storage Areas.

##### Operations and Storage Areas (Apr 1984)

(a) The Contractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the NAFI, its officers and agents, free and harmless from liability of any nature occasioned by

the Contractor's performance.

(b) Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the NAFI. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

(End of Clause)

#### NFC 36-11 -- Use and Possession Prior to Completion.

Use and Possession Prior to Completion (Apr 1984)

(a) The NAFI shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the NAFI intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The NAFI's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the NAFI has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the NAFI's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the NAFI delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

(End of Clause)

#### NFC 36-12 -- Cleaning Up.

Cleaning Up (Apr 1984)

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the NAFI. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

(End of Clause)

#### NFC 36-13 -- Accident Prevention.

Accident Prevention (Nov 1991)

(a) The Contractor shall provide and maintain work environments and procedures which will --

(1) Safeguard the public and NAFI personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;

(2) Avoid interruptions of NAFI operations and delays in project completion dates; and

(3) Control costs in the performance of this contract.

(b) For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall --

(1) Provide appropriate safety barricades, signs, and signal lights;

(2) Comply with the standards issued by the Secretary of Labor at 29 CFR Part 1926 and 29 CFR Part 1910; and

(3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

(c) If this contract is for construction or dismantling, demolition or removal of improvements with any Department of Defense agency or component, the Contractor shall comply with all pertinent provisions of the latest version of U.S. Army Corps of Engineers Safety and Health Requirements Manual, EM 385-1-1, in effect on the date of the solicitation.

(d) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or NAFI personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

(e) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

(End of Clause)

#### NFC 36-14 -- Availability and Use of Utility Services.

Insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated, the contract is to be performed on NAFI sites when the contracting officer decides

(a) that the existing utility system is adequate for the needs of both the NAFI and the contractor, and

(b) furnishing it is in the NAFI's interest. When this clause is used, the contracting officer shall list the available utilities in the contract.

Availability and Use of Utility Services (Apr 1984)

(a) The NAFI shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the NAFI or, where the utility is produced by the NAFI, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining



charges. Before final acceptance of the work by the NAFI, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

(End of Clause)

#### NFC 36-15 -- Schedules for Construction Contracts.

##### Schedules for Construction Contracts (Apr 1984)

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the NAFI. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

(End of Clause)

#### NFC 36-17 -- Layout of Work.

Insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated and use of this clause is appropriate due to a need for accurate work layout and for siting verification during work performance:

##### Layout of Work (Apr 1984)

The Contractor shall lay out its work from Government established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

(End of Clause)

#### NFC 36-26 -- Preconstruction Conference.

##### Preconstruction Conference (Feb 1995)

If the Contracting Officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

(End of Clause)

#### NFC 42-13 -- Bankruptcy.

##### Bankruptcy (Jul 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of NAFI contract numbers and contracting offices for all NAFI contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

(End of Clause)

#### NFC 42-14 -- Suspension of Work.

Insert the following clause in solicitations and contracts when a fixed-price construction or architect-engineer contract is contemplated:

##### Suspension of Work (Apr 1984)

(a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the NAFI.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted

(1) by an act of the Contracting Officer in the administration of this contract, or

(2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

(c) A claim under this clause shall not be allowed --

(1) For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

(2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

(End of Clause)

NFC 43-4 -- Changes.

Insert the following clause: The 30-day period may be varied according to agency procedures.

Changes (Jun 2007)

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes --

(1) In the specifications (including drawings and designs);

(2) In the method or manner of performance of the work;

(3) In the NAFI-furnished property or services; or

(4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contracting Officer written notice stating --

(1) The date, circumstances, and source of the order; and

(2) That the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the NAFI is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the NAFI. The statement of proposal for adjustment may be included in the notice under paragraph (b) of this clause.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(End of Clause)

NFC 46-12 -- Inspection of Construction.

