

ARMY & AIR FORCE EXCHANGE SERVICE
SOLICITATION/PROPOSAL/AWARD
(MERCHANDISE, SUPPLIES, EQUIPMENT, AND/OR SERVICES)

ISSUING OFFICE Army & Air Force Exchange Service Attn: SD-F (S. Carter) 3911 S. Walton Walker Blvd. Dallas, TX 75236	CONTRACTING OFFICER Sally Carter	
	TELEPHONE NO. 214-312-3237	CONTRACT CONTROL NO. (If Applicable)
	ITEMS/SERVICE NBFF Snack Bar Aberdeen Proving Grounds, MD	

SOLICITATION FOR PROPOSALS

DATE ISSUED 30 July 2010	SOLICITATION NUMBER PZF-FR-001-10-1081
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Proposals are solicited for merchandise, supplies, equipment or services described in this solicitation. Written proposals must be received at the issuing office by 2:00 o'clock p m, local time 31 Aug 2010

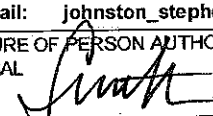
PROPOSAL (To Be Completed By Offeror)

The offeror agrees, if awarded all or part of the items and/or services solicited, to furnish them according to the price(s)/fee(s), terms and conditions contained in the solicitation and proposal. This proposal will be valid for _____ calendar days (60 calendar days unless a different period is entered by offeror) after the date for receipt of proposals established above.

OFFEROR REPRESENTS (Check appropriate boxes)

- That it is is not a manufacturer or producer of, is is not a regular dealer in; the items provided
(Commodity contracts only).
- That it is is not engaged in furnishing of services of the type called for herein (Service contracts only).
- That it operates as an Individual Partnership Corporation, incorporated in the States or Country of Delaware
- That it is is not a small business.
- That it is is not a minority business enterprise. (See definition of page 2)*
- That it is is not a woman-owned business. (See definition of page 2)*
- That an owner or officer of the firm or the firm or a related firm has has not been convicted of a felony related to a business transaction.
- That an owner or officer of the firm or the firm or a related firm has has not been suspended or debarred.
- That the information provided is full, accurate and complete. For breach of this warranty, AAFES may terminate for default any contract resulting from this solicitation and all other AAFES contracts.

**Check a block for all contracts to be performed in the United States, its possessions and Puerto Rico.*

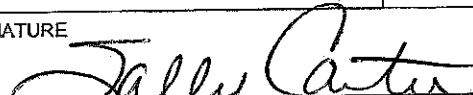
FULL NAME AND BUSINESS ADDRESS OF OFFEROR (STREET, CITY, STATE & ZIP CODE OR COUNTRY) Tim Hortons USA Inc. c/o 874 Sinclair Road Oakville, ON L6K 2Y1 Canada	TELEPHONE NUMBER/FAX NUMBER/EMAIL ADDRESS Phone: 905-339-6511 Fax: 905-845-0265 Email: johnston_stephen@timhortons.com
	SIGNATURE OF PERSON AUTHORIZED TO SIGN PROPOSAL  DATE <u>Aug 27/10</u>

TIN: 59-2121042	DUNS: See Attached	TYPED OR PRINTED NAME AND TITLE Stephen Johnston Senior Vice President Development
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ACCEPTANCE AND AWARD (To Be Completed By AAFES)

CONTRACT AWARDED FOR FOLLOWING:
ALL. This contract is awarded subject to contractor's Best and Final fee offeror letter dated 7 September 2010, which is attached hereto and made a part of the contract.
AAFES FEE: 5.5%
CONTRACT PERIOD: 10 Years
FEE DEPOSIT: \$1,100.00 **VENDOR CODE: 5909-9101**

CONTRACT NO. APG 10-1081	AMOUNT: <input checked="" type="checkbox"/> ESTIMATED \$ <input type="checkbox"/> ACTUAL 4,800,000.00	DATE OF AWARD 14 September 2010
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SIGNATURE 	(TYPED NAME) SALLY CARTER CONTRACTING OFFICER ARMY & AIR FORCE EXCHANGE SERVICE
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AAFES FORM 4450-002 (REV OCT 07) (Prev Edition Usable)

INSTRUCTIONS TO OFFERORS AND
CONDITIONS OF PROPOSAL/AWARDS
(Merchandise, Supplies, Equipment and/or Services)

1. CONTENTS OF SOLICITATION/CONTRACT:

This solicitation and any resulting contract consists of AAFES FORM 4450-2, Solicitation/Proposal/Award Merchandise, Supplies, Equipment and/or Services), pages 1 thru 4, and the following listed Schedule and Exhibits.

- | | | |
|---|------------|------------|
| <input checked="" type="checkbox"/> Schedule, Solicitation No. PZF-FR-001-10-1081 | ,page(s) 1 | through 5 |
| <input checked="" type="checkbox"/> Exhibit A, General Provisions (Feb 10) | ,page(s) 1 | through 10 |
| <input checked="" type="checkbox"/> Exhibit B, Labor Provisions, Contract for Services (with SCA) - April 10 | ,page(s) 1 | through 7 |
| <input checked="" type="checkbox"/> Exhibit C, Special Provisions (Fast Food Concession Contracts) | ,page(s) 1 | through 13 |
| <input checked="" type="checkbox"/> Exhibit D, Prices, Menu, and Specifications | ,page(s) 1 | through 4 |
| <input checked="" type="checkbox"/> Exhibit E, Fee Schedule | ,page(s) 1 | through 1 |
| <input checked="" type="checkbox"/> Exhibit F, Insurance Requirements | ,page(s) 1 | through 1 |
| <input checked="" type="checkbox"/> Exhibit G, Location and Demographics | ,page(s) 1 | through 1 |
| <input checked="" type="checkbox"/> Exhibit H, US DOL Wage Determination, Services Contract Act (w/2 page attachment) | ,page(s) 1 | through 1 |
| <input checked="" type="checkbox"/> Exhibit I, Building Construction/Renovation and Equipment | ,page(s) 1 | through 3 |
| <input checked="" type="checkbox"/> Exhibit J, General Provisions (Contract for Construction) (Jul 10) | ,page(s) 1 | through 37 |
| <input checked="" type="checkbox"/> Exhibit K, Notice of Requirements for Affirmative Action to Ensure EEO (EO 11246) | ,page(s) 1 | through 2 |
| <input checked="" type="checkbox"/> Exhibit L, AAFES Payment Bond | ,page(s) 1 | through 2 |
| <input checked="" type="checkbox"/> Exhibit M, Section 01420 Environmental Protection | ,page(s) 1 | through 7 |

2. SUBMISSION OF PROPOSALS:

a. Offerors have been provided one complete copy of the solicitation as identified above, and two proposal packages. Each proposal package consists of AAFES FORM 4450-2, Solicitation/Proposal/Award pages 1 thru 4, and the schedule or exhibits listed below. Also, for service contracts, a Financial and Technical Capability Data Sheet and a Projected Operation Statement are included if checked below.

- | | |
|--|--|
| <input checked="" type="checkbox"/> Financial and Technical Capability Data sheet, if checked. | <input checked="" type="checkbox"/> Operating Statement, if checked. |
| <input checked="" type="checkbox"/> Bank and/or Financial Statement | |
| <input checked="" type="checkbox"/> Exhibit E | ,page(s) 1 through 1 |
| <input type="checkbox"/> Exhibit | ,page(s) through |
| <input type="checkbox"/> Exhibit | ,page(s) through |

b. To make a proposal, complete, sign and return two proposal packages.

3. DEFINITIONS:

a. The term "minority business" means a business concern (1) which is at least 51 percent owned by minority group members; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more minority group members, and (2) whose management and daily business operations are controlled by one or more such minority group members. For purposes of this definition, minority group members include Black Americans, Hispanic Americans, Asian-Pacific Americans, Asian-Indian Americans, and Native Americans (such as American Indians, Eskimos, Aleuts and Native Hawaiians).

b. The term "women-owned business" means that is at least 51 percent owned by a woman or women who also control and operate it. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management.

(PAGE 2 AAFES FORM 4450-002)

4. PROPOSAL PREPARATION:

- a. You are encouraged to contact the contracting officer if you have a question concerning this solicitation. Information about the solicitation furnished any prospective offeror will be furnished all prospective offerors.
- b. Furnish all information required by the solicitation on the forms provided. Failure to do so may result in the proposal being considered non-responsive and excluded from consideration for award.
- c. Erasures or changes must be initialed by the person signing the proposal.
- d. The person signing the proposal must have authority to obligate the firm contractually.
- e. Unless otherwise authorized by the solicitation, any alteration to the terms and conditions contained in the solicitation may render offeror's proposal non-responsive.

5. **SUBMISSION** - Proposals and modifications, if any, must be sent in a sealed envelope addressed to the issuing office with the offer's name (for identification only) and the solicitation number on the front. Telegraphic proposals will NOT be considered unless authorized in the solicitation; however, proposals may be modified by telegraphic notice provided it is received before the time and date set for receipt of proposals.

6. **LATE PROPOSALS** - AAFES reserves the right to consider proposals or modifications received late, but before award is made, should such action be to AAFES advantage.

7. **WITHDRAWAL** - Proposals may be withdrawn by written notice or telegram received at any time prior to award.

8. **NO PROPOSAL** - If you don't submit a proposal, DO NOT return the solicitation or proposal packages unless instructed to elsewhere in the solicitation. However, please send us a letter or postcard telling us if you're interested in receiving future solicitations for this type of items or services.

9. ELIGIBILITY OF PROPOSED CONTRACTOR (S):

a. Proposals for merchandise, supplies or equipment will not be considered for award unless submitted by manufacturers or producers of, prime sources, or regular dealers, in the items required.

b. Proposals for services will not be considered unless submitted by persons or firms who, currently or within the preceding six (6) years, have successfully owned, operated, or managed in a full time capacity, for over twelve consecutive months, a business identical or having similar technical and operational characteristics as the service solicited. The phrase operated or managed means the offeror has/had a direct involvement in the day-to-day operation of the business to include responsibility for employment, supervision, scheduling production/services, payroll, and purchasing. The monthly sales volume of the offeror's business must equal or exceed the estimated monthly sales of the proposed concession activity. AAFES reserves the right to waive all or part of the qualification requirements in the event it is determined to be in AAFES' best interests.

c. Proposals will not be considered if submitted by brokers, active duty military personnel or U.S. Government employees. This prohibition includes immediate family members of these personnel residing in the same household, unless approved before award of contract.

d. The offeror must have adequate resources to perform the resulting contract and, upon request, furnish proof of same to the contracting officer. The contracting officer may request a financial statement, a cost breakdown, a projected operating statement, or other data from any offeror. Failure to furnish the data requested within the time specified may cause a firm to be determined non-responsive. AAFES further reserves the right to determine the responsibility of the offerors based on factors including but not limited to the offeror's financial resources, business capacity, performance record, integrity, management/business acumen, technical ability and facilities/equipment.

10. **DISCOUNTS** (Not applicable to procurements of edible meat, meat food products, dairy products, edible fats or oils, or concession services.) - Prompt payment discounts will be included in the evaluation of proposals provided the period of the offered discount is 20 days or more. Even if not evaluated for award, all discount terms offered will become a part of any resulting contract.

11. ACCEPTANCE AND AWARD

a. AAFES reserves the right to reject any or all proposals, to waive or correct informalities and minor irregularities in proposals received, and to conduct further negotiations with any or all offerors.

b. Unless otherwise stated in the solicitation (and in the absence of any express limitation made by the offeror), AAFES may accept all or any part of any proposal, without further negotiations. Proposals should therefore contain the offeror's most favorable terms. Any further negotiations undertaken will not constitute a rejection or counteroffer on the part of AAFES.

(PAGE 3 AAFES FORM 4450-002)

c. When quantities for merchandise, supplies or equipment stated in the solicitation are estimated, AAFES reserves the right to make an award on any item for the quantity less than the quantity proposed at the unit price offered unless the offeror's proposal specifies otherwise.

d. AAFES plans to award a contract to the responsive, responsible offeror whose proposal is best for AAFES, price/fee and other factors set out in the solicitation considered. AAFES reserves the right to accept other than the lowest proposal, and to make multiple awards unless otherwise provided in the Schedule.

e. Contracting Officer will award the contract by completing the "ACCEPTANCE AND AWARD" block on page 1, signing the contract, obtaining any approvals required by AAFES directives, and mailing or otherwise furnishing the successful offeror a copy of the completed contract within the time allowed for acceptance of the offeror.

12. **INCONSISTENCIES** - In the event of an inconsistency between the provisions of this solicitation, the inconsistency will be resolved by giving precedence in the following order: (a) the Schedule; (b) Instructions to Offerors and Conditions of Proposals/Awards; (c) General Provisions; (d) Other provisions of the contract whether incorporated by reference or otherwise; (e) the Specifications; and (f) the Drawings.

13. **CERTIFICATE OF INDEPENDENT PROPOSAL DETERMINATION** - Offeror certifies that this proposal or any change thereto is made without consultation, communication, or agreement, for the purpose of restricting competition or manipulating awards, and this proposal has not been disclosed and will not be disclosed prior to award.

14. **PROPRIETARY INFORMATION** - AAFES will not be bound by any language in any offer purporting to limit AAFES' right to use or disclose any offer or any part of an offer because of proprietary information in it, unless the contracting officer specifically agrees in writing to such limitations.

15. **TAXPAYER IDENTIFYING NUMBER (TIN)** - The 9-digit TIN is an identifier required of all individuals and businesses that file tax returns in the United States. For individuals eligible for a social security number (SSN), the SSN assigned by the Social Security Administration serves as the TIN. For resident or non-resident aliens ineligible for a SSN, the individual taxpayer identification number (ITIN) assigned by the IRS serves as the TIN. The Employer Identification Number (EIN) assigned by the IRS serves as the TIN for businesses and entities other than individuals. Failure to provide the TIN may result in a proposal being found non-responsive and not further considered for award.

(PAGE 4 AAFES FORM 4450-002)

Army and Air Force Exchange Service
Attn: SD-F (S. Carter)
3911 S. Walton Walker Blvd.
Dallas, TX 75236
(214) 312-3237
Fax (214) 465-2337
Email: cartersally@aafes.com

3 September 2010

Tim Hortons USA Inc.
c/o 874 Sinclair Road
Oakville, ON L6K2Y1
Canada


Dear Mr. Johnston:

You are invited to submit your Best & Final Fee offer for solicitation no. PZ-FR-001-10-1081 NBFF Snack Bar concession operation at Aberdeen Proving Grounds, MD (Bldg. 6002), by **12:00 p.m. (CST) on 8 September 2010.**

You are encouraged to reevaluate estimated sales of \$40,000 per month, operating expenses and initial investments made in evaluating your final fee offer.

Please enter your Best & Final Fee offer below, and fax a copy of this letter to my attention at FAX (214) 465-2337, or scan and email to cartersally@aafes.com **no later than 12:00 p.m. (CST) on 18 August 2009.**

BEST AND FINAL FEE PERCENTAGE



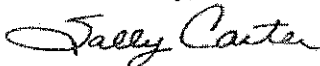
Concessionaire's Signature

5.5 %



Date

Sincerely,



SALLY CARTER
Contracting Officer

SCHEDULE

1. **General:** Proposals are solicited to establish a contract for the operation of a concession fast food facility specializing in Name Brand Snack Bar, Building 6002 at Aberdeen Proving Grounds, MD. Should the location require modifications to meet the franchise's brand image, to include design and renovations, Phase I of the contract will be enforced.

Contract performance at this location will consist of two phases.

a. Phase I will be the design and renovation of the facility and will be governed by this Schedule and Exhibit B and Exhibits H through M, and

b. Phase II will be the concession operation of the activity and will be governed by this Schedule and Exhibits A through I of this contract.

2. **Qualifications of Offerors:** Offerors must currently operate fast food facilities specializing in the type of product identified above with broad geographic customer recognition and acceptance of brand name products and operating concepts. Therefore, proposals are only being solicited from offerors whom we have determined meet our requirements, and unsolicited proposals will not be considered. Additionally, offerors must currently have restaurants in the current Arbitron Area of Dominant Influence (ADI) for the installation(s) for which an offeror makes a proposal or have plans to activate one or more facilities in the near future (e.g., within six months). If a firm other than the chain is awarded a contract as a result of this solicitation the firm must be a franchise in good standing and maintain throughout the period of the contract a franchise for each location awarded. The franchise agreement must be for the same chain for which award is being made.

3. **Effective Date of Contract and Contract Period:** The effective date of any contract awarded as a result of this solicitation will be the date entered in the Acceptance and Award section of AAFES Form 4450-002. The contract period will be computed from the date of opening of the facility following final inspection and acceptance of construction and will be documented by a contract amendment. The performance period for the facility will be ten (10) years.

4. **Sales Data/Demographics:** AAFES has no actual operating data to project sales for a brand name fast food activity specializing in this type of product at this location. However, the AAFES monthly sales estimate is stated in Exhibit E. Demographics for the location are shown at Exhibit G. AAFES makes no warranty expressed or implied of the gross sales to be realized under any contracts resulting from this negotiated contract.

5. **Fee:**

a. Offerors must enter a fee proposal in Exhibit E.

b. Contractor shall, without additional expense to AAFES, be responsible for all franchise fees (to include but not limited to the following: initial franchise fees, royalty fees, marketing & advertising fees)

required by their NBFF franchise agreement with the NBFF franchisor.

6. **Hours of Operation:** The hours of operation of the concession activity will be established by local exchange management in coordination with the installation commander. Concessionaire may recommend hours of operation based on its experience and knowledge of the market. The activity must operate a minimum of **60** hours per week.
7. **Award of Contract:** A contract will be awarded to the responsible offeror whose proposal is responsive to solicitation requirements and provides the highest monthly dollar return to AAFES. The highest monthly dollar return to AAFES will be computed as the product of the AAFES monthly sales projection times the percentage fee offered.
8. **Brand Recognition:** With approval from the contracting officer, concessionaire will display company name/logo on signing in the shop, in any advertising, and on employee identification badges, shirts, etc. Concessionaire will provide interior décor and signing that meets company (franchise) standards. AAFES will assist the concessionaire in obtaining approval of exterior décor and signing by installation major commands. The concessionaire acknowledges that there is no guarantee the installation will approve exterior signing that is inconsistent with installation guidelines.
9. **Restriction on Disclosure and Use of Data:** Offerors who include information in their proposals that they do not want disclosed to the public for any purpose or used by AAFES except for evaluation or contract performance purposes will:
- a. Attach a cover page with the following legend: "This proposal includes information that will not be disclosed outside AAFES and will not be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate this proposal or by AAFES in the performance of the contract. This restriction does not limit AAFES' right to use information contained in this proposal if it is obtained from another source without restriction or if already known to AAFES. The information subject to this restriction is contained in sheets (insert numbers or other identification of sheets);" and
 - b. Mark each sheet of information it wishes to restrict with the following legend: "Use or disclosure of information contained on this sheet is subject to the restriction on the cover page of this proposal."
 - c. After award, the restricted information will be returned to each unsuccessful offeror.
10. **Opening Procedure:**
- a. **Implementation Plan:** Within 30 days of contract award, the concessionaire will prepare and submit to AAFES an implementation plan consisting of:
 - (1) Concept design submittal to include floor plans, site layout

and construction documents completed to at least 30% of final contract document stage sufficient to convey the intent of the building/conversion the concessionaire will accomplish.

(2) Construction cost estimate.

(3) Design analysis to completely describe the facility construction/conversion.

(4) Project schedule for accomplishment of the project, in calendar days, starting from date the final design documents are approved by AAFES until the facility is opened for business. Include the following phases: award of contract, construction, equipment installation and facility opening preparation (including staff training and shake down of equipment).

b. Proprietary Approval - Form DD 1391: AAFES will execute form based on scope and construction cost data provided by the concessionaire. AAFES will take measures to obtain proprietary approval through installation and major commands. Concessionaire will not start construction until these approvals are obtained. Offeror acknowledges that there is no guarantee that the military will approve that which is submitted without changes related to military construction requirements or those unique to the installation.

c. Pre-design Meeting: Upon receipt of AAFES concurrence with the implementation plan the concessionaire and his technical representative, in conjunction with AAFES representatives and base/post engineers, will visit the identified base/post to attend a pre-design meeting at which time general agreement will be reached by all parties on the design concept.

d. Design Completion: The concessionaire will submit the completed design within 30 days (for new construction) or 60 days (for conversion) of the pre-design meeting to AAFES and the base/post engineers for technical sufficiency review. The concessionaire and his technical representatives, in conjunction with AAFES representatives and base/post engineers, will participate in a final design review conference at the base/post. The concessionaire will incorporate all of the comments, as resolved, into the construction contract documents and will provide one set of the final corrected documents to AAFES and to the base/post engineers.

e. Construction Phase: Upon receipt of necessary governmental approvals, AAFES will issue to the concessionaire a notice-to-proceed with construction. Exhibit J, General Provisions (Contract for Construction) is applicable to the construction phase.

(1) The concessionaire and/or its general contractor will contact the AAFES engineers and will advise of and consult to resolve any difficulties affecting the project. The AAFES contracting officer will be informed by the concessionaire of any significant problems that will affect the scheduled opening or project cost.

(2) During the construction period two inspections will be made jointly by the concessionaire, AAFES and the base/post engineers. These inspections will occur when the construction is approximately 50-60%

complete and again at 100% complete (including equipment installation). Concessionaire will correct all construction deficiencies identified during each inspection at no cost to AAFES or the base/post. Under no circumstances will the facility be opened for business without base/post engineer approval of completed construction/conversion.

11. **Bond Requirements:**

a. For the renovation phase of any contract, Miller Act payment bond from an approved surety is required in the penal sum of one hundred percent (100%) of the renovation costs.

b. Reference Exhibit L for the required AAFES bond form, which must be submitted prior to renovation. Concessionaire will be required to provide the Contracting Officer with bid summaries and the scope of work for the renovation within 30 days after contract award. Contracting Officer will then establish the bond amount based upon submitted bid summaries. Established bond amount will be provided to the concessionaire via amendment to the contract.

12. **Image Upgrade:** At the end of the first 5 (five) years of operation, the contractor will completely upgrade the image of the activity to the then current standard. This upgrade will be at no cost to AAFES and will not result in reduced fees.

13. **Alterations:**

a. Delete Paragraph 11.d, Acceptance of Award, 4450-002, Instructions to Offerors and Conditions of Proposal/Awards, in its entirety and substitute the following:

"d. AAFES plans to award a contract to the responsive, responsible offeror whose proposal is best for AAFES, price/fee and other factors set out in the solicitation considered. AAFES reserves the right to accept other than the highest fee/lowest proposal, and to make multiple awards unless otherwise provided in the Schedule."

b. Paragraph 8.b, Termination, of Exhibit A, General Provisions, is changed from "thirty (30) days notice" to "ninety (90) days notice."

c. Paragraph 29, UNSPC Item Category Identifiers, and Paragraph 30, Army and Air Force Exchange Service Rights, of Exhibit A, General Provisions are deleted in its entirety.

d. Paragraph 22.a, Customer Checks, of Exhibit C, Special Provisions, is deleted and replaced with the following:

"a. Concessionaire will accept both local and out-of-town checks in payment for merchandise and service. AAFES will assist the concessionaire in the collection of non-sufficient fund checks."

e. Paragraph 26, Charge Card/Military Star Card, of Exhibit C, Special Provisions, is revised to add the following:

"c. Concessionaires will not require customer signature for Credit Card slips or Military Star Card purchases of \$25 or less."

f. Exhibit J, General Provisions (Contract for Construction), is revised as follows:

(1) Paragraph 10, Inconsistencies (Sep 91), is deleted in its entirety.

(2) Paragraph 18.c, Specifications and Drawings, is deleted in its entirety.

(3) Paragraph 18.e, Specifications and Drawings, is revised to delete the last two sentences.

(4) Paragraphs 36, 37, 38, 39, 40, 41, 43, 44, 45, 49, 53, 54 and 56 are deleted in their entirety.

EXHIBIT A
GENERAL PROVISIONS
(Feb 10)

1. AUTHORITY TO BIND (NOV 95).
2. LEGAL STATUS (AUG 08).
3. PROCUREMENT INTEGRITY (NOV 95).
4. ORAL REPRESENTATIONS (JAN 94).
5. MODIFICATIONS AND ADDITIONS (MAY 04).
6. SUBCONTRACTING (JUN 94).
7. ASSIGNMENT - SERVICES (DEC 97).
8. TERMINATION (JUN 94).
9. PERMITS, LICENSES AND APPLICABLE LAWS (JAN 94).
10. INDEMNIFY AND HOLD HARMLESS (MAY 89).
11. DISPUTES (FEB 95).
12. NON-WAIVER OF DEFAULTS (MAY 89).
13. ADVERTISEMENTS (AUG 08).
14. EXAMINATION OF RECORDS (AUG 08).
15. CONTRACTOR PERSONNEL AND REPRESENTATIVES (AUG 08).
16. ENVIRONMENTAL PROTECTION (AUG 09).
17. CONTRACTOR LIABILITY - SERVICES (MAY 04).
18. DRUG-FREE WORKPLACE (AUG 92).
19. RESTRICTIONS ON PURCHASES OF FOREIGN GOODS (MAY 04).
20. DATE COMPLIANT (DEC 04)
21. PAYMENT BY ELECTRONIC FUNDS TRANSFER (OCT 98).
22. CHOICE OF LAW AND FORUM (MAR 2006)
23. PRIVACY ACT (APR 84)
24. PAYMENT CARD INDUSTRY (PCI) COMPLIANCE (DEC 04)
25. GREEN CLAUSE (AUG 09)
26. PERFORMANCE (AUG 09)
27. COMBATING TRAFFICKING IN PERSONS (AUG 09)
28. PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (FEB 10)
29. UNSPSC ITEM CATEGORY IDENTIFIERS (AUG 09)
30. ARMY AND AIR FORCE EXCHANGE SERVICE RIGHTS
(UNLIMITED) (AUG 09)

GENERAL PROVISIONS

1. AUTHORITY TO BIND (NOV 95).

a. "Contracting Officer" means a person authorized by the Commander, AAFES to execute and administer contracts, purchase orders, or other agreements on behalf of AAFES. Only contracting officers may waive or change contract terms; impose additional contract requirements; issue cure, show-cause and termination notices; issue claims against contractors, and issue final decisions on contractor claims.

b. The contracting officer may authorize other AAFES and government officials to perform actions of an administrative nature, such as conducting inspections and audits; placing orders against existing contracts; forwarding requests for contract changes to the contracting officer; collecting contract payments, and processing routine documents. These officials are not contracting officers, as defined in a. above.

c. AAFES has no obligation to recognize or accept waivers or changes to this contract that result from the actions of officials other than the contracting officer. Claims based on such actions may be denied. Questions concerning the authority of other AAFES or government officials should be referred to the contracting officer.

2. LEGAL STATUS (AUG 08).

The Army and Air Force Exchange Service (AAFES), including its activities, offices, and individual exchanges, is an integral part of the Departments of the Army and Air Force and an instrumentality of the United States Government. AAFES contracts are United States contracts; however, they do not obligate appropriated funds of the United States except for a judgment or compromise settlement in suits brought under the provisions of the Contract Disputes Act of 1978, as amended, in which event AAFES will reimburse the U.S. Government. AAFES procurement policy is established by applicable directives and instructions promulgated by the Department of Defense. The Federal Acquisition Regulation (FAR) does not apply to AAFES.

3. PROCUREMENT INTEGRITY (NOV 95).

a. By submission of an offer or performance of this contract, the offeror or contractor certifies with respect to this AAFES purchase action:

(1) that no discussion, offer or promise of future employment or business opportunity has been or will be made to AAFES civilian or military personnel who participated personally and substantially in the purchase action;

(2) that no offer, promise or gift of any gratuity, entertainment, money, or other thing of value has been or will be made to any AAFES civilian or military personnel or any other employee of the United States Government or member of their family or household;

(3) that no information proprietary to other offerors or other purchasing information (offeror list, prices offered, technical evaluations or rankings, etc.) is sought or obtained until it is available to the public under AAFES procedures.

(4) that no person or selling agency has been employed or retained to secure this contract upon an agreement or understanding 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. Contractor certifies that no gratuities (entertainment, gifts, money, kickbacks or other things of value) were or will be solicited or accepted by the contractor, or any person representing the contractor, from any subcontractor or person representing the subcontractor, for the purpose of obtaining or rewarding favorable treatment in connection with this contract or any subcontract under it.

c. Contractor will report in writing to the Director, Loss Prevention Division, any possible violation of this clause when the contractor has reasonable grounds to believe a violation may have occurred. The contractor shall cooperate fully with any federal agency investigation of a possible violation of this clause.

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

4. **ORAL REPRESENTATIONS (JAN 94).** This contract represents the entire agreement of the parties. Any changes or amendments thereto may not be recognized by AAFES unless committed to writing and incorporated by reference into the contract by the contracting officer.

5. MODIFICATIONS AND ADDITIONS (MAY 04).

a. Except as otherwise specifically provided in this contract, all changes, modifications, additions or deletions to this contract must be prepared in writing as formal amendments signed by both parties and approved in accordance with provisions of applicable regulations.

b. Unilateral Amendments: The contracting officer may make unilateral amendments to the contract to incorporate administrative changes, provided such changes are within the general scope of the contract.

6. SUBCONTRACTING (JUN 94). Contractor shall not subcontract any part of the work to be performed without the prior written consent of the contracting officer. Any subcontractor used in connection with this contract is the agent of the contractor and not the agent of AAFES.

7. ASSIGNMENT - SERVICES (DEC 97). The Assignment of Claims Acts, 31 U.S.C. 3727 and 41 U.S.C. 15, are not applicable to amounts due under AAFES contracts. Contractor may not assign its rights or delegate its obligations under this contract, and AAFES will neither consent to, nor recognize, any purported assignment. Contractor may request permission from the contracting officer to have contract payments forwarded to a third party.

8. TERMINATION (JUN 94). Relative to termination of this contract, it is mutually agreed:

a. This contract may be terminated in whole or in part by either party immediately upon written notice to the other party in the event of breach of this contract by the other party.

b. This contract may be terminated in whole or in part by either party upon thirty (30) days notice (ninety (90) days for vending contracts) in writing to the other party.

c. This contract is automatically terminated upon the dispatch of written notice to contractor in the event the exchange is inactivated or the installation at which the exchange is located is inactivated. If this contract covers services to be performed at various exchanges or installations and only one or more of the exchanges or installations is inactivated, then only that portion of the contract being performed at the inactivated exchange or installation is terminated.

9. PERMITS, LICENSES AND APPLICABLE LAWS (JAN 94). Contractor warrants that all necessary permits and licenses have been obtained and that the merchandise, services, supplies, and/or equipment provided under this contract are in compliance with applicable laws.

10. INDEMNIFY AND HOLD HARMLESS (MAY 89).

a. Contractor will indemnify, hold harmless and defend AAFES and all other agencies and Instrumentalities of the United States, their agents, representatives, employees and customers from any and all suits, judgments and claims, including those established by or pursuant to court decisions, to international agreements, or duly promulgated regulations of the United States Government, and all charges and expenses incident thereto which arise out of any of the following:

(1) The alleged or established violation or infringement of any patent, copyright or trademark rights asserted by any third party with regard to items or services provided by contractor;

(2) Loss, damage, or injury alleged or established to have arisen out of or in connection with items or services provided by contractor, unless such loss, damage, or injury was caused by or resulted solely from the acts or omissions of AAFES, its agents, representatives, or employees;

(3) Any loss, damage, or injury alleged or established to have arisen out of or in connection with any other acts or omissions of the contractor.

b. AAFES will give contractor notice and an opportunity to defend.

11. DISPUTES (FEB 95).

a. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

b. "Claim" as used in this clause means a written demand or written assertion by one of the contracting parties seeking the payment of money in a sum certain or other relief arising under or relating to this contract. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Contract Disputes Act.

c. A claim by the contractor shall be made in writing and submitted to the contracting officer for a written decision. A claim by AAFES against the contractor shall be made by a written decision by the contracting officer.

d. For contractor claims exceeding \$100,000, the contractor shall submit with the claim a signed certification that:

- (1) The claim is made in good faith;
- (2) Supporting data are accurate and complete to the best of the contractor's knowledge and belief, and
- (3) The amount requested accurately reflects the contract adjustment for which the contractor believes AAFES is liable.

e. The claim must be executed by an individual with authority to bind the contractor.

f. The contracting officer will mail or otherwise furnish a written decision in response to a contractor claim, within the time periods specified by law. Such decision will be final and conclusive unless:

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

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

g. Pending final resolution on any request for relief, claim, appeal, or action arising under or relating to this contract, contractor will proceed diligently with the performance of this contract and will comply with the contracting officer's decisions.

h. Submission of false claims to AAFES is a violation of federal law and may result in civil and/or criminal penalties. If contractor cannot support all or part of its claim as a result of fraud or misrepresentation of fact, then in addition to other remedies or penalties provided for by law, contractor will pay AAFES an amount equal to the unsupported part of the claim and all AAFES' costs attributable to reviewing that part of the claim.

12. NON-WAIVER OF DEFAULTS (MAY 89). Any failure by AAFES at any time, or from time to time, to enforce or require strict performance of any terms or conditions of this contract will not constitute waiver thereof and will not affect or impair such terms and conditions in any way or AAFES' right at any time to avail itself of such remedies as it may have for breach or breaches of such terms and conditions.

13. Advertisements (AUG 08).

Contractor will not represent in any manner, expressly or by implication, that products purchased under this contract are approved or endorsed by any element of the United States, including AAFES. All contractor advertisements that refer to AAFES or military exchanges will contain a statement that the advertisement was neither paid for nor sponsored, in whole, or in part, by AAFES, the military exchange system, or the United States Government.

14. Examination of Records (AUG 08).

a. This clause applies if the amount of the contract exceeds \$10,000 and the contract was entered into by means of negotiation. The contractor agrees that the contracting officer or his duly authorized representative will 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 the expiration of three years after the final payment under the contract. The contractor agrees to include this clause in all subcontracts that exceed \$10,000.

b. "General Accountability Office" may be substituted for "contracting officer or his duly authorized representative" when the prospective contractor does not accept the standard wording of the examination clause.

c. Contracts awarded to foreign contractors may exclude the examination clause when its use is precluded by the laws of the country involved, subject to the approval of the servicing AAFES General Counsel (AAFES HQ and AAFES Europe). Contract files will be in such circumstances be documented to show the basis for exclusion of the clause.

15. CONTRACTOR PERSONNEL AND REPRESENTATIVES (AUG 08).

a. The contractor will discontinue using any individual in exchange facilities upon contracting officer's written notice that the individual is not acceptable for performance under this contract. Contractor will not use any such person to perform other AAFES contracts without the prior written consent of the contracting officer.

b. The contractor will not employ any individual to work in exchange facilities whom an AAFES contracting officer has determined unacceptable under any other AAFES contract without the prior written consent of the contracting officer.

c. Contractor personnel will abide by applicable regulations and directives and conduct themselves so as not to reflect discredit on AAFES.

d. Contractor will not represent himself/herself to be an agent or representative of AAFES, another instrumentality, or an agency of the United States.

16. ENVIRONMENTAL PROTECTION (AUG 09).

a. This clause shall apply to any contract in excess of \$100,000, and indefinite quantity contracts estimated to exceed \$100,000 in one year; however, it shall not apply to use of facilities located outside the United States.

b. Unless this contract is exempt, by acceptance of this contract, contractor (and, where appropriate, subcontractor) stipulates:

(1) that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the EPA List of Violating Facilities as of the date of contract award;

(2) its agreement to comply with all requirements of Section 114 of the Air Act and Section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in sections 114 and 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder;

(3) that as a condition of award of contract, contractor shall promptly notify the contracting officer of the receipt of any communication from the Director, Office of Federal Activities, U.S. Environmental Protection Agency, or delegatee, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities;

(4) its agreement to include the criteria and requirements in subparagraphs (1) through (4) in every nonexempt subcontract, and to take such actions the Government may direct as a means of enforcing such provisions.

17. CONTRACTOR LIABILITY - SERVICES (MAY 04).

a. Except as set out specifically elsewhere in the contract, contractor will be liable for costs to AAFES and/or other agencies of the United States associated with termination for default as follows:

(1) Incidental damages, including expenses reasonably incurred in connection with repurchase of the service and any other reasonable expense incident to the breach.