Inspection of Construction (Aug. 1996)

(a) Definition. "Work" includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the NAFI. All work shall be conducted under the general direction of the Contracting Officer and is subject to NAFI inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) NAFI inspections and tests are for the sole benefit of the NAFI and do not --

(1) Relieve the Contractor of responsibility for providing adequate quality control measures;

(2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;

(3) Constitute or imply acceptance; or

(4) Affect the continuing rights of the NAFI after acceptance of the completed work under paragraph (i) of this section.

(d) The presence or absence of a NAFI inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer's written authorization.

(e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The NAFI may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The NAFI shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The Contractor shall, without charge, replace or correct work found by the NAFI not to conform to contract requirements, unless in the public interest the NAFI consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(g) If the Contractor does not promptly replace or correct rejected work, the NAFI may --

(1) By contract or otherwise, replace or correct the work and charge the cost to the Contractor; or

(2) Terminate for default the Contractor's right to proceed.

(h) If, before acceptance of the entire work, the NAFI decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the contract, the NAFI shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the NAFI's rights under any warranty or guarantee.

(End of Clause)

#### NFC 46-21 -- Warranty of Construction.

##### Warranty of Construction (Mar 1994)

- (a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.
- (b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the NAFI takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the NAFI takes possession.
- (c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to NAFI-owned or controlled real or personal property, when that damage is the result of --
- (1) The Contractor's failure to conform to contract requirements; or (2) Any defect of equipment, material, workmanship, or design furnished.
- (d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.
- (e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- (f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the NAFI shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.
- (g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall --
- (1) Obtain all warranties that would be given in normal commercial practice;
- (2) Require all warranties to be executed, in writing, for the benefit of the NAFI, if directed by the Contracting Officer; and
- (3) Enforce all warranties for the benefit of the NAFI, if directed by the Contracting Officer.
- (h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the NAFI may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.
- (i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the NAFI nor for the repair of any damage that results from any defect in NAFI-furnished material or design.
- (j) This warranty shall not limit the NAFI's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.
- (End of Clause)

#### CLAUSES INCORPORATED BY REFERENCE

NFC-202-1 Definitions  
NFC-203-2 Certificate of Independent Price Determination  
NFC-203-3 Gratuities  
NFC-203-5 Covenant Against Contingent Fees  
NFC-203-7 Anti-Kickback Procedures  
NFC-203-8 Cancellation, Recession, and Recovery of Funds for Illegal or Improper Activity  
NFC-203-10 Price or Fee Adjustment for Illegal or Improper Activity  
NFC-203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions  
NFC-203-12 Limitation on Payments to Influence Certain Federal Transactions  
NFC-203-13 Contractor Code of Business Ethics and Conduct  
NFC-203-16 Preventing Personal Conflicts of Interest.  
NFC-203-17 Contractor Employee Whistleblower Rights and Requirement to Inform appraisals  
NFC-204-3 Taxpayer Identification  
NFC-204-4 Printed or Copied Double-Sided on Postconsumer Fiber Content Paper  
NFC-204-5 Women-Owned Business (Other Than Small Business)  
NFC-204-9 Personal Identity Verification of Contractor Personnel  
NFC-204-12 Data Universal Numbering System Number Maintenance  
NFC-204-19 Incorporation by Reference of Representations and Certifications  
NFC-209-2 Prohibition on Contracting with Inverted Domestic Corporations - Representation.  
NFC-209-5 Certification Regarding Responsibility Matters  
NFC-209-6 Protecting the NAFI's Interest When Subcontracting with Contractor's Debarred, Suspended, or Proposed for Debarment  
NFC-209-9 Updates of Publicly Available Information Regarding Responsibility Matters  
NFC-210-1 Market Research  
NFC-211-10 Commencement, Prosecution, and Completion of Work  
NFC-211-13 Time Extensions  
NFC-215-2 Audit and Records--Negotiations  
NFC-215-6 Place of Performance  
NFC-215-8 Order of Precedence--Uniform Contract Format  
NFC-222-1 Notice to the NAFI of Labor Disputes  
NFC-222-4 Contract Work Hours and Safety Standards--Overtime Compensation  
NFC-222-5 Employment Eligibility Verification.  
NFC-222-6 Construction Wage Rate Requirements.  
NFC-222-7 Withholding of Funds.  
NFC-222-8 Payrolls and Basic Records  
NFC-222-9 Apprentices and Trainees.

NFC-222-10 Compliance with Copeland Act Requirements.  
 NFC-222-11 Subcontracts (Labor Standards)  
 NFC-222-12 Contract Termination- Debarment.  
 NFC-222-13 Compliance with Construction Wage Rate Requirements and Related Regulations  
 NFC-222-14 Disputes Concerning Labor Standards.  
 NFC-222-18 Certification Regarding Knowledge of Child Labor for Listed End Products  
 NFC-222-22 Previous Contracts and Compliance Reports  
 NFC-222-25 Affirmative Action Compliance  
 NFC-222-27 Affirmative Action Compliance Requirements for Construction.  
 NFC-222-37 Employment Reports on Veterans.  
 NFC-222-38 Compliance with Veterans' Employment Reporting Requirements  
  
 NFC-222-40 Notification of Employee Rights Under the National Labor Relations Act.  
 NFC-222-48 Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification  
 NFC-222-52 Exemption from Application of the Service Contract Labor Standards to Contracts for Services-Certification.  
 NFC-223-1 Biobased Product Certification  
 NFC-223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts.  
 NFC-223-3 Hazardous Material Identification and Material Safety Data.  
 NFC-223-4 Recovered Material Certification  
 NFC-223-6 Drug-Free Workplace.  
 NFC-223-9 Estimate of Percentage of Recovered Material Content for EPA - Designated Items.  
 NFC-223-10 Waste Reduction Program.  
 NFC-223-15 Energy Efficiency in Energy-Consuming Products.  
 NFC-223-17 Affirmative Procurement of EPA-designated Items in Service and Construction Contracts.  
 NFC-223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving  
 NFC-224-1 Privacy Act Notification.  
 NFC-224-2 Privacy Act.  
 NFC-225-2 Buy American Act Certificate  
 NFC-225-4 Buy American Act--Free Trade Agreements--Israeli Trade Act Certificate  
 NFC-225-6 Trade Agreements Certificate  
 NFC-225-13 Restrictions on Certain Foreign Purchases  
 NFC-225-20 Prohibition on Conducting Restricted Business Operations in Sudan-Certification  
 NFC-225-25 Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran--Representation and Certifications  
 NFC-226-2 Historically Black College or University and Minority Institution Representation  
 NFC-227-1 Authorization and Consent.  
 NFC-227-2 Notice and Assistance Regarding Patent and Copyright Infringement.  
 NFC-227-4 Patent Indemnity- Construction Contracts.  
 NFC-227-6 Royalty Information  
 NFC-227-15 Representation of Limited Rights Data and Restricted Computer Software  
 NFC-228-2 Additional Bond Security.  
 NFC-228-5 Insurance-Work on a NAFI Installation.  
 NFC-228-11 Pledges of Assets  
 NFC-228-12 Prospective Subcontractor Requests for Bonds.  
 NFC-228-14 Irrevocable Letter of Credit.  
 NFC-228-15 Performance and Payment Bonds- Construction.  
 NFC-229-3 Federal, State, and Local Taxes.  
 NFC-232-5 Payments under Fixed-Price Construction Contracts.  
 NFC-232-17 Interest.  
 NFC-232-27 Prompt Payment for Construction Contracts.  
 NFC-232-34 Payment by Electronic Funds Transfer - Other than System for Award Management  
 NFC-232-39 Unenforceability of Unauthorized Obligations.  
 NFC-233-3 Protest after Award.  
 NFC-233-4 Applicable Law for Breach of Contract Claim  
 NFC-236-2 Differing Site Conditions  
 NFC-236-3 Site Investigation and Conditions Affecting the Work.  
 NFC-236-5 Material and Workmanship.  
 NFC-236-6 Superintendence by the Contractor  
 NFC-236-7 Permits and Responsibilities.  
 NFC-236-8 Other Contracts.  
 NFC-236-9  
 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.  
 NFC-236-10 Operations and Storage Areas.  
 NFC-236-11 Use & Possession Prior to Completion.  
 NFC-236-12 Cleaning Up.  
 NFC-236-13 Accident Prevention.  
 NFC-236-14 Availability and Use of Utility Services.  
 NFC-236-15 Schedules for Construction Contracts.  
 NFC-236-17 Layout of Work.