(2) Consequential damages including, but not limited to, lost fees resulting from lapses in service, unscheduled facility closures, sales declines, lower fees received on repurchase, and injury to person or property proximately resulting from any breach of warranty.

b. Contractor will not be liable for incidental or consequential damages if the failure to perform arises out of causes beyond the control and without the fault or negligence of the contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the contractor. In such case contractor must provide prompt written notice to the contracting officer; the contracting officer, at his option may accept late, partial or substituted performance, or may terminate the contract in whole or in part effective immediately upon receipt of written notice by contractor.

18. DRUG-FREE WORKPLACE (AUG 92). Contractor agrees to make a good faith effort to establish and maintain a drug-free workplace in connection with the performance of this contract. Consistent with the size and organization of its work force, contractor may wish to consider taking the following or other appropriate actions in establishing a drug-free workplace: publicizing a drug-free workplace policy, initiating an employee drug awareness program or encouraging participation in existing community/installation programs and informing employees of the general availability of drug counseling programs.

19. RESTRICTIONS ON PURCHASES OF FOREIGN GOODS (MAY 04).

a. Contractor will not acquire for use in the performance of this contract any merchandise, equipment, supplies or services originating from, processed in, or transported from or through, the countries prohibited from commerce by the United States Government. This restriction includes merchandise, equipment, supplies or services from any other country that is restricted by law, regulation or executive order at any time during performance of the contract. A current list of prohibited countries is available at <http://www.ustreas.gov/offices/enforcement/ofac/>.

b. Contractor agrees to insert the provisions of this clause, including this paragraph, in its subcontracts.

20. DATE COMPLIANT (DEC 04).

a. Contractor warrants that all information technology (software, hardware, micro-code, firmware, etc.) supplied under the contract are able to accurately and efficiently process date and time data including, but not limited to, calculating, comparing, and sequencing date and time data from, into, and between the twentieth and twenty-first centuries, and leap year calculations through at least 31 December 2101. The supplied information technology when used in combination with other information technology will accurately and efficiently process date and time data if the other information technology properly exchanges date and time data. No human intervention is needed to invoke the date

compliance (i.e. rebooting the hardware or restarting the software). The information technology methods to be date compliant must run fault free (no abnormal exiting applications and error free results) and be transparent to the user.

b. If the Information Technology supplied under this contract relies on other Information Technology to accurately and efficiently process date and time data then the contractor must disclose this reliance before entering into any agreement or allowing any contract addition or substitution (as may be authorized by the contracting officer).

21. PAYMENT BY ELECTRONIC FUNDS TRANSFER (OCT 98). The following will apply for all payments made by AAFES to the contractor under the terms of this contract.

a. Method of payment.

(1) All payments by AAFES under this contract shall be made by electronic funds transfer (EFT). The term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) If AAFES is unable to release payment by EFT, the Contractor agrees to either (i) accept payment by check or some other mutually agreeable method of payment, or (ii) request AAFES to extend the payment due date until such time as AAFES can make payment by EFT.

b. AAFES shall make payment to the Contractor using the EFT information provided by the contractor. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to AAFES, not less than thirty days prior to the effective date.

c. If the Contractor's EFT information in the AAFES database is incorrect AAFES need not make payment to the Contractor under this contract until correct EFT information is entered into the AAFES database; and any invoice shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract.

d. If the Contractor has identified multiple payment receiving points in the AAFES database, and the Contractor has not notified AAFES of the payment receiving point applicable to this contract, AAFES shall make payment to the first payment receiving point listed in the AAFES database.

e. The payment or disbursing office shall forward to the Contractor available payment information. AAFES shall send the payment information to the remittance address contained in the AAFES database.

22. CHOICE OF LAW AND FORUM (MAR 06) This contract shall be construed and interpreted in accordance with the laws of the United States of America as applied by, among others, the Armed Services Board of Contract Appeals and the United States Court of Federal Claims. By execution of this contract, the Contractor expressly agrees to waive any rights to invoke the jurisdiction of the national or state courts where this contract is performed and agrees to accept the exclusive jurisdiction of an appropriate US Federal administrative body or court.

23. PRIVACY ACT (APR 84).

a. The Contractor agrees to –

(1) Comply with the Privacy Act of 1974 (the Act) and Department of Defense rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies –

(a) The systems of records; and

(b) The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

b. In the event of violations of the Act, a civil action may be brought against AAFES when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an AAFES function, and criminal penalties may be imposed upon the officers or employees of AAFES when the violation concerns the operation of a system of records on individuals to accomplish an AAFES function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an AAFES function, the Contractor is considered to be an employee of AAFES.

c. "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

d. "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or

employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

e. "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

f. The system or systems of records identified for this contract is/are: The system of records refers to information collected, compiled, and/or utilized to build a customer database for potential and/or current /follow-on services. Instruments used to collect information in written or electronic format includes, but are not limited to, application for services, verification of credit rating, customer inquiries/comments, data for invoicing current customers, change of address notifications, information used for marketing purposes, etc.

g. Subcontracting/outsourcing customer data outside CONUS is not acceptable for DoD Operational Security (OPSEC) purposes.

24. PAYMENT CARD INDUSTRY (PCI) COMPLIANCE (DEC 04)

a. If payment cardholder data is shared with contractors, subcontractors, merchants or service providers under the terms and conditions of this contract, the contractors, subcontractors, merchants and service providers must adhere to the most current version of the PCI DSS (Data Security Standard) requirements. These requirements are available at <https://www.pcisecuritystandards.org>.

b. The contractor acknowledges that each contractor, subcontractor, merchant and service provider with access to payment cardholder data is responsible for the security of the cardholder data the provider possesses. The contractor will also include this clause in any subcontract that provides access to cardholder data.

25. GREEN CLAUSE (AUG 09)

The Army and Air Force Exchange Service (AAFES) encourages contractors/vendors to embrace, establish and promote environmentally "Green Initiatives". We look to the contractor to accomplish this by:

- (1) Where possible utilize environmentally friendly products
- (2) Where possible promote energy-efficiency and water conservation
- (3) 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)

26. **PERFORMANCE (AUG 09)** Contractor will perform in accordance with all contract provisions. AAFES will make payments only for performance as promised including supplies delivered and accepted per product specification and free of defects, or services rendered that satisfy the contractual specifications and are accepted. Payments for milestones will be paid when the milestones have been achieved and accepted. Additional periods of performance (if any) will only be granted for performance at or above the contractual level. The contracting officer may exercise remedies in accordance with the provisions of this contract for poor performance, non-performance, or failure to meet the service level agreement established.

27. COMBATING TRAFFICKING IN PERSONS (AUG 09)

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

"Coercion" means—

- (1) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (3) The abuse or threatened abuse of the legal process.

(4) Withholding any documents (e.g. passports, visas, IDs, etc.) that prevents or restricts the person to move freely.

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

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

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

"Forced labor" means knowingly providing or obtaining the labor or services of a person—

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

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

"Involuntary servitude" includes a condition of servitude induced by means of—

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

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

"Severe forms of trafficking in persons" means—

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

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

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

(b) *Policy.* The United States Government and the Army Air Force Exchange Service has adopted a zero tolerance policy regarding trafficking in persons. Contractors and contractor employees shall not—

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract; or

(3) Use forced labor in the performance of the contract.

(c) *Contractor requirements.* The Contractor shall—

(1) Notify its employees of—

(i) The United States Government's and the Army Air Force Exchange Services' zero tolerance policy described in paragraph (b) of this clause; and

(ii) The 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

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

(d) *Notification.* The Contractor shall inform the Contracting Officer immediately of—

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

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

(e) *Remedies.* In addition to other remedies available to the Army Air Force Exchange Service, the Contractor's failure to comply with the requirements of paragraphs (c), (d), or (f) of this clause may result in—

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

(2) Requiring the Contractor to terminate a subcontract;

(3) Suspension of contract or fee payments;

(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Army Air Force Exchange Service determined Contractor non-compliance;

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

(6) Suspension or debarment.

(f) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts.

(g) *Mitigating Factor.* The Contracting Officer may consider whether the Contractor had a Trafficking in Persons awareness program at the time of the violation as a mitigating factor when determining remedies. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/g/tip>.

28. PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (FEB 10)

This clause is to provide guidance concerning compliance with Homeland Security Presidential Directive (HSPD) 12 and Policy for Common Identification Standard for Contractors and Subcontractors when contract performance requires routine physical access to a Federally controlled facility and/or routine access to a Federally controlled information system. As processes and procedures could change over time, go to <http://www.aafes.com/>, click on "Doing Business with AAFES", click on EXISTING Vendors/Suppliers, and then click on the Instructions to Obtain Authorization to Enter Military Installations for the most up-to-date instructions. Questions should be directed to AAFES HQ Chief of Staff, Force Protection (CS-FP) or your Contracting Officer.

(a) After contract award and prior to performance on any Federal installation, the contractor shall comply with the local installation's personal identity verification procedures identified by that installation which implements HSPD-12 policy for a Common Identification Standard for Federal Employees and Contractors.

(1) If the contractor employee is to work at only one site, AAFES' contractors must follow local installation guidelines and directives concerning identification, access, and security requirements. These guidelines may vary from

one installation to another and it is the contractor's responsibility to seek guidance concerning these issues from the Exchange Service Business Manager or General Manager.

(2) If the contractor or their employees will access sensitive data or go to multiple installations (CONUS or OCONUS), they must obtain a Common Access Card (CAC) and will be required to submit a clearance package to CS-FP, no less than 30 days in advance of needed access.

(b) The contractor shall insert this clause in all subcontracts when the subcontractor is required to have routine physical access to a Federally controlled facility and/or routine access to a Federally-controlled information system.

(c) The contractor is responsible for securing and returning to the issuing office all identification cards issued under these procedures (1) for all employees at the end of the contract; and (2) for individual employees no longer employed or no longer assigned to perform the AAFES contract.

(d) As a reminder, any costs associated with the clearance process are the responsibility of the contractor.

29. UNSPSC ITEM CATEGORY IDENTIFIERS (AUG 09)

The vendor shall identify the contractor's items by utilizing the United Nations Standard Products and Services Code (UNSPSC) system for categorizing products and services. UNSPSC code guidance can be found at: www.unspsc.org.

The UNSPSC product or service identifiers will be part of the originally proposed item descriptions along with subsequent replacement and or substitution items. The identifiers will be provided in a format which shall indicate the appropriate item category identifier along with sales transaction information required by the report.

The UNSPSC code has five levels, with each successive level supplying greater detail. These levels are identified as follows:

- Level 1: SEGMENT
- Level 2: FAMILY
- Level 3: CLASS
- Level 4: COMMODITY
- Level 5: BUSINESS FUNCTION

For Example:

IT Items – UNSPSC Segment Identifier Number 43

All reported items should be coded following the guidance contained on the UNSPSC website. Each line item number can be code identified by the first four levels of the UNSPSC structure. The fifth level coding can be completed utilizing either '00' or a business function code. Example: Notebook Computer – 42.17.18.01.00

For AAFES purposes, UNSPSC reporting of servers shall contain an additional identifier at the fifth level (Business Function) as follows:

*Low-end (32-bit) 43.17.18.06.01
High-end (64-bit) 43.17.18.06.02*

In situations where more than one UNSPSC code applies to a CLIN, the predominant item's UNSPSC will be reported. The code reported should be at least to level 3 (Class), and by the digits '00'. Example: Network Hardware (assorted) – 43.17.27.00.00.

UNSPSC Implementation - AAFES will assist vendors in assigning UNSPSC codes when required. The UNSPSC codes assigned to transacted items should coincide with any such items incorporated where possible. AAFES reserves the right to change or add item identifier format reporting as required.

30. ARMY AND AIR FORCE EXCHANGE SERVICE RIGHTS (UNLIMITED) (AUG 09)

If there are any deliverables under this contract or this contract is for consulting services, the following applies: The Army and Air Force Exchange Service (AAFES) shall have unlimited rights, in all works (including drawings, designs,

specifications, notes, data, information, reports, analysis, recommendations, or other products) developed in the performance of this contract. These AAFES rights include the right to use these works on any other AAFES contract or agreement or other efforts without additional compensation to the Contractor. The Contractor hereby grants to AAFES a paid-up license throughout the world to all AAFES works to which he may assert or establish any claim for intellectual property derived from this AAFES contracted effort or products developed under this contract. The Contractor for a period of three years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

Contractor shall have no rights to use AAFES furnished data or information supplied to Contractor by AAFES for other than this AAFES contract; it will be deemed AAFES Confidential Information and shall remain AAFES sole property. All reports, analysis, and recommendations provided by Contractor pursuant to this contract will be and remain the sole property of AAFES and the United States Government and may not be used on any other work by Contractor without Contracting Officer approval (e.g. including consideration or additional costs to AAFES) and with respect thereto, the contractor agrees not to assert any proprietary or confidential rights and not to establish any claim for intellectual property.

The contractor agrees that duly authorized representatives of AAFES will have access at all reasonable times to inspect and review all notes or other data pertaining to the work to be performed under this contract.

EXHIBIT B
LABOR PROVISIONS
Contract for Services (with SCA) – April 10

1. EQUAL EMPLOYMENT OPPORTUNITY.

a. The contractor agrees to comply with regulations of the Department of Labor contained in 41, Code of Federal Regulations, 60, which are incorporated herein by reference.

b. A contract award in the amount of \$10,000,000 or more will not be made unless the contractor, and each first-tier subcontractor which will receive a subcontract of \$10,000,000 or more, are found on the basis of a review to be in compliance with the Equal Employment Opportunity regulations of the Department of Labor.

2. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT. (Applicable to contracts for services performed in the United States, any U.S. territory, or the District of Columbia.) The following clause is applicable to concession, agency, and vending machine contracts where the total gross receipts from sales or services under the contract will exceed \$2,500 and to management and direct service contracts where total payments to the contractor will exceed \$2,500. This contract to the extent that it is of the character to which the Contract Work Hours and Safety Standards Act, 40 USC 327, applies, is subject to all applicable provisions of the Act and the regulations of the Secretary of Labor thereunder (29 CFR 5).

a. Overtime Requirements: No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek to work in excess of 40 hours in such workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer or mechanic receives such compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 40 hours in such workweek.

b. Violation; liability for unpaid wages; liquidated damages: In the event of any violations of provisions of paragraph a., the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be completed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph a. in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of his standard workweek of 40 hours without payment of the overtime wages required by paragraph a.

c. Withholding for unpaid wages and liquidated damages: The contracting officer may withhold from the contractor from any monies payable on account of work performed by the contractor or subcontractor such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph b.

d. Subcontracts: The contractor shall insert paragraphs a. through d. of this clause in all subcontracts and shall require their inclusion in all subcontracts of any tier.

e. Records: The contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for 3 years from the completion of the contract.

3. AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA. If this contract equals or exceeds \$25,000, and is not otherwise exempt, the contractor agrees to comply with the regulations of the Department of Labor and the Office of Federal Contract Compliance Program, and the Affirmative Action clause as set out in 41 CFR Part 60-250, which are incorporated herein by reference

4. AFFIRMATIVE ACTION FOR INDIVIDUALS WITH DISABILITIES. If the contract or the total of all orders issued during a calendar year equals or exceeds \$10,000 and is not otherwise exempt, the contractor agrees to comply with the regulations of the Department of Labor and the Affirmative Action clause as set forth in Title 41, Code of Federal Regulation, Part 60-741, which are incorporated herein by reference.

5. CONVICT LABOR (MAY 1989). In connection with the performance of work under this contract, the contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 USC 4082(c)(2)) and Executive Order 11755, December 29, 1973, as amended by Executive Order 12608, September 9, 1987.

6. SERVICE CONTRACT ACT. (Applicable to Contracts of \$2,500 or more.) Except to the extent that an exemption, variation or tolerance would apply if this were a contract in excess of \$2,500, the contractor and any subcontractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Regulations and interpretations of the Service Contract Act of 1965, as amended, are contained in 29 CFR Part 4.

7. SERVICE CONTRACT ACT OF 1965 AS AMENDED.

a. This contract is subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR Part 4).

b.

(1) Each service employee employed in the performance of this contract by the contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract.

(2)

(a) If there is such a wage determination attached to this contract, the contracting officer shall require that any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this section. (The information collection requirements contained in the following paragraphs of this section have been approved by the Office of Management and Budget under OMB control number 1215-0150.)

(b) Such conforming procedure shall be initiated by the contractor prior to the performance of contract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative, the employees themselves, shall be submitted by the contractor to the contracting officer no later than 30 days after such unlisted class of employees performs any contract work. The contracting officer shall review the proposed action and promptly submit a report of the action, together with the agency's recommendation and all pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the contracting officer within 30 days of receipt that additional time is necessary.

(c) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the contracting officer who shall promptly notify the contractor of the action taken. Each affected employee shall be furnished by the contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(d)

((1)) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

((2)) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a contractor succeeds a contract under which the classification in question was previously conformed pursuant to this section, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the contractor shall advise the contracting officer of the action taken but the other procedures in paragraph b(2)(b) of this section need not be followed.

((3)) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

furnish these services, and the contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

g.

(1) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work records containing the information specified in paragraphs g.(1)(a) through (f) of this section for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor. (Sections 7.g.(1)(a) through (d) approved by the Office of Management and Budget under OMB control number 1215-0017 and sections 7.g.(1)(e) and (f) approved under OMB control number 1215-0150):

(a) Name and address and social security number of each employee.

(b) The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.

(c) The number of daily and weekly hours so worked by each employee.

(d) Any deductions, rebates, or refunds from the total daily and weekly compensation of each employee.

(e) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to the labor standards clause in paragraph b of this section. A copy of the report required by the clause in paragraph b.(2)(b) of this section shall be deemed to be such a list.

(f) Any list of the predecessor contractor's employees which had been furnished to the contractor pursuant to Section 4.6(1)(2).

(2) The contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of the Department of Labor and notification of the contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

h. The contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

i. The contracting officer shall withhold or cause to be withheld from the AAFES prime contractor under this or any other Government contract with the contractor such sums as an appropriate official of the Department of Labor requests or such sums as the contracting officer decides may be necessary to pay underpaid employees employed by the contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965, may be grounds for termination of the right to proceed with the contract work. In such event, AAFES may enter into other contracts or agreements for completion of the work, charging the contractor in default with any additional cost.

j. The contractor agrees to insert these clauses in this section relating to the Service Contract Act of 1965 in all subcontracts subject to the Act. The term "contractor" as used in these clauses in any subcontract, shall be deemed to refer to the subcontractor, except in the term "AAFES prime contractor."

k.

(1) As used in these clauses, the term "service employee" means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of

those regulations. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(2) The classes of service employees expected to be employed under this contract with AAFES are identified on an attachment to these Labor Provisions. Such employees would be subject, if employed by AAFES, to the pay scales established by AAFES and would be paid not less than the wage rates and fringe benefits shown on the attachment.

l.

(1) If wages to be paid or fringe benefits to be furnished any service employees employed by the AAFES prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the AAFES prime contractor shall report such fact to the contracting officer, together with full information as to the applicable and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof. (Approved by the Office of Management and Budget under OMB control number 1215-0150.)

(2) Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacations or other benefit provisions based upon length of service with a contractor (predecessor) or successor (Section 4.173 of Regulations, 29 CFR Part 4), the incumbent prime contractor shall furnish to the contracting officer a certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The contracting officer shall turn over such list to the successor contractor at the commencement of the succeeding contract. (Approved by the Office of Management and Budget under OMB control number 1215-0150.)

m. Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR Part 4.

n.

(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

o. Notwithstanding any of the clauses in paragraphs b. through m. of this section relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

p. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

q. An employee engaged in an occupation in which he or she customarily and regularly receives more than \$30 a month in tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531: Provided, however, that the amount of such credit may not exceed \$2.13 per hour. To utilize this provision:

- (1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
- (2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
- (3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit (approved by the Office of Management and Budget under OMB control number 1215-0017);
- (4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

r. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6, and 8. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

ARMY AND AIR FORCE EXCHANGE SERVICE

EMPLOYEE CLASSIFICATIONS

This statement of equivalent AAFES rates is required to be made by AAFES in accordance with Section 2(a)(5) of the Service Contract Act, but a successful offeror under this solicitation is not required to pay the rates set forth on this page. The contractor is required to pay rates in accordance with any applicable currently effective wage determination from the Department of Labor made part of this contract. The following classes of service employees would be utilized by AAFES if the activity were a direct operation of AAFES.

INFORMATION ONLY

<u>Job Classification</u>	<u>Hourly Wages</u>
Food Service Worker	\$ 8.55

FRINGE BENEFITS

Life, accident and health insurance, sick leave programs, and retirement are 29.09 percent of basic hourly rates.

Holidays: New Year's Day, Martin Luther King's Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day.

Paid Vacation: 2 hours of annual leave each week for an employee of less than 3 years of service; 3 hours of annual leave each week for an employee with 3 but less than 15 years of service; 4 hours of annual leave each week for an employee with 15 or more years of service.

EXHIBIT C

ARMY AND AIR FORCE EXCHANGE SERVICE

SPECIAL PROVISIONS

(FAST FOOD CONCESSION CONTRACTS)

1. **ACTIVITY:** AAFES grants to concessionaire a non-exclusive concession to operate the activity described in the Schedule. The assignment of space for concession use is a revocable license and is not a tenancy. In the event the premises where concessionaire operates are destroyed either in whole or in substantial part (so as to significantly hinder or prevent normal operations by concessionaire) by act of God, such as, but not limited to, fire, flood, hurricane, unusually severe weather conditions, or any other occurrence without limitation (including any act, omission or negligence on the part of AAFES, the U.S. Government or their employees), this contract shall terminate and neither party shall have any further obligation to the other under the contract. Concessionaire should consider obtaining fire and casualty or other insurance on the facility it constructs or renovates to protect concessionaire's investment in the facility and contents. The existence of insurance or proceeds of such insurance shall not be construed to obligate concessionaire to reconstruct, repair or demolish the damaged or destroyed facility.

2. **FACILITIES/MAINTENANCE:**

a. Concessionaire will maintain the premises and repair or replace as necessary non-severable equipment, installed property and concessionaire furnished equipment, signs and furniture and assume all costs of ordinary running repairs. AAFES will not assume responsibility for lost sales or interruptions to service due to maintenance requirements. Concessionaire will be liable for any damage to the premises resulting from acts or omissions of concessionaire, his employees, or agents. AAFES may inspect the premises at any time.

b. Concessionaire will maintain, repair, and replace, as necessary, all concessionaire-furnished equipment, furniture, fixtures, and decor items. Interior/exterior decor to meet concessionaire's corporate or franchise standards and any upgrades will be done at concessionaire's expense.

c. Concessionaire will keep the premises clean, orderly, secure, and sanitary. Concessionaire will comply with the installation/exchange fire and safety regulations, the provisions of Exchange Service Manual 17-1, entitled "Occupational Safety and Health Program," and applicable health and sanitation regulations.

d. Concessionaire will do custodial maintenance on the exterior of the facility and grounds if a building is assigned for concessionaire's use. If the facility is shared with other concessionaires, exterior custodial maintenance will be assigned by exchange management. If the concession is located in an exchange complex and predominant tenancy is by AAFES direct-operated activities, AAFES will perform exterior custodial maintenance, except those tasks described in "e" below. The equipment and labor to perform exterior custodial maintenance assigned to the concessionaire will

be at concessionaire's expense. Assigned exterior maintenance may include:

(1) Pick up all refuse daily within the assigned exterior areas.

(2) During the season, cut and trim the grass weekly within the assigned exterior areas.

(3) During the season, clear the snow, ice, slush and mud deposits from the sidewalks and walkways within the assigned exterior areas.

e. Concessionaire will, as needed, but at least daily, clean the entrance door, exterior of storefront windows, entrance way and customer walkways, empty and thoroughly clean all waste and smoking receptacles, and check exterior lighting. Exterior lighting failures will be promptly repaired.

f. Posted operating hours are those that will be displayed at the facility. However, each facility will be open for business at least 5 minutes before posted opening, and will remain open at least 5 minutes past posted closing, as in the following example:

POSTED Hours of Operation 1000 - 1800
ACTUAL Hours of Operation 0955 - 1805

The term open for business means ready to serve the customer. Activities such as preparing cash registers and sales forms will be accomplished prior to actual opening. Facilities will be open for business at all times during scheduled operating hours. Hours of operation will generally conform to those of nearby exchange activities, and may be changed by two weeks written notice by mutual agreement of the general manager and contractor. However, hours of operation for facilities not located near exchange activities are fixed and may only be changed by written amendment to the contract. If the nearby exchange is open on a holiday, the concession must also be open during the same hours. If the nearby exchange is closed on a holiday, the concession may also choose to remain closed.

3. **PROHIBITED ACTIVITIES:** Concessionaire will not, in or about the premises of the military installation, engage in or permit gambling or the use of any device which savors gambling (such as punch cards or slot machines), engage in loan operations, or sell merchandise or services on credit (except for national credit cards customary in the trade) unless otherwise provided for in the Schedule. Concessionaire assumes responsibility for all deferred charges. Concessionaire will take no actions counter to the purpose of the contract or which have the effect of diverting sales from the concession activity to concessionaire's commercial business activities. Facilities will not be used for performance or support of other AAFES contracts or commercial business activities.

4. **MINIMUM QUALITY:** Items of merchandise or service provided under this contract will, as a minimum, be equal to those provided by first quality commercial establishments of the food chain.

5. **PRICES:**

a. Concessionaire will charge for merchandise or services only those

prices established in the Price Schedule exhibit of this contract.

b. Where a state law imposes a sales tax on the sale of the item and/or service by concessionaire to the authorized customer, the sales tax will be separately stated from the sales price, added to the price set out in the Price Schedule exhibit, and collected from the customer.

6. **AUTHORIZED CUSTOMERS:** When beer or wine are authorized and sold, concessionaire will comply with patron identification procedures required by AAFES.

7. **CUSTOMER COMPLAINTS AND CLAIMS:** Concessionaire will adhere to AAFES' policy of customer satisfaction guaranteed. Concessionaire will also adhere to the name brand nationwide "customer satisfaction" policy with respect to each customer, if available. So long as concessionaire maintains it, customers of each facility shall have access to concessionaire's toll free number to resolve customer satisfaction issues. All customer complaints and claims will be resolved at concessionaire's expense. Any disagreement that cannot be resolved between concessionaire and the customer will be referred to the contracting officer, whose decision will be final and not subject to the Disputes clause. If concessionaire fails to process complaints and claims timely, AAFES may, in addition to other rights and remedies available under this contract, settle customer complaints and claims and charge them to concessionaire's account.

8. **SIGNS:** Concessionaire will post only those signs required by the food chain. The size, type and location of each exterior sign must be approved in advance by the base/post engineers. Any other signs must be approved by the contracting officer. AAFES will furnish and the concessionaire will keep posted the following signs:

- | | |
|------------------------------------|------------------------------------|
| a. Hours of Operation. | d. Specialized Policy Signs. |
| b. Emergency Contact Sign/Decal | e. Fraud, Waste and Abuse Sticker. |
| c. Cash Register Discrepancy Sign. | |

9. **UTILITIES:**

a. Concessionaire is responsible for installing all utility meters required by the base/post engineer and for payment of all utilities and related charges, to include heat, power, gas, water and trash removal. If facility does not have separate utility meters, utility charges will be prorated based on square footage and type of usage. Neither AAFES nor the government will assume any liability for losses caused by interruptions of utility service regardless of cause.

b. Concessionaire is responsible for costs of connecting or disconnecting utilities to concessionaire furnished equipment.

c. Concessionaire is responsible for costs of telephone service used in performance of this contract.

d. Concessionaire and concessionaire employees will comply with AAFES energy conservation programs to the extent possible under chain-directed

operating standards.

10. **INTERNAL CONTROLS/FPOS SYSTEM:** A complete and accurate accounting of all transactions will be maintained in accordance with the chain's standard accounting procedures except as otherwise provided herein. The accounting system must provide for the accurate accounting and reporting of daily and monthly gross sales. Concessionaire will use a Food Point of Sale system that complies with the chain's specifications and the following:

Food Point of Sale (FPOS) System - Computer based point of sale system with levels of password protection capable of performing, but not limited to the following functions:

a. Sale audit access at any time during the business day. Report will indicate tender type, net sales, refunds and adjustments and personnel opening cash drawer. Other reports may be requested by the Contracting Officer from time to time and must have the capability to provide a variety of data.

b. Customer Receipt:

(1) All customer receipts are to be electronically printed detailing all components of the customer's transaction.

(2) Must have the ability to re-print a customer receipt on command at the request of the customer, Services Business Manager, Contracting Officer or any other authorized party.

(3) Must be able to record all discounts on the customer's POS receipt.

(4) Must be able to reflect the appropriate sales tax if applicable.

(5) Must be able to document with the POS receipt, any transactions involving refunds.

c. Cash Drawer:

(1) Drawer can only be opened as part of a transaction and the POS system identifies who accessed the drawer and if it was opened as a customer transaction or no-sale.

(2) Drawer will have an emergency release feature that must be covered with a protective plate to prevent the use of the release lever/button without complete removal of the plate.

(3) Must be equipped with a "Blind Close Routine", to insure proper declaration of daily deposits and isolate cash variances.

d. Reporting:

(1) Transactions will be totaled at the end of every business day; detailing all sales and refunds.

(2) System will have the ability to generate daily, weekly, and monthly reports that break transactions down categories.

11. **CONCESSIONAIRE SETTLEMENT REPORT:**

a. Concessionaire will prepare a Concessionaire Settlement Report, AAFES Form 6550-10, or other reporting format approved by the contracting officer, in triplicate, for each reporting period, listing each facility separately on the report.

b. The reporting period will be by calendar month.

c. An original and one copy of the Concessionaire Settlement Report along with detail tape or other verifying data acceptable to AAFES must be forwarded to arrive in the supporting exchange accounting office no later than the 15th calendar day of the month following the reporting period.

d. If activity is operated by a franchisee, a copy of the monthly royalty report will be attached to the settlement report.

12. **FEE DEPOSIT AND PAYMENT:**

a. The "Estimated Fee" is determined by multiplying the estimated monthly sales projection in the offerors proposal by the contract fee. Payments must be made to arrive in the supporting exchange accounting office as follows:

(1) If the "estimated fee" is less than \$1,500, the actual fee payment for the monthly reporting period is due no later than the 15th calendar day of the following month;

(2) If the "estimated fee" is \$1,500 or more, concessionaire must deposit with the exchange accounting office one-half the "estimated fee." The full amount of the actual fee for each monthly reporting period is then due no later than the 15th calendar day of the following month. The fee deposit will be refunded to the concessionaire within 30 calendar days of expiration/termination of the contract, less any amount due AAFES. No interest will accrue to concessionaire on the deposit while held by AAFES.

b. Fee (and settlement report) for less than a full reporting period upon termination or expiration of the contract will be forwarded to arrive no later than 10 calendar days after termination or expiration of the contract.

c. Payments due on Saturday, Sunday or national holidays will be due on the next working day.

d. A late charge of \$75.00 will be assessed on all fee payments not received at the designated payment office by close of business on the date due. This charge will be in addition to other remedies provided by the contract.

13. **TAXES:**

a. Concessionaire is responsible for determining the applicability of

and for payment of all federal, state, host country, and local taxes applicable to the property, income, and transactions of concessionaire, and if required by applicable laws and regulations, will collect and remit sales taxes to the state. Sales taxes which have been collected in the manner required by Clause 5, Prices, will be excluded from the computation of gross receipts, and the amount excluded will be listed on the Concessionaire Settlement Report. The amount of taxes so excluded will not exceed the actual sum payable to the state. If required by state law or regulation, concessionaire will obtain and conspicuously display the state sales tax permit.

b. Concessionaire warrants that the contract prices or other consideration do not include any tax or duty from which concessionaire is exempt under the laws or agreements of the United States Government, state or host country where this contract is performed. If any such tax or duty has been included in the pricing or consideration through error or otherwise, the contract pricing or consideration will be correspondingly reduced or adjusted. If for any reason after the contract date, concessionaire is relieved, in whole or in part, from the payment or the burden of any tax or duty included in the contract pricing or other consideration, the contract pricing and/or other consideration will be correspondingly reduced or adjusted.

c. If this contract covers an activity involving a Federal Occupational Tax, concessionaire agrees as a condition precedent to engaging in or operating such activity, to tender to AAFES the amount of any Federal Occupational Tax applicable thereto if payment has not been accomplished by concessionaire, or to reimburse AAFES the amount of any such tax AAFES has paid as a result of the operation of such activity by concessionaire. As between the parties of this contract, notice or demand for payment from an office of the U.S. Internal Revenue Service will be conclusive that the Federal Occupational Tax is payable and in the amount so specified to be due.

14. **CONCESSIONAIRE AND CONCESSIONAIRE EMPLOYEES (CONCESSION PERSONNEL):**

a. Responsible management will be available during all hours of operation at the concession activity. The manager or designated representative will be completely knowledgeable of the terms and conditions of this contract and will be delegated authority to conduct business as required by this contract. Authority will include, but will not be limited to, purchase of operating supplies, maintenance and repair of equipment, training of employees, maintaining prescribed hours of operation, supervision of concessionaire employees, and settlement of customer complaints or claims. The concessionaire will provide the contracting officer with written notification naming the person(s) appointed manager or representative.

b. Concessionaire will furnish a sufficient number of trained, qualified employees to ensure the efficient performance of this contract. New concessionaires will give first consideration to employment of employees of the previous operations.

c. All concessionaire employees used in performance of this contract who have customer contact must be able to read, write, and speak English at

a fluency level sufficient for efficient performance of the contract.

d. If requested by exchange management, the concessionaire will, at his expense, make his employees available for any applicable training in accordance with training dates determined by exchange management.

e. Concession personnel must meet the health and security standards prescribed by the contract and applicable regulations, and must obtain installation passes, permits, and security clearances as applicable.

f. Concession personnel will be neatly dressed and meticulous in their personal grooming at all times. Customer contact personnel will be required to wear attire typical of styles commonly used by the better local commercial facilities of the food chain and as approved by the contracting officer. Logo nameplates will be provided by the concessionaire and worn by all customer contact personnel

g. Concession personnel will give prompt and courteous treatment to authorized customers.

h. Concession personnel will abide by applicable regulations and directives and conduct themselves so as not to reflect discredit on AAFES.

i. Concessionaire will discontinue the use of any employee for performance of this contract upon written notice from the contracting officer that the individual is not (or no longer) acceptable for performance under this contract. Concessionaire will not use any such employee in performance of other AAFES contracts without the prior written consent of the applicable contracting officer.

j. Concessionaire will not employ any individual under this contract who has previously been determined unacceptable for performance under any other AAFES contract or has been separated for cause by AAFES.

15. **ACTIONS TO BE TAKEN UPON TERMINATION (INCLUDING EXPIRATION):**

a. If contractor desires to sell, and AAFES desires to purchase, any or all of the concessionaire furnished property including equipment, furniture and movable trade fixtures, etc., used in the facility by concessionaire for this contract, the value of the property will be jointly agreed upon by both parties. Contractor must show clear title to all items transferred.

b. Concessionaire will promptly settle his account with AAFES including payment in full of all amounts due AAFES; vacate the premises, leaving installed property and non-severable equipment, and all AAFES furnished property, clean and in as good order and condition as when received (damage due to acts of God or the U.S. Government, and ordinary wear and tear excepted); surrender all installation passes, decals, etc., for himself and his employees; and complete satisfactory settlement of all customer complaints and claims. Termination of the contract does not release concessionaire from the obligation to satisfactorily settle customer complaints and claims.

c. Concessionaire will promptly remove all other concessionaire

property (furniture, signs, etc.) and severable equipment not purchased by AAFES and surrender the premises in good order and condition, fair wear and tear excepted. Concessionaire will be responsible for restoration of the premises necessary to achieve good order and condition at no cost to AAFES or the government. Restoration of buildings which were converted by the concessionaire will be limited to interior work. Restoration of buildings constructed by the concessionaire will include both interior and exterior work. Parking and other site features must also be restored to acceptable condition. Upon failure to vacate the premises or remove concessionaire's property, the contracting officer may enter the premises, cause concessionaire's property to be removed and stored in a warehouse at concessionaire's expense, and cause the premises to be cleaned and restored at concessionaire's expense. If concessionaire is indebted to AAFES, concessionaire authorizes and empowers the contracting officer to take possession of concessionaire's property and dispose of same by public or private sale without notice, and out of the proceeds of sale, satisfy all costs to AAFES including the costs of sale, handling, storage, etc., and any other indebtedness to AAFES.

d. If concessionaire is not awarded a follow-on contract, concessionaire will arrange the transfer of the activity's telephone number to the new concessionaire unless such transfer is prohibited by the servicing telephone company.

16. **LOST, ABANDONED, AND UNCLAIMED PROPERTY:** Personal property left in the concession area will be returned promptly to the owner if the owner can be identified. If return to the owner cannot be promptly accomplished, the items will be turned over to the appropriate military office for lost, abandoned or unclaimed items. (Example, a customer leaves his umbrella in the concession.)

17. **INDEBTEDNESS:**

a. Concessionaire will pay promptly and in accordance with the terms of this contract, all indebtedness incurred in connection with performing the contract. If a due date is not specifically set out elsewhere, such payments due AAFES must be received by AAFES no later than 15 days after receipt of notice of amounts due. If all amounts due under this contract or due under other contracts are not received, at any time thereafter, the contracting officer may at his option direct by written order that daily receipts be turned over to AAFES for the period or periods of time until all amounts owing AAFES are paid.

b. AAFES may charge concessionaire for a dishonored check received from concessionaire, except when (1) the bank acknowledges the return to be the result of bank error or (2) the return is the result of an AAFES error. The amount charged by AAFES will not exceed the administrative amount normally charged AAFES customers by AAFES for dishonored checks. The contracting officer may, at his option, require payment to be made in cash, certified check, or cashier's check.

18. **FEE REVISIONS:** The fees established in this contract will remain firm throughout the term of the contract unless revised by mutual agreement of the contracting parties.

19. **INSURANCE:**

a. Concessionaire will maintain in full force and effect, during the period of the contract, at least the insurance coverage set out in the Insurance Requirements exhibit of this contract.

b. Concessionaire will be liable for damage, loss or injury to property or persons resulting from acts or omissions of concessionaire, his employees or agents, whether or not covered by required insurance, except as limited by paragraph 1, Activity.

20. **PROMOTIONAL EVENTS:**

a. The concessionaire will participate in all chain-directed promotions and may also conduct independent promotions at the activity level subject to prior coordination with local exchange management.

b. The cost of chain-directed or concessionaire-sponsored promotions will be borne by the concessionaire. Fees payable to AAFES (Gross Sales) will be based on regular sale price less any discount or fee items customers are entitled to resulting from redeeming coupons.

c. Concessionaire is encouraged to advertise in media produced primarily for distribution on military reservations to authorized customers. Advertising in commercial media not specifically directed towards the military market, when not otherwise prohibited by the contract, requires prior approval of the contracting officer.

21. **REFUNDS:**

a. Concessionaire will be responsible for refunds to customers due to customer dissatisfaction with the item or service or due to any overcharges made on items or services furnished under this contract. Should concessionaire refuse or fail to promptly make any refund of overcharges to a customer, AAFES may make such refund and charge such amount to concessionaire's account. If a customer cannot be located or if refund to a customer is otherwise not practicable as determined by the contracting officer, concessionaire will pay the amount of the overcharge to AAFES within 15 calendar days from date of demand by AAFES.

b. Requests for refunds not promptly honored will be considered complaints or claims and will be subject to the provisions of the Customer Complaints and Claims clause.

22. **CUSTOMER CHECKS.**

a. Concessionaires are strongly encouraged to accept both local and out-of-town checks in payment for merchandise and services.

b. Concessionaire may charge the customer for a dishonored check except when (1) the bank acknowledges the dishonor to be a bank error or (2) the return is the result of a concessionaire error. Concessionaire may not charge more than the administrative amount charged by AAFES for dishonored checks. Losses from dishonored checks are concessionaire's responsibility.

c. With the approval of the local Exchange General Manager, concessionaires in CONUS, Hawaii, Guam and Panama may purchase equipment from AAFES to access any available AAFES check verification system. The concessionaire will pay all costs associated with system, to include equipment, installation, maintenance, supplies, and line charges. AAFES will not be liable for concessionaire losses caused by malfunction of equipment or system outages.

d. Under no circumstances will the concessionaire record the customer Social Security Number (SSN) on the check.

23. SAFEGUARDING OF CONCESSIONAIRE FUNDS ON ARMY AND AIR FORCE INSTALLATIONS:

a. When funds in excess of \$100 are kept in the concessionaire facility during nonoperational hours, they will be secured in a steel safe equipped with a three-position combination tumbler locking device.

b. When funds in excess of \$500 are held in the concessionaire facility during nonoperational hours, the safe must:

(1) be secured to the premises by being encased in a concrete bed;
or

(2) be bolted or steel-strapped to a floor beam or an internal wall support beam with the bolts or straps concealed to prevent cutting or prying; or

(3) weigh in excess of 1,000 pounds.

24. INSPECTIONS:

a. The AAFES contracting officer, or any person designated by the contracting officer, may conduct inspections as may be considered necessary to insure compliance by the concessionaire with all provisions of this contract.

b. AAFES may perform surveillance to verify concessionaire and concessionaire employee compliance with contract terms and to detect theft of funds. Such surveillance may include the use of electronic equipment. Concessionaire will inform employees that such surveillance may be conducted and that individuals implicated in criminal activity may be prosecuted in Federal courts. Concessionaire will obtain written certification from all employees that they have been so informed and will maintain the certification on file for the period of the contract. A form for this certification is available from the contracting officer.

c. Concessionaire is liable and will pay AAFES for losses under this contract detected by surveillance or otherwise discovered or incurred.

25. Compliance with Chain's Current Image: The constructed facility whether freestanding or conversion, will reflect the chain's current visual image and programs/methods. The concessionaire is responsible for implementing all changes to the current standards during the contract period within 90 (ninety) days of the chain's publication of the changes.

This requirement is also subject to paragraph 4.d, Exhibit I.

26. CHARGE CARD AND MILITARY STAR CARD SALES (JAN 01).

a. Charge Cards: Concessionaire will accept at least two recognized U.S. commercial charge cards, Visa and MasterCard.

(1) Concessionaire will accept the GSA Smart Pay Card and Government Purchase Card (GPC) from authorized customers and DoD civilians for official purchases upon presentation of the charge card and a Government Identification Card.

(2) Concessionaire is responsible for the payment of any fees, charge backs, and other arranged costs levied by the charge card issuing companies.

b. Military Star Card:

(1) Concessionaire will participate in the Military Star card program for products/services as authorized in this contract. AAFES, Navy Exchange System (NEXCOM), Marine Exchange System (MCX) and the Coast Guard Exchange System authorize the program for use within their facilities and within each exchange system. Primary responsibilities are as follows:

(a) Concessionaire will report such sales on the Concessionaire Settlement Report in the same manner as other credit card sales.

(b) AAFES will provide procedures and forms required to process the Military Star card credit transactions.

(c) Concessionaire will be charged a processing fee of 2.0% of all Military Star card transactions, to include sales tax, less merchandise refunds or adjustments, which will be deducted from the AAFES reimbursement to the concessionaire. The fee percentage may be administratively reduced by AAFES without contract amendment.

(d) AAFES will pay the contractor in accordance with the Payments clause shown below.

(e) AAFES will be responsible for collection of Military Star card account balances from customers.

(f) Concessionaire will handle refunds and adjustments under the Military Star card program in the same manner as other credit card sales.

(g) The term "daily sales receipts" in Special Provision 22, "Indebtedness", is expanded to include any funds payable to the concessionaire under the Military Star card program.

(2) Payment (CONUS):

(a) Payment will be made weekly based on concessionaire's weekly summary of Military Star card transactions as verified and reported by the local exchange. A check will be issued weekly covering the prior

Monday through Sunday time period. The check will be sent out approximately one week after the Monday through Sunday transaction period.

(b) Date of payment is determined to be the earliest of the following:

((1)) Date of the check issued to the concessionaire, or

((2)) Date an electronic fund transfer is received by the concessionaire regardless of the date the financial institution posts the transfer, or

((3)) Date a withholding authorized by the contract is initiated by AAFES.

(c) Payment will be made by mailing a check to the address shown on the contract, unless the concessionaire provides a different "remit to" address to the contracting officer.

((1)) If a contractor wishes to change the address (e.g., street, P.O. Box, city/state) to which payment should be sent or wishes its payments to also reflect a financial institution or a factor's name and be sent to a factor's address, the request must be in writing, signed by a responsible official of the contractor, and submitted to the contracting officer. Any such request must clearly establish which division or subsidiary of a corporation such changes apply to and the address that is superseded by the changes. These changes will become effective when approved by the contracting officer and on the date determined by AAFES. This will normally be 30 days after approval. Changes will be done on an accommodation basis only, with the understanding that no legal obligation is imposed on AAFES for failure to make payment to the new payee/address. The contractor may in similar manner, revoke such changes.

((2)) Any request by the contractor to change the name shown on the contract or to assign contract performance must be sent to the contracting officer.

(d) Any questions or inquiries concerning payments should be directed to the exchange General Manager's office. Unidentified and duplicate payments must be brought to the attention of the exchange General Manager's office immediately upon discovery. The contractor is required to mail a copy of the AAFES check voucher received with unidentified or duplicate payment highlighted. Under no circumstances should unidentified payments be applied against other amounts due.

(e) Contractors are to wait at least 30 days past the due date of the payment before writing the exchange General Manager's office. Any interest penalties due to contractor will be computed in accordance with the Prompt Payment Act, 31, U.S.C. 3901-3906 as amended.

27. **SMOKING POLICY (DEC 86)**. The smoking policy for concession operations will be as directed by the general manager.

28. **HEAVY METAL LEACHING (FEB 92)**. Concessionaire warrants that any product that can reasonably be used to carry food or liquid for human consumption and made of a substance prone to heavy metal leaching such as

and to include pewter ware, earthenware, ceramic ware, chinaware, ironware, lacquer ware, bronze ware, brassware, leaded crystal ware, and coated/plated items with a heavy metal base furnished under this contract, contains no leachable levels of metals dangerous to users. Maximum leachable levels and test methods are established by the U.S. Food and Drug Administration. AAFES reserves the right to test concessionaire products on an unannounced basis. If a heavy metal leaching failure is found, concessionaire agrees to reimburse AAFES for all follow-up costs to sample test the remainder of his items for the duration of the contract. This provision does not supersede, replace, or cancel other remedial provisions allowed by the contract. Concessionaire further warrants that products have been tested by either the U.S. Food and Drug Administration or a nationally recognized independent test laboratory and found to be in compliance with the current U.S. Food and Drug Administration action levels and test methods. Test data will be furnished to AAFES upon request by the contracting officer.

29. **AAFES/VENDOR PARTNERSHIP MARKETING PROGRAM (JUL 94)**. The AAFES Marketing Program consists of numerous elements to enhance the sale of consumer products and services. At the contractor's request, AAFES will give the contractor the opportunity to participate in selected elements of the Program. All participation will be in conjunction with the sale of authorized products and services to authorized customers. AAFES reserves the right to limit the degree of participation based on availability, designated themes of special events, and the overall goals of the program.

30. **ORGANIZATIONAL SALES (NOV 00)**. Concessionaire may sell items to authorized official organizations and activities of the U.S. Armed Forces. Sales will be recorded on the cash register at the time the sales transaction is made. Any losses incurred as a result of organizational sales are concessionaire's responsibility.

EXHIBIT D

PRICES, MENU, AND SPECIFICATIONS

1. The products to be sold will be the NBFF Snack Bar menu items and portions required in the chain's facilities. Concessionaire will adhere to all chain's specifications as to ingredients, sources of food and beverage items, methods of preparation and service and weight or portions of products served. All food, drink, and other items will be served in packaging according to chain's specifications. Concessionaire will update the building, procedures, menu, decor, etc., on a continuing and timely basis in conjunction with new programs required by the chain and implemented in the chain's commercial facilities.

2. All items offered for sale will comply with industry accepted food safety and shelf life limitations in addition to those deemed necessary by the installation health authority (Preventive Medicine (PM)/Public Health(PH)/Food Inspectors(FI)). Concessionaire will furnish the contracting officer copies of all QSC and other inspection reports within ten (10) days of inspection. Concessionaire will at all times maintain the facility and services at the highest grade level or category for such inspections. Discrepancies will be corrected in a timely manner.

3. Concessionaire must stay abreast of current FDA product recalls and ensure appropriate action is taken to remove affected items from sale and comply with disposition instructions.

4. Sell prices will be the same as the chain's closest commercial facility. Sell prices may be adjusted from time-to-time to meet this requirement.

5. **Food Processing and Sanitation:**

a. Food Source: All foods (including ice) sold under this contract must be processed/packaged in production plants or facilities that meet the sanitary standards prescribed in the current version of MIL-STD-3006, DEPARTMENT OF DEFENSE STANDARD PRACTICE, SANITATION REQUIREMENTS FOR FOOD ESTABLISHMENTS.

Note: Food source changes or additions during the contract period must be approved by the contracting officer prior to accepting deliveries or offering the items for sale.

b. All deliveries of food items of animal origin and/or classed as perishable (not shelf stable at ambient temperatures) will be inspected for compliance with contract requirements. Inspections will be performed by AAFES Receiving Agent or the installation health authorities. If delivery container is inspected at a location other than at the Exchange then the delivery invoice will be stamped or marked by food inspection personnel (and Security Forces if opened due to force protection inspections) as evidence that an authorized inspection was accomplished and products meet contract requirements. Foods determined to be unwholesome, of poor quality, from non-approved food sources, and/or delivered in unsanitary vehicles will not be permitted to be sold under this contract.

c. Concessionaire must contact the contracting officer and installation Health Authorities Office (PM/PH/FI) prior to initial delivery on this contract to confirm that food items comply with military Approved Source requirements and to establish necessary inspection point and procedures. Mobile snack truck concessionaires must provide AAFES and the installation health authorities a current schedule of delivery routes/stops for each unit operating on the installation. *Note: In the event of an identified threat to the installation, or a heightened force protection/Homeland Security Threat Level, the contractor may be required to adjust delivery routes to minimize vulnerability risk and enable direct delivery to AAFES facilities/customers prior to making deliveries to other customers outside the installation.*

d. Food sales areas must comply with current Federal, FDA, DOD, local, state food safety and Force Protection requirements. These include but are not limited to the FDA Food Code, Air Force Instruction 48-116, Food Safety Program, and TB Med 530, Occupational and Environmental Health Food Sanitation. Concessionaires will conduct appropriate background checks and training for drivers delivering to military installation and ensure every effort is made to protect food from intentional or accidental contamination during transportation and sale. Sales areas are subject to routine and special medical inspections without notice. Unsatisfactory rating by the local health officials will be reported to the General Manager immediately.

e. The concessionaire will allow installation health authorities access to the facility during all hours of operation for the purpose of conducting food safety compliance inspections and vulnerability assessments. Concessionaire will comply with requests by the health authorities for samples of manufactured items.

f. All plant facilities, machinery, equipment, and apparatus used in the production, processing, handling, storage, or delivery of items under this contract and all items delivered under this contract will meet the sanitary standards prescribed in the current edition of MIL-STD-1105C, Military Standard Sanitary Standards for Bakeries.

g. Thermometers required for immersion into food or cooking media will be of metal stem-type construction, numerically scaled, and accurate of + 3 degrees Fahrenheit.

6. Concessionaire Vehicles:

a. All trucks used by the concessionaire in performance of the contract will be identified by lettering, stating concessionaire's name. Vehicles will comply with all state, local, and military standards for vehicle inspection and registration.

b. Vehicles or conveyances used in the transportation of items called for in this contract will be clean, closed vehicles conforming to high standards of commercial transportation, equipped to protect against contamination of the product and maintain food at the required storage temperature during shipment and sale (such as on Mobile Snack Vehicles) Non

perishable foods will be shipped under 70° Fahrenheit (21.1° Celsius), chilled items must be shipped and stored at 32° to 40° Fahrenheit (0° to 4.4° Celsius). And Frozen items will be maintained at 0° Fahrenheit (-17.7° Celsius) or lower.

7. **Employees:**

a. Concessionaire employees will wear clean uniforms, maintain a high degree of personal cleanliness, and conform to hygienic practices.

b. Concessionaire must comply with applicable state and military medical examination requirements (pre-employment and periodic) for all food handlers. Examinations may be required by the installation medical authority; therefore the concessionaire must contact the installation Health Authority prior to commencing with the operation. .

c. Concessionaire will make a daily visual inspection of all food employees for obvious signs of illness, skin disease, infected cuts or boils prior to starting work.

d. All personnel involved in food handling procedures and sales will comply with FDA Food Code and military Employee Health standards. Concessionaire will ensure that employees displaying signs/symptoms such as vomiting, diarrhea, jaundice, sore throat, nasal discharge or lesions that are draining pus are removed from the workplace. Additionally, all employees that have been diagnosed with an illness transmittable via food (IAW FDA Food Code) must be removed from the workplace. These restrictions must comply with FDA Food Code standards and employee must have a physician's release certifying that they are not communicable before resuming work.

e. It is each employee's responsibility to inform his or her supervisor of any potential health hazard to include the symptoms listed above in paragraph 4d. Also to be reported is the occurrence among members of the employee's household of Norovirus Salmonella, shigella, E. Coli: 0157:h2, Hepatitis A, or other such medical conditions.

f. Concessionaire, manager and employees operating a food service facility/mobile snack truck must meet training requirements outlined in the FDA Food Code, Air Force Instruction 48-116, Food Safety Program, and TB Med 530, Occupational and Environmental Health Food Sanitation and EOP 25-04.

g. Concessionaire must present a copy of the contract in person to the installation medical authorities (Preventative Medicine, Public Health or Food Inspection personnel) so that applicable health standards/practices and force protection compliance requirements can be explained and the needed references obtained.

8. **Tipping:** Tipping shall be neither encouraged nor discouraged. Tip jars or similar collection devices are prohibited.

9. **Bioterrorism:** Concessionaire will ensure that both they and their food

supply sources are compliant with current Federal, FDA, DOD, local, state and Military Force Protection requirements. These include but are not limited to Facility Registration IAW FDA Bioterrorism Act, 2002, conducting appropriate background checks on drivers delivering to military installation and ensuring every effort is made to protect food from intentional or accidental contamination during storage or shipment.

Sol. No. PZF-FR-001-10-1081

EXHIBIT E

FEE SCHEDULE

1. Offeror will enter below the fee percentages offered to AAFES. Fees will be paid based on the total actual monthly gross sales of all locations during the contract period.

<u>Location</u>	<u>Projected Monthly Sales</u>	<u>Fee % (Offeror Enter)</u>
Aberdeen Proving Ground, MD (Building 6002)	\$40,000	5% %

2. Fee payment will be made at:

Ft. Meade Exchange
ATT: Cashier Cage
Bldg #4432 Llewellyn Ave.
Ft. Meade, MD 20762

3. **Market Share/Penetration:** Offeror will indicate the number of fast food facilities operated by their chain in the state, county, ADI (identify your brand's ADI location in blank space) and local market area of the location for which an offer is being made.

<u>Location:</u>	Aberdeen Proving Grounds	<u>No. of Chain Fast food Facilities (Offeror Enter)</u>
State:	Maryland	<u>0</u>
County:	Hardford	<u>0</u>
ADI:	<u>Northeast US & Canada</u>	<u>615 - US 3055 - Canada</u>
Local Market:	Aberdeen	<u>0</u>

4. If the offeror does not currently market within the ADI for the location for which a proposal is being made, they must furnish their plan to activate one or more facilities and provide a detailed description of the field service organization to support our facilities as well as planned commercial facilities in that ADI. This information must be submitted with their proposal. It will be used by the contracting officer in his evaluation of concessionaire responsibility. **See Attached**

5. Offerors are also requested to furnish their chain's total number of direct and franchise units for each ADI within the United States.

See Attached

EXHIBIT F

INSURANCE REQUIREMENTS

The contractor will maintain, during any contract period, insurance coverage listed below, with insurance company(ies) acceptable to AAFES. All liability insurance coverage will name the United States and AAFES as additional and several insureds for claims, demands, suits, judgments, cost, charges, and expenses arising out of or in connection with any loss, damage, or injury resulting from the negligence or other fault of contractor, or contractor's agents, representatives, or employees. The insurance coverages to be maintained are:

a. The following coverage in amounts complying with state or military installation requirements, whichever is greater, where this contract is performed:

(1) Worker's Compensation and Employer's Liability Insurance.

(2) Automobile Bodily Injury and Property Damage Liability for vehicles operated to performance of this contract by the contractor or contractor's agents or employees on the military installation, whether or not owned by concessionaire.

b. The concessionaire will maintain the coverages listed below and will furnish a current Certificate of Insurance, ACORD Form 25-S, showing the insurance is in effect. The Certificate of Insurance must show the United States and AAFES as additional insureds for all liability coverages. The "INSURED" block of the Certificate of Insurance must list both the concessionaire's name and AAFES contract number.

(1) Commercial General Liability in minimum limits for Bodily Injury and Property Damage:

\$1,000,000 Each Occurrence Limit
\$2,000,000 General Aggregate Limit

This insurance policy will be written on an "occurrence" basis. A policy written on a "claims made" basis is not acceptable.

(2) Products Liability Insurance in minimum limits of \$50,000 for injury to or death of any one person, \$100,000 for each accident or occurrence, \$100,000 for aggregate personal injury liability, \$25,000 for each occurrence for property damage, and \$25,000 aggregate or \$300,000 Combined Single Limit.

EXHIBIT G

LOCATION AND DEMOGRAPHICS

1. Location Description: Aberdeen Proving Grounds, MD is located in the nearest city of Aberdeen, MD. The NBFF snack bar facility will be located in Bldg. No.6002 and will be approximately 2,312 square feet. This is an existing building that will require build out/renovations.

2. Service Requirements:	REQUIRED	OPTIONAL	NOT REQUIRED
a. Drive-thru service is:	_____	_____	___X_
b. Dine-in service is:	___X_	_____	_____
c. Take-out service is:	___X_	_____	_____
d. Home-delivery service is:	_____	_____	___X_

3. AAFES food sales and demographics at this location are as follows:

a. <u>Direct Food Activity</u>	<u>Location</u>	<u>Average Monthly Sales</u>
Burger King	Bldg.2330	\$ 83,931.00
Anthony's Pizza	Bldg.2401	\$ 20,136.00
<u>Concession Food Activity</u>	<u>Location</u>	<u>Average Monthly Sales</u>
Subway	Bldg.2514	\$ 31,416.00
The Cup (Coffee)	Bldg.2401	\$ 5,624.00
The Cup (Coffee)	Bldg.E4010	\$ 6,312.00
Argo's Food (Mobile Food)	Various	\$ 5,971.00

b. Installation Demographics are as follows:

Active Duty Sponsors:	2,476
Active Duty Family Members:	1,722
Retiree Sponsors:	6,438
Retiree Family Members:	6,937
Guard and Reserve Sponsors:	4,287
Guard and Reserve Family Members:	6,135
Total Civilians:	14,829

c. City adjacent or close to the installation: **Aberdeen, MD**

EXHIBIT H

U.S. Department of Labor Wage Determination

Services Contract Act

1. The attached U.S. Department of Labor Wage Determination applies to the operation of a concession activity at the following location:

<u>Location</u>	<u>Wage Determination No.</u>
Aberdeen Proving Grounds, MD	1986-1165

2. Any contract awarded as a result of this solicitation will be subject to the Service Contract Act of 1965. If applicable, contractor must comply with all requirements of the Act and must pay wages and fringe benefits not less than those specified in a wage determination issued by the Department of Labor. Any offeror participating in the solicitation does so with the understanding that a wage determination not yet received from the Department of Labor will upon receipt be applicable to any contract awarded as a result of this solicitation. Upon receipt of a reply from the Department of Labor, the solicitation will be amended to add the wage determination.

WD 86-1165 (Rev.-13) was first posted on www.wdol.gov on 08/18/2009

Fast Food Services

REGISTER OF WAGE DETERMINATIONS UNDER
THE SERVICE CONTRACT ACT
By direction of the Secretary of Labor

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
WASHINGTON, D.C. 20210

Shirley F. Ebbesen Division of Wage
Director Determinations

Wage Determination No: 1986-1165
Revision No: 13
Date Of Revision: 08/08/2009

State: Maryland
Area: Maryland Statewide
(excluding Anne Arundel, Baltimore, Baltimore City and Montgomery Counties)

OCCUPATION CODE - TITLE	FOOTNOTE	RATE
07080 - Fast Food Shift Leader		7.79
07090 - Fast Food Worker		7.25

The FAST FOOD INDUSTRY covers establishments with the following characteristics:

1. A limited fixed menu which can be prepared by workers following a short training period.
2. No alcoholic beverages served.
3. Customers ordering meals at counter or drive-up locations.
4. Food available almost immediately after order is placed.
5. Tipping not encouraged.

** UNIFORM ALLOWANCE **

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations", Fifth Edition, April 2006, unless otherwise indicated. Copies of the Directory are available on the Internet. A links to the Directory may be found on the WHD home page at <http://www.dol.gov/esa/whd/> or through the Wage Determinations On-Line (WDOL) Web site at <http://wdol.gov/>.

REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND WAGE RATE {Standard Form 1444 (SF 1444)}

Conformance Process:

The contracting officer shall require that any class of service employee which is not listed herein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed classes of employees shall be paid the monetary wages and furnished the fringe benefits as are determined. Such conforming process shall be initiated by the contractor prior to the performance of contract work by such unlisted class(es) of employees. The conformed classification, wage rate, and/or fringe benefits shall be retroactive to the commencement date of the contract. {See Section 4.6 (C)(vi)} When multiple wage determinations are included in a contract, a separate SF 1444 should be prepared for each wage determination to which a class(es) is to be conformed.

The process for preparing a conformance request is as follows:

- 1) When preparing the bid, the contractor identifies the need for a conformed occupation(s) and computes a proposed rate(s).
- 2) After contract award, the contractor prepares a written report listing in order proposed classification title(s), a Federal grade equivalency (FGE) for each proposed classification(s), job description(s), and rationale for proposed wage rate(s), including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves. This report should be submitted to the contracting officer no later than 30 days after such unlisted class(es) of employees performs any contract work.
- 3) The contracting officer reviews the proposed action and promptly submits a report of the action, together with the agency's recommendations and pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. (See section 4.6(b)(2) of Regulations 29 CFR Part 4).
- 4) Within 30 days of receipt, the Wage and Hour Division approves, modifies, or disapproves the action via transmittal to the agency contracting officer, or notifies the contracting officer that additional time will be required to process the request.
- 5) The contracting officer transmits the Wage and Hour decision to the contractor.
- 6) The contractor informs the affected employees.

Information required by the Regulations must be submitted on SF 1444 or bond paper.

When preparing a conformance request, the "Service Contract Act Directory of Occupations" (the Directory) should be used to compare job definitions to insure that duties requested are not performed by a classification already listed in the wage determination. Remember, it is not the job title, but the required tasks that determine whether a class is included in an established wage determination. Conformances may not be used to artificially split, combine, or subdivide classifications listed in the wage determination.

EXHIBIT I

BUILDING CONSTRUCTION/RENOVATION AND EQUIPMENT

1. Construction/Renovation/Equipment

a. The facility designed will be suitable for permanent type military facilities and compatible with the fire protection requirements for noncombustible construction, and satisfy local military and governmental codes, industrial standards and regulations. Permanent is defined as: Construction incorporating quality of materials and equipment and details and methods of construction which result in a building or facility suitable to serve a specific purpose over a minimum life expectancy of 25 years with normal maintenance. The concessionaire will accomplish necessary investigations, soil borings, etc., as required to support the design analysis. The concessionaire will obtain all necessary permits required by the base engineers ten days before site surveys and soil investigations are to be accomplished.

b. The concessionaire will furnish all labor, materials and non-severable equipment necessary to design and construct the fast food facilities identified under this agreement except that the chain's basic design will, in all cases, be furnished by the concessionaire.

c. The concessionaire will provide and install trade equipment, supplies, fixtures, furniture and decor/signing necessary for a fully operating facility.

d. Before start of construction, the proposed work requires prescribed proprietary approvals, e.g., by installation command, major command and Department of Air Force or Army as applicable, and design technical sufficiency approvals. All new construction or structural remodeling and modifications to existing buildings, including electrical, mechanical, sewer, plumbing, etc., will be supervised and inspected by a qualified inspector employed by the party responsible for construction who will certify that all construction meets plans and specifications. Tests of materials will be made when required by the specifications, code requirements or applicable laws, rules and regulations. Tests will be accomplished by an independent testing laboratory.

2. Title to Facilities and Equipment

a. Immediately upon completion of the constructed/converted facility and inspection and acceptance by AAFES and the installation, title to the new facility or improvements to the existing facility (including non-severable equipment and installed property - see paragraph 4 below) passes to the government. AAFES will execute DD Form 1354. The concessionaire will furnish information necessary for execution of the form.

b. Title to concessionaire furnished trade equipment, signage and other items unique to the chain's fast food facilities will remain with the concessionaire. Non-severable equipment will remain with the facility as property of the government. Non-severable equipment includes built-in

walk-in coolers/freezers, kitchen hood equipment, sinks and other permanently installed equipment which is an integral part of the facility structure.

3. Documentation

a. Upon completion of the activation of the fast food facility, the concessionaire will furnish to the contracting officer the total actual costs of each of the following (documented by contracts and billings if requested by AAFES):

- (1) design
- (2) construction
- (3) renovation
- (4) installed property
- (5) non-severable equipment
- (6) severable equipment

b. The concessionaire will also provide to AAFES and the base engineers one set each of reproducible as-built documents (plans and specifications) of the facility constructed.

4. Unreimbursed Costs:

a. In the event of termination of the contract by AAFES according to paragraph 8b (Notice) or 8c (Inactivation) of Exhibit A, General Provisions, after completion and acceptance of the facility by AAFES and the government (installation), but not including substantial damage or destruction in accordance with paragraph 1, Exhibit C, AAFES will reimburse the concessionaire all unamortized costs of construction, renovation, improvements, installed property and non-severable equipment. Non-severable equipment is identified in paragraph 2 above. Installed property includes:

HVAC systems including duct work and controls
Unit heaters
Cooling towers
Hot water heaters
Furnaces
Fans
Package chillers
Condensers
Pumps
Electric motors
Transformers
Light fixtures
Parking and service court paving
Roofing
Interior finishes - floors, walls and ceiling

The payment by AAFES will be the amortized value based on the costs established in paragraph 3, on a straight-line basis computed according to the following schedule:

*Building and Improvements-New Construction	10 Years
*Building and Improvements-Conversion/Renovation	10 Years
Installed Property	10 Years
Non-severable Equipment	10 Years

*Excludes installed property and non-severable equipment.

The concessionaire will have the right to remove trade equipment, signage or other items that are unique to the chain's fast food facility.

b. In the event of termination of the contract by AAFES for default according to paragraph 8a, or concessionaire notice termination, paragraph 8b of Exhibit A, General Provisions, after completion of the facility and acceptance by AAFES and the government (installation), concessionaire will be reimbursed 50% of the unamortized costs in 4a above.

c. In the event of termination of the contract by AAFES for default or any termination by concessionaire before completion of the facility and acceptance by AAFES or the government (installation), concessionaire shall not be entitled to any reimbursement from AAFES or the U. S. Government for any costs whatever expended in the performance of this contract. In this event, concessionaire shall be liable to AAFES for the costs of restoring the premises to their original state (costs of demolishing uncompleted work and restoration of the site) if the uncompleted work is not usable in AAFES' sole judgment.

d. Additional construction/renovation (excluding restoration required by paragraph 15.c., Exhibit C) or installation of new equipment during the period of contract to comply with new programs directed by the chain will be paid for by the concessionaire at no cost to AAFES or the government and amortized on a straight-line basis over the remaining term of the contract.

EXHIBIT J
ARMY & AIR FORCE EXCHANGE SERVICE
GENERAL PROVISIONS
(Contract for Construction)
(JUL 10)

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GENERAL PROVISIONS
(Contract for Construction)

1. AUTHORITY TO BIND (JAN 94).

a. "Contracting Officer" means a person authorized by the Commander, AAFES to execute and administer contracts, purchase orders, or other agreements on behalf of AAFES. Only contracting officers may waive or change contract terms; impose additional contract requirements; issue cure, show-cause and termination notices; issue claims against contractors, and issue final decisions on contractor claims.

b. Other AAFES and government officials may be authorized by the contracting officer to perform actions of an administrative nature, forwarding requests for contract changes to the contracting officer; collecting contract payments, and processing routine documents. These officials are not contracting officers, as defined in a. above.

c. AAFES has no obligation to recognize or accept waivers or changes to this contract that result from the actions of officials other than the contracting officer. Claims based on such actions may be denied. Questions concerning the authority of other AAFES or government officials should be referred to the contracting officer.

2. LEGAL STATUS (AUG 08). The Army and Air Force Exchange Service (AAFES), including its activities, offices, and individual exchanges, is an integral part of the Departments of the Army and Air Force and an instrumentality of the United States Government. AAFES contracts are United States contracts; however, they do not obligate appropriated funds of the United States except for a judgment or compromise settlement in suits brought under the provisions of the Contract Disputes Act of 1978, as amended, in which event AAFES will reimburse the U.S. Government. AAFES procurement policy is established by applicable directives and instructions promulgated by the Department of Defense. The Federal Acquisition Regulation (FAR) does not apply to AAFES.

3. PROCUREMENT INTEGRITY, GRATUITIES AND CONTINGENT FEES (AUG 92).

a. By submission of an offer or performance of this contract, the offeror or contractor certifies with respect to this AAFES purchase action:

(1) that no discussion or offer or promise of future employment or business opportunity has been or will be made to AAFES civilian or military personnel who participated personally and substantially in the purchase;

(2) that no offer, promise or gift of any gratuity, entertainment, money, or other thing of value, will be made to any AAFES officer or employee or any other officer or employee of the United States Government or member of their family or household;

(3) that no information proprietary to other offerors or other purchasing information (listing of offerors, prices offered, technical evaluations or rankings, etc.) has been or will be sought, obtained or given to any person not authorized by the contracting officer, until it would be available to the public under AAFES procedures.

(4) that no person or selling agency has been employed or retained to secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee except bona fide employees or bona fide established commercial selling agencies retained by contractor for the purpose of securing business.

b. Contractor certifies that no gratuities (entertainment, gifts, money, kickbacks or other thing of value) were or will be solicited or accepted by the contractor, or any person representing the contractor, from any subcontractor or person representing the subcontractor, for the purpose of obtaining or rewarding favorable treatment in connection with this contract or any subcontract under it.

c. Contractor will report in writing to the Director, Loss Prevention Division, any possible violation of this clause when the contractor has reasonable grounds to believe a violation may have occurred. The contractor shall cooperate fully with any federal agency investigation of a possible violation of this clause.

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

4. OFFICIALS NOT TO BENEFIT (MAY 79). No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

5. CONTRACTOR PERSONNEL AND REPRESENTATIVES (AUG 08).

a. Contractor will discontinue the use of any individual for performance of this contract in exchange facilities upon written notice from the contracting officer that the individual is not (or no longer) acceptable for performance under this contract. Contractor will not use any such person to perform other AAFES contracts without the prior written consent of the applicable contracting officer.

b. Contractor will not employ for performance in exchange facilities any individual under this contract who has been determined unacceptable for performance under any other AAFES contract without the prior written consent of the contracting officer.

c. Contractor personnel will abide by applicable regulations and directives and conduct themselves so as not to reflect discredit on AAFES.

d. Contractor will not represent himself/herself to be an agent or representative of AAFES, another instrumentality, or an agency of the United States.

6. COMPOSITION OF CONTRACTOR (SEP 91). If the contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

7. ASSIGNMENT (Jan 94). The Assignment of Claims Acts, 31 U.S.C. 3272 and 41 U.S.C. 15, are not applicable to amounts due under AAFES contracts. Contractor may not assign its rights or delegate its obligations under this contract, and AAFES will neither consent to, nor recognize, any purported assignment. Contractor may request permission from the contracting officer to have contract payments forwarded to a third party.

8. PERMITS AND RESPONSIBILITIES (SEP 91). The contractor shall, without additional expense to AAFES, be responsible for obtaining any necessary licenses and permits, and for complying with applicable Federal, state, foreign and municipal laws, codes and regulations, in connection with the prosecution of the work. He/she shall be similarly responsible for all damages to persons or property that occur as a result of his/her fault or negligence. He/she shall take proper safety and health precautions to protect the work, the workers, the public and the property of others. He/she shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction thereof which theretofore may have been accepted.