NFC-236-21 Specifications and Drawings for Construction.  
NFC-236-26 Preconstruction Conference.  
NFC-236-7009 Option for Supervision and Inspection Services  
NFC-242-13 Bankruptcy  
NFC-242-14 Suspension of Work  
NFC-243-4 Changes  
NFC-244-6 Subcontracts for Commercial Items  
NFC-245-1 NAFI Property  
NFC-246-12 Inspection of Construction  
NFC-246-21 Warranty of Construction  
NFC-248-1 Value Engineering--Construction  
NFC-249-1 Termination for Convenience of the NAFI (Fixed-Price) (Short Form)  
NFC-249-10 Default (Fixed-Price Construction)

**Section J - List of Attachments**

<b>Number</b>	<b>Attachment Name</b>	<b>Attachment Description</b>	<b>Reference Identifier</b>	<b>Date</b>	<b>Line Item</b>
08	Attachment 3 - Project Manual	Project Manual		02 Mar 2023	
09	Attachment 4 - Submittal Log	Submittal Log		02 Mar 2023	
10	Attachment 5 - Wage Determination ND20230014	Wage Determination		02 Mar 2023	
12	Attachment 1- AF Form 3052	Cost Data Summary		03 Mar 2023	
13	Attachment 2 - Construction Drawings	Drawings		06 Mar 2023	
14	Attachment 7 - Electronic Payment Trading Partner Enrollment Agreement	Electronic Payment Trading Partner Enrollment Agreement		08 Mar 2023	
15	Attachment 6 - Past Performance Cover Page	Past Performance Cover Page		08 Mar 2023	

## Section K - Representations, Certification, & Other Statements

### SYSTEM FOR AWARD MANAGEMENT REGISTRATION

An *Offeror* is required to be registered in SAM when submitting an *offer* or quotation, and *shall* continue to be registered until time of award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this *solicitation*. The Offeror must be registered as a small business under the NAICS code 236220.

#### Bid Guarantee (Sept 1996)

- (a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, *may* be cause for rejection of the bid.
- (b) The bidder *shall* furnish a bid guarantee in the form of a firm commitment, *e.g.*, bid bond supported by good and sufficient *surety* or *sureties* acceptable to the Government, postal money order, certified check, cashier's check, *irrevocable letter of credit*, or, under Treasury Department regulations, certain bonds or notes of the *United States*. The *Contracting Officer* will return bid guarantees, other than bid bonds-
  - (1) To unsuccessful bidders as soon as practicable after the opening of bids; and
  - (2) To the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.
- (c) The amount of the bid guarantee *shall* be **20% percent** of the bid price
- (d) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the bidder, the *Contracting Officer* *may* terminate the contract for default.
- (e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

### 32. REPRESENTATION REGARDING CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.

#### a. Prohibition.

(1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Nothing in the prohibition shall be construed to-

- (a) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- (b) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract. Nothing in the prohibition shall be construed to-

- (a) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- (b) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

b. Procedures. The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

c. Representation. The Offeror represents that-

- (1) It will, will not provide covered telecommunications equipment or services to the NAFI in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (d)(1) of this section if the Offeror responds "will" in paragraph (c) (1) of this section; and
- (2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that It does, does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (d) (2) of this section if the Offeror responds "does" in

paragraph (c) (2) of this section.

d. Disclosures.

(1) Disclosure for the representation in paragraph(c) (1) of this provision. If the Offeror has responded "will" in the representation in paragraph (c) (1) of this provision, the Offeror shall provide the following information as part of the offer:

(a) For covered equipment-

(i) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(ii) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description ,as applicable); and

(iii) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (a) (1) of this provision.