9. FEDERAL, STATE, LOCAL AND FOREIGN TAXES (JAN 91).

a. The responsibility for determining the applicability of any taxes imposed on the performance of this contract or any subcontract hereunder rests with the contractor. The contract price includes all applicable federal, state and local taxes and customs duties. Some state or local laws or regulations exempt purchases of materials or supplies incorporated into or used in the performance of federal contracts. The contract price does not include any tax for which an exemption exists at the time of contract award.

b. Nevertheless, with respect to any Federal excise tax or duty on the transactions or property covered by this contract, if a statute, a court decision, written ruling or regulation takes effect after the contract date, and

(1) results in the contractor being required to pay or bear the burden of any such Federal excise tax or duty or increase in the rate thereof which would not otherwise have been payable on such transactions or property, the contract price shall be increased by the amount of such tax or duty or rate increase, provided the contractor warrants in writing no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price as a contingency reserve or otherwise; or

(2) results in the contractor not being required to pay or bear the burden of, or in obtaining a refund or drawback of, any such Federal excise tax or duty which would otherwise have been payable on such transactions or property or which was the basis of an increase in the contract price, the contract price shall be decreased by the amount of the relief, refund or drawback, or that amount shall be paid to AAFES, as directed by the contracting officer. The contract price shall be similarly decreased if the contractor, through his fault or negligence or his failure to follow instructions of the contracting officer, is required to pay or bear the burden of, or does not obtain a refund or drawback of, any such Federal excise tax or duty.

c. Subparagraphs "a" and "b" above shall not be applicable to social security taxes or to any other employment tax.

d. Except as otherwise provided in this contract, the contract price includes all applicable foreign taxes and duties. The contractor warrants that the contract price does not include any tax or duty which the government of the United States and the government of the country wherein the contract is to be performed has agreed shall not be applicable to purchasing of goods and services by the U.S. forces. Should the prices in this contract include any such tax or if after the date of this contract, contractor be exempted from any tax or duty included in the price of goods and/or services provided for in this contract, the contract price shall be decreased by the amount of such tax or duty.

e. No adjustment of less than \$100 shall be made in the contract price pursuant to this clause.

f. As used in this clause, the term "contract date" means the actual contract date. As to additional supplies or services purchased by modification of this contract, the term "contract date" means the date of such modification.

g. Unless there does not exist any reasonable basis to sustain an exemption, AAFES upon the request of the contractor shall, without further liability, furnish evidence appropriate to establish exemption from any Federal, state, foreign or local tax; provided that, evidence appropriate to establish exemption from any Federal excise tax or duty which may give rise to either an increase or decrease in the contract price will be furnished only at the discretion of AAFES.

h. The contractor shall promptly notify the contracting officer of matters which will result in either an increase or decrease in the contract price, and shall take action with respect thereto as directed by the contracting officer.

10. INCONSISTENCIES (SEP 91). To the extent of any inconsistency between the General Provisions and any specifications or other provisions, the General Provisions shall control.

11. INDEMNIFY AND HOLD HARMLESS (MAY 89).

a. Contractor will indemnify, hold harmless and defend AAFES and all other agencies and Instrumentalities of the United States, their agents, representatives, employees and customers from any and all suits, judgments and claims, including those established by or pursuant to court decisions, to international agreements, or duly promulgated regulations of the United States Government, and all charges and expenses incident thereto which arise out of:

(1) The alleged or established violation or infringement of any patent, copyright or trademark rights asserted by any third party with regard to items or services provided by contractor;

(2) Loss, damage, or injury alleged or established to have arisen out of or in connection with items or services provided by contractor, unless such loss, damage, or injury was caused by or resulted solely from the acts or omissions of AAFES, its agents, representatives, or employees;

(3) Any loss, damage, or injury alleged or established to have arisen out of or in connection with any other acts or omissions of the contractor.

b. AAFES will give contractor notice and an opportunity to defend.

12. EXAMINATION OF RECORDS (AUG 08).

a. This clause applies if the amount of the contract exceeds \$10,000 and the contract was entered into by means of negotiation. The contractor agrees that the contracting officer or his duly authorized representative will 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 the expiration of three years after the final payment under the contract. The contractor agrees to include this clause in all subcontracts that exceed \$10,000.

b. "General Accountability Office" may be substituted for "contracting officer or his duly authorized representative" when the prospective contractor does not accept the standard wording of the examination clause.

c. Contracts awarded to foreign contractors may exclude the examination clause when its use is precluded by the laws of the country involved, subject to the approval of the servicing AAFES General Counsel (AAFES HQ and AAFES Europe). Contract files will be in such circumstances be documented to show the basis for exclusion of the clause.

13. INSURANCE (MAR 08).

Contractor agrees to purchase and maintain at contractor's expense in insurance company or companies acceptable to AAFES the insurance coverage listed herein for the period of this contract, and furnish a certificate of insurance evidencing such insurance to be in effect, no later than ten days after award of contract (and indicating on the certificate of insurance that, in the event of modification, cancellation or nonrenewal, AAFES will be given 30 days prior notice). All liability insurance contracts shall name the United States and AAFES as additional and several insured with respect to claims, demands and expenses arising out of or in connection with any loss, damage or injury resulting from acts or omissions of contractor, its agents, representatives or employees. The certificate of insurance must show the United States and AAFES as additional insured for all liability coverage shown below. This insurance policy will be written on an "occurrence" basis and will include contractual liability. A policy written on a "claims made" basis is not acceptable. Commercial General Liability Insurance with minimum limits as follows:

	CONTRACT VALUE LESS THAN \$1M	CONTRACT VALUE \$1M OR MORE
Any one occurrence, Bodily Injury and Property Damage Combined	\$100,000	\$1,000,000
Property & Completed Operations, Per Occurrence	\$100,000	\$1,000,000
General Aggregate Limit, Per Project	\$100,000	\$2,000,000

The contractor shall obtain Builder's Risk Insurance against the perils of fire, lightning, windstorm, hail, explosion, collapse, riot, civil commotion, smoke aircraft, land vehicles, vandalism, and malicious mischief in an amount of insurance equal at all times to the replacement value of materials delivered and labor performed. The policy shall be insured jointly in the names of the contractor and AAFES.

The contractor also agrees to purchase from sources referred to in clause "a" above the following insurance coverage with limits complying with state or military installation requirements, whichever is greater, where the contract is performed: Worker's Compensation Employer's Liability Insurance.

Automobile Bodily Injury and Property Damage Liability for vehicles operated in performance of this contract by the contractor's agents or employees on the military installation, whether or not owned by the contractor.

Contractor agrees to require that all subcontractors will purchase and maintain, at their expense in insurance company or companies acceptable to AAFES, the following insurance and furnish AAFES with certificates of insurance, evidencing that required coverage is in effect, no later than 10 days after award of contract and that not less than 30 days prior written notice will be given AAFES in the event of modification, cancellation, or nonrenewal.

Worker's Compensation and Employer's Liability Insurance with minimum limits specified in subparagraph "a (1)" above. Commercial General Liability Insurance with minimum limits specified in subparagraph "a (I)" above. This insurance policy will be written on an "occurrence" basis. A policy written on a "claims made" basis is not acceptable.

Automobile Bodily Injury and Property Damage Liability Insurance as specified in subparagraph "a (1)" above.

14. ADDITIONAL SECURITY (SEP 91). If any surety upon any bond furnished in connection with this contract becomes unacceptable to AAFES, or if any such surety fails to furnish reports as to its financial condition from time to time as requested by AAFES, or if the contract price is increased to such an extent that the penal sum of any bond becomes inadequate in the opinion of the contracting officer, the contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of AAFES or of persons supplying labor or materials in the prosecution of the work contemplated by this contract.

15. CONDITIONS AFFECTING THE WORK (SEP 91). The contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions, which can affect the work or the cost thereof. Any failure by the contractor to do so will not relieve him/her from responsibility for successfully performing the work without additional expense to AAFES. AAFES assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this contract, unless such understanding or representations by AAFES are expressly stated in the contract.

16. SITE INVESTIGATION (SEP 91). The contractor acknowledges that he/she has investigated and satisfied himself/herself as to the conditions affecting the work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the work. The contractor further acknowledges that he/she has satisfied himself/herself 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 AAFES, as well as from information presented by the drawings and specifications made a part of this contract. Any failure by the contractor to acquaint himself/herself with the available information will not

relieve him/her from responsibility for estimating properly the difficulty or cost of successfully performing the work. AAFES assumes no responsibility for any conclusions or interpretations made by the contractor on the basis of the information made available by AAFES.

17. DIFFERING SITE CONDITIONS (SEP 91).

a. The contractor shall promptly, and before such conditions are disturbed, notify the contracting officer in writing of: (1) subsurface or latent physical conditions at the site differing materially from those indicated in this contract; or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract. The contracting officer shall promptly investigate the conditions, and if he/she finds that such conditions do materially so differ and cause an increase or decrease in the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.

b. No claim of the contractor under this clause shall be allowed unless the contractor has given the notice required in subparagraph "a" above; provided, however, the time prescribed therefore may be extended by the contracting officer.

c. No claim by the contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

18. SPECIFICATIONS AND DRAWINGS (SEP 91).

a. The contractor shall keep at the work site a current copy of the drawings and specifications and shall at all times give the contracting officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. Figures marked on drawings shall in general be followed in preference to scale measurements. Large scale drawings shall, in general, govern small scale drawings. The contractor shall compare all drawings and verify before laying out the work and will be responsible for any errors which might have been avoided thereby. Further, the contractor shall check all drawings, figures and specifications immediately upon their receipt. In any case of discrepancy in the figures, drawings or specifications, the matter shall be promptly submitted to the contracting officer, who shall promptly make a determination in writing. Any adjustment by contractor without such a determination shall be at his/her risk and expense. The contracting officer shall furnish from time to time such detail drawings and other information as he/she may consider necessary, unless otherwise provided.

b. Omissions from the drawings or specifications or mis-description of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the contractor from performing such omitted or mis-described details of work, but they will be performed as if fully and correctly set forth and described in the drawings and specifications.

c. In addition to the requirements of subparagraph "a" above, contractor hereby acknowledges receipt of all plans, drawings and specifications identified as Exhibits to this contract. Contractor agrees and admits that the said plans, drawings and specifications and particulars are sufficient for their intended purpose without any additional extra work, other than the work set forth thereby or necessarily inferred to be done from the general nature and tendency of the plans and descriptions. Plans and drawings remain the property of AAFES and shall be returned upon completion of the work. Contractor shall not deviate from the drawings or specifications, or execute any extra work of any kind whatsoever, unless the same be authorized in writing by the contracting officer.

d. The contractor shall submit to the contracting officer for approval, with such promptness as to cause no delay in his/her own work or in that of any other contractor, copies of all shop or installation drawings and schedules required for the work of the various trades called for under the various headings of the specifications. Unless otherwise stipulated in the specifications, six copies of each such shop or installation drawing and schedule will be submitted. These drawings and schedules shall be complete and detailed. The contractor shall make any and all corrections required by the contracting officer, file with him/her four corrected copies and furnish such other copies as may be needed. If the contractor considers any corrections indicated on the drawings to constitute a change to the contract drawings or specifications, notice as required under the clause entitled "Changes" will be given to the contracting officer. The contracting officer's approval of such drawings or schedules shall not be construed as a complete check, but will indicate only that the general method of construction and detailing is satisfactory. Approval of such drawings will not relieve the contractor of responsibility for the dimensions and design of adequate connections, details and satisfactory construction of all work.

e. During the progress of the job, the contractor shall keep a careful record at the job site of all changes and corrections from the details shown on the drawings. The contractor shall enter such changes and corrections on contract drawings promptly, but in no case later than on a weekly basis. The record drawings shall indicate, in addition to all changes and corrections, the actual location of all subsurface utility lines in order that the location of these lines and the appurtenances may be determined in the event the surface openings or indicators become covered or obscured. The record drawings shall show by offset dimensions two permanently fixed surface features at the end of each run including each change in direction. The average depth below the surface of each run shall also be recorded. At the time of beneficial occupancy of each structure or facility involved under this contract, the contractor shall submit to the contracting officer as-built prints showing the aforementioned data. If the contractor fails to maintain the record drawings as required herein, the contracting officer will deduct from the monthly progress payment an amount representing the estimated monthly cost of maintaining the record drawings and will continue deduction of the 10% retainage even after completion of the contract. In addition, final payment with respect to separately placed facilities or the contract as a whole will be withheld until proper as-built drawings have been furnished to the contracting officer.

f. Shop drawings for construction means drawings, submitted to AAFES by the contractor, subcontractor or any lower tier subcontractor pursuant to a construction contract, showing in detail, (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e. form, fit and attachment details) of materials or equipment. AAFES may duplicate, use and disclose in any manner and for any purpose shop drawings delivered under this contract. The subparagraph "f" shall be included in all subcontracts hereunder at any tier.

19. BASE LINES AND GRADES (SEP 91). The contractor shall lay out his/her work from base lines and grades established by AAFES and shall be responsible for all measurements in connection therewith. The contractor shall, at his/her own expense, furnish all stakes, templates, platforms, equipment and ranges and labor that may be required in setting and cutting, or laying out any part of the work. The contractor will be held responsible for the proper execution of the work to such lines and grades as may be established or indicated by the contracting officer, and all stakes or other marks thus established shall be preserved by him/her until their removal is authorized by the contracting officer. The contracting officer will furnish, on request from the contractor, all location and limit marks reasonably necessary for the conduct of the work.

20. PERFORMANCE OF WORK BY CONTRACTOR (SEP 91). The general contractor will perform on-site work with its own labor force in an amount equal to at least 15% of the total contract amount. This 15% is to be direct labor and materials cost excluding job-site supervision and overhead.

21. CONTRACTOR SUPERVISION (SEP 91).

a. At all times during construction, the contractor will have a qualified competent full-time job superintendent acceptable to the contracting officer on the job site. This superintendent will be granted full authority to act for the contractor in areas relating to performance of the contract by the contractor's and subcontractors' forces.

b. In addition to the superintendent, on contracts that exceed \$1,000,000; the contractor will have one or more foremen, as the number of trades working may dictate, on the job to provide first hand supervision of its own work force.

c. If the contractor fails to provide the project management as required by this clause the contracting officer may make a determination of the dollar value of the management and deduct this amount from the contract.

22. MATERIALS AND WORKMANSHIP (SEP 91).

a. Unless otherwise specifically provided in this contract, all equipment, material and articles incorporated in the work covered by this contract are to be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in this contract, reference to any equipment, material, article or patented process, by trade name, make or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and the contractor may, at his/her option, use any equipment, material, article, or process which, in the judgment of the contracting officer is equal to that named. The contractor shall furnish to the contracting officer for his/her approval the name of the manufacturer, the model number and other identifying data and information respecting the performance, capacity, nature and rating of the machinery and mechanical and other equipment which the contractor contemplates incorporating in the work. When required by this contract or when called for by the contracting officer, the contractor shall furnish the contracting officer for approval, full information concerning the material or articles which he/she contemplates incorporating the work. When so directed, samples shall be submitted for approval at the contractor's expense, with all shipping charges prepaid. Machinery, equipment, material and articles installed are used without required approval shall be at the risk of subsequent rejection.

b. Contractor shall not incorporate in the work any salvaged material except upon prior written approval of the contracting officer. If salvage material is accumulated during construction or installation, contractor shall adequately store and safeguard the same and shall not remove such material from the premises or site of the work without prior written consent of the contracting officer. Contractor shall not acquire title to any such salvaged material except by prior written consent of the contracting officer.

c. Contractor warrants that no materials imported or produced with Economic Cooperation Act or Mutual Security Act funds in the country where the work is located will be used or incorporated in the construction work.

d. All work under this contract shall be performed in a skillful and workmanlike manner. The contracting officer may, in writing, require the contractor to remove from the work any employee the contracting officer deems incompetent, careless, undesirable for security reasons, or otherwise objectionable.

e. All materials acquired by the contractor in the performance of this contract shall immediately become the property of AAFES upon that acquisition. The contractor has sole responsibility for all such material and workmanship to include the restoration of any damaged work. AAFES does not waive the right to require the fulfillment of all of the terms of the contract. Risk of loss shall be borne by the contractor until such time as the project is accepted by AAFES pursuant to Clause 46 of this contract.

23. AVAILABILITY AND USE OF UTILITY SERVICES (SEP 91).

a. To the extent that work is being performed on a government facility or installation, the government will make available to the contractor, from existing outlets and supplies, all reasonably required amounts of utilities. The specifications of this contract will stipulate whether or not there will be a charge for utilities.

b. Where there is a charge for utilities used in performing work on a government facility or installation, each utility shall be paid for by the contractor at prevailing rates charged to the government. For those situations where the utility is produced by the government, the contractor will pay reasonable rates determined by the contracting officer.

c. The contractor shall carefully conserve utilities furnished from government sources. The contractor, at his/her own expense and in a workmanship manner satisfactory to the contracting officer, shall install and maintain all necessary temporary connections and distribution lines and, if necessary to determine charges, all meters required to measure the amount of each utility used; and shall remove the same prior to final acceptance of the construction.

24. OPERATION AND STORAGE AREAS (SEP 91).

a. All operations of the contractor (including storage of materials) upon government premises shall be confined to areas authorized or approved by the contracting officer. No unauthorized or unwarranted entry upon, passage through, or storage or disposal of materials shall be made upon government premises. Government premises adjacent to the construction will be made available for use by the contractor without cost whenever such use will not interfere with other government uses or purposes.

b. Temporary buildings (storage sheds, shops, office, etc.) may be erected by the contractor upon government premises only with the approval of the contracting officer, and shall be built with labor and materials furnished by the contractor without expense to AAFES and will be removed by him/her at his/her expense upon the completion of the work. With the written consent of the contracting officer, such buildings and utilities may be abandoned and need not be removed.

c. The contractor shall, under directives prescribed by the contracting officer, use only established roadways or construct and use such temporary roadways as may be authorized by the contracting officer. Where materials are transported in the prosecution of 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 curbing or sidewalks, protection against damage shall be provided by the contractor, and any damaged roads, curbing or sidewalks shall be repaired by, or at the expense of, the contractor.

25. MAINTENANCE OF PREMISES (SEP 91). Contractor shall at all times keep AAFES premises on which the work is performed and the adjoining premises, driveways and streets, clean of rubbish caused by the contractor's operations and keep the construction site free of rank growth of grass and weeds, and at the completion of the work, shall remove all the rubbish from the premises and all of his/her tools, equipment, temporary work and surplus materials, and shall leave the worksite clean and ready for use. If contractor does not attend to such cleaning promptly upon request, AAFES may cause such cleaning to be done by others and charge the cost to contractor.

26. CLEANING UP (SEP 91). The contractor shall at all times keep the construction area, including storage areas used by contractor, free from accumulations of waste material or rubbish and prior to completion of the work, remove any rubbish, tools, scaffolding, equipment and materials not the property of AAFES from and about the premises. Upon completion of the construction, the contractor shall leave the work and premises in a clean, neat and workmanlike condition satisfactory to the contracting officer.

27. PROTECTION OF MATERIAL AND WORK (SEP 91). The contractor shall at all times take care to protect and preserve all materials, supplies and equipment of every description and all work performed. All reasonable requests of the contracting officer to enclose or specially protect such property will be complied with. If, as determined by the contracting officer, material, equipment, supplies and work performed are not adequately protected by the contractor, such property may be protected by AAFES and the cost thereof charged to the contractor or deducted from any payments due to him/her.

28. PROTECTION OF EXISTING VEGETATION, STRUCTURE, UTILITIES AND IMPROVEMENTS (SEP 91).

a. The contractor will preserve and protect all existing vegetation such as trees, shrubs and grass on or adjacent to the site of work which is not to be removed and which does not unreasonably interfere with the construction work. The contractor will be responsible for unauthorized cutting or damaging of trees and shrubs, including damage due to careless operation of equipment, stockpiling of materials, or tracking of grass areas by equipment. The contractor will be liable for or may be required to replace at its own expense all vegetation not protected and preserved as required herein that may be destroyed or damaged.

b. The contractor will protect from damage all existing improvements or utilities at or near the site of the work, the location of which is made known to him/her, and will repair or restore any damage to such facilities resulting from acts or omissions of contractor, his/her agents, employees, subcontractors or representatives. If the contractor fails or refuses to repair any such damage promptly, the contracting officer may have the necessary work performed and charge the cost thereof to the contractor.

29. ENVIRONMENTAL PROTECTION (AUG 09).

a. This clause shall apply to any contract in excess of \$100,000, indefinite quantity contracts estimated to exceed \$100,000 in one year; provided, however, it shall not apply to use of facilities located outside the United States.

b. Unless this contract is exempt, by acceptance of this contract, contractor (and, where appropriate, subcontractor) stipulates:

(1) that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the EPA List of Violating Facilities as of the date of contract award;

(2) its agreement to comply with all requirements of Section 114 of the Air Act and Section 308 of the Water Act relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in Sections 114 and 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder;

(3) that as a condition of award of contract, he/she shall promptly notify the contracting officer of the receipt of any communication from the Director, Office of Federal Activities, U.S. Environmental Protection Agency, or his/her delegee, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities;

(4) its agreement to include the criteria and requirements in subparagraphs "(1)" through "(4)" in every nonexempt subcontract, and to take such action as the government may direct as a means of enforcing such provisions.

30. IDENTIFICATION OF EMPLOYEES (NOV 08).

a. After award and prior to performance on any Federal installation, the contractor shall comply with the local installation's personal identity verification procedures identified by that installation which implements HSPD-12 policy for a Common Identification Standard for Federal Employees and Contractors.

b. AAFES Contractors must follow local installation guidelines and directives concerning identification, access, and security requirements. These guidelines may vary from one installation to another, and it is the contractor's responsibility to seek guidance concerning these issues.

c. The contractor shall insert this clause in all subcontracts when the subcontractor is required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

d. The contractor shall be responsible for furnishing identification to each employee, and for requiring each employee engaged in the work to display such identification. The identification shall immediately be delivered to the contracting officer for cancellation upon the release of any employee. When required by the contracting officer, the contractor shall obtain and submit fingerprints of all persons employed or to be employed on the project. The employee identification and fingerprint requirements shall be in accordance with requirements of the installation whereupon the work is being performed.

31. ACCIDENT PREVENTION (SEP 91).

a. In order to provide safety controls for protection to the life and health of employees and other persons; for prevention of damage to property, materials, supplies and equipment; and for avoidance of work interruptions in the performance of this contract, the contractor shall comply with all pertinent provisions of Corps of Engineers Manual, EM 385-1-1, entitled "General Safety Requirements", as amended, (available from Superintendent of Documents, Washington D.C. 20402 stock number S/N 008-022-00243-0) and will also take or cause to be taken such additional measures as the contracting officer may determine to be reasonably necessary for the purpose, including compliance with Exchange Operating Procedure 17-1, entitled "Occupational Safety and Health Program," as amended (available from the contracting officer).

b. The contractor will maintain an accurate record of, and will report to the contracting officer in the manner and on the forms prescribed by the contracting officer, exposure data and all accidents resulting in death, traumatic injury, occupational disease and/or damage to property, materials, supplies and equipment incident to work performed under this contract.

c. The contracting officer will notify the contractor of any noncompliance with the foregoing provisions and the action to be taken. The contractor shall, after receipt of such notice, immediately take corrective action. Such notice, when delivered to the contractor or his/her representative at the site of the work, shall be deemed sufficient for the purpose. If the contractor fails or refuses to comply promptly, the contracting officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop order shall be made the subject of claim for extension of time or for excess costs or damages by the contractor.

d. Compliance with the provisions of this clause by subcontractors will be the responsibility of the contractor.

e. Prior to commencement of the work, the contractor will meet in conference with representatives of the contracting officer to discuss and develop mutual understandings relative to administration of the overall safety program.

32. SCHEDULE AND PROGRESS (SEP 91).

a. The contractor shall within five days or within such time as determined by the contracting officer, after date of commencement of work, prepare and submit to the contracting officer for approval, a practicable schedule showing the order in which the contractor proposes to carry on the work, the date on which he/she will start the several salient features (including purchasing of materials, plant and equipment) and the contemplated dates for completing the same. The contractor shall submit to the contracting officer at the end of each week a brief written report of the percentage of work accomplished for each work element during that week, or at such other intervals of time as may be established by the contracting officer. If the contractor fails to submit the required progress schedule(s) and progress reports, the contracting officer may withhold approval of progress payment estimates until such time as the contractor submits required schedules and reports.

b. The contractor shall furnish sufficient work forces, construction plant, and equipment and shall work such hours, including night shifts, overtime operations, and Sunday and holiday work, as may be necessary to ensure the prosecution of the work in accordance with the approved progress schedule. If, in the opinion of the contracting officer, the contractor falls behind the progress schedule, the contractor shall take such steps as may be necessary to improve his/her progress, and the contracting officer may require him/her to increase the number of shifts, and/or overtime operations, days of work and/or the amount of construction plant, all without additional costs to AAFES.

c. Failure to the contractor to comply with the requirements of the contracting officer under this provision shall be grounds for determination by the contracting officer that the contractor is not prosecuting the work with such diligence as will ensure completion within the time specified. Upon such determination, the contracting officer may terminate the contractor's rights to proceed under the clause of this contract entitled "Termination for Default--Damages for Delay--Time Extensions."

33. INSPECTION (SEP 91).

- a. The contractor shall, (1) maintain an adequate inspection system and perform such inspections as will assure that the work performed under the contract conforms to contract requirements, and (2) maintain and make available to AAFES adequate records of such inspections.
- b. The work will be conducted under the general direction of the contracting officer and is subject to inspection and test by his/her appointed inspectors to ensure strict compliance with the terms of the contract. No inspector is authorized to change any provision of the specifications without written authorization of the contracting officer, nor shall the presence or absence of an inspector relieve the contractor from any requirements of the contract. AAFES shall have the right to reject defective material and workmanship and require its correction and replacement. Contractor shall without charge, correct rejected workmanship and replace rejected material with proper material. Contractor shall promptly segregate and remove rejected material from the premises. If the contractor fails to proceed at once with replacement of rejected material and/or the correction of defective workmanship, AAFES may, (1) by contract or otherwise, replace such material and/or correct such workmanship and charge the cost thereof to the contractor, or (2) terminate the contractor's right to proceed as provided for in Clause 41 herein and the contractor and the surety being liable for any damage to the same extent as provided in said Clause 41 for termination thereunder.
- c. The contractor shall furnish promptly, without additional charge, all facilities, labor and materials reasonably needed for performing such safe and convenient inspections and tests that may be required by the contracting officer. All inspections and tests by AAFES shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be performed as described in this contract. The contractor shall be charged with any additional cost of inspection when materials and workmanship are not ready at the time inspection is requested by the contracting officer or when reinspection or retest is necessitated by prior rejection.
- d. Should it be considered necessary or advisable by AAFES at any time before final acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the contractor shall, on request, promptly furnish all necessary facilities, labor and material. If such work is found to be defective or nonconforming in any material respect, due to the fault of the contractor or its subcontractors, he/she shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, that actual cost of additional services necessarily involved in the examination and reconstruction plus 15% shall be allowed the contractor and he/she shall, in addition, if completion of the work has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.

34. OTHER CONTRACTS (SEP 91). AAFES may undertake or award other contracts for additional work, and the contractor shall fully cooperate with such other contractors and AAFES or government employees and carefully fit his/her own work to such additional work as may be directed by the contracting officer. The contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by AAFES or government employees.

35. AAFES-FURNISHED PROPERTY (SEP 91).

- a. AAFES shall deliver to the contractor, for use in connection with and under the terms of this contract, the property described as AAFES-Furnished property in the Schedule or Specifications, together with such related data and information as the contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "AAFES-furnished property"). The delivery or performance dates for the supplies or services to be furnished by the contractor under this contract are based upon the expectation that AAFES furnished property suitable for use (except for such property furnished "as is") will be delivered to the contractor at the times stated in the Schedule of Specifications or, if not so stated, in sufficient time to enable the contractor to meet such delivery or performance dates. In the event that AAFES-furnished property is not delivered to the contractor by such time or times, the contracting officer shall, upon timely written request made by the contractor, make a determination of the delay, if any, occasioned the contractor thereby, and shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by any such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." Except for AAFES-furnished property furnished "as is," in the event the AAFES-furnished property is received by the contractor in a condition not suitable for the intended use the contractor shall, upon receipt hereof, notify the contracting officer of such fact and, as directed by the contracting officer, either (1) return such property at AAFES' expense or otherwise dispose of the property, or (2) effect repair or modifications. Upon the completion of "(1)" or "(2)" above, the contracting officer upon written request of the contractor shall equitably adjust the delivery or performance dates or the contract price, or both, and any other contractual provision affected by the rejection or disposition, or the repair or modification, in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and AAFES shall not be liable to suit for breach

of contract by reason of any delay in delivery of AAFES-furnished property or delivery of such property in a condition not suitable for its intended use.

b. Changes in AAFES-Furnished Property.

(1) By notice in writing, the contracting officer may, (a) decrease the property provided or to be provided by AAFES under this contract, or (b) substitute other AAFES-owned property for property to be provided by AAFES, or to be acquired by the contractor for AAFES, under this contract. The contractor shall promptly take such action as the contracting officer may direct with respect to the removal and shipping of property covered by such notice.

(2) In the event of any decrease in or substitution of property pursuant to subparagraph "b (1)" above, or any withdrawal of authority to use property provided under any other contract or lease, which property AAFES has agreed in the Schedule or Specifications, to make available for the performance of this contract, the contracting officer, upon written request of the contractor (or if the substitution of property causes a decrease in the cost of performance, on his/her own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution or withdrawal, in accordance with the procedures provided for in the "Changes" clause of this contract.

c. Title. Title to all property furnished by AAFES shall remain in AAFES. In order to define the obligations of the parties under this clause, title to each item of facilities, special test equipment and special tooling (other than that subject to a "Special Tooling" clause) acquired by the contractor for AAFES pursuant to this contract shall pass to and vest in AAFES when its use in the performance of this contract commences, or upon payment therefore by AAFES, whichever is earlier, whether or not title previously vested. All AAFES-furnished property, together with all property acquired by the contractor title to which vests in AAFES under this paragraph, is subject to the provisions of this clause and is hereinafter collectively referred to as "AAFES property." Title to AAFES property shall not be affected by the incorporation or attachment thereof to any property not owned by AAFES, nor shall such AAFES property, or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

d. Use of AAFES Property. AAFES property shall, unless otherwise provided herein or approved by the contracting officer, be used only for the performance of this contract.

e. Risk of Loss. Unless otherwise provided in this contract, the contractor assumes the risk of, and shall be responsible for, any loss of or damage to AAFES property provided under this contract upon its delivery to him/her or upon passage of title thereto to AAFES as provided in subparagraph "c" hereof, except for reasonable wear and tear and except to the extent that such property is consumed in the performance of this contract.

f. Access. AAFES and any persons designated by it, shall at all reasonable times have access to the premises wherein any AAFES property is located, for the purpose of inspecting AAFES' property.

g. Restoration of Contractor's Premises. Unless otherwise provided herein, AAFES:

(1) may abandon any AAFES property in place, and thereupon all obligations of AAFES regarding such abandoned property shall cease; and

(2) shall not be under any duty or obligation to restore or rehabilitate, or to pay the costs of the restoration or rehabilitation of the contractor's plant or any portion thereof which is affected by the abandonment or removal of any AAFES property.

36. CHANGES (SEP 91).

a. The contracting officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make and change in the work within the general scope of the contract, including but not limited to changes:

- (1) in the specifications (including drawings and designs);
- (2) in the method or manner of performance of the work;
- (3) in AAFES-furnished facilities, equipment, materials, services or site; or
- (4) directing acceleration in the performance of the work.

- b. Any other written order or an oral order (which terms as used in this subparagraph "b" shall include direction, instruction, interpretation or determination) from the contracting officer, which causes any such change, shall be treated as a change order under this clause, provided that the contractor gives the contracting officer written notice stating the date, circumstances, and source of the order and that the contractor regards the order as a change order.
- c. Except as herein provided, 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 hereunder.
- 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 order, an equitable adjustment shall be made and the contract modified in writing accordingly; provided, however, that except for claims based on defective specifications, no claim for any change under subparagraph "b" above shall be allowed for any cost incurred more than 20 days before the contractor gives written notice as therein required; and provided further, that in the case of defective specifications for which AAFES is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the contractor in attempting to comply with such defective specifications.
- e. If the contractor intends to assert a claim for an equitable adjustment under this clause, he/she must, within 30 days after receipt of a written change order in accordance with subparagraph "a" above or the furnishing of a written notice under subparagraph "b" above, submit to the contracting officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is extended by the contracting officer. The statement of claim hereunder may be included in the notice under subparagraph "b" above.
- f. No claim by the contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

37. PRICING OF ADJUSTMENTS (MAR 08)

a. Pursuant to the clause entitled "changes" herein, when the contracting officer directs the contractor to perform changes that result in an increase in the cost to the contractor, the contracting officer will make an appropriate adjustment to the contract price. In no event shall any delays or extensions of time (other than suspensions of work covered by Clause 44) be construed as a reason or justification for payment of extra compensation to the contractor except as provided by this clause. The adjusted amount will only include reimbursement of actual and verifiable DIRECT (labor, material, supplies, major equipment rental, taxes, worker's compensation insurance for non-overhead personnel and payment bond premiums) cost directly attributable to the change, plus the indirect (overhead/profit) cost percentage factors below. Indirect costs will be reimbursed according to the nature, extent, and complexity of the work involved, but in no case will reimbursement exceed the following:

(1)Percentage allowed:

	OVERHEAD	PROFIT	COMMISSION
To the contractor on work performed by other than his own forces	None	None	8%
To the contractor and/or the subcontractors for that portion of the work performed with THEIR RESPECTIVE FORCES	10%	8%	None

(2) The above allowable percentages for indirect costs cover profit, commission and all home office and field overhead (including but not limited to extended and unabsorbed overhead) expenses; insurance; (all except worker's compensation for non-overhead personnel); field and office supervisors, assistants and staff; field offices and storage or work shelters; small tools, estimating engineering, coordination, expediting, purchasing, detailing, legal, accounting, data processing or other administrative expenses shop drawings, permits, and all other job burdens incidental to the trade. It shall include all compensation for these costs including changes which involve an extension of time for completion of the work.

(3) No more than three (3) of the above percentages will be allowed on any change regardless of the number of subcontractor tiers involved. That is, the markup on work subcontracted will be limited to one (1) overhead and one (1) profit percentage in addition to the general contractor's commission. Commission is defined to include all field and office overhead and profit of the general contractor. Subcontractors are not allowed to take a commission, overhead or profit on work subcontracted by them.

(4) On changes involving a net decrease in total contract price, a credit to AAFES for overhead, profit, and (when applicable) commission, will be computed using the rates proposed by the contractor in their initial proposal.

b. The contractor will submit an itemized breakdown for each change that will include, but is not limited to, the following. Itemized breakdowns will normally not be required for changes under \$2,500 and not involving time extensions. AAFES reserves the right to require cost breakdowns below \$2,500 if deemed necessary by the contracting officer.

- (1) Material and supplies - quantities and unit prices.
- (2) Equipment (refer to "c" below).
- (3) Labor costs - by trade.
- (4) Taxes - except Social Security Taxes.
- (5) Overhead.
- (6) Profit.
- (7) Commission.

c. The rates payable for equipment will not exceed the rates established in the Corps of Engineer's manual titled: "Construction Equipment Ownership and Operating Expenses Schedule" current edition for the region in which the work occurs.

38. MODIFICATION (SEP 91). This contract may not be modified orally. Any modification must be accomplished with the same formalities as are required for the execution of this contract.

39. MODIFICATION PROPOSALS/PRICE BREAKDOWN (DEC 97). The contractor, in connection with any proposal he/she makes for a contract modification, shall furnish a price breakdown, itemized as required by the contracting officer. Itemized breakdowns will normally not be required for changes under \$2,500 and not involving time extensions. AAFES reserves the right to require cost breakdowns below \$2,500 if deemed necessary by the contracting officer. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract and overhead costs, as well as profit; and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefore shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by the contracting officer.