(b) For covered services-

(i) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(ii) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (a) (1) of this provision.

(2) Disclosure for the representation in paragraph(c) (2) of this provision. If the Offeror has responded "does" in the representation in paragraph (c) (2) of this provision, the Offeror shall provide the following information as part of the offer:

(a) For covered equipment-

(i) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(ii) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description ,as applicable); and

(iii) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (a) (2) of this provision.

(b) For covered services-

(i) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(ii) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (a) (2) of this provision.

**33. COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES-REPRESENTATION**

a. Definitions. As used in this provision, "covered telecommunications equipment or services" and "reasonable inquiry" have the meaning provided in the clause 52.204-25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

b. Procedures. The Offeror shall review the list of excluded parties in the System for Award Management (SAM)(<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services ".c. Representation.(1) The Offeror represents that it does, does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.(2) After conducting a reasonable inquiry for purposes of this representation, the offeror represents that it does, does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services.



## Section L - Instructions, Conditions, & Notices to Offerors or Quoters

### L-1 GENERAL PROPOSAL PREPARATION INSTRUCTIONS

To assure timely and equitable evaluation of proposals, offerors shall follow the instructions contained herein. Offerors are required to meet all solicitation requirements, including, but not limited to: terms and conditions, representations and certifications, and technical requirements, in addition to those identified as evaluation factors or subfactors. Failure to meet a requirement may result in an offer being ineligible for award. Non-conformance with the instructions provided in this solicitation may result in an unfavorable proposal evaluation and/or removal from consideration.

L-1.1 Submission of Proposal: Offerors shall submit one electronic copy of each deliverable by email to both of the names listed below:

Ms. Carly Larson, [carly.larson@us.af.mil](mailto:carly.larson@us.af.mil)  
Lt William West, [william.west.36@us.af.mil](mailto:william.west.36@us.af.mil)

If the file size is too large to be delivered by email, the offeror must notify the contacts listed above, and a DoD SAFE link will be provided to drop-off files. The offeror is responsible to request the link timely so that proposals will be received by the proposal due date.

### L-2 PROPOSAL PREPARATION INSTRUCTIONS

L-2.1 The response shall consist of three (3) parts:

Part I- Price Proposal  
Part II-Technical Proposal  
Part III-Past Performance Proposal

Each part shall be submitted in separate documents and labeled.

L-2.2 Specific Instructions:

#### PART I: PRICE PROPOSAL/CONTRACT DOCUMENTS/BONDING

- i. Part I, Section A (SF 1442, Complete blocks 14, 15, 17, 18, 19, and 20A-C).
- ii. Part I, Section B--Use AF Form 3052 (Attachment 1) (please note there are two pages in the excel spreadsheet, titled "Cover" and "Back")
- iii. Part I, Section G--Contractor's Information
- iv. Part I, Section K, Representations, Certifications, and other Statements of Offeror
- v. Part I, Section K - Bid Guarantee (20% of bid price)
- vi. Teaming/Joint venture arrangement information, as applicable

The government reserves the right to ask for additional information to make a price fair and reasonable determination.

#### PART II: TECHNICAL PROPOSAL

- i. Limited to 10 pages

The technical proposal shall be prepared in accordance with these instructions and shall be evaluated in accordance with the evaluation criteria and evaluation standards in Section M, Evaluation Factors for Award. Technical proposals shall include necessary information to enable the evaluators to form a definitive conclusion concerning the offeror's ability to perform the required construction services.

Factor 1: Gantt Chart and Narrative

- Provide a Gantt Chart outlining all major work elements showing a logical sequence of events, and complete construction for the full duration of the project
- Provide a narrative that includes assumptions, risks, constraints, and sufficient information to adequately support the Gantt chart, including market conditions (i.e. supply chain delays, labor shortages)
- The Gantt chart and narrative should accurately reflect the timeline for completion of the project and will serve as the initial project schedule for the offeror that receives the contract award

#### PART III: PAST PERFORMANCE PROPOSAL

i. Limited to 3 pages (one page per project)

The past performance proposal shall be prepared in accordance with these instructions and shall be evaluated in accordance with the evaluation criteria and evaluation standards in Section M, Evaluation Factors for Award.

ii. The offeror must include all three (3) projects on one cover sheet, provided in Attachment 6. This will be the first page of the past performance proposal. All columns must be completed. Two points of contact must be provided under column "Contracting Agency POC/Customer Name". The cover sheet does not count towards the page limitation.

iii. In addition to the cover page, the contractor shall provide one full page per project. This page shall include a summary/overview and any other pertinent information regarding the project. Any period of performance extensions or schedule delays must be addressed/fully explained.

Factor 1: General Project Construction Experience

The offeror shall submit three (3) contracts of similar size and scope of the solicitation project, that were completed within five (5) years of the closing date of this solicitation. All projects must be design-bid-build with a magnitude between \$5 million dollars to \$15 million dollars. Projects shall include most or all of the following disciplines:

- Electrical
- HVAC
- Fire Protection
- Asbestos abatement/removal
- Concrete masonry
- Plumbing
- Carpentry
- Concrete pavement
- Roofing
- Selective demolition
- General site work (excavating, grade work, tree protection, etc)

L-3 All information and documents submitted in response to this RFP must be responsive and consistent with the following:

i. Format for proposal submission shall be as follows:

(a) A page is defined as one face of an 8 1/2" x 11" sheet of paper containing information (minimum 1/2" margins). The Offeror shall number each page in order. In the event an offeror creates an ambiguity, the Government may exercise its own discretion in counting pages. Offerors are encouraged to number proposal paragraphs consistent with the instructions contained in Section M.

(b) Typing shall not be less than 12 point font and must be Times New Roman.

(c) Two columns of text per page are acceptable. Elaborate format and color representations are not desirable.

ii. The price proposal is not limited to a specific number of pages

iii. Technical proposals shall be limited to 10 pages. Past Performance proposals shall be limited to 3 pages. The Government will remove pages in excess of these limitations and will not evaluate them.

iv. The covers for each volume, table of contents or title pages, will not be included in the page count if they are inserted solely to provide ease to the reader in locating parts/sections of the proposal. These items will be counted if they contain any other information, i.e., diagrams, extraneous data, etc.

(d) Project Manual: disregard any mention of submitting products or materials prior to the proposal due date. These items will be evaluated after award during the submittal process.

L-4 Joint Venture Offerors: If the offeror is a joint venture, the offeror shall provide all required solicitation information for all parties including a copy of the signed joint venture agreement with proposal. The agreement shall include information, which identifies the responsibilities for each entity under this contract. The agreement shall demonstrate the relationship between firms and identify contractual relationships and authorities to bind each entity of the joint venture. If the joint venture is comprised of 8(a) firms, the Small Business Administration (SBA), prior to the proposal due date, must approve the joint venture agreement.

L-5 Site Visit: A site visit will be held on 22 March 2023 at 1400 CST. Contractors will meet at the 319th Contracting Squadron, Building 242, Grand Forks AFB, before going to the Child Development Center, Building 168. All prospective offerors are highly encouraged to attend. In order to make this site visit as productive as possible, offerors should submit, no later than three business days before the site visit, any questions they may have in writing to william.west.36@us.af.mil and carly.larson@us.af.mil. All other questions arising from this solicitation must be submitted in writing no later than 24 March 2023 at 1630 CST. If base access is needed for the site visit, email a request no later than three business days before the site visit, and the contracting office will assist with processing base passes.

## Section M - Evaluation Factors for Award

### M-1 BASIS FOR CONTRACT AWARD

This section outlines the criteria the Government will use in evaluating the offeror's capabilities and proposals.