40. DISPUTES (OCT 95).

a. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

b. "Claim" as used in this clause means a written demand or written assertion by one of the contracting parties seeking the payment of money in a sum certain or other relief arising under or relating to this contract. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Contract Disputes Act.

c. A claim by the contractor shall be made in writing and, unless otherwise stated in this contract, submitted within six years after accrual of the claim to the contracting officer for a written decision. A claim by the government against the contractor shall be made by a written decision by the contracting officer.

d. For contractor claims exceeding \$100,000, the contractor shall submit with the claim a signed certification that:

- (1) The claim is made in good faith;
- (2) Supporting data are accurate and complete to the best of the contractor's knowledge and belief, and
- (3) The amount requested accurately reflects the contract adjustment for which the contractor believes AAFES is liable.

e. The claim must be executed by an individual with authority to bind the contractor.

f. The contracting officer will mail or otherwise furnish a written decision in response to a contractor claim, within the time periods specified by law. Such decision will be final and conclusive unless:

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

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

g. Pending final resolution on any request for relief, claim, appeal, or action arising under or relating to this contract, contractor will proceed diligently with the performance of this contract and will comply with the contracting officer's decisions.

h. Submission of false claims to AAFES is a violation of federal law and may result in civil and/or criminal penalties. If contractor cannot support all or part of its claim as a result of fraud or misrepresentation of fact, then in addition to other remedies or penalties provided for by law, contractor will pay AAFES an amount equal to the unsupported part of the claim and all AAFES' costs attributable to reviewing that part of the claim.

41. TERMINATION FOR DEFAULT-DAMAGES FOR DELAY-TIME EXTENSIONS (SEP 91).

a. If the contractor breaches any provision of this contract or refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will ensure its completion within time specified in this contract, or any extensions thereof, or fails to complete said work within such time, AAFES may, by written notice to the contractor, terminate his/her right to proceed with the work or such part of the work as to which there has been delay. In such event, AAFES may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances and plant as may be on the site of the work and necessary therefore. Whether or not the contractor's right to proceed with the work is terminated, he/she and his/her sureties shall be liable for any damage to AAFES resulting from his/her refusal or failure to complete the work within the specified time. Such damages will consist of, but not be limited to:

(1) Loss of net profit on programmed retail sales for the period of time delayed beyond contract completion date.

(2) Inspection costs for period of time delayed beyond contract completion date.

(3) Travel and per diem costs of AAFES employees for inspection visits beyond contract completion date.

(4) Cost incurred for rescheduling delivery of AAFES-furnished equipment; i.e., storage costs incurred, moving charges incurred and/or increased cost of equipment due to delayed purchasing.

b. If fixed and agreed liquidated damages are provided in the contract and if AAFES so terminates the contractor's right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned by AAFES in completing the work.

c. If fixed and agreed liquidated damages are provided in the contract and if AAFES does not so terminate the contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

d. The contractor's right to proceed shall not be so terminated nor the contractor charged with the resulting damage if:

(1) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the U.S. Government in either its sovereign or contractual capacity, act of AAFES, acts of another contractor in performance of a contract with AAFES or the U.S. Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the contractor and such subcontractors or suppliers at any tier; and

(2) The contractor, within 10 days from the beginning of any such delay (unless the contracting officer grants a further period of time before the date of final payment under the contract), notifies the contracting officer in writing of the causes of delay. The contracting officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his/her judgment, the findings of fact justifies such an extension, and his/her findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the "Disputes" clause of this contract.

e. If, after notice of termination of the contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the "Termination for Convenience of AAFES" clause of this contract.

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

42. NONWAIVER OF DEFAULTS (SEP 91). Any failure by AAFES 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 AAFES' right at any time to avail itself of such remedies as it may have for any breach or breaches of such terms or conditions.

43. TERMINATION FOR CONVENIENCE OF AAFES (SEP 91).

a. The performance of work under this contract may be terminated by AAFES in accordance with this clause in whole, or from time to time in part, whenever the contracting officer shall determine that such termination is in the best interest of AAFES. Any such termination shall be effected by delivery to the contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

b. After receipt of a Notice of Termination, and except as otherwise directed by the contracting officer, the contractor shall:

(1) stop work under the contract on the date and to the extent specified in the Notice of Termination;

(2) place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of work under the contract as is not terminated;

(3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(4) assign to AAFES, in the manner, at the times, and to the extent directed by the contracting officer, all of the right, title and interest of the contractor under the orders and subcontracts so terminated, in which case AAFES shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(5) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the contracting officer, to the extent he/she may require, which approval or ratification shall be final for all the purposes of this clause;

(6) transfer title to and deliver to AAFES, in the manner, at the times, and to the extent, if any, as directed by the contracting officer (a) the fabricated or unfabricated parts, work in process, completed work, supplies and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (b) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to AAFES;

(7) use his/her best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the contracting officer, any property of the types referred to in subparagraph "b(6)" above, provided, however, that the contractor: (a) shall not be required to extend credit to any purchaser, and (b) may acquire any such property under the conditions prescribed by and at a price or prices approved by the contracting officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by AAFES to the contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the contracting officer may direct;

(8) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(9) take such action as may be necessary, or as the contracting officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the contractor and in which AAFES has or may acquire an interest.

c. After receipt of a Notice of Termination, the contractor shall submit to the contracting officer his/her termination claim, in the form and with the certification prescribed by the contracting officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the contracting officer, upon request of the contractor made in writing within such one-year period or authorized extension thereof. However, if the contracting officer determines that the facts justify such action, he/she may receive and act upon any such termination claim at any time after such one-year period or any extension thereof. Upon failure of the contractor to submit its termination claim within the time allowed, the contracting officer may determine, on the basis of information available, the amount, if any, due to the contractor by reason of the termination and shall thereupon pay to the contractor the amount so determined.

d. Subject to the provisions of subparagraph "c," the contractor and the contracting officer may agree upon the whole or any part of the amount or amounts to be paid to the contractor by reason of a total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done: provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the contractor shall be paid the agreed amount. Nothing in subparagraph "e" of this clause, prescribing the amount to be paid to the contractor in the event of failure of the contractor and the contracting officer to agree upon the whole amount to be paid to the contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the contractor pursuant to this subparagraph "d."

e. In the event of the failure of the contractor and the contracting officer to agree, as provided in subparagraph "d", upon the whole amount to be paid to the contractor by reason of the termination of work pursuant to this clause, AAFES, but without duplication of any amounts agreed upon in accordance with subparagraph "d", shall pay to the contractor the following amounts:

(1) with respect to all contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of:

(a) the cost of such work; except that part of the cost of work which is attributable to overhead (including bonding and insurance costs) will not exceed 12% of the total of this amount.

(b) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in subparagraph "b(5)" above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under this contract, which amounts shall be included in the cost on account of which payment is made under subdivision "(s)" above; and a sum, as profit on subdivision "(a)" above, equal to two percent of that part of the cost determined under subdivision "(a)" which represents the cost of articles or materials delivered to the site but not yet incorporated in the project, as of the effective date of the Notice of Termination, plus a sum equal to eight percent of the balance of the amount determined under subdivision "(a)" above, except that the total of such sums shall not exceed six percent of the total of the cost of the work as determined under "(a)" above; however, no profit shall be allowed on that part of the cost of the work, if any, that represents any charges for interest or borrowing; and finally, if it appears that the contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision "(c)" and an appropriate adjustment shall be made reducing the amount of settlement to reflect the indicated rate of loss; and

(2) the reasonable cost of preservation and protection of property incurred pursuant to subparagraph "b (9)", hereof; and any other reasonable cost incidental to termination of work under this contract, including expense incidental to the determination of the amount due to the contractor as the result of the termination of work under this contract. The total sum to be paid to the contractor under subparagraph "e (1)" above shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that AAFES shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the contractor as provided in subparagraph "e (1)", the fair value, as determined by the contracting officer, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to AAFES, or to a buyer pursuant to subparagraph "b (7)".

f. The contractor shall have the right of appeal under the clause of this contract entitled "Disputes," from any determination made by the contracting officer under subparagraphs "c", "e" or "h" hereof, except that if the contractor has failed to submit his/her claim within the time provided in subparagraphs "c" or "h" hereof, and has failed to request extension of such time he/she shall have no such right of appeal. In any case where the contracting officer has made a determination

of the amount due under subparagraphs "c", "e" or "h" hereof, AAFES shall pay to the contractor the following: (1) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the contracting officer; or (2) if an appeal has been taken, the amount finally determined on such appeal.

g. In arriving at the amount due the contractor under this clause there shall be deducted: (1) all unliquidated partial or progress payments or other unliquidated payments on account theretofore made to the contractor, applicable to the termination portion of this contract; (2) any claim which AAFES may have against the contractor in connection with this contract; and (3) the agreed price for, or the proceeds of sale of, any materials, supplies or other things acquired by the contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to AAFES.

h. If the termination hereunder be partial, the contractor may file with the contracting officer a claim for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the contractor for an equitable adjustment under this clause must be asserted within 90 days from the effective date of the termination notice, unless an extension is granted in writing by the contracting officer.

i. AAFES may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against cost incurred by the contractor in connection with the terminated portion of this contract whenever in the opinion of the contracting officer the aggregate of such payments shall be within the amount to which the contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the contractor to AAFES upon demand, together with interest computed at the rate of ten percent per annum, for the period from the date such excess payment is received by the contractor to the date on which such excess is repaid to AAFES; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the contractor's claim by reason of retention or other disposition of termination inventory until 10 days after the date of such retention or disposition, or such later date as determined by the contracting officer by the reason of the circumstances.

j. Costs claims, agreed to, or determined pursuant to subparagraphs "c", "d", "e" and "h" hereto, shall be in accordance with Part 31 of the Federal Acquisition Regulation (FAR) as in effect on the date of this contract.

k. Unless otherwise provided for in this contract, or by applicable statute, the contractor shall, from the effective date of termination until the expiration of three years after final settlement under this contract, preserve and make available to AAFES at all reasonable times at the office of the contractor, but without charge to AAFES, all his books, records, documents and other evidence bearing on the costs and expenses of the contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the contracting officer, photographs, microphotographs or other authentic reproductions thereof.

44. SUSPENSION OF WORK (SEP 91).

a. The contracting officer may order the contractor in writing to suspend, delay or interrupt all or any part of the work for such period of time as he/she may determine to be appropriate for the convenience of AAFES.

b. If the performance of work is suspended, delayed, or interrupted by an act of the contracting officer for an unreasonable period of time or by the contracting officer's failures to act within a reasonable time or constructive suspension which results in an increase in the specified construction period, an adjustment will be made for any increase in the cost of performance of this contract (excluding profit as set forth herein). However, no adjustment will be made under this clause for any suspension, delay or interruption to the extent (1) that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the contractor, or (2) for which an adjustment is provided for or excluded under any other provision of this contract.

c. The amount payable for home office overhead will not exceed the amount established by the following formula:

Amount of contract at award X 4%	==	Per Calendar day home office overhead rate
_____	_____	
Performance period specified in contract at time of award		

d. The amount payable for field overhead will be based on the actual payrolls, costs of equipment made idle (the rate will not exceed rates established in the Corps of Engineer's manual titled "Construction Equipment Ownership and Operating Expenses Schedule") and by actual invoices reflecting cost. No overhead figure will be paid for small tools. If work is suspended, delayed, or interrupted in part the extended overhead will be prorated by the contracting officer based on the actual versus the planned progress considering the reason for suspension.

45. PAYMENTS (OCT 98).

a. Payment By Electronic Funds Transfer (Oct 98). The following will apply for all payments made by AAFES to the contractor under the terms of this contract.

(1) Method of payment.

(a) All payments by AAFES under this contract shall be made by electronic funds transfer (EFT). The term "EFT" refers to the funds transfer and may also include the payment information transfer.

(b) If AAFES is unable to release payment by EFT, the Contractor agrees to either (i) accept payment by check or some other mutually agreeable method of payment, or (ii) request AAFES to extend the payment due date until such time as AAFES can make payment by EFT.

(2) AAFES shall make payment to the Contractor using the EFT information provided by the contractor. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to AAFES, not less than thirty days prior to the effective date.

(3) If the Contractor's EFT information in the AAFES database is incorrect AAFES need not make payment to the Contractor under this contract until correct EFT information is entered into the AAFES database; and any invoice shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract.

(4) If the Contractor has identified multiple payment receiving points in the AAFES database, and the Contractor has not notified AAFES of the payment receiving point applicable to this contract, AAFES shall make payment to the first payment receiving point listed in the AAFES database.

(5) The payment or disbursing office shall forward to the Contractor available payment information. AAFES shall send the payment information to the remittance address contained in the AAFES database.

b. Progress Payments.

(1) A contractor may submit no more than one request for progress payments each month. The original request must be sent to the contracting officer, and complete copies of the request, with all supporting documentation, must simultaneously be provided to the AAFES agents (specified by the contracting officer to perform contract surveillance, (e.g., on-site A/E inspector and A/E's home office), and to the contractor's surety(s) for contracts over \$25,000.

(2) To be considered proper for payment purposes, each progress payment request must:

(a) be submitted on the American Institute of Architects (AIA) Application and Certificate of Payment/Forms G702 and G702A, unless other forms are authorized in writing by the contracting officer. The monthly payment request must include the information specified on the authorized forms and must always include a breakdown of the total contract price, showing the price for each principal category of work and the percentage of completion of each category as of the date of payment request. Reasonable quantities of approved material delivered to the site for incorporation into the project may be considered in submitting a request for progress payment. AAFES reserves the right to reject such material after payment is made for it in the event the material does not conform to contract requirements. If the contractor submits a request which includes material delivered to the site and if AAFES pays (less retainage) for the material, title to 100% of the material included in the request will pass to AAFES. Preparatory work and material delivered off-site cannot be considered in submitting a request for progress payment, unless the contracting officer gives the contractor written permission;

(b) contain the complete mailing address where payment is to be sent, and the name, title, and phone number of the contractor's authorized representative; AND contain the following certification, signed by the contractor's authorized representative:

"I hereby certify, to the best of my knowledge and belief, that-
the amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
payments to subcontractors and suppliers have been made from any previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of the Prompt Payment Act, Chapter 39, Title 31, United States Code; and this request for payment does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract."
_____ (Signature, Name, Title, and Date)

(3) The contracting officer, or others on behalf of the contracting officer, may request additional information or evidence verifying the contractor's payment request before determining that a payment request is proper.

(4) Any request for progress or final payment which is determined to be improper by the contracting officer will be mailed or otherwise returned to the contractor within 7 calendar days after receipt, with a statement identifying the defects in the request. In the event AAFES takes more than 7 calendar days to return an improper request, the number of days available to AAFES to make timely payment after it has received a corrected, proper request will be reduced by the number of calendar days over 7 which it took AAFES to return the improper request.

(5) Upon receipt of a proper request for progress payment, that is, a request which meets all procedural/format requirements set forth above, the contractor is entitled to receive a progress payment (less retainage) in accordance with the provisions in the Date of Payment paragraphs below. Nevertheless, even if a payment request is procedurally proper, the amount of any progress payment made as a result of a proper request is discretionary with the contracting officer, based upon his/her reasonable evaluation of the quantity of work performed by the contractor, whether such work on the contact up to that point meets contract requirements, and other relevant factors. After receiving a procedurally proper request for progress payment, the contracting officer may, in his discretion, pay only that portion of the amount requested as he/she has determined should appropriately be paid.

(a) The contracting officer may consider information from any source available in determining whether a request is proper and the amount which should be paid. If the contractor's surety(s) fails to object to the contractor's request for progress payment within 7 calendar days, this will be construed as agreement by the surety(s) that the request accurately reflects progress on the job.

(b) The contracting officer's determination to make payment pursuant to a request for progress payment does not release the contractor from the obligation to comply with all contract terms, nor does it imply "acceptance" of the work in terms of contract performance.

c. Retainage. Ten percent will be withheld as retainage from any net amount which the contracting officer determines is appropriate for a progress payment. The contracting officer may increase retainage if it appears AAFES may have a claim against the contractor arising under the contract, pending final resolution or a contracting officer's final decision. When the work is substantially complete, the contracting officer may, at his/her discretion, retain any amount required for the protection of AAFES and shall release the balance.

d. Final Payment. Final payment will be made after:

(1) completion of all contract performance, including all punch list items;

(2) submission of all manuals, warranties, as-built drawings, and other required submissions in acceptable form, as required by the contract specifications;

(3) final inspection and acceptance by AAFES; and

(4) submission of a proper request for final payment with appropriate release of all claims against the U.S. Government and AAFES arising under the contract, other than claims that have been filed in writing with the contracting officer and that are specifically excepted by the contractor from release. A proper request for final payment must meet the requirements set out above in paragraph a. for requests for progress payments and contain an additional certification that the requirements set out above in paragraph c. (1) through (3) have been met.

e. Date of Payment. Payment of progress payments and final payment will be made no later than 30 calendar days after receipt by the contracting officer of a proper request, as set out in the above paragraphs. The date of payment is the date on the check issued in payment or the date an electronic transfer is made.

f. Interest.

(1) AAFES will pay interest to the contractor as required by the Prompt Payment Act if the contractor complies with the above paragraphs but payment is made later than 30 days after receipt of a proper request for payment, provided that no interest is payable under the Prompt Payment Act for periods of time when there is a disagreement between AAFES and the contractor over issues concerning compliance with the terms of the contract.

(2) When interest is owed under the Prompt Payment Act, it will accrue beginning the day after the due date through the payment date, or until one year, or until the contractor files a proper certified claim under the Disputes Clause of the contract, whichever occurs first.

g. Unearned Amounts Paid to Contractor.

(1) Contractor will pay interest to AAFES as specified in the Prompt Payment Act for amounts requested and paid under the contract provisions, when the payment requested and paid exceeded the amount which the contractor was authorized to request under the contract.

(2) Interest will be payable from the date of the AAFES payment until the overpayment is received from contractor, payment is made by AAFES of a reduced amount reflecting the erroneous request for payment by contractor, or the contract performance deficiency is corrected, if appropriate.

h. Required Subcontract Clauses

(1) Contractor agrees to include in each of its subcontracts for property or services, entered into for the purpose of performing this AAFES contract, the following subcontract clauses, as further specified in the Prompt Payment Act, 31 U.S.C. 3901, et seq., as amended:

(a) a payment clause which obligates the contractor to pay all subcontractors, including materialmen, for satisfactory performance not later than 7 calendar days after receipt of payment from AAFES out of such amounts as are paid to the contractor under this AAFES contract;

(b) an interest penalty clause which obligates the contractor to pay to each subcontractor an interest penalty for each payment not made in accordance with the payment clause for the time period and at the rate specified in the Prompt Payment Act; and

(c) a clause requiring each subcontractor to include, in each of its subcontracts, payment and interest penalty clauses conforming to the same standards referenced in subsections a and b above and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor.

(2) The Prompt Payment Act requires AAFES to require the contractor to comply with additional requirements as set forth in the Act. Contractor promises to comply with these requirements, which include but are not limited to:

(a) providing specified notices and requiring its subcontractors to provide such notices when payment is to be withheld by the contractor from a subcontractor or by a subcontractor from a lower-tier subcontractor;

(b) providing specified notices and taking action, to include payment of interest to AAFES, in the event that the contractor receives an unauthorized payment, as when the contractor receives payment for work which it later determines was not in accordance with the contract terms.

(3) Nothing in this contract shall be deemed to entitle subcontractors, materialmen, or lower-tier subcontractors or materialmen to rights as third-party beneficiaries of the contract between AAFES and the prime contractor. AAFES will incur no liability to subcontractors or materialmen of any tier in the event that AAFES fails to pay the prime contractor, the prime contractor fails to pay subcontractors or materialmen, or subcontractors fail to pay lower-tier subcontractors or materialmen in accordance with the subcontract clauses required in paragraph g above.

46. FINAL INSPECTION AND ACCEPTANCE (SEP 91).

- a. Upon completion of the work, contractor shall notify AAFES. Upon receipt of such notice, AAFES shall have a reasonable time within which to inspect the work for compliance with the plans, specifications and drawings. Such inspection may, at request of contractor, be accomplished in conjunction with contractor's representatives. Upon completion of the inspection, AAFES shall execute a certificate of inspection and acceptance. The certificate shall expressly state any exceptions covering incomplete or deficient work.
- b. Correction of Defects. In the event the certificate of inspection and acceptance shall contain findings and exceptions covering incomplete or defective work or noncompliance with specifications, contractor agrees to make good all such defective or bad work or material within a reasonable time, as determined by the contracting officer, without any further cost or expense to AAFES. In case the contractor fails or refuses to correct the defects in work or material, after notice, within the time as determined by the contracting officer, AAFES may correct such defects, and the cost and expense incurred in such a case shall be borne by the contractor and shall be deducted from any payments due contractor.
- c. Use and Possession Prior to Completion. AAFES shall have the right to take possession of or use any completed or partially completed part of the work. Prior to such possession or use, the contracting officer shall furnish the contractor an itemized list of work remaining to be performed or corrected on such portions of the project as are to be possessed or used by AAFES, provided that failure to list any item of work shall not relieve the contractor of responsibility for compliance with the terms of the contract. Such possession or use shall not be deemed an acceptance of any work under the contract. While AAFES has such possession or use, the contractor, notwithstanding the provisions of the clause of this contract entitled "Permits and Responsibilities," shall be relieved of the responsibility for the loss or damage to the work resulting from AAFES' possession or use. If such prior possession or use by AAFES delays the progress of the work, or causes additional expense to the contractor, an equitable adjustment in the contract price or the time of completion will be made and the contract shall be modified in writing accordingly.
- d. Final inspection and acceptance will be in accordance with the provision of Clause 33.c. Acceptance shall be final and conclusive except as regards to intent defects, departures from specific requirements of the contract, and the specifications and drawings made a part thereof, fraud, or such gross mistakes as amounts to fraud. Nothing contained in this paragraph shall in any way restrict AAFES' rights under any warranty.

47. DRUG-FREE WORKPLACE (AUG 92). Contractor agrees to make a good faith effort to establish and maintain a drug-free workplace in connection with the performance of this contract. Consistent with the size and organization of its workforce, contractor may wish to consider taking the following or other appropriate actions in establishing a drug-free workplace: publicizing a drug-free workplace policy; initiating an employee drug awareness program or encouraging participation in existing community/installation programs; informing employees of the general availability of drug counseling programs.

48. WARRANTY OF CONSTRUCTION (SEP 91).

- a. In addition to any other warranties set out elsewhere in this contract, the contractor warrants that work performed under this contract conforms to the contract requirements and is free of any defect of equipment, material or design furnished, or workmanship performed by the contractor or any of its subcontractors or suppliers at any tier. Such warranty shall continue for a period of one year from the date of final acceptance of the work, but with respect to any part of the work which AAFES takes possession of prior to final acceptance, such warranty shall continue for a period of one year from the date AAFES takes possession. Under this warranty, the contractor shall remedy at contractor's own expense any such failure to conform or any such defect. In addition, the contractor shall remedy at contractor's own expense any damage to AAFES or government owned or controlled real or personal property, when that damage is the result of the contractor's failure to conform to the contract requirements or any such defect of equipment, material, workmanship, or design. The contractor shall also restore any work damaged in fulfilling the terms of this clause. The contractor's warranty with respect to work repaired or replaced hereunder will run for one year from the date of such repair or replacement.
- b. AAFES shall notify the contractor in writing within a reasonable time after the discovery of any failure, defect, or damage.
- c. Should the contractor fail to remedy any failure, defect, or damage described in subparagraph "a" above within a reasonable time after receipt of notice thereof, AAFES shall have the right to replace, repair, or otherwise remedy such failure, defect, or damage at the contractor's expense.

d. In addition to the other rights and remedies provided by this clause, all subcontractors', manufacturers', and suppliers' warranties, express or implied, respecting any work and materials, shall at the direction of AAFES, be enforced by the contractor for the benefit of AAFES. In such case if the contractor's warranty under subparagraph "a" above has expired, any suit directed by AAFES to enforce a subcontractor's, manufacturer's or supplier's warranty shall be at the expense of

AAFES. The contractor shall obtain any warranties which the subcontractors, manufacturers or suppliers would give in normal commercial practice.

e. If directed by the contracting officer, the contractor shall require any such warranties to be executed in writing to either AAFES or the government.

f. Notwithstanding any other provision of this clause, unless such a defect is caused by the negligence of the contractor or its subcontractors or suppliers at any tier, the contractor shall not be liable for the repair of any defects of material or design furnished by AAFES nor for the repair of any damage which results from any such defect in AAFES-furnished material or design.

g. The warranty specified herein shall not limit AAFES' right under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistake, or fraud.

h. Defects in design or manufacture of equipment specified by AAFES on a "brand name and model" basis, shall not be included in this warranty. The contractor shall require any subcontractors, manufacturers or suppliers thereof to execute their warranties in writing directly to either AAFES or the government as directed by the contracting officer.

49. DAVIS-BACON ACT (SEP 91). (Applicable to contracts in excess of \$2,000 for work within the 50 United States and the District of Columbia.)

a. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section I (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of subparagraph "g." of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed without regard to skill, except as provided in the clause entitled "Apprentices and Trainees." Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph "b." of this clause) and the Davis-Bacon poster (WH-132) shall be posted at all times by the contractor and his or her subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

c. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator of the Wage and Hour Division, or an authorized representative, will approve, modify or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30- day period that additional time is necessary.

d. In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer to the Administrator for determination. The Administrator of the Wage and Hour Division, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

e. The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs "c" or "d" of this clause, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

f. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

g. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the contractor, that applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

h. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

i.

(1) By entering into this contract, the contractor certifies that neither he nor she nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded government contracts by virtue of the Davis-Bacon Act (29 CFR 5. 12(a)(1)).

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a government contract by virtue of the Davis-Bacon Act (29 CFR 5. 12(a)(1)).

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

j. Subparagraphs "a" through "i" of this clause shall apply to this contract to the extent that it is (1) a prime contract with the government subject to the Davis-Bacon Act, or (2) a subcontract also subject to the Davis-Bacon Act under such prime contract.

50. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT - OVERTIME COMPENSATION (SEP 91). (Applicable to contracts in excess of \$2,000 for work performed within the United States and its territories.)

a. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

b. In the event of any violation of the provisions set forth in subparagraph "a" of this clause, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor or subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the provisions set forth in subparagraph "a" of this clause, in the sum of \$10 for each calendar day for which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in subparagraph "a" of this clause.

c. The contracting officer shall upon his/her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or

subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in subparagraph "a" of this clause.

d. The contractor or subcontractor shall insert in any subcontracts the provisions set forth in subparagraphs "a" through "d" of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provision set forth in subparagraph "a" through "d" of this clause.

51. APPRENTICES AND TRAINEES (SEP 91). (Applicable to contracts for work performed within the United States.)

a. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to an individual registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. When a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination of the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

52. COMPLIANCE WITH COPELAND ACT REQUIREMENTS (SEP 91). The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

53. PAYROLLS AND BASIC RECORDS (SEP 91). (Applicable to contracts in excess of \$2,000 for work within the United States.)

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section (b) 2(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under subparagraph "g" of the clause entitled "Davis-Bacon Act" that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section I (b) 2(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprenticeships and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting officer if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the contracting officer. The payrolls submitted shall set out accurately all of the information required to be maintained under subparagraph "a" of this clause. The information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents, Government Printing Office. The contractor is responsible for the submission of copies of payrolls by all subcontractors.

c. Each payroll submitted shall be accomplished by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under subparagraph "a" of this clause and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

d. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph "c" of this clause.

e. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

f. The contractor or subcontractor shall make the records required under paragraph "a" of this clause available for inspection, copying, or transcription by the contracting officer or the Department of Labor or their authorized representatives. The contractor and subcontractor shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the contracting officer may, after written notice to the contractor, take such action as may be necessary to cause suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

54. WITHHOLDING (SEP 91). (Applicable to contracts in excess of \$2,000 for work performed within the United States.)

The contracting officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, so much of the accrued payments or advances as may be

considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting officer may, after written notice to the prime contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

55. SUBCONTRACTS (SEP 91). (For contracts to be performed outside the United States, its possessions and Puerto Rico, subparagraph "a" hereof is not applicable.)

a. Within seven days after the award of any subcontract either by the contractor or his subcontractor, the contractor shall deliver to the contracting officer a statement setting forth the name and address of the subcontractor and a summary description of the work subcontracted. The contractor shall at the same time furnish a statement signed by the subcontractor acknowledging inclusion in his subcontract of the clauses of this contract entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act--Overtime Compensation, Apprentices and Trainees," "Payrolls and Basic Records," "Compliance With Copeland Act Requirements," "Withholding," "Subcontracts," "Contract Termination-Debarment" and "Disputes Concerning Labor Standards." The contractor or subcontractor shall insert these clauses and such other clauses as the contracting officer may by appropriate instructions require in any subcontracts. A clause requiring the subcontractors to include these clauses in any lower tier subcontracts is also required. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited above.

b. Required Subcontract Conditions. Contractor shall provide in all subcontracts in addition to those heretofore required, the following terms and conditions:

- (1) That all material and labor will be paid for by contractor only and not AAFES;
- (2) Subcontractor will not attempt to hold AAFES liable in the event contractor defaults;
- (3) Subcontractor will not place in lien and waives a lien on all material and labor furnished to contractor and incorporated in the work on AAFES or government premises.

c. Nothing contained in this contract shall create any contractual relation between the subcontractor and AAFES.

56. CONTRACT TERMINATION-DEBARMENT (SEP 91). A breach of the contract clauses entitled "Davis-Bacon Act," "Contract Work Hours and Safety Standards Act--Overtime Compensation," "Apprentices and Trainees, Payrolls and Basic Records," may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

57. DISPUTES CONCERNING LABOR STANDARDS (SEP 91). (Applicable to contracts in excess of \$2,000 for work performed within the United States.) Disputes arising out of the labor standards provisions of the contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of his or her subcontractors) and the AAFES, the U.S. Department of Labor or the employees or their representatives.

58. CONVICT LABOR (SEP 91). In connection with the performance of work under this contract, the contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 U.S.C. 4082(c)(2)) and Executive Order 11755, December 29, 1973, 12608 and 12943.

59. AFFIRMATIVE ACTION FOR INDIVIDUALS WITH DISABILITIES (NOV 09). If the contract or the total of all orders issued during a calendar year equals or exceeds \$10,000 and is not otherwise exempt, the contractor agrees to comply with the regulations of the Department of Labor and the Affirmative Action clause as set forth in Title 41, Code of Federal Regulation, Part 60-741, which are incorporated herein by reference.

60. AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (SEP 91). If this contract equals or exceeds \$10,000 and is not otherwise exempt, the contractor agrees to comply with the regulations of the Department of Labor and the Office of Federal Contract Compliance Program, and the Affirmative Action clause as set out in Title 41, Code of Federal Regulations, Part 60-250, which are incorporated herein by reference.

61. EQUAL OPPORTUNITY (SEP 91).

a. If this contract exceeds \$10,000 and is for work performed within the United States or exceeds \$10,000 and is for work performed outside the United States and recruitment of workers within the United States is involved, during the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include but not be limited to the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this Equal Opportunity clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and by the rules, regulations and orders of the Secretary of Labor or pursuant thereto, and will permit access to his/her books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the contractor's noncompliance with the Equal Opportunity clause of this contract or with any of said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part, and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs "(1)" through "(7)" in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

b. Certification of Equal Employment Compliance. By acceptance of this contract, the contractor certifies that, to the best of its knowledge and belief up to the contract date, no written notice such as a show cause letter, a letter indicating probable cause or any other formal written notification citing specific deficiencies, has been recalled by the contractor from any Federal Government agency or representative thereof that the contractor or any of its divisions or affiliates or known first-tier subcontractors is in violation of any of the provisions of Executive Order 11246 of September 24, 1965, Executive Order 11375 of October 13, 1967, or rules and regulations of the Secretary of Labor (41 CFR, Chapter 60) and specifically as to not having an acceptable affirmative action compliance program or being in noncompliance with any other aspect of the Equal Employment Opportunity Program. It is further certified and agreed that should there be any change in the status of circumstances certified to above the contract date of any extension thereof the contracting officer cognizant of this contract will be notified promptly.

c. Contractor Certification of Nonsegregated Facilities. (Applicable to contracts exceeding \$10,000 which are not exempt under Clause "a" above.) By acceptance of this contract, the contractor certifies that he or she does not and will not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The contractor agrees that a breach of his certification is a violation of the Equal Opportunity clause of this contract. As used herein, the term "segregated facilities" means any waiting rooms, work areas, rest rooms, wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, religion, color, age or national origin, because of habit, local custom or otherwise. Contractor further agrees that (except where subcontractors have similarly certified for specific time periods) he/she will obtain identical certifications from proposed subcontractors prior to award of subcontracts exceeding \$10,000 which are not exempt from the provisions of Equal Opportunity clauses, that he or she will retain such certificates in his/her files; and that he or she will provide the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods): NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES(SEP 91). A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually or annually). (NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.)

d. Affirmative Action Program. If this contract is for an amount of \$50,000 or more, and the contractor has 50 or more employees, contractor by acceptance of this contract certifies that he or she has, or will within 120 days from the date of contract, develop and maintain at each of his/her establishments Equal Opportunity Affirmative Action Programs, pursuant to 41 CFR 60.2.

62. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER-11461)(SEP 91).

a. As used in these specifications:

- (1) "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- (2) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor or any person to whom the Director delegates authority;
- (3) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- (4) "Minority" includes:
 - (a) Black Americans (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (b) Hispanic Americans (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin; regardless of race);
 - (c) Asian-Indian Americans (United States citizens whose origins are in India, Pakistan or Bangladesh).
 - (d) Asian-Pacific Americans (United States citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust territory of the Pacific islands, the Northern Mariana islands, Laos, Cambodia or Taiwan).
 - (e) Native Americans (American Indians, Eskimos, Aleuts and native Hawaiians).

b. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitation from which this contract resulted.

c. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the

Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

d. The contractor shall implement the specific affirmative action standard provided in paragraphs "g (l)" through "g (16)" of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

e. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

f. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

g. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(1) Ensure and maintain a working environment free of harassment, intimidation and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

(2) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of organizations' responses.

(3) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the contractor may have taken.

(4) Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under "g (2)" above.

(6) Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual

and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

(7) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.

(8) Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to the discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

(9) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

(11) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

(12) Conduct, at least annually, an inventory and evaluation, at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(13) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(15) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.

h. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations "g (1)" through "g (16)". The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under "g (1)" through "g (16)" of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

i. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and

female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goal for women generally, the contractor may be in violation of the Executive Order if a specific minority group of women is under utilized).

j. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.

k. The contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order 11246.

l. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

m. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph "g" of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

n. The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include for each employee, the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper or laborer); dates of changes in status, hours worked per week in the indicated trade, rate of pay and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

o. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

63. NOTICE TO AAFES OF LABOR DISPUTES (SEP 91).

a. Whenever the contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the contracting officer.

b. The contractor agrees to insert the substance of this clause, including this paragraph "b" in any subcontract hereunder, except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by actual or potential labor disputes, the subcontractor shall immediately notify the next higher tier subcontractor or prime contractor, as appropriate, of all relevant information with respect to such dispute.

64. REPRESENTATIVES (SEP 91). Contractor is fully responsible for the actions of all employees and contracted representatives. Books and records of contracted representatives are subject to examination and audit under the examination of records clause of the contract.

65. RESTRICTIONS ON PURCHASES OF FOREIGN GOODS (OCT 96).

a. Unless advance written approval of the contracting officer is obtained, the contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within or that were located in or transported from or through countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries include Cuba, Iran, Iraq, Libya, and North Korea.

b. The contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the government of Iraq.

c. The contractor agrees to insert the provisions of this clause, including this paragraph (c), in all subcontracts hereunder.

66. CONTRACTOR'S GENERAL ENVIRONMENTAL COMPLIANCE (APR 97). Contractor (and any subcontractor, agent or representative) shall comply with all applicable Federal, State, and local laws and regulations providing for environmental protection and pollution control and abatement. These include but are not limited to: the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation and Liability Act, Toxic Substances Control Act, Federal Insecticide Fungicide and Rodenticide Act, Coastal Zone Management Act, Endangered Species Act, National Historic Preservation Act, Safe Drinking Water Act, Emergency Planning and Community Right-to-Know Act, Oil Pollution Act, Archeological Resources Protection Act, and Pollution Prevention Act. Contractor has the duty to determine for itself where such laws and regulations apply. Although the Contractor may request assistance from the Contracting Officer in delineating applicable environmental laws and regulations, Contractor has an independent responsibility to make its own determination and to do so in a timely fashion.

67. FINES OR PENALTIES FOR ENVIRONMENTAL NON-COMPLIANCE (APR 97). The Contractor shall be responsible for paying any fines or penalties assessed against AAFES or the installation or the Army or Air Force for environmental violations resulting from acts or omissions of the contractor or its employees, subcontractors, or agents. This obligation is in addition to any fines or penalties that may be assessed against the contractor for the same conduct. Contractor may either reimburse these fines or penalties through the Contracting Officer, or with the consent of the installation environmental management office, conveyed through the Contracting Officer, the Contractor may pay such fines or penalties directly to the regulatory agency or agencies concerned.

68. CONTRACTOR'S LIABILITY FOR ENVIRONMENTAL DAMAGES (APR 97). Contractor agrees to hold harmless and indemnify AAFES and the installation (which includes the Army, Air Force, or other Department of Defense component, as appropriate) for any and all damages of any kind resulting from environmentally harmful activities by the contractor, contractor's employees or agents or subcontractors. "Damages" includes but is not limited to personal injury, property damage (including diminution of value), or death, environmental restoration and response costs, natural resource damages, expert witness and attorney's fees, and reimbursement of any and all expenses incurred to obtain permits as a result of Contractor's failure to identify or obtain permits for itself or AAFES or the installation.

69. FEDERAL COMPLIANCE WITH RIGHT-TO-KNOW AND POLLUTION PREVENTION LAWS (APR 97). Contractor will, upon request, provide the installation with information it may need to comply with Right-to-Know and pollution Prevention laws and relevant Executive Orders. Such information may include Material Safety Data Sheets or amounts of chemicals used, stored or disposed of.

70. RECYCLED MATERIALS (APR 97). Materials used in this contract shall be, to the greatest extent practicable and consistent with financial prudence, made of recycled materials or of materials that are recyclable.

71. ASBESTOS (APR 97). Asbestos material will not be included in this project.

72. POLYCHLORINATED BIPHENYLS (PCBs) (APR 97). PCBs will not be used or included in this project.

73. LEAD-BASED PAINT (APR 97). Lead-based paint will not be included in this project.

74. OZONE-DEPLETING SUBSTANCES (APR 97).

a. Class I substance," as used in this clause, means any substance designated as class I by the Environmental Protection Agency (EPA)(40 CFR Part 82), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform.

b. "Class II substance," as used in this clause, means any substance designated as class II by EPA (40 CFR Part 82), including but not limited to, hydro chlorofluorocarbons.

c. As required by 42 USC 7671j(b), c, and (d) and 40 CFR Part 82, Subpart E, the Contractor shall label products which contain class I or class II ozone-depleting substances or are manufactured with a process that uses class I or class II ozone-depleting substances, or containers of class I or class II ozone-depleting substances, as follows:

WARNING

Contains (or manufactured with, if applicable) _____ * _____, (a) substance(s) which harm(s) public health and the environment by destroying ozone in the upper atmosphere." *The Contractor shall insert the name of the substance(s).

d. The contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 USC 7671g, National Recycling and Emission Reduction Program and 7671h, Servicing of Motor Vehicle Air Conditioners) as each or both apply to the contract.

75. CONTAMINATED SOIL OR GROUNDWATER (APR 97). Unless otherwise specified elsewhere in this contract, site has been inspected and is, consistent with best professional judgment, free of environmental contamination or pollution. However, unexpected conditions can always arise. Contractor or subcontractor personnel may encounter soil or groundwater that is suspected to be contaminated, either because of odors, colors, free liquids, or other suspicious conditions. Should this occur, contractor will immediately notify the base environmental office, and take necessary initial measures to protect workers, the site, and other personnel.

76. UNEXPLODED MUNITIONS (APR 97). No munitions or munitions-related materials are known or expected to be present on site. However, should suspected munitions-type material be encountered, contractor should immediately notify the installation environmental office and receive advice before disturbing the questionable material.

77. UNEXPECTED ARTIFACTS OR RELICS (APR 97). Should contractor employees in the course of site preparation or other work on this contract find unexpected historic or archeological remains, such as bones, arrow points, pottery remnants, foundations, or other evidence of previous uses of the site, contractor will cease further site-disturbing activity and immediately notify the installation environmental office and the contracting officer.

78. DATE COMPLIANT (DEC 04).

a. Contractor warrants that all information technology (software, hardware, micro-code, firmware, etc.) supplied under the contract are able to accurately and efficiently process date and time data including, but not limited to, calculating, comparing, and sequencing date and time data from, into, and between the twentieth and twenty-first centuries, and leap year calculations through at least 31 December 2101. The supplied information technology when used in combination with other information technology will accurately and efficiently process date and time data if the other information technology properly exchanges date and time data. No human intervention is needed to invoke the date compliance (i.e. rebooting the hardware or restarting the software). The information technology methods to be date compliant must run fault free (no abnormal exiting applications and error free results) and be transparent to the user.

b. If the Information Technology supplied under this contract relies on other Information Technology to accurately and efficiently process date and time data then the contractor must disclose this reliance before entering into any agreement or allowing any contract addition or substitution (as may be authorized by the contracting officer).

79. CHOICE OF LAW AND FORUM (MAR 2006). This contract shall be construed and interpreted in accordance with the laws of the United States of America as applied by, among others, the Armed Services Board of Contract Appeals and the United States Court of Federal Claims. By execution of this contract, the Contractor expressly agrees to waive any rights to invoke the jurisdiction of the national or state courts where this contract is performed and agrees to accept the exclusive jurisdiction of an appropriate US Federal administrative body or court.

80. PRIVACY ACT (APR 84).

a. The Contractor agrees to --

(1) Comply with the Privacy Act of 1974 (the Act) and Department of Defense rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies --

(i) The systems of records; and

(ii) The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

b. In the event of violations of the Act, a civil action may be brought against AAFES when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an AAFES function, and criminal penalties may be imposed upon the officers or employees of AAFES when the violation concerns the operation of a system of records on individuals to accomplish an AAFES function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an AAFES function, the Contractor is considered to be an employee of AAFES.

c. "Operation of a system of records," as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

d. "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

e. "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

f. The system or systems of records identified for this contract is/are:

The system of records refers to information collected, compiled, and/or utilized to build a customer database for potential and/or current/follow-on services. Instruments used to collect information in written or electronic formats include, but are not limited to, application for services, verification of credit rating, customer inquiries/comments, data for invoicing current customers, change of address notifications, information used for marketing purposes, etc.

g. Subcontracting/outsourcing customer data outside CONUS is not acceptable for DoD Operational Security (OPSEC) purposes.

81. ADVERTISEMENTS (AUG 08)

Contractor will not represent, in any manner, expressly or by implication, that products purchased under this contract are approved or endorsed by any element of the United States, including AAFES. All contractor advertisements that refer to AAFES or military exchanges will contain a statement that the advertisement was neither paid for nor sponsored, in whole, or in part, by AAFES, the military exchange system, or the United States Government.

82. PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (FEB 10)

This clause is to provide guidance concerning compliance with Homeland Security Presidential Directive (HSPD) 12 and Policy for Common Identification Standard for Contractors and Subcontractors when contract performance requires routine physical access to a Federally controlled facility and/or routine access to a Federally controlled information system. As processes and procedures could change over time, go to <http://www.aafes.com/>, click on "Doing Business with AAFES", click on EXISTING Vendors/Suppliers, and then click on the Instructions to Obtain Authorization to Enter Military Installations for the most up-to-date instructions. Questions should be directed to AAFES HQ Chief of Staff, Force Protection (CS-FP) or your Contracting Officer.

(a) After contract award and prior to performance on any Federal installation, the contractor shall comply with the local installation's personal identity verification procedures identified by that installation which implements HSPD-12 policy for a Common Identification Standard for Federal Employees and Contractors.

(1) If the contractor employee is to work at only one site, AAFES' contractors must follow local installation guidelines and directives concerning identification, access, and security requirements. These guidelines may vary from one installation to another and it is the contractor's responsibility to seek guidance concerning these issues from the Exchange Service Business Manager or General Manager.

(2) If the contractor or their employees will access sensitive data or go to multiple installations (CONUS or OCONUS), they must obtain a Common Access Card (CAC) and will be required to submit a clearance package to CS-FP, no less than 30 days in advance of needed access.

(b) The contractor shall insert this clause in all subcontracts when the subcontractor is required to have routine physical access to a Federally controlled facility and/or routine access to a Federally-controlled information system.

(c) The contractor is responsible for securing and returning to the issuing office all identification cards issued under these procedures (1) for all employees at the end of the contract; and (2) for individual employees no longer employed or no longer assigned to perform the AAFES contract.

(d) As a reminder, any costs associated with the clearance process are the responsibility of the contractor.

83. COMBATING TRAFFICKING IN PERSONS (FEB 09)

(a) Definitions. As used in this clause—

“Coercion” means—

- (1) Threats of serious harm to or physical restraint against any person;
 - (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
 - (3) The abuse or threatened abuse of the legal process.
 - (4) Withholding any documents (e.g. passports, visas, IDs, etc.) that prevents or restricts the person to move freely.
- “Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.
- “Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

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

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

- (1) By threats of serious harm to, or physical restraint against, that person or another person;
- (2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or
- (3) By means of the abuse or threatened abuse of law or the legal process.

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

- (1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or
- (2) The abuse or threatened abuse of the legal process.

“Severe forms of trafficking in persons” means—

- (1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

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

(b) Policy. The United States Government and the Army Air Force Exchange Service has adopted a zero tolerance policy regarding trafficking in persons. Contractors and contractor employees shall not—

- (1) Engage in severe forms of trafficking in persons during the period of performance of the contract;
- (2) Procure commercial sex acts during the period of performance of the contract; or
- (3) Use forced labor in the performance of the contract.

(c) Contractor requirements. The Contractor shall—

(1) Notify its employees of—

- (i) The United States Government's and the Army Air Force Exchange Services' zero tolerance policy described in paragraph (b) of this clause; and
 - (ii) The 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
- (2) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this clause.

(d) Notification. The Contractor shall inform the Contracting Officer immediately of—

- (1) Any information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy; and
- (2) Any actions taken against Contractor employees, subcontractors, or subcontractor employees pursuant to this clause.

(e) Remedies. In addition to other remedies available to the Army Air Force Exchange Service, the Contractor's failure to comply with the requirements of paragraphs (c), (d), or (f) of this clause may result in—

- (1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;
- (2) Requiring the Contractor to terminate a subcontract;
- (3) Suspension of contract or fee payments;
- (4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Army Air Force Exchange Service determined Contractor non-compliance;

- (5) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or
- (6) Suspension or debarment.
- (f) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts.
- (g) Mitigating Factor. The Contracting Officer may consider whether the Contractor had a Trafficking in Persons awareness program at the time of the violation as a mitigating factor when determining remedies. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/g/tip> .

84. GREEN CLAUSE (AUG 09)

The Army and Air Force Exchange Service (AAFES) encourages contractors/vendors to embrace, establish and promote environmentally "Green Initiatives". We look to the contractor to accomplish this by:

- (1) Where possible utilize environmentally friendly products
- (2) Where possible promote energy-efficiency and water conservation
- (3) 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)

estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is **Aberdeen Proving Grounds** located in the state of **Maryland** and is a Standard Metropolitan Statistical Area (SMSA).

EXHIBIT L

ARMY AND AIR FORCE EXCHANGE SERVICE PAYMENT BOND (SEE INSTRUCTIONS ON REVERSE)		DATE BOND EXECUTED	BOND NUMBER		
PRINCIPAL (Legal Name and Business Address)		TYPE OF ORGANIZATION ("X" ONE)			
		<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION			
SURETY(IES) (Name(s) and Business Address(es))		STATE OF INCORPORATION			
		PENAL SUM OF BOND			
		MILLION(s)	THOUSAND(s)	HUNDRED(s)	CENT(s)
		CONTRACT DATE			
		CONTRACT NO.			
<p>KNOW ALL MEN BY THESE PRESENTS, That we, the Principal and Surety(ies) hereto, are firmly bound to the Army & Air Force Exchange Service and the United States of America in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, and successors jointly and severally: Provided, that, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.</p> <p>THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into the contract identified above;</p> <p>NOW THEREFORE, if the Principal shall promptly make payment to all persons supplying labor and material in the prosecution of the the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety(ies) being hereby waived, then the above obligation shall be void and of no effect.</p> <p>IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this payment bond and have affixed their seals on the date set forth above.</p>					
PRINCIPAL					
SIGNATURE(s)	1. _____ (Seal)	2. _____ (Seal)	CORPORATE SEAL		
TYPED NAME(s) & TITLE(s)	1. _____	2. _____			
CORPORATE SURETY					
NAME & ADDRESS	STATE OF INC		LIABILITY LIMIT		
SIGNATURE(s)	1. _____	2. _____	CORPORATE SEAL		
TYPED NAME(s) & TITLE(s)	1. _____	2. _____			

AAFES FORM 4400-040 (REV APR 03) (Prev Editions Obsolete)

INSTRUCTIONS

1. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of this form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved, evidence of his authority must be furnished.
2. Corporation executing the bond as sureties must be among those appearing on the Treasury Department's list of approved sureties and must be acting within the limitations set forth therein.
3. Corporations executing the bond shall affix their corporate seals.
4. The name of each person signing this payment bond should be typed in the space provided.

Exhibit M
SECTION 01420
ENVIRONMENTAL PROTECTION

PART 1 - GENERAL

1.01 SECTION INCLUDES (Scope)

A. The work covered by this section consists of furnishing all labor, materials, and equipment and performing all work required for the prevention of environmental degradation during and as a result of construction operations under this contract. These requirements are in addition to any environmental protection requirements elsewhere in these specifications. For the purpose of this specification, environmental pollution is defined as the presence of chemical, physical, or biological elements or agents, not naturally occurring at the site, which adversely affect human health or welfare; unfavorably alter ecological balances important to human life; affect other species of importance to humans; or degrade the utility of the environment for aesthetic and recreational purposes. The control of environmental pollution by the contractor requires consideration of air, water, and land, and involves noise control, solid waste management and management of radiant energy and radioactive materials, as well as other pollutants. This section also requires the protection of cultural and historic resources.

B. Contractor shall coordinate the work of this section with the work called for under the various sections of Division 2.

1.02. CONTRACTOR'S GENERAL ENVIRONMENTAL COMPLIANCE OBLIGATIONS.

Work under this contract is to be performed on a government facility. All environmental rules applying to contractor operations elsewhere will also apply on the government facility. Contractor (and any subcontractor, agent or representative) shall comply with all applicable Federal, State, and local laws and regulations providing for environmental protection and pollution control and abatement. These include but are not limited to: the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation and Liability Act, Toxic Substances Control Act, Federal Insecticide Fungicide and Rodenticide Act, Coastal Zone Management Act, Endangered Species Act, National Historic Preservation Act, Safe Drinking Water Act, Emergency Planning and Community Right-to-Know Act, Oil Pollution Act, Archeological Resources Protection Act, and Pollution Prevention Act. Contractor has the duty to determine for itself where such laws and regulations apply. Although the Contractor may request assistance from the Contracting Officer in delineating applicable environmental laws and regulations, Contractor has an independent responsibility to make its own determination and to do so in a timely fashion.

1.03. FINES OR PENALTIES FOR ENVIRONMENTAL NON-COMPLIANCE.

The Contractor shall be responsible for paying any fines or penalties assessed against AAFES or the installation or the Army or the Air Force for violations of environmental laws or regulations resulting from acts or omissions of the contractor or its employees, subcontractors, or agents. This obligation is in addition to any fines or penalties that may be assessed against the contractor for the same conduct. Contractor may either reimburse these fines or penalties through the Contracting Officer or with the consent of the Contracting Officer, the Contractor may pay such fines or penalties directly to the regulatory agency or agencies concerned.

1.04. CONTRACTOR'S LIABILITY FOR ENVIRONMENTAL DAMAGES

Contractor agrees to hold harmless and indemnify AAFES (which includes the Army, Air Force, or other Department of Defense component, as appropriate) for any and all damages of any kind resulting from environmentally harmful activities by the contractor, contractor's employees or agents or subcontractors. "Damages" includes but is not limited to personal injury, property damage (including diminution of value), or death, environmental restoration and response costs, natural resource damages, expert witness and attorney's fees, and reimbursement of any and all expenses incurred to obtain permits as a result of Contractor's failure to identify or obtain permits for itself or AAFES.

1.05 CONTACTS WITH ENVIRONMENTAL REGULATORY OFFICIALS.

Contractor shall immediately advise the Contracting Officer and the installation environmental office of the content of all contacts with federal, state, or local environmental regulators, before, during, and after the performance of this contract concerning the performance of this contract.

PART 2 PERMITS

2.01 PERMITS FOR EQUIPMENT USED BY CONTRACTOR IN PERFORMING AAFES CONTRACTS.

For equipment used in the performance of this contract, Contractor shall obtain in Contractor's name and at no additional expense to AAFES, all permits, coordinations, certifications or other regulatory authorization necessary to perform and complete the work required by this contract under applicable environmental laws and regulations. "Applicable environmental laws and regulations" includes but is not limited to: the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Toxic Substances Control Act, Federal Insecticide Fungicide and Rodenticide Act, Coastal Zone Management Act, Endangered Species Act, National Historic Preservation Act, Safe Drinking Water Act, Emergency Planning and Community Right-to-Know Act, Oil Pollution Act, and Pollution Prevention Act and State, County, and Local laws and regulations on the same subjects.

2.02 PERMITS NEEDED FOR CONSTRUCTION, EXCAVATION, MODIFICATION, RENOVATION, DEMOLITION, INSTALLATION, OR OTHER ALTERATION OF BUILDINGS, STRUCTURES, EQUIPMENT, INSTALLATIONS, REAL PROPERTY OR SYSTEMS

Contractor shall identify all Federal, State, County, or local, permits, coordinations, certifications or other regulatory authorization requirements under all applicable environmental laws and regulations as defined in (a.) above. "This includes inspections and approvals required for connection to any Public Water Supply System." Contractor shall then prepare and submit in draft all applicable permit applications, coordinations, notices, or other required filings, together with all supporting data to the contracting officer for review. Permit applications or notifications or other documents that must be submitted by AAFES will be submitted by AAFES, and any documents that must be submitted by the contractor will be returned after review to the contractor for submission. No work requiring permit or other written authorization shall proceed before the Contractor has the permit or authorization or a copy thereof in its possession.

PART 3 MATERIALS

3.01 RECYCLED MATERIALS.

Materials used in this contract shall be, to the greatest extent practicable and consistent with financial prudence, made of recycled materials or of materials that are recyclable. Where construction debris such as concrete or asphalt or wood can be recycled, this alternative will be considered.

3.02 ASBESTOS

Asbestos will not be used or included in this project.

3.03 POLYCHLORINATED BIPHENYL'S (PCBs)

PCBs will not be used or included in this project.

3.04 LEAD-BASED PAINT

Lead-based paint will not be used included in this project.

3.05 OZONE-DEPLETING SUBSTANCES.

A. "Class I substance," as used in this clause, means any substance designated as class I by the Environmental Protection Agency (EPA)(40 CFR Part 82), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform.

B. "Class II substance," as used in this clause, means any substance designated as class II by EPA (40 CFR Part 82), including but not limited to, hydrochlorofluorocarbons.

C. As required by 42 USC 7671j(b), c, and (d) and 40 CFR Part 82, Subpart E, the Contractor shall label products which contain class I or class II ozone-depleting substances or are manufactured with a process that uses class I or class II ozone-depleting substances, or containers of class I or class II ozone-depleting substances, as follows:

"WARNING: Contains (or manufactured with, if applicable)
_____*_____, (a) substance(s) which harm(s)public health

and the environment by destroying ozone in the upper atmosphere."

*The Contractor shall insert the name of the substance(s).

D. The contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 USC 7671g, National Recycling and Emission Reduction Program and 7671h, Servicing of Motor Vehicle Air Conditioners) as each or both apply to the contract.

3.06 PESTICIDES

Except as may be specified elsewhere in this contract, Contractor will not use or apply pesticides (such as herbicides or weed-killers, insecticides, or rodenticides) without the specific written prior approval of the Contracting Officer.

PART 4 - EXECUTION (WORK PRACTICES)

4.00 GENERAL: SITE DISTURBANCE DURING CONSTRUCTION ACTIVITIES.

Contractor shall use industry-recognized best management practices to avoid creation of fugitive dust emissions and to avoid and control storm water runoff from the construction site and any temporary roads that may be used for access to it. Water sprinkling may be used to control dust. Contractor shall perform all work under this contract in such a manner that no pollutants of any kind are released into ditches, storm drains, streams, lakes, or other surface waters on or connected to the site.

4.01 PROTECTION OF WATER RESOURCES

A. General: The General Contractor shall not pollute storm drainage, streams, lakes, or reservoirs with fuels, oils, bitumens, calcium chloride, acids, construction wastes or other harmful materials or pollutants. It is the responsibility of the General Contractor to determine and comply with all applicable federal, state, regional, municipal, and other regulations.

B. Spillage: The General Contractor shall take special measures to prevent chemicals, fuels, oils, greases, bituminous materials, waste washings, herbicides, cement, and surface drainage from entering public waters. In the event of a spill, the contractor must make all required notifications to federal, state or local authorities and will notify the Contracting Officer immediately.

C. Washing and Curing Water: Water used in aggregate processing, concrete curing, foundation, and concrete lift clean-up and other waste water shall not be allowed to enter the storm drainage system.

4.02 PROTECTION OF LAND RESOURCES

A. General: It is intended that the land resources within the project boundaries and outside the limits of permanent work performed under this contract be preserved in their present condition or be restored to a condition after completion of construction that will appear to the natural and not detract from the appearance of the project. The General Contractor shall limit his construction activities to areas defined by the Drawings or Specifications.

B. Prevention of Landscape Defacement: Except in areas marked on the plans to be cleared, the General Contractor shall not deface, remove, cut, injure or destroy trees or shrubs without specific written authority. Trees designated to be saved shall be protected from either excavation or filling within the root zone. No ropes, cables, or guys shall be fastened or attached to any existing trees for anchorage unless specifically authorized by the Contracting Officer. The General Contractor shall in any event be responsible for any damage resulting from such use.

C. Restoration of Landscape Damage: Any trees or other landscape features scarred or damaged by the General Contractor's equipment or operations shall be restored as nearly as possible to the original condition at the General Contractor's expense. The Contracting Officer will decide what method of restoration shall be used, and whether damaged trees shall be treated and healed or removed and disposed of under requirements for clearing and grubbing (Section 02102). All scars made on trees not designated on the plans to be removed by equipment construction operations, or by the removal of limbs larger than 1-inch in diameter shall be coated immediately with an approved tree wound dressing. All trimming or pruning shall be performed in an approved manner by experienced landscape personnel. Tree trimming with axes shall not be permitted. Trees that are to remain, either within or outside established clearing limits, that are subsequently damaged by the General Contractor and are beyond saving in the opinion of the Contracting Officer, shall be immediately removed and replaced with a nursery-grown tree of the same species.

4.03 CONTROL OF AIR EMISSIONS.

Contractor's actions shall conform to all federal, state, and local requirements for the control of air emissions during work under this contract. Trucks leaving the site will be brushed or washed to remove all practicable amounts of dust or other material that may become airborne. Contractor will ensure that all internal construction vehicles and equipment used will have the lowest practicable emissions characteristics and be maintained in optimum operating condition for the reduction of air emissions. Where use of electric motors instead of internal combustion engines is feasible, electric motors will be used during construction.

PART 5 WASTE DISPOSALS

5.00 POLLUTION PREVENTION & WASTE DISPOSAL.

The contractor should use prior planning to find those materials that will minimize the creation of waste in general and hazardous waste in particular. Recycling should be considered and implemented at every practicable stage of the project.

5.01 WASTE DISPOSAL

A. Pollution Prevention: The contractor should use prior planning to find those materials and work practices that will minimize the creation of waste in general and hazardous waste in particular.

B. Hazardous Waste Generation, Handling, and Disposal. Work done under this contract is to be performed on a government facility. According to rules and procedures of the United States Environmental Protection Agency, the federal facility is required to have a generator identification number under the Resource Conservation and Recovery Act (RCRA) and to be responsible for wastes (as defined under RCRA) produced, managed, stored, disposed on, or transported from the facility. Accordingly, Contractor will, to the greatest extent practicable, use materials, processes, and techniques that will avoid the creation of hazardous waste. Contractor shall prepare and follow a written waste management and disposal plan for all hazardous wastes generated on the site. Prior to generation of any hazardous wastes, contractor will coordinate planned activities regarding hazardous materials and hazardous waste with the Contracting Officer. Contractor shall submit a written waste management plan, through the contracting officer, to installation environmental office. Contractor shall follow this plan once it has been approved by the contracting officer. Under no circumstances will contractor bring onto the site hazardous waste that has been generated elsewhere. All hazardous waste will be properly disposed of by the Contractor in accordance with all federal, state, and local requirements.

C. Disposal of Non-RCRA Wastes.

All non-hazardous wastes generated on the site as a result of this contract must be disposed of properly, in accordance with all federal, state and local requirements. Materials will be recycled whenever practicable. Prior to creation of such wastes, the contractor shall submit to the installation environmental management function, through the Contracting Officer, a plan for disposal of wastes. Such plan shall include the types of waste to be created, how they shall be stored, managed and disposed. Contractor shall follow this plan once it has been approved by the installation and contracting officer. Such wastes will not be created until approved by the Contracting Officer.

D. Construction Debris.

- a. Debris from demolition of existing structures will ordinarily be removed to a location on the installation, as designated by the installation authorities.
- b. If a location on the installation is not available, other sections in this contract may require the contractor to remove clean construction debris from the site to a location of the contractor's choosing off the installation. (Site soil or other site media are not covered by this paragraph.) Debris will be recycled or disposed of in accordance with all applicable federal, state and local rules. Such debris must be free of all contamination, including but not limited to, lead paint, asbestos, and insecticides. Prior to removal of any construction debris, that debris must be certified by the installation to be free of contamination and of no value to the United States, and this certification must be provided to the contracting officer. To expedite work, this may be accomplished by a telecopier or other suitable electronic means, however, the original certification form must be provided to the contracting officer. No form is prescribed for this certification so long as all necessary information is provided and the document is signed by an authorized installation representative. However, an example is provided at **page 7** and this form may be used. All construction debris removed from the installation must be covered by a certification. The contractor must arrange with the installation POC whether all debris will be covered by one certification or if several certifications will be required.

E. Consolidated Waste Disposal Plans: Contractor may, at contractor's option, submit for approval as specified above one consolidated plan for handling hazardous and non-hazardous wastes.

F. Earthwork and Removal of Potentially Contaminated Media:

1. Unless otherwise specified elsewhere in this contract, the site has been inspected and is, consistent with best professional judgment, free of environmental contamination or pollution. However, work under this contract will be performed on a military installation, where the history of prior military and industrial activities is not necessarily completely known. The following provisions prohibit the removal from the installation of soil or other materials found on site and are included, in an abundance of caution, for the protection of AAFES, the installation, and the contractor.
2. Notwithstanding any other clause in this contract, including but not limited to all standard site work general provisions (02010-02900); no media by-product resulting from site preparation, construction or excavation shall be moved off the post, base, or installation where the construction is occurring. If the construction is off the post, base or installation, no media by-product shall be moved off the construction site.
3. The contractor shall: (1) leave the media in place at the site, subject to appropriate erosion control; or (2) haul the media to and place it at a location on the installation that has been designated either in this contract or in writing by the contracting officer; and (3) if unforeseen difficulties arise, such as excessive quantity of media is generated, the contractor shall advise the contracting officer and shall not remove media from the site without written authorization from the contracting officer.

DEFINITIONS

Media - Any soil, water, or air, moved, disturbed or released from a site.

The terms hazardous, waste, pollutant, contaminate, substance have the same meanings and usage here as they commonly do in CERCLA, RCRA, FWPCA, CAA, TSCA, and SDWA respectively."

INSTALLATION CERTIFICATION FOR CLEAN CONSTRUCTION DEBRIS TO BE REMOVED FROM AAFES
PROJECT SITE

As representative of _____ (insert name of installation), I am authorized to certify, and hereby do so certify, that the construction debris to be removed from the AAFES project site at _____
_____ (describe project and list address, for example Main Exchange Project, 111 Road A, X installation) has been inspected and is of no value to the United States and is free of all contamination, including but not limited to: lead paint, asbestos, PCBs, and pesticides.

CERTIFICATION:

Signed: _____ Date: _____

Printed Name, Rank or Grade, and Duty Title: _____

ORIGINAL OF THIS FORM MUST BE PROVIDED TO CONTRACTING OFFICER

PART 6 UNEXPECTED SITE CONDITIONS

6.01 CONTAMINATED SOIL OR GROUNDWATER.

Unless otherwise specified elsewhere in this contract, site has been inspected and is, consistent with best professional judgment, free of environmental contamination or pollution. However, unexpected conditions can always arise. Contractor or subcontractor personnel may encounter soil or groundwater that is suspected to be contaminated, either because of odors, colors, free liquids, unexpected construction debris, or other suspicious conditions. Should this occur, contractor will immediately notify the Contracting Officer and the installation environmental office and take necessary initial measures to protect workers, the site, and other personnel.

6.02 UNEXPECTED ARTIFACTS OR RELICS

Should contractor employees in the course of site preparation or other work on this contract find unexpected historic or archeological remains, such as bones, arrow points, pottery remnants, foundations, or other evidence of previous uses of the site, contractor will cease further site-disturbing activity and immediately notify the Contracting Officer and installation environmental office.

SECTION I

Instructions to Offerors -- Amendment of Solicitation. The following instructions apply unless specified otherwise in an AAFES letter accompanying this amendment.

a. Offerors must acknowledge receipt of this amendment prior to the hour and date specified for receipt of proposals in the original solicitation, or the hour and date specified in this amendment if such has been amended. Offeror must acknowledge by one of the following means:

- (1) By signing and returning all except one copy of this amendment.
- (2) By acknowledging receipt of this amendment on each copy of the proposal submitted;
- (3) By separate letter or telegram which includes a reference to the solicitation and amendment number.

b. Proposals must be based upon and refer to the solicitation as amended. Unless an acknowledgment of this amendment is received by the contracting officer before the hour and date specified for receipt of proposals, offeror's proposal may be considered nonresponsive.

c. If you desire to revise a proposal previously submitted, such revision must be received prior to the hour and date specified for receipt of proposals enclosed in a sealed envelope addressed to the issuing office, with the name and address of the offeror and the solicitation number on the face of the envelope. Telegraphic proposals will not be considered unless authorized by the solicitation; however, proposals may be modified by telegraphic notice provided such notice is received prior to the time set for receipt of proposals. Telegraphic modifications should not reveal the amount of the original or of the revised proposal.

SECTION II

Instructions to Contractor -- Amendment of Contract.

Unless otherwise instructed, all except one copy of this amendment are to be executed by the person authorized to bind the firm contractually and returned to the contracting officer. The effective date will be the date the amendment is signed in block 6 by the contracting officer or the date(s) indicated in block 4, whichever is later.

SCHEDULE

1. **General:** This contract is establish for the design, renovation and operation of a concession fast food facility specializing in Name Brand Snack Bar, Building 6002 at Aberdeen Proving Grounds, MD.

Contract performance at this location will consist of two phases.

a. Phase I will be the design and renovation of the facility and will be governed by this Schedule and Exhibit B and Exhibits H through M, and

b. Phase II will be the concession operation of the activity and will be governed by this Schedule and Exhibits A through I of this contract.

2. **Effective Date of Contract and Contract Period:** The contract period will be computed from the date of opening of the facility following final inspection and acceptance of construction. Pending facility opening, an "on or about" date will be established. Once the start date is determined a contract amendment will be issued identifying the actual start and end dates. The performance period for the facility will be ten (10) years.

3. **Sales Data/Demographics:** AAFES monthly sales estimate is stated in Exhibit E. Demographics for the location are shown at Exhibit G. AAFES makes no warranty expressed or implied of the gross sales to be realized under any contracts resulting from this negotiated contract.

4. **Fee:**

a. Offerors must enter a fee proposal in Exhibit E.

b. Contractor shall, without additional expense to AAFES, be responsible for all franchise fees (to include but not limited to the following: initial franchise fees, royalty fees, marketing & advertising fees) required by their NBFF franchise agreement with the NBFF franchisor.

5. **Hours of Operation:** The hours of operation of the concession activity will be established by local exchange management in coordination with the installation commander. Concessionaire may recommend hours of operation based on its experience and knowledge of the market. The activity must operate a minimum of 60 hours per week.

6. **Brand Recognition:** With approval from the contracting officer, concessionaire will display company name/logo on signing in the shop, in any advertising, and on employee identification badges, shirts, etc. Concessionaire will provide interior décor and signing that meets company (franchise) standards. AAFES will assist the concessionaire in obtaining approval of exterior décor and signing by installation major commands. The concessionaire acknowledges that there is no guarantee the installation will approve exterior signing that is inconsistent with installation guidelines.

7. Opening Procedure:

a. Implementation Plan: Within 30 days of contract award, the concessionaire will prepare and submit to AAFES an implementation plan consisting of:

(1) Concept design submittal to include floor plans, site layout and construction documents completed to at least 30% of final contract document stage sufficient to convey the intent of the building/conversion the concessionaire will accomplish.

(2) Construction cost estimate.

(3) Design analysis to completely describe the facility construction/conversion.

(4) Project schedule for accomplishment of the project, in calendar days, starting from date the final design documents are approved by AAFES until the facility is opened for business. Include the following phases: award of contract, construction, equipment installation and facility opening preparation (including staff training and shake down of equipment).

b. Proprietary Approval - Form DD 1391: AAFES will execute form based on scope and construction cost data provided by the concessionaire. AAFES will take measures to obtain proprietary approval through installation and major commands. Concessionaire will not start construction until these approvals are obtained. Offeror acknowledges that there is no guarantee that the military will approve that which is submitted without changes related to military construction requirements or those unique to the installation.

c. Pre-design Meeting: Upon receipt of AAFES concurrence with the implementation plan the concessionaire and his technical representative, in conjunction with AAFES representatives and base/post engineers, will visit the identified base/post to attend a pre-design meeting at which time general agreement will be reached by all parties on the design concept.

d. Design Completion: The concessionaire will submit the completed design within 30 days (for new construction) or 60 days (for conversion) of the pre-design meeting to AAFES and the base/post engineers for technical sufficiency review. The concessionaire and his technical representatives, in conjunction with AAFES representatives and base/post engineers, will participate in a final design review conference at the base/post. The concessionaire will incorporate all of the comments, as resolved, into the construction contract documents and will provide one set of the final corrected documents to AAFES and to the base/post engineers.

e. Construction Phase: Upon receipt of necessary governmental approvals, AAFES will issue to the concessionaire a notice-to-proceed with construction. Exhibit J, General Provisions (Contract for Construction) is applicable to the construction phase.

(1) The concessionaire and/or its general contractor will contact the AAFES engineers and will advise of and consult to resolve any

difficulties affecting the project. The AAFES contracting officer will be informed by the concessionaire of any significant problems that will affect the scheduled opening or project cost.

(2) During the construction period two inspections will be made jointly by the concessionaire, AAFES and the base/post engineers. These inspections will occur when the construction is approximately 50-60% complete and again at 100% complete (including equipment installation). Concessionaire will correct all construction deficiencies identified during each inspection at no cost to AAFES or the base/post. Under no circumstances will the facility be opened for business without base/post engineer approval of completed construction/conversion.

8. **Bond Requirements:**

a. For the renovation phase of any contract, Miller Act payment bond from an approved surety is required in the penal sum of one hundred percent (100%) of the renovation costs.

b. Reference Exhibit L for the required AAFES bond form, which must be submitted prior to renovation. Concessionaire will be required to provide the Contracting Officer with bid summaries and the scope of work for the renovation within 30 days after contract award. Contracting Officer will then establish the bond amount based upon submitted bid summaries. Established bond amount will be provided to the concessionaire via amendment to the contract.