Award will be made to the offeror with:

- i. Lowest price (must be determined fair and reasonable)
- ii. Acceptable rating for technical proposal
- iii. Acceptable rating for past performance proposal

Initially, the Government will rank all proposals by price from lowest to highest. Once the proposals are ranked from lowest to highest, only the lowest priced proposal will be evaluated. Following price evaluation, if the lowest priced proposal is found to be fair and reasonable, the offeror's technical proposal will be evaluated. If they receive an "acceptable" rating for their technical proposal, then their past performance will be evaluated. If they receive an "acceptable" rating for past performance, award will be made to this offeror. No other proposals will be evaluated.

If the lowest priced proposal is not found to be fair and reasonable, or receives an "unacceptable" rating in their technical proposal or past performance proposal, their entire proposal will be eliminated from consideration, and the next lowest priced proposal will be evaluated. The evaluation process will continue (price, then technical, then past performance), until award can be made to an offeror with a fair and reasonable price, and an "acceptable" rating in both technical and past performance.

While the Government evaluation team will strive for maximum objectivity, the evaluation process is, by its nature, subjective; and therefore, professional judgment is implicit throughout the entire process.

### M-2 EVALUATION FACTORS

#### PART I: PRICE EVALUATION FACTOR

Initially, the Government will rank proposals by price from lowest to highest. Once the proposals are ranked from lowest to highest, only the lowest priced proposal will be evaluated. The Government will conduct an evaluation to document the fairness, reasonableness, and balance of the proposed price. Submission of an unreasonably low or unbalanced price may be grounds for eliminating an offer from competition.

The Government may use various price evaluation techniques and procedures to ensure a fair and reasonable price. Examples of such techniques include, but are not limited to the following:

- Comparison of proposed prices received in response to the solicitation.
- Comparison to the Independent Government Estimate (IGE)

The government reserves the right to ask for additional information to make a price fair and reasonable determination.

#### PART II: TECHNICAL EVALUATION FACTOR

Technical proposals will receive a rating of "acceptable" or "unacceptable".

##### Factor 1: Gantt Chart and Narrative

To receive an "acceptable" rating, the chart must outline all major work elements showing a logical sequence of events, and complete construction for the full duration of the project. The narrative must include assumptions, risks, constraints, and sufficient information to adequately support the Gantt chart, including market conditions (i.e. supply chain delays, labor shortages). The Gantt chart and narrative should be detailed and project specific. Narratives that include executive summaries, and/or vague or general statements about company capabilities will not receive an "acceptable" rating.

#### PART III: PAST PERFORMANCE FACTOR

Past performance proposals will receive a rating of "acceptable" or "unacceptable".

##### Factor 1: General Project Construction Experience

To receive an "acceptable" rating, the proposal must meet the following criteria:

1. All three (3) contracts:
  - a. Clearly meet the size, scope and type of work in the solicitation project
  - b. Construction was completed within five (5) years of the closing date of this solicitation
  - c. Are design-bid-build

- d. Are within the magnitude of \$5 million dollars to \$15 million dollars
- e. Include most or all of the following disciplines:

- Electrical
- HVAC
- Fire Protection
- Asbestos abatement/removal
- Concrete masonry
- Plumbing
- Carpentry
- Concrete pavement
- Roofing
- Selective demolition
- General site work (excavating, grade work, tree protection, etc)

2. The cover sheet at Attachment 6 must be included and complete. All columns must be completed. Two points of contact must be provided under column "Contracting Agency POC/Customer Name". The government may contact these points of contact for references on the projects submitted. Additionally, the government may pull Contractor Performance Assessment Reporting System (CPARS) for the three (3) contracts submitted, as well as any completed contracts within the past five years, if needed to make a determination. In addition to the cover page, the contractor shall provide one full page per project. This page shall include a summary/overview and any other pertinent information regarding the project. Any period of performance extensions or schedule delays must be addressed/explained. Period of performance/schedule delays that are not fully explained/justified, and/or ratings that are marginal or unsatisfactory, could result in receiving an "unacceptable" rating.

M-3

The Government may contact one, some or none, or all offerors that provided proposals. This may address all aspects of the proposal: price, technical, past performance, proposal documentation, and/or any other matter in the evaluation process.