9. **Subcontracting:** Contractor is authorized to use a subcontractor for performance of this contract pursuant to Exhibit A, General Provisions, Paragraph 6. While the subcontractor may perform some actions required by the contract to be performed by the concessionaire, the contractor carries responsibility for accurate and timely performance. In the event that the contractor determines it necessary to replace a subcontractor, performance will continue while contractor will be allowed 180 days to appoint the new subcontractor.

10. **Image Upgrade:** At the end of the first 5 (five) years of operation, the contractor will completely upgrade the image of the activity to the then current standard. This upgrade will be at no cost to AAFES and will not result in reduced fees.

11. **Alterations:**

a. Delete Paragraph 11.d, Acceptance of Award, 4450-002, Instructions to Offerors and Conditions of Proposal/Awards, in its entirety and substitute the following:

"d. AAFES plans to award a contract to the responsive, responsible offeror whose proposal is best for AAFES, price/fee and other factors set out in the solicitation considered. AAFES reserves the right to accept other than the highest fee/lowest proposal, and to make multiple awards unless otherwise provided in the Schedule."

b. Paragraph 8.b, Termination, of Exhibit A, General Provisions, is

changed from "thirty (30) days notice" to "ninety (90) days notice."

c. Paragraph 29, UNSPC Item Category Identifiers, and Paragraph 30, Army and Air Force Exchange Service Rights, of Exhibit A, General Provisions are deleted in its entirety.

d. Paragraph 22.a, Customer Checks, of Exhibit C, Special Provisions, is deleted and replaced with the following:

"a. Concessionaire will accept both local and out-of-town checks in payment for merchandise and service. AAFES will assist the concessionaire in the collection of non-sufficient fund checks."

e. Paragraph 26, Charge Card/Military Star Card, of Exhibit C, Special Provisions, is revised to add the following:

"c. Concessionaires will not require customer signature for Credit Card slips or Military Star Card purchases of \$25 or less."

f. Exhibit J, General Provisions (Contract for Construction), is revised as follows:

(1) Paragraph 10, Inconsistencies (Sep 91), is deleted in its entirety.

(2) Paragraph 18.c, Specifications and Drawings, is deleted in its entirety.

(3) Paragraph 18.e, Specifications and Drawings, is revised to delete the last two sentences.

(4) Paragraphs 36, 37, 38, 39, 40, 41, 43, 44, 45, 49, 53, 54 and 56 are deleted in their entirety.

ARMY AND AIR FORCE EXCHANGE SERVICE AMENDMENT OF SOLICITATION/CONTRACT (AGREEMENT)	PAGE OF 1 2
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1. AMENDMENT OF: SOLICITATION CONTRACT (AGREEMENT)

SOLICITATION/CONTRACT NUMBER <p style="text-align: center;">APG 10-1081</p>	AMENDMENT NUMBER <p style="text-align: center;">Two (2)</p>	CONTRACT CONTROL NO. (If Applicable)
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2. IF A SOLICITATION AMENDMENT

Refer to Section I "Instructions to Offerors" on reverse of this form and the following as indicated:

a. The time and date specified for receipt of proposals is:

Not extended

Extended until (local time at place of receipt of proposals)

Hour Date

_____ M, _____

b. The above solicitation is modified as set forth in Block 4 below.

3. IF A CONTRACT AMENDMENT

Refer to Section II "Instructions to Contractors" on reverse of this form and the following as indicated:

a. The expiration date of the above CONTRACT is changed:

FROM TO

12 July 2011 11 July 2021

b. The above CONTRACT is:

Not further modified.

Modified as set forth in Block 4 below.

4. DESCRIPTION OF AMENDMENT.

a. The Schedule has been deleted in its entirety and replaced with Schedule, Attachment No. One (1), consisting of four (4) pages.

b. Exhibit A, General Provisions (FEB. 10) has been deleted in its entirety consisting of eleven (10) pages and replaced with Exhibit A, General Provisions (May 11), Attachment Two (2), consisting of ten (10) pages.

c. Exhibit B, Labor Provisions Contract for Services (with SCA) dated (APR 10) has been deleted in its entirety consisting of seven (7) pages and replaced with Exhibit B, Attachment Three (3), consisting of six (6) pages.

d. Exhibit C, Army and Air Force Exchange Service Special Provisions (Fast Food Concession Contracts) has been deleted in its entirety consisting of fourteen (13) pages and replaced with Exhibit C, Special Provisions Name Brand Fast Food (NBFF) Concession Contracts (Jan.2011) Attachment four (4), consisting of ten (10) pages.

Reimbursement for actual cost to provide and install 225 KVA transformer and house keeping pad in Building No. 6002 in the amount of/ or not to exceed \$31,374.00.

////////////////////////////////////Last Page////////////////////////////////////

IN ALL OTHER RESPECTS, THE TERMS AND CONDITIONS OF THE SOLICITATION/CONTRACT, AS AMENDED, REMAIN IN FULL FORCE AND EFFECT.

SIGNATURES

5. NAME AND ADDRESS OF OFFEROR/CONTRACTOR (Street, City, County, State, and Zip Code) Tim Hortons USA Inc. c/o 874 Sinclair Road Oakville, ON L6K 2Y1 Canada	6. ISSUED BY ARMY AND AIR FORCE EXCHANGE SERVICE ATTN: MICHELLE SMITH-CATO 3911 WALTON WALKER BLVD. DALLAS, TEXAS 75236
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SIGNATURE OF PERSON AUTHORIZED TO SIGN 	DATE Nov 21/11	SIGNATURE OF CONTRACTING OFFICER 	DATE 11/21/11
TYPED OR PRINTED NAME AND TITLE Stephen Johnston, SVP.		TYPED OR PRINTED NAME OF CONTRACTING OFFICER THOMAS C. BRYANT, JR.	

SECTION I

Instructions to Offerors -- Amendment of Solicitation. The following instructions apply unless specified otherwise in an Exchange letter accompanying this amendment.

a. Offerors must acknowledge receipt of this amendment prior to the hour and date specified for receipt of proposals in the original solicitation, or the hour and date specified in this amendment if such has been amended. Offeror must acknowledge by one of the following means:

- (1) By signing and returning all except one copy of this amendment.
- (2) By acknowledging receipt of this amendment on each copy of the proposal submitted;
- (3) By separate letter or telegram which includes a reference to the solicitation and amendment number.

b. Proposals must be based upon and refer to the solicitation as amended. Unless an acknowledgment of this amendment is received by the contracting officer before the hour and date specified for receipt of proposals, offeror's proposal may be considered nonresponsive.

c. If you desire to revise a proposal previously submitted, such revision must be received prior to the hour and date specified for receipt of proposals enclosed in a sealed envelope addressed to the issuing office, with the name and address of the offeror and the solicitation number on the face of the envelope. Telegraphic proposals will not be considered unless authorized by the solicitation; however, proposals may be modified by telegraphic notice provided such notice is received prior to the time set for receipt of proposals. Telegraphic modifications should not reveal the amount of the original or of the revised proposal.

SECTION II

Instructions to Contractor -- Amendment of Contract.

Unless otherwise instructed, all except one copy of this amendment are to be executed by the person authorized to bind the firm contractually and returned to the contracting officer. The effective date will be the date the amendment is signed in block 6 by the contracting officer or the date(s) indicated in block 4, whichever is later.

SCHEDULE

1. **General:** This contract is establish for the operation of a concession fast food facility specializing in **Name Brand Fast Snack Bar at Aberdeen Proving Grounds, MD**. Should the location require modifications to meet the franchise's brand image, to include design and renovations, Phase I of the contract will be enforced.

Contract performance at this location will consist of two phases.

a. Phase I will be the design and construction of the facility and will be governed by this Schedule, Exhibit B, Exhibit H through L.

b. Phase II will be the concession operation of the activity and will be governed by this Schedule and Exhibits A through I of this contract.

2. **Qualifications of Offerors:** Offerors must currently operate fast food facilities specializing in the type of product identified above with broad geographic customer recognition and acceptance of brand name products and operating concepts. Therefore, proposals are only being solicited from offerors whom we have determined meets our requirements and unsolicited proposals will not be considered. Additionally, offerors must currently have restaurants in the current Arbitron Area of Dominant Influence (ADI) for the installation(s) for which an offeror makes a proposal or have plans to activate one or more facilities in the near future (e.g., within six months). If a firm other than the chain is awarded a contract as a result of this solicitation the firm must be a franchise in good standing and maintain throughout the period of the contract a franchise for each location awarded. The franchise agreement must be for the same chain for which award is being made.

3. **Effective Date of Contract and Contract Period:** The effective date of any contract awarded as a result of this solicitation will be the date entered in the Acceptance and Award section of AAFES Form 4450-002. The contract period will be computed from the date of opening of the facility following final inspection and acceptance of construction and will be documented by a contract amendment. The performance period for the facility will be ten (10) years.

a. **Aberdeen Proving Grounds, MD start date 12 July 2011 and ending 11 July 2021.**

4. **Sales Data/Demographics:** The Exchange has no actual operating data to project sales for a brand name fast food activity specializing in this type of product at this location. However, the Exchange monthly sales estimate is stated in Exhibit E. Demographics for the location are shown at Exhibit G. The Exchange makes no warranty expressed or implied of the gross sales to be realized under any contracts resulting from this solicitation.

5. **Fee:** Offerors must enter a fee proposal in Exhibit E. Contractor shall, without additional expense to the Exchange, be responsible for all franchisee fees (to include but not limited to the following: Initial Franchisee Fees, Royalty Fees, Marketing & Advertising Fees) required by their franchisee agreement with the NBFF franchisor.

6. **Hours of Operation:** The hours of operation of the concession activity will be established by local exchange management in coordination with the installation commander. Concessionaire may recommend hours of operation based on its experience and knowledge of the market. The activity must operate a minimum of **60** hours per week.

7. **Brand Recognition:** With approval from the contracting officer, concessionaire will display company

name/logo on signing in the shop, in any advertising, and on employee identification badges, shirts, etc. Concessionaire will provide interior décor and signing that meets company (franchise) standards. The Exchange will assist the concessionaire in obtaining approval of exterior décor and signing by installation major commands. The concessionaire acknowledges that there is no guarantee the installation will approve exterior signing that is inconsistent with installation guidelines.

8. **Restriction on Disclosure and Use of Data:** Offerors who include information in their proposals that they do not want disclosed to the public for any purpose or used by the Exchange except for evaluation or contract performance purposes will:

a. Attach a cover page with the following legend: "This proposal includes information that will not be disclosed outside the Exchange and will not be duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate this proposal or by the Exchange in the performance of the contract. This restriction does not limit the Exchange right to use information contained in this proposal if it is obtained from another source without restriction or if already known to the Exchange. The information subject to this restriction is contained in sheets (insert numbers or other identification of sheets); and

b. Mark each sheet of information it wishes to restrict with the following legend: "Use or disclosure of information contained on this sheet is subject to the restriction on the cover page of this proposal."

c. After award, the restricted information will be returned to each unsuccessful offeror.

9. **Opening Procedure:**

a. **Implementation Plan:** Within 30 days of contract award, the concessionaire will prepare and submit to the Exchange an implementation plan to the Exchange contracting office and local exchange management consisting of:

(1) Concept design submittal to include floor plans, site layout and construction documents completed to at least 30% of final contract document stage sufficient to convey the intent of the building/conversion the concessionaire will accomplish.

(2) Construction cost estimate.

(3) Design analysis to completely describe the facility construction/conversion.

(4) Project schedule for accomplishment of the project, in calendar days, starting from date the final design documents are approved by the Exchange until the facility is opened for business. Include the following phases: award of contract, construction, equipment installation and facility opening preparation (including staff training and shake down of equipment).

b. **Proprietary Approval - Form DD 1391:** The Exchange will execute form based on scope and construction cost data provided by the concessionaire. The Exchange will take measures to obtain proprietary approval through installation and major commands. Concessionaire will not start construction until these approvals are obtained. Offeror acknowledges that there is no guarantee that the military will approve that which is submitted without changes related to military construction requirements or those unique to the installation.

c. **Pre-design Meeting:** Upon receipt of the Exchange concurrence with the implementation plan the

concessionaire and his technical representative, in conjunction with the Exchange representatives and base/post engineers, will visit the identified base/post to attend a pre-design meeting at which time general agreement will be reached by all parties on the design concept.

d. **Design Completion:** The concessionaire will submit the completed design to the Exchange contracting office and local exchange management within 30 days (for new construction) or 60 days (for conversion) of the pre-design meeting to the Exchange and the base/post engineers for technical sufficiency review. The concessionaire and his technical representatives, in conjunction with the Exchange representatives and base/post engineers, will participate in a final design review conference at the base/post. The concessionaire will incorporate all of the comments, as resolved, into the construction contract documents and will provide one set of the final corrected documents to the Exchange and to the base/post engineers.

e. **Construction Phase:** Upon receipt of necessary governmental approvals, the Exchange will issue to the concessionaire a notice-to-proceed with construction. Exhibits J, General Provisions (Contract for Construction) and K, General Wage Decisions are applicable to the construction phase.

(1) The concessionaire and/or its general contractor will contact the Exchange engineers and will advise of and consult to resolve any difficulties affecting the project. The Exchange contracting officer will be informed by the concessionaire of any significant problems that will affect the scheduled opening or project cost.

(2) During the construction period two inspections will be made jointly by the concessionaire, the Exchange and the base/post engineers. These inspections will occur when the construction is approximately 50-60% complete and again at 100% complete (including equipment installation). Concessionaire will correct all construction deficiencies identified during each inspection at no cost to the Exchange or the base/post. Under no circumstances will the facility be opened for business without base/post engineer approval of completed construction/conversion.

10. Bond Requirements:

a. For the construction phase of any contract, Miller Act payment bond from an approved surety are required in the penal sum of one hundred percent (100%) of the renovation costs

b. Payment Bond, AAFES form 4400-040, is required to be submitted prior to renovation. Concessionaires will be required to provide the Contracting Officer with bid summaries and the scope of work for the renovation within 30 days after contract award. Contracting officer will then establish the bond amount based upon submitted bid summaries. Established bond amount will be provided to the concessionaire via an amendment to the contract.

11. Subcontracting: Contractor is authorized to use a subcontractor for performance of this contract pursuant to Exhibit A, General Provisions, and Paragraph 6. While the subcontractor may perform some actions required by the contract to be performed by the concessionaire, the contractor carries responsibility for accurate and timely performance. In the event that the contractor determines it necessary to replace a subcontractor, performance will continue while contractor will be allowed 180 days to appoint the new subcontractor.

12. Image Upgrade: At the end of the first 5 (five) years of operation, the contractor will completely upgrade the image of the activity to the then current standard. This upgrade will be at no cost to the Exchange and will not result in reduced fees.

13. Alterations:

a. **“Transitioning to the Exchange:** The Army and Air Force Exchange Service (AAFES) is transitioning to a new corporate logo and commercial name (as used in commerce) the “Exchange”. Our legal name remains the Army and Air Force Exchange Service and the “AAFES” acronym still exists. However, we are in the process of replacing it with the “Exchange”. This clause authorizes the substitution of the word “Exchange” where the “AAFES” acronym exists, except in the case of “Commander, AAFES” which is changed to “Commander, Army and Air Force Exchange Service.”

b. Delete in its entirety all reference to paragraph 11.d, Acceptance of Award, AAFES Form 4450-002, Instructions to Offerors and Conditions of Proposal/Awards and replace with the following:

11. d. The Exchange plans to award a contract to the responsive, responsible offeror whose proposal is best for the Exchange, price/fee and other factors set out in the solicitation considered. The Exchange reserves the right to accept other than the highest fee/lowest proposal, and to make multiple awards unless otherwise provided in the Schedule.

c. Paragraph 8.b, Termination, Exhibit A, General Provisions, is changed from thirty (30) days notice to ninety (90) days notice.

d. Paragraph 29, UNSPSC Item Category Identifiers and Paragraph 30, Army and Air Force Exchange Service Rights, Exhibit A, General Provisions, is deleted in its entirety.

e. Exhibit J, General Provisions, Contract for Construction, is revised as follows:

- (1) Paragraph 18.c, Specifications and Drawings is deleted in its entirety.
- (2) Paragraph 18.e, Specifications and Drawings deletes the last sentence.
- (3) Paragraphs 10, 36-45, 49, 53-54 and 56 are deleted in its entirety.

EXHIBIT A
GENERAL PROVISIONS
(MAY 11)

1. Legal Status (AUG 08)
2. Authority to Bind (NOV 95)
3. Procurement Integrity (NOV 95)
4. Oral Representations (JAN 94)
5. Modifications and Additions (MAY 04)
6. Subcontracting (JUN 94)
7. Assignment - Services (DEC 07)
8. Termination (JUN 94)
9. Permits, Licenses and Applicable Laws (JAN 94)
10. Indemnify and Hold Harmless (MAY 89)
11. Disputes (DEC 07)
12. Nonwaiver of Defaults (SEP 91)
13. Advertisements (AUG 08)
14. Examination of Records (AUG 08)
15. Contractor Personnel and Representatives (AUG 08)
16. Environmental Protection (AUG 09)
17. Contractor Liability - Services (MAY 04)
18. Drug-free Workplace (AUG 92)
19. Restrictions on Purchases of Foreign Goods (MAY 04)
20. Date Compliant (DEC 07)
21. Payment by Electronic Funds Transfer (OCT 98)
22. Choice of Law and Forum (DEC 07)
23. Privacy Act (DEC 07)
24. Payment Card Industry (PCI) Compliance (OCT 10)
25. Green Clause (AUG 09)
26. Performance (AUG 09)
27. Combating Trafficking in Persons (AUG 09)
28. Personal Identity Verification of Contractor Personnel (MAY 11)
29. UNSPSC Item Category Identifiers (AUG 09)
30. Army and Air Force Exchange Service Rights (Unlimited) (AUG 09)

GENERAL PROVISIONS

1. LEGAL STATUS (AUG 08).

The Army and Air Force Exchange Service (hereinafter and as known in commerce, the "Exchange"), including its activities, offices, and individual exchanges, is an integral part of the Departments of the Army and Air Force and an instrumentality of the United States Government. Exchange contracts are United States contracts; however, they do not obligate appropriated funds of the United States except for a judgment or compromise settlement in suits brought under the provisions of the Contract Disputes Act of 1978, as amended, in which event the Exchange will reimburse the U.S. Government. Exchange procurement policy is established by applicable directives and instructions promulgated by the Department of Defense. The Federal Acquisition Regulation (FAR) does not apply to the Exchange.

2. AUTHORITY TO BIND (NOV 95).

a. "Contracting Officer" means a person authorized by the Commander, Army and Air Force Exchange Service to execute and administer contracts, purchase orders, or other agreements on behalf of the Exchange. Only contracting officers may waive or change contract terms; impose additional contract requirements; issue cure, show-cause and termination notices; issue claims against contractors, and issue final decisions on contractor claims.

b. The contracting officer may authorize other Exchange and government officials to perform actions of an administrative nature, such as conducting inspections and audits; placing orders against existing contracts; forwarding requests for contract changes to the contracting officer; collecting contract payments, and processing routine documents. These officials are not contracting officers, as defined in a. above.

c. The Exchange has no obligation to recognize or accept waivers or changes to this contract that result from the actions of officials other than the contracting officer. The contracting officer may deny claims based on such actions. Contractors' should refer questions concerning the authority of other Exchange or government officials to the contracting officer.

3. PROCUREMENT INTEGRITY (NOV 95).

a. By submission of an offer or performance of this contract, the offeror or contractor certifies with respect to this Exchange purchase action:

(1) that no discussion, offer or promise of future employment or business opportunity has been or will be made to the Exchange civilian or military personnel who participated personally and substantially in the purchase action;

(2) that no offer, promise or gift of any gratuity, entertainment, money, or other thing of value has been or will be made to any Exchange civilian or military personnel or any other employee of the United States Government or member of their family or household;

(3) that no information proprietary to other offerors or other purchasing information (offeror list, prices offered, technical evaluations or rankings, etc.) is sought or obtained until it is available to the public under the Exchange procedures.

(4) that no person or selling agency has been employed or retained to secure this contract upon an agreement or understanding 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. Contractor certifies that no gratuities (entertainment, gifts, money, kickbacks or other things of value) were or will be solicited or accepted by the contractor, or any person representing the contractor, from any subcontractor or person representing the subcontractor, for the purpose of obtaining or rewarding favorable treatment in connection with this contract or any subcontract under it.

c. Contractor will report in writing to the Director, Loss Prevention Division, any possible violation of this clause when the contractor has reasonable grounds to believe a violation may have occurred. The contractor shall cooperate fully with any federal agency investigation of a possible violation of this clause.

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

4. ORAL REPRESENTATIONS (JAN 94).

This contract represents the entire agreement of the parties. Any changes or amendments thereto may not be recognized by the Exchange unless committed to writing and incorporated by reference into the contract by the contracting officer.

5. MODIFICATIONS AND ADDITIONS (MAY 04).

a. Except as otherwise specifically provided in this contract, all changes, modifications, additions or deletions to this contract must be prepared in writing as formal amendments signed by both parties and approved in accordance with provisions of applicable regulations.

b. Unilateral Amendments: The contracting officer may make unilateral amendments to the contract to incorporate administrative changes, provided such changes are within the general scope of the contract.

6. SUBCONTRACTING (JUN 94).

Contractor shall not subcontract any part of the work to be performed without the prior written consent of the contracting officer. Any subcontractor used in connection with this contract is the agent of the contractor and not the agent of the Exchange.

7. ASSIGNMENT - SERVICES (DEC 97).

The Assignment of Claims Acts, 31 U.S.C. 3727 and 41 U.S.C. 15, are not applicable to amounts due under the Exchange contracts. Contractor may not assign its rights or delegate its obligations under this contract, and the Exchange will neither consent to, nor recognize, any purported assignment. Contractor may request permission from the contracting officer to have contract payments forwarded to a third party.

8. TERMINATION (JUN 94).

Relative to termination of this contract, it is mutually agreed:

a. This contract may be terminated in whole or in part by either party immediately upon written notice to the other party in the event of breach of this contract by the other party.

b. This contract may be terminated in whole or in part by either party upon thirty (30) days notice (ninety (90) days for vending contracts) in writing to the other party.

c. This contract is automatically terminated upon the dispatch of written notice to contractor in the event the exchange is inactivated or the installation at which the exchange is located is inactivated. If this contract covers services to be performed at various exchanges or installations and only one or more of the exchanges or installations is inactivated, then only that portion of the contract being performed at the inactivated exchange or installation is terminated.

9. PERMITS, LICENSES AND APPLICABLE LAWS (JAN 94).

Contractor warrants that all necessary permits and licenses have been obtained and that the merchandise, services, supplies, and/or equipment provided under this contract are in compliance with applicable laws.

10. INDEMNIFY AND HOLD HARMLESS (MAY 89).

a. Contractor will indemnify, hold harmless and defend the Exchange and all other agencies and Instrumentalities of the United States, their agents, representatives, employees and customers from any and all suits, judgments and claims, including those established by or pursuant to court decisions, to international agreements, or duly promulgated regulations of the United States Government, and all charges and expenses incident thereto which arise out of any of the following:

(1) The alleged or established violation or infringement of any patent, copyright or trademark rights asserted by any third party with regard to items or services provided by contractor;

(2) Loss, damage, or injury alleged or established to have arisen out of or in connection with items or services provided by contractor, unless such loss, damage, or injury was caused by or resulted solely from the acts or omissions of the Exchange, its agents, representatives, or employees;

(3) Any loss, damage, or injury alleged or established to have arisen out of or in connection with any other acts or omissions of the contractor.

b. The Exchange will give contractor notice and an opportunity to defend.

11. DISPUTES (DEC 07).

a. This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

b. "Claim" as used in this clause means a written demand or written assertion by one of the contracting parties seeking the payment of money in a sum certain or other relief arising under or relating to this contract. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Contract Disputes Act.

c. A claim by the contractor shall be made in writing and submitted to the contracting officer for a written decision.

A claim by the Exchange against the contractor shall be made by a written decision by the contracting officer.

d. For contractor claims exceeding \$100,000, the contractor shall submit with the claim a signed certification that:

- (1) The claim is made in good faith;
- (2) Supporting data are accurate and complete to the best of the contractor's knowledge and belief, and
- (3) The amount requested accurately reflects the contract adjustment for which the contractor believes the Exchange is liable.

Exchange is liable.

e. The claim must be executed by an individual with authority to bind the contractor.

f. The contracting officer will mail or otherwise furnish a written decision in response to a contractor claim, within the time periods specified by law. Such decision will be final and conclusive unless:

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

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

g. Pending final resolution on any request for relief, claim, appeal, or action arising under or relating to this contract, contractor will proceed diligently with the performance of this contract and will comply with the contracting officer's decisions.

h. Submission of false claims to the Exchange is a violation of federal law and may result in civil and/or criminal penalties. If contractor cannot support all or part of its claim as a result of fraud or misrepresentation of fact, then in addition to other remedies or penalties provided for by law, contractor will pay the Exchange an amount equal to the unsupported part of the claim and all the Exchange's costs attributable to reviewing that part of the claim.

12. NONWAIVER OF DEFAULTS (SEP 91).

Any failure by the Exchange 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 Exchange'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.

13. ADVERTISEMENTS (AUG 08).

Contractor will not represent in any manner, expressly or by implication, that products purchased under this contract are approved or endorsed by any element of the United States, including the Exchange. All contractor advertisements that refer to the Exchange or military exchanges will contain a statement that the advertisement was neither paid for nor sponsored, in whole, or in part, by the Exchange, the military exchange system, or the United States Government.

14. EXAMINATION OF RECORDS (AUG 08).

a. This clause applies if the amount of the contract exceeds \$10,000 and the contract was entered into by means of negotiation. The contractor agrees that the contracting officer or his duly authorized representative will 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 the expiration of three years after the final payment under the contract. The contractor agrees to include this clause in all subcontracts that exceed \$10,000.

b. "General Accountability Office" may be substituted for "contracting officer or his duly authorized representative" when the prospective contractor does not accept the standard wording of the examination clause.

c. Contracts awarded to foreign contractors may exclude the examination clause when its use is precluded by the laws of the country involved, subject to the approval of the servicing Exchange General Counsel (Exchange HQ and Exchange Europe). Contract files will be in such circumstances be documented to show the basis for exclusion of the clause.

15. CONTRACTOR PERSONNEL AND REPRESENTATIVES (AUG 08).

a. The contractor will discontinue using any individual in Exchange facilities upon contracting officer's written notice that the individual is not acceptable for performance under this contract. Contractor will not use any such person to perform other Exchange contracts without the prior written consent of the contracting officer.

b. The contractor will not employ any individual to work in Exchange facilities whom an Exchange contracting officer has determined unacceptable under any other Exchange contract without the prior written consent of the contracting officer.

c. Contractor personnel will abide by applicable regulations and directives and conduct themselves so as not to reflect discredit on the Exchange.

d. Contractor will not represent himself/herself to be an agent or representative of the Exchange, another instrumentality, or an agency of the United States.

16. ENVIRONMENTAL PROTECTION (AUG 09).

a. This clause shall apply to any contract in excess of \$100,000, and indefinite quantity contracts estimated to exceed \$100,000 in one year; however, it shall not apply to use of facilities located outside the United States.

b. Unless this contract is exempt, by acceptance of this contract, contractor (and, where appropriate, subcontractor) stipulates:

(1) that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the EPA List of Violating Facilities as of the date of contract award;

(2) its agreement to comply with all requirements of Section 114 of the Air Act and Section 308 of the Water Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in sections 114 and 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder;

(3) that as a condition of award of contract, contractor shall promptly notify the contracting officer of the receipt of any communication from the Director, Office of Federal Activities, U.S. Environmental Protection Agency, or delegatee, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities;

(4) its agreement to include the criteria and requirements in subparagraphs (1) through (4) in every nonexempt subcontract, and to take such actions the Government may direct as a means of enforcing such provisions.

17. CONTRACTOR LIABILITY - SERVICES (MAY 04).

a. Except as set out specifically elsewhere in the contract, contractor will be liable for costs to the Exchange and/or other agencies of the United States associated with termination for default as follows:

(1) Incidental damages, including expenses reasonably incurred in connection with repurchase of the service and any other reasonable expense incident to the breach.

(2) Consequential damages including, but not limited to, lost fees resulting from lapses in service, unscheduled facility closures, sales declines, lower fees received on repurchase, and injury to person or property proximately resulting from any breach of warranty.

b. Contractor will not be liable for incidental or consequential damages if the failure to perform arises out of causes beyond the control and without the fault or negligence of the contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the contractor. In such case contractor must provide prompt written notice to the contracting officer; the contracting officer, at his option may accept late, partial or substituted performance, or may terminate the contract in whole or in part effective immediately upon receipt of written notice by contractor.

18. DRUG-FREE WORKPLACE (AUG 92).

Contractor agrees to make a good faith effort to establish and maintain a drug-free workplace in connection with the performance of this contract. Consistent with the size and organization of its work force, contractor may wish to consider taking the following or other appropriate actions in establishing a drug-free workplace: publicizing a drug-free workplace policy, initiating an employee drug awareness program or encouraging participation in existing community/installation programs and informing employees of the general availability of drug counseling programs.

19. RESTRICTIONS ON PURCHASES OF FOREIGN GOODS (MAY 04).

a. Contractor will not acquire for use in the performance of this contract any merchandise, equipment, supplies or services originating from, processed in, or transported from or through, the countries prohibited from commerce by the United States Government. This restriction includes merchandise, equipment, supplies or services from any other country that is restricted by law, regulation or executive order at any time during performance of the contract. A current list of prohibited countries is available at <http://www.ustreas.gov/offices/enforcement/ofac/>.

b. Contractor agrees to insert the provisions of this clause, including this paragraph, in its subcontracts.

20. DATE COMPLIANT (DEC 07).

a. Contractor warrants that all information technology (software, hardware, micro-code, firmware, etc.) supplied under the contract are able to accurately and efficiently process date and time data including, but not limited to, calculating, comparing, and sequencing date and time data from, into, and between the twentieth and twenty-first centuries, and leap year calculations through at least 31 December 2101. The supplied information technology when used in combination

with other information technology will accurately and efficiently process date and time data if the other information technology properly exchanges date and time data. No human intervention is needed to invoke the date compliance (i.e. rebooting the hardware or restarting the software). The information technology methods to be date compliant must run fault free (no abnormal exiting applications and error free results) and be transparent to the user.

b. If the Information Technology supplied under this contract relies on other Information Technology to accurately and efficiently process date and time data then the contractor must disclose this reliance before entering into any agreement or allowing any contract addition or substitution (as may be authorized by the contracting officer).

21. PAYMENT BY ELECTRONIC FUNDS TRANSFER (OCT 98).

The following will apply for all payments made by the Exchange to the Contractor under the terms of this contract.

a. Method of payment:

(1) All payments by the Exchange under this contract shall be made by electronic funds transfer (EFT). The term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) If the Exchange is unable to release payment by EFT, the Contractor agrees to either

(i) accept payment by check or some other mutually agreeable method of payment, or

(ii) request the Exchange to extend the payment due date until such time as the Exchange can make payment by EFT.

b. The Exchange shall make payment to the Contractor using the EFT information provided by the Contractor to the Exchange. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the Exchange not less than thirty days prior to the effective date.

c. If the Contractor's EFT information in the Exchange database is incorrect the Exchange need not make payment to the Contractor under this contract until correct EFT information is entered into the Exchange database; and any invoice shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract.

d. If the Contractor has identified multiple payment receiving points in the Exchange database, and the Contractor has not notified the Exchange of the payment receiving point applicable to this contract, the Exchange shall make payment to the first payment receiving point listed in the Exchange database.

e. The payment or disbursing office shall forward to the Contractor available payment information. The Exchange shall send the payment information to the remittance address contained in the Exchange database.

22. CHOICE OF LAW AND FORUM (DEC 07).

This contract shall be construed and interpreted in accordance with the laws of the United States of America as applied by, among others, the Armed Services Board of Contract Appeals and the United States Court of Federal Claims. By execution of this contract, the Contractor expressly agrees to waive any rights to invoke the jurisdiction of the national or state courts where this contract is performed and agrees to accept the exclusive jurisdiction of an appropriate US Federal administrative body or court.

23. PRIVACY ACT (DEC 07).

a. The Contractor agrees to –

(1) Comply with the Privacy Act of 1974 (the Act) and Department of Defense rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies --

a. The systems of records; and

b. The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

b. In the event of violations of the Act, a civil action may be brought against the Exchange when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an Exchange function, and criminal penalties may be imposed upon the officers or employees of the Exchange when the violation concerns the operation of a system of records on individuals to accomplish an Exchange function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an Exchange function, the Contractor is considered to be an employee of the Exchange.

c. "Operation of a system of records" as used in this clause, means performance of any of the activities associated with

maintaining the system of records, including the collection, use, and dissemination of records

d. "Record," as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

e. "System of records on individuals," as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

f. The system or systems of records identified for this contract is/are:
The system of records refers to information collected, compiled, and/or utilized to build a customer database for potential and/or current/follow-on services. Instruments used to collect information in written or electronic formats include, but are not limited to, application for services, verification of credit rating, customer inquiries/comments, data for invoicing current customers, change of address notifications, information used for marketing purposes, etc.

g. Subcontracting/outsourcing customer data outside CONUS is not acceptable for DoD Operational Security (OPSEC) purposes.

24. PAYMENT CARD INDUSTRY (PCI) COMPLIANCE (OCT 10).

a. If payment cardholder data is processed via a contractor's processor or via an Exchange point of sale terminal or if card data is shared with contractors, subcontractors, merchants or service providers under the terms and conditions of this contract, the contractors, subcontractors, merchants and service providers must adhere to the most current version of the Payment Card Industry Data Security Standards (PCI DSS) requirements. These requirements are available at <https://www.pcisecuritystandards.org>.

b. The contractor acknowledges that each contractor, subcontractor, merchant and service provider with access to payment cardholder data is responsible for the security of the cardholder data the provider possesses. The contractor will also include this clause in any subcontract that provides access to cardholder data.

c. The contractor will control any duplicate or store copies of payment card receipts in a locked cabinet or in a locked register or locked drawer. The contractor will use equipment that masks the card number on the customer's receipt per the PCI DSS. The contractor will develop and implement procedures for destruction of receipts based on PCI standards and applicable state law.

25. GREEN CLAUSE (AUG 09).

The Exchange encourages contractors/vendors to embrace, establish and promote environmentally "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)

26. PERFORMANCE (AUG 09).

Contractor will perform in accordance with all contract provisions. The Exchange will make payments only for performance as promised including supplies delivered and accepted per product specification and free of defects, or services rendered that satisfy the contractual specifications and are accepted. Payments for milestones will be paid when the milestones have been achieved and accepted. Additional periods of performance (if any) will only be granted for performance at or above the contractual level. The contracting officer may exercise remedies in accordance with the provisions of this contract for poor performance, non-performance, or failure to meet the service level agreement established.

27. COMBATING TRAFFICKING IN PERSONS (AUG 09).

a. *Definitions.* As used in this clause—
"Coercion" means—

- (1) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (3) The abuse or threatened abuse of the legal process.

(4) Withholding any documents (e.g. passports, visas, IDs, etc.) that prevents or restricts the person to move freely. "Commercial sex act" means any sex act on account of which anything of value is given to or received by any person. "Debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

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

"Forced labor" means knowingly providing or obtaining the labor or services of a person—

- (1) By threats of serious harm to, or physical restraint against, that person or another person;
- (2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or
- (3) By means of the abuse or threatened abuse of law or the legal process.

"Involuntary servitude" includes a condition of servitude induced by means of—

- (1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or
- (2) The abuse or threatened abuse of the legal process.

Severe forms of trafficking in persons" means—

- (1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
 - (2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- "Sex trafficking" means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

b. Policy. The United States Government and the Army and Air Force Exchange Service has adopted a zero tolerance policy regarding trafficking in persons. Contractors and contractor employees shall not—

- (1) Engage in severe forms of trafficking in persons during the period of performance of the contract;
- (2) Procure commercial sex acts during the period of performance of the contract; or
- (3) Use forced labor in the performance of the contract.

c. Contractor requirements. The Contractor shall—

- (1) Notify its employees of—
 - (i) The United States Government's and the Army and Air Force Exchange Services' zero tolerance policy described in paragraph (b) of this clause; and
 - (ii) The 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
- (2) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this clause.

d. Notification. The Contractor shall inform the Contracting Officer immediately of—

- (1) Any information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy; and
- (2) Any actions taken against Contractor employees, subcontractors, or subcontractor employees pursuant to this clause.

e. Remedies. In addition to other remedies available to the Army and Air Force Exchange Service, the Contractor's failure to comply with the requirements of paragraphs (c), (d), or (f) of this clause may result in—

- (1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;
- (2) Requiring the Contractor to terminate a subcontract;
- (3) Suspension of contract or fee payments;
- (4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Army and Air Force Exchange Service determined Contractor non-compliance;
- (5) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or
- (6) Suspension or debarment.

f. Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts.

g. Mitigating Factor. The Contracting Officer may consider whether the Contractor had a Trafficking in Persons awareness program at the time of the violation as a mitigating factor when determining remedies. Additional information

about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/g/tip>.

28. PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (MAY 11).

This clause is to provide guidance concerning compliance with Homeland Security Presidential Directive (HSPD) 12 and Policy for Common Identification Standard for Contractors and Subcontractors when contract performance requires routine physical access to a Federally controlled facility and/or routine access to a Federally controlled information system. As processes and procedures could change over time, go to <http://www.shopmyexchange.com>, click on, "Doing Business", click on "Authorization to Enter Military Installations" for the most up-to-date instructions. Questions should be directed to the Exchange HQ Chief of Staff, Force Protection (CS-FP) or your Contracting Officer.

a. After contract award and prior to performance on any Federal installation, the contractor shall comply with the local installation's personal identity verification procedures identified by that installation which implements HSPD-12 policy for a Common Identification Standard for Federal Employees and Contractors.

(1) If the contractor employee is to work at only one site, the Exchange's contractors must follow local installation guidelines and directives concerning identification, access, and security requirements. These guidelines may vary from one installation to another and it is the contractor's responsibility to seek guidance concerning these issues from the Exchange Service Business Manager or General Manager.

(2) If the contractor or their employees will access sensitive data or go to multiple DoD or access to multiple non-DoD facilities on a recurring basis for a period of 6 months or more (CONUS or OCONUS), they must obtain a Common Access Card (CAC) and will be required to submit a clearance package to CS-FP, no less than 30 days in advance of needed access. Authorization must be received from CS-FP before contractors can be issued a CAC card. CAC card will be issued after a thorough background check which includes the completion of a FBI fingerprint check with favorable results and submission of a National Agency Check with inquiries to the Office of Personnel Management (OPM) or a DoD determined equivalent investigation, you will then be directed to the nearest military installation where the card can be obtained.

b. The contractor shall insert this clause in all subcontracts when the subcontractor is required to have routine physical access to a Federally controlled facility and/or routine access to a Federally-controlled information system.

c. The contractor is responsible for securing and returning to the issuing office all identification cards issued under these procedures

(1) for all employees at the end of the contract; and

(2) for individual employees no longer employed or no longer assigned to perform the Exchange contract.

d. As a reminder, any costs associated with the clearance process are the responsibility of the contractor.

29. UNSPSC ITEM CATEGORY IDENTIFIERS (AUG 09).

The vendor shall identify the contractor's items by utilizing the United Nations Standard Products and Services Code (UNSPSC) system for categorizing products and services. UNSPSC code guidance can be found at: www.unspsc.org.

The UNSPSC product or service identifiers will be part of the originally proposed item descriptions along with subsequent replacement and or substitution items. The identifiers will be provided in a format which shall indicate the appropriate item category identifier along with sales transaction information required by the report.

The UNSPSC code has five levels, with each successive level supplying greater detail. These levels are identified as follows:

Level 1: SEGMENT

Level 2: FAMILY

Level 3: CLASS

Level 4: COMMODITY

Level 5: BUSINESS FUNCTION

For Example:

IT Items – UNSPSC Segment Identifier Number 43

All reported items should be coded following the guidance contained on the UNSPSC website. Each line item number can be code identified by the first four levels of the UNSPSC structure. The fifth level coding can be completed utilizing either '00' or a business function code. Example: Notebook Computer – 42.17.18.01.00

For Exchange purposes, UNSPSC reporting of servers shall contain an additional identifier at the fifth level (Business Function) as follows:

*Low-end (32-bit) 43.17.18.06.01
High-end (64-bit) 43.17.18.06.02*

In situations where more than one UNSPSC code applies to a CLIN, the predominant item's UNSPSC will be reported. The code reported should be at least to level 3 (Class), and by the digits '00'. Example: Network Hardware (assorted) – 43.17.27.00.00.

UNSPSC Implementation – The Exchange will assist vendors in assigning UNSPSC codes when required. The UNSPSC codes assigned to transacted items should coincide with any such items incorporated where possible. The Exchange reserves the right to change or add item identifier format reporting as required.

30. ARMY AND AIR FORCE EXCHANGE SERVICE RIGHTS (UNLIMITED) (AUG 09).

If there are any deliverables under this contract or this contract is for consulting services, the following applies: The Exchange shall have unlimited rights, in all works (including drawings, designs, specifications, notes, data, information, reports, analysis, recommendations, or other products) developed in the performance of this contract. These Exchange rights include the right to use these works on any other Exchange contract or agreement or other efforts without additional compensation to the Contractor. The Contractor hereby grants to the Exchange a paid-up license throughout the world to all Exchange works to which he may assert or establish any claim for intellectual property derived from this Exchange contracted effort or products developed under this contract. The Contractor for a period of three years after completion of the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

Contractor shall have no rights to use Exchange furnished data or information supplied to Contractor by the Exchange for other than this Exchange contract; it will be deemed Exchange Confidential Information and shall remain the Exchange sole property. All reports, analysis, and recommendations provided by Contractor pursuant to this contract will be and remain the sole property of the Exchange and the United States Government and may not be used on any other work by Contractor without Contracting Officer approval (e.g. including consideration or additional costs to the Exchange) and with respect thereto, the contractor agrees not to assert any proprietary or confidential rights and not to establish any claim for intellectual property.

The contractor agrees that duly authorized representatives of the Exchange will have access at all reasonable times to inspect and review all notes or other data pertaining to the work to be performed under this contract.

EXHIBIT B
LABOR PROVISIONS
Contract for Services (with SCA) – JAN 2011

1. EQUAL EMPLOYMENT OPPORTUNITY.

a. The contractor agrees to comply with regulations of the Department of Labor contained in 41, Code of Federal Regulations, 60, which are incorporated herein by reference.

b. A contract award in the amount of \$10,000,000 or more will not be made unless the contractor, and each first-tier subcontractor which will receive a subcontract of \$10,000,000 or more, are found on the basis of a review to be in compliance with the Equal Employment Opportunity regulations of the Department of Labor.

2. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.

(Applicable to contracts for services performed in the United States, any U.S. territory, or the District of Columbia.) The following clause is applicable to concession, agency, and vending machine contracts where the total gross receipts from sales or services under the contract will exceed \$2,500 and to management and direct service contracts where total payments to the contractor will exceed \$2,500. This contract to the extent that it is of the character to which the Contract Work Hours and Safety Standards Act, 40 USC 327, applies, is subject to all applicable provisions of the Act and the regulations of the Secretary of Labor thereunder (29 CFR 5).

a. Overtime Requirements: No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek to work in excess of 40 hours in such workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer or mechanic receives such compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 40 hours in such workweek.

b. Violation; liability for unpaid wages; liquidated damages: In the event of any violations of provisions of paragraph a., the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be completed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph a. in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of his standard workweek of 40 hours without payment of the overtime wages required by paragraph a.

c. Withholding for unpaid wages and liquidated damages: The contracting officer may withhold from the contractor from any monies payable on account of work performed by the contractor or subcontractor such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph b.

d. Subcontracts: The contractor shall insert paragraphs a. through d. of this clause in all subcontracts and shall require their inclusion in all subcontracts of any tier.

e. Records: The contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for 3 years from the completion of the contract.

3. AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA.

If this contract equals or exceeds \$25,000, and is not otherwise exempt, the contractor agrees to comply with the regulations of the Department of Labor and the Office of Federal Contract Compliance Program, and the Affirmative Action clause as set out in 41 CFR Part 60-250, which are incorporated herein by reference

4. AFFIRMATIVE ACTION FOR INDIVIDUALS WITH DISABILITIES.

If the contract or the total of all orders issued during a calendar year equals or exceeds \$10,000 and is not otherwise exempt, the contractor agrees to comply with the regulations of the Department of Labor and the Affirmative Action clause as set forth in Title 41, Code of Federal Regulation, Part 60-741, which are incorporated herein by reference.

5. CONVICT LABOR (MAY 1989).

In connection with the performance of work under this contract, the contractor agrees not to employ any person undergoing sentence of imprisonment except as provided by Public Law 89-176, September 10, 1965 (18 USC 4082(c)(2)) and Executive Order 11755, December 29, 1973, as amended by Executive Order 12608, September 9, 1987.

6. SERVICE CONTRACT ACT.

(Applicable to Contracts of \$2,500 or more.) Except to the extent that an exemption, variation or tolerance would apply if this were a contract in excess of \$2,500, the contractor and any subcontractor hereunder shall pay all of his employees engaged in performing work on the contract not less than the minimum wage specified under Section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended. Regulations and interpretations of the Service Contract Act of 1965, as amended, are contained in 29 CFR Part 4

7. SERVICE CONTRACT ACT OF 1965 AS AMENDED.

a. This contract is subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR Part 4).

b.

(1) Each service employee employed in the performance of this contract by the contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract.

(2)

(a) If there is such a wage determination attached to this contract, the contracting officer shall require that any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this section. (The information collection requirements contained in the following paragraphs of this section have been approved by the Office of Management and Budget under OMB control number 1215-0150.)

(b) Such conforming procedure shall be initiated by the contractor prior to the performance of contract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative, the employees themselves, shall be submitted by the contractor to the contracting officer no later than 30 days after such unlisted class of employees performs any contract work. The contracting officer shall review the proposed action and promptly submit a report of the action, together with the agency's recommendation and all pertinent information including the position of the contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the contracting officer within 30 days of receipt that additional time is necessary.

(c) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the contracting officer who shall promptly notify the contractor of the action taken. Each affected employee shall be furnished by the contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(d)

((1)) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

((2)) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a contractor succeeds a contract under which the classification in question was previously conformed pursuant to this section, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the contractor shall advise the contracting officer of the action taken but the other procedures in paragraph b(2)(b) of this section need not be followed.

((3)) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(e) The wage rate and fringe benefits finally determined pursuant to paragraphs b(2)(a) and (b) of this section shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(f) Upon discovery of failure to comply with paragraphs b(2)(a) through (e) of this section, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work.

(3) If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965 as amended, the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor as provided in such Act.

Amendment Two (2)

Attachment Three (3)

c. The contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subpart D of 29 CFR Part 4, and not otherwise.

d.

(1) In the absence of a minimum wage attachment for this contract, neither the contractor nor any subcontractor under this contract shall pay any person performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision shall relieve the contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(2) If this contract succeeds a contract, subject to the Service Contract Act of 1965 as amended, under which substantially the same services were furnished in the same locality and service employees were paid wage and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wages rates and fringe benefits, neither the contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreements, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of Section 4.1b(b) of 29 CFR Part 4 apply or unless the Secretary of Labor or his authorized representative finds, after a hearing as provided in Section 4.10 of 29 CFR Part 4 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in Section 4.11 of 29 CFR Part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract. 53 Comp. Gen. 401 (1973). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as a date of the final administrative decision.

e. The contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract. (Approved by the Office of Management and Budget under OMB control number 1215-0150.)

f. The contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

g.

(1) The contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work records containing the information specified in paragraphs g.(1)(a) through (f) of this section for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor. (Sections 7.g.(1)(a) through (d) approved by the Office of Management and Budget under OMB control number 1215-0017 and sections 7.g.(1)(e) and (f) approved under OMB control number 1215-0150):

(a) Name and address and social security number of each employee.

(b) The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.

(c) The number of daily and weekly hours so worked by each employee.

(d) Any deductions, rebates, or refunds from the total daily and weekly compensation of each employee.

(e) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to the labor standards clause in paragraph b of this section. A copy of the report required by the clause in paragraph b.(2)(b) of this section shall be deemed to be such a list.

(f) Any list of the predecessor contractor's employees which had been furnished to the contractor pursuant to Section 4.6(1)(2).

(2) The contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor. (Approved by the Office of Management and Budget under OMB control number 1215-0150.)

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of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of the Department of Labor and notification of the contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

h. The contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

i. The contracting officer shall withhold or cause to be withheld from the Exchange prime contractor under this or any other Government contract with the contractor such sums as an appropriate official of the Department of Labor requests or such sums as the contracting officer decides may be necessary to pay underpaid employees employed by the contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the agency may, after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965, may be grounds for termination of the right to proceed with the contract work. In such event, the Exchange may enter into other contracts or agreements for completion of the work, charging the contractor in default with any additional cost.

j. The contractor agrees to insert these clauses in this section relating to the Service Contract Act of 1965 in all subcontracts subject to the Act. The term "contractor" as used in these clauses in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Exchange prime contractor."

k.

(1) As used in these clauses, the term "service employee" means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations. The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(2) The classes of service employees expected to be employed under this contract with the Exchange are identified on an attachment to these Labor Provisions. Such employees would be subject, if employed by the Exchange, to the pay scales established by the Exchange and would be paid not less than the wage rates and fringe benefits shown on the attachment.

l.

(1) If wages to be paid or fringe benefits to be furnished any service employees employed by the Exchange prime contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Exchange prime contractor shall report such fact to the contracting officer, together with full information as to the applicable and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof. (Approved by the Office of Management and Budget under OMB control number 1215-0150.)

(2) Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacations or other benefit provisions based upon length of service with a contractor (predecessor) or successor (Section 4.173 of Regulations, 29 CFR Part 4), the incumbent prime contractor shall furnish to the contracting officer a certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor contractors of each such service employee. The contracting officer shall turn over such list to the successor contractor at the commencement of the succeeding contract. (Approved by the Office of Management and Budget under OMB control number 1215-0150.)

m. Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR Part 4.

n.

(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

o. Notwithstanding any of the clauses in paragraphs b. through m. of this section relating to the Service Contract Act of 1965, the

following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

p. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program.

q. An employee engaged in an occupation in which he or she customarily and regularly receives more than \$30 a month in tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531: Provided, however, that the amount of such credit may not exceed \$2.13 per hour. To utilize this provision:

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit (approved by the Office of Management and Budget under OMB control number 1215-0017);

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

r. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 4, 6, and 8. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

ARMY AND AIR FORCE EXCHANGE SERVICE

EMPLOYEE CLASSIFICATIONS

This statement of equivalent the Exchange rates is required to be made by the Exchange in accordance with Section 2(a)(5) of the Service Contract Act, but a successful offeror under this solicitation is not required to pay the rates set forth on this page. The contractor is required to pay rates in accordance with any applicable currently effective wage determination from the Department of Labor made part of this contract. The following classes of service employees would be utilized by the Exchange if the activity were a direct operation of the Exchange.

INFORMATION ONLY

<u>Job Classification</u>	<u>Hourly Wages</u>
Food Service Worker	\$ 8.95

FRINGE BENEFITS

Life, accident and health insurance, sick leave programs, and retirement are 29.09 percent of basic hourly rates.

Holidays: New Year's Day, Martin Luther King's Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day.

Paid Vacation: 2 hours of annual leave each week for an employee of less than 3 years of service; 3 hours of annual leave each week for an employee with 3 but less than 15 years of service; 4 hours of annual leave each week for an employee with 15 or more years of service.

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**EXHIBIT C
SPECIAL PROVISIONS
NAME BRAND FAST FOOD (NBFF) CONCESSION CONTRACTS (JAN 2011)**

1. Activity (JUL 10)
2. Facilities/Maintenance/Operating Hours (JUL 10)
3. License for the Exchange Trademarks (JAN 05)
4. Authorized Customers (DEC 88)
5. Customer Complaints and Claims (JUN 01)
6. Signs, Identity and Décor Standards (JUN 01)
7. Utilities (APR 05)
8. Internal Controls/FPOS System (JUN 01)
9. Concessionaire Settlement Report (NOV 02)
10. Fee Deposit and Payment (MAY 99)
11. Taxes (FEB 89)
12. Concessionaire and Concessionaire Employees (Concession Personnel) (JAN 00)
13. Actions to be Taken Upon Termination (Including Expiration) (JAN 05)
14. Lost, Abandoned, and Unclaimed Property (DEC 88)
15. Indebtedness (FEB 89)
16. Fee Revisions (JUN 01)
17. Insurance (JUL 10)
18. Promotional Events (JUL 10)
19. The Exchange Tabloid/Special Sales Coupons and Merchandise Gift Certificate Redemption (APR 05)
20. Refunds (DEC 88)
21. Customer Checks (MAY 05)
22. Safeguarding of Concessionaire Funds on Army and Air Force Installations (DEC 88)
23. Compliance With Chains Current Image (JUN 01)
24. Charge Card/Military Star Card Sales (JUL 10)
25. Inspections (MAR 00)
26. Smoking Policy (DEC 86)
27. Heavy Metal Leaching (DEC 07)
28. Exchange/Vendor Partnership Marketing Program (JUL 94)
29. Organizational Sales (NOV 00)

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1. ACTIVITY (JUL 10).

- a. The Exchange grants to concessionaire a non-exclusive concession to operate the activity described in the Schedule.
- b. The assignment of space for concession is a revocable license and is not a tenancy.
- c. If premises furnished by or through the Exchange are destroyed either in whole or in substantial part so as to significantly hinder or prevent normal operations by concessionaire by act of God, (such as, but not limited to, fire, flood, hurricane, unusually severe weather conditions), or any other occurrence without limitation (including any act, omission or negligence on the part of the Exchange, the U.S. Government or their employees), this contract shall terminate and neither party shall have any further obligation to the other under the contract. Concessionaire should consider obtaining fire and casualty or other insurance on the facility it constructs or renovates to protect concessionaire's investment in the facility and contents. The existence of insurance or proceeds of such insurance shall not be construed to obligate concessionaire to reconstruct, repair or demolish the damaged or destroyed facility.

2. FACILITIES/MAINTENANCE (JUL 10).

- a. Concessionaire will maintain the premises and repair or replace as necessary non-severable equipment, installed property and concessionaire furnished equipment, signs and furniture and assume all costs of ordinary running repairs. The Exchange will not assume responsibility for lost sales or interruptions to service due to maintenance requirements. Concessionaire will be liable for any damage to the premises resulting from acts or omissions of concessionaire, his employees, or agents. The Exchange may inspect the premises at any time.
- b. Concessionaire will maintain, repair, and replace, as necessary, all concessionaire-furnished equipment, furniture, fixtures, and decor items. Interior/exterior decor to meet concessionaire's corporate or franchise standards and any upgrades will be done at concessionaire's expense.
- c. Concessionaire will keep the premises clean, orderly, secure, and sanitary. Concessionaire will comply with the installation/exchange fire, safety and security regulations and applicable health and sanitation and environmental protection regulations.
- d. Concessionaire will do custodial maintenance on the exterior of the facility and grounds if a building is assigned for concessionaire's use. If the facility is shared with other concessionaires, exterior custodial maintenance will be assigned by exchange management. If the concession is located in an exchange complex and predominant tenancy is by the Exchange direct-operated activities, the Exchange will perform exterior custodial maintenance, except those tasks described in "e" below. The equipment and labor to perform exterior custodial maintenance assigned to the concessionaire will be at concessionaire's expense. Assigned exterior maintenance may include:
 - (1) Pick up all refuse daily within the assigned exterior areas.
 - (2) During the season, cut and trim the grass weekly within the assigned exterior areas.
 - (3) During the season, clear the snow, ice, slush and mud deposits from the sidewalks and walkways within the assigned exterior areas.
- e. Concessionaire will, as needed, but at least daily, clean the entrance door, exterior of storefront windows, entrance way and customer walkways, empty and thoroughly clean all waste and smoking receptacles, and check exterior lighting. Exterior lighting failures will be promptly repaired.
- f. Posted operating hours are those that will be displayed at the facility. However, each facility will be open for business at least 5 minutes before posted opening, and will remain open at least 5 minutes past posted closing, as in the following example:

POSTED Hours of Operation 1000 - 1800
ACTUAL Hours of Operation 0955 - 1805

The term open for business means ready to serve the customer. Activities such as preparing cash registers and sales forms will be accomplished prior to actual opening. Facilities will be open for business at all times during scheduled operating hours. Hours of operation will generally conform to those of nearby exchange activities, and may be changed by two

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weeks written notice by mutual agreement of the general manager and contractor. However, hours of operation for facilities not located near exchange activities are fixed and may only be changed by written amendment to the contract. If the nearby exchange is open on a holiday, the concession must also be open during the same hours. If the nearby exchange is closed on a holiday, the concession may also choose to remain closed.

3. LICENSE FOR EXCHANGE TRADEMARKS (JAN 05).

a. Should the concessionaire be granted permission to use an Exchange trademark, concessionaire agrees that it becomes a temporary licensee of such mark and warrants that it shall use the licensed mark only for the purposes of and pursuant to this Agreement. Concessionaire agrees that it has no claim, option, or other right whatsoever, direct or implied, to any like license for any geographic area or location other than the licensed location(s) in this Agreement.

b. Upon cancellation, termination or expiration of this Agreement, concessionaire shall immediately discontinue all use of the licensed mark and will be deemed to have automatically and irrevocably assigned any rights, equities, good will, titles or other rights in the mark which concessionaire may have obtained or had vested in pursuance of any endeavors under this Agreement. Any such assignment shall be without other consideration than the mutual covenants of this Agreement.

4. AUTHORIZED CUSTOMERS (DEC 88).

Concessionaire will sell service or merchandise only to personnel authorized to use the Exchange facilities. Concessionaire will comply with The Exchange patron identification procedures.

5. CUSTOMER COMPLAINTS AND CLAIMS (JUN 01).

Concessionaire will adhere to the Exchange's policy of customer satisfaction guaranteed. Concessionaire will also adhere to the name brand nationwide "customer satisfaction" policy with respect to each customer, if available. So long as concessionaire maintains it, customers of each facility shall have access to concessionaires' toll free number to resolve customer satisfaction issues. All customer complaints and claims will be resolved at concessionaire's expense. Any disagreement that cannot be resolved between concessionaire and the customer will be referred to the contracting officer, whose decision will be final and not subject to the Disputes clause. If concessionaire fails to process complaints and claims timely, the Exchange may, in addition to other rights and remedies available under this contract, settle customer complaints and claims and charge them to concessionaire's account.

6. SIGNS (JUN 01).

Concessionaire will post only those signs required by the food chain. The size, type and location of each exterior sign must be approved in advance by the base/post engineers. Any other signs must be approved by the contracting officer. The Exchange will furnish and the concessionaire will keep posted the following signs:

- Hours of Operation.
- Emergency Contact Sign/Decal
- Cash Register Discrepancy Sign
- Specialized Policy Signs
- Fraud, Waste and Abuse Sticker

7. UTILITIES (APR 05).

a. Concessionaire is responsible for installing all utility meters required by the base/post engineer and for payment of all utilities and related charges, to include heat, power, gas, water and trash removal. If facility does not have separate utility meters, utility charges will be prorated based on square footage and type of usage. Neither the Exchange nor the government will assume any liability for losses caused by interruptions of utility service regardless of cause.

b. Concessionaire is responsible for costs of connecting or disconnecting utilities to concessionaire furnished equipment.

c. Concessionaire is responsible for costs of telephone service used in performance of this contract.

d. Concessionaire and concessionaire employees will comply with the Exchange energy conservation programs to the extent possible under chain-directed operating standards.

8. INTERNAL CONTROLS/FPOS SYSTEM (JUN 01).

A complete and accurate accounting of all transactions will be maintained in accordance with the chain's standard accounting procedures except as otherwise provided herein. The accounting system must provide for the accurate accounting and reporting of daily and monthly gross sales. Concessionaire will use a Food Point of Sale system that complies with the chain's specifications and the following:

Food Point of Sale (FPOS) System - Computer based point of sale system with levels of password protection capable of performing, but not limited to the following functions:

a. Sale audit access at any time during the business day. Report will indicate tender type, net sales, refunds and adjustments and personnel opening cash drawer. Other reports may be requested by the Contracting Officer from time to time and must have the capability to provide a variety of data.

b. Customer Receipt:

(1) All customer receipts are to be electronically printed detailing all components of the customer's transaction.

(2) Must have the ability to re-print a customer receipt on command at the request of the customer, Services Business Manager, Contracting Officer or any other authorized party.

(3) Must be able to record all discounts on the customer's POS receipt.

(4) Must be able to reflect the appropriate sales tax if applicable.

(5) Must be able to document with the POS receipt, any transactions involving refunds.

c. Cash Drawer:

(1) Drawer can only be opened as part of a transaction and the POS system identifies who accessed the drawer and if it was opened as a customer transaction or no-sale.

(2) Drawer will have an emergency release feature that must be covered with a protective plate to prevent the use of the release lever/button without complete removal of the plate.

(3) Must be equipped with a "Blind Close Routine", to insure proper declaration of daily deposits and isolate cash variances.

d. Reporting:

(1) Transactions will be totaled at the end of every business day; detailing all sales and refunds.

(2) System will have the ability to generate daily, weekly, and monthly reports that break transactions down categories.

9. CONCESSIONAIRE SETTLEMENT REPORT (NOV 02).

a. Concessionaire will prepare a Concessionaire Settlement Report, Exchange Form 6550-10, or other reporting format approved by the contracting officer, in triplicate, for each reporting period, listing each facility separately on the report.

b. The reporting period will be by calendar month.

c. An original and one copy of the Concessionaire Settlement Report along with detail tape or other verifying data acceptable to the Exchange must be forwarded to arrive in the supporting exchange accounting office no later than the 15th calendar day of the month following the reporting period.

d. If activity is operated by a franchisee, a copy of the monthly royalty report will be attached to the settlement report.

10. FEE DEPOSIT AND PAYMENT (MAY 99).

a. The "Estimated Fee" is determined by multiplying the estimated monthly sales projection in the offerors proposal by the contract fee. Payments must be made to arrive in the supporting exchange accounting office as follows:

(1) If the "estimated fee" is less than \$1,500, the actual fee payment for the monthly reporting period is due no later than the 15th calendar day of the following month;

(2) If the "estimated fee" is \$1,500 or more, concessionaire must deposit with the exchange accounting office one-half the "estimated fee." The full amount of the actual fee for each monthly reporting period is then due no later than the 15th calendar day of the following month. The fee deposit will be refunded to the concessionaire within 30 calendar days of expiration/termination of the contract, less any amount due the Exchange. No interest will accrue to concessionaire on the deposit while held by the Exchange.

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b. Fee (and settlement report) for less than a full reporting period upon termination or expiration of the contract will be forwarded to arrive no later than 10 calendar days after termination or expiration of the contract.

c. Payments due on Saturday, Sunday or national holidays will be due on the next working day.

d. A late charge of \$75.00 will be assessed on all fee payments not received at the designated payment office by close of business on the date due. This charge will be in addition to other remedies provided by the contract.

11. TAXES (FEB 89).

a. Concessionaire is responsible for determining the applicability of and for payment of all federal, state, host country, and local taxes applicable to the property, income, and transactions of concessionaire, and if required by applicable laws and regulations, will collect and remit sales taxes to the state. Sales taxes which have been collected in the manner required by Clause 5, Prices, will be excluded from the computation of gross receipts, and the amount excluded will be listed on the Concessionaire Settlement Report. The amount of taxes so excluded will not exceed the actual sum payable to the state. If required by state law or regulation, concessionaire will obtain and conspicuously display the state sales tax permit.

b. Concessionaire warrants that the contract prices or other consideration do not include any tax or duty from which concessionaire is exempt under the laws or agreements of the United States Government, state or host country where this contract is performed. If any such tax or duty has been included in the pricing or consideration through error or otherwise, the contract pricing or consideration will be correspondingly reduced or adjusted. If for any reason after the contract date, concessionaire is relieved, in whole or in part, from the payment or the burden of any tax or duty included in the contract pricing or other consideration, the contract pricing and/or other consideration will be correspondingly reduced or adjusted.

c. If this contract covers an activity involving a Federal Occupational Tax, concessionaire agrees as a condition precedent to engaging in or operating such activity, to tender to the Exchange the amount of any Federal Occupational Tax applicable thereto if payment has not been accomplished by concessionaire, or to reimburse the Exchange the amount of any such tax the Exchange has paid as a result of the operation of such activity by concessionaire. As between the parties of this contract, notice or demand for payment from an office of the U.S. Internal Revenue Service will be conclusive that the Federal Occupational Tax is payable and in the amount so specified to be due.

12. CONCESSIONAIRE AND CONCESSIONAIRE EMPLOYEES (CONCESSION PERSONNEL) (JAN 00).

a. Responsible management will be available during all hours of operation at the concession activity. The manager or designated representative will be completely knowledgeable of the terms and conditions of this contract and will be delegated authority to conduct business as required by this contract. Authority will include, but will not be limited to, purchase of operating supplies, maintenance and repair of equipment, training of employees, maintaining prescribed hours of operation, supervision of concessionaire employees, and settlement of customer complaints or claims. The concessionaire will provide the contracting officer with written notification naming the person(s) appointed manager or representative.

b. Concessionaire will furnish a sufficient number of trained, qualified employees to ensure the efficient performance of this contract. New concessionaires will give first consideration to employment of employees of the previous operations.

c. All concessionaire employees used in performance of this contract who have customer contact must be able to read, write, and speak English at a fluency level sufficient for efficient performance of the contract.

d. If requested by exchange management, the concessionaire will, at his expense, make his employees available for any applicable training in accordance with training dates determined by exchange management.

e. Concession personnel must meet the health and security standards prescribed by the contract and applicable regulations, and must obtain installation passes, permits, and security clearances as applicable.

f. Concession personnel will be neatly dressed and meticulous in their personal grooming at all times. Customer contact personnel will be required to wear attire typical of styles commonly used by the better local commercial facilities of the food chain and as approved by the contracting officer. Logo nameplates will be provided by the concessionaire and worn by all customer contact personnel

g. Concession personnel will give prompt and courteous treatment to authorized customers.

h. Concession personnel will abide by applicable regulations and directives and conduct themselves so as not to reflect discredit on the Exchange.

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i. Concessionaire will discontinue the use of any employee for performance of this contract upon written notice from the contracting officer that the individual is not (or no longer) acceptable for performance under this contract. Concessionaire will not use any such employee in performance of other Exchange contracts without the prior written consent of the applicable contracting officer.

j. Concessionaire will not employ any individual under this contract who has previously been determined unacceptable for performance under any other Exchange contract or has been separated for cause by the Exchange.

13. ACTIONS TO BE TAKEN UPON TERMINATION (INCLUDING EXPIRATION) (JAN 05).

a. If contractor desires to sell, and the Exchange desires to purchase, any or all of the concessionaire furnished property including equipment, furniture and movable trade fixtures, etc., used in the facility by concessionaire for this contract, the value of the property will be jointly agreed upon by both parties. Contractor must show clear title to all items transferred.

b. Concessionaire will promptly settle his account with the Exchange including payment in full of all amounts due the Exchange; vacate the premises, leaving installed property and non-severable equipment, and all the Exchange furnished property, clean and in as good order and condition as when received (damage due to acts of God or the U.S. Government, and ordinary wear and tear excepted); surrender all installation passes, decals, etc., for himself and his employees; and complete satisfactory settlement of all customer complaints and claims. Termination of the contract does not release concessionaire from the obligation to satisfactorily settle customer complaints and claims.

c. Concessionaire will promptly remove all other concessionaire property (furniture, signs, etc.) and severable equipment not purchased by the Exchange and surrender the premises in good order and condition, fair wear and tear excepted. Concessionaire will be responsible for restoration of the premises necessary to achieve good order and condition at no cost to the Exchange or the government. Restoration of buildings which were converted by the concessionaire will be limited to interior work. Restoration of buildings constructed by the concessionaire will include both interior and exterior work. Parking and other site features must also be restored to acceptable condition. Upon failure to vacate the premises or remove concessionaire's property, the contracting officer may enter the premises, cause concessionaire's property to be removed and stored in a warehouse at concessionaire's expense, and cause the premises to be cleaned and restored at concessionaire's expense. If concessionaire is indebted to the Exchange, concessionaire authorizes and empowers the contracting officer to take possession of concessionaire's property and dispose of same by public or private sale without notice, and out of the proceeds of sale, satisfy all costs to the Exchange including the costs of sale, handling, storage, etc., and any other indebtedness to the Exchange.

d. If concessionaire is not awarded a follow-on contract, concessionaire will arrange the transfer of the activity's telephone number to the new concessionaire unless such transfer is prohibited by the servicing telephone company.

14. LOST, ABANDONED, AND UNCLAIMED PROPERTY (DEC 88).

Personal property left in the concession area will be returned promptly to the owner if the owner can be identified. If return to the owner cannot be promptly accomplished, the items will be turned over to the appropriate military office for lost, abandoned or unclaimed items. (Example, a customer leaves his umbrella in the concession.)

15. INDEBTEDNESS (FEB 89).

a. Concessionaire will pay promptly and in accordance with the terms of this contract, all indebtedness incurred in connection with performing the contract. If a due date is not specifically set out elsewhere, such payments due the Exchange must be received by the Exchange no later than 15 days after receipt of notice of amounts due. If all amounts due under this contract or due under other contracts are not received, at any time thereafter, the contracting officer may at his option direct by written order that daily receipts be turned over to the Exchange for the period or periods of time until all amounts owing the Exchange are paid.

b. The Exchange may charge concessionaire for a dishonored check received from concessionaire, except when (1) the bank acknowledges the return to be the result of bank error or (2) the return is the result of an Exchange error. The amount charged by the Exchange will not exceed the administrative amount normally charged Exchange customers by the Exchange for dishonored checks. The contracting officer may, at his option, require payment to be made in cash, certified check, or cashier's check.

16. FEE REVISIONS (JUN 01).

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The fees established in this contract will remain firm throughout the term of the contract unless revised by mutual agreement of the contracting parties.

17. INSURANCE (JUL 10).

- a. Concessionaire will maintain in full force and effect, during the period of the contract, at least the insurance coverage set out in the Insurance Requirements exhibit of this contract.
- b. Concessionaire will be liable for damage, loss or injury to property or persons resulting from acts or omissions of concessionaire, his employees or agents, whether or not covered by required insurance.

18. PROMOTIONAL EVENTS (JUL 10).

- a. The concessionaire will participate in all chain-directed promotions and may also conduct independent promotions at the activity level subject to prior coordination with local exchange management.
- b. The cost of chain-directed or concessionaire-sponsored promotions will be borne by the concessionaire. Fees payable to the Exchange (Gross Sales) will be based on regular sale price less any discount or free items customers are entitled to resulting from redeeming coupons.
- c. Concessionaire is encouraged to advertise in media produced primarily for distribution on military reservations to authorized customers. Advertising in commercial media not specifically directed towards the military market, when not otherwise prohibited by the contract, requires prior approval of the contracting officer.

19. EXCHANGE TABLOID/SPECIAL SALES COUPONS AND MERCHANDISE GIFT CERTIFICATE REDEMPTION (APR 05).

a. Exchange Tabloid/Special Sales Coupons:

(1) Concessionaire will enter the total face value amount of the Exchange Tabloid and Special coupons redeemed during a reporting period on the Concessionaire Settlement Report, Exchange Form 6550-10. The coupons received and redeemed will be submitted to the supporting exchange accounting office with the settlement report. The supporting exchange accounting office will verify the coupon amount.

(2) Concessionaire will deduct the total face value of the coupons redeemed from fee payment unless otherwise specified by the contract.

b. Exchange Merchandise Gift Certificates:

(1) Concessionaires will follow all current the Exchange policies and procedures regarding acceptance and processing of gift certificates, as set out in the Exchange EOP 40-11 (Special Retail Programs).

(2) Concessionaire will honor Exchange Merchandise Gift Certificates and redeem for any combination of merchandise and cash back. The Exchange Merchandise Gift Certificates cannot be redeemed for cash only at concession activities. Customers who wish to redeem certificates for cash only must do so at any Exchange direct retail facility.

(3) Concessionaire will ensure that Gift Certificates have been properly completed by both the Exchange and the customer. Review for the following information on certificates:

(a) Recipient's name must be written on the "Payable To" line of gift certificate.

(b) Value of gift certificate must be written in both numbers and words. The amount in numbers must agree with amount written in words.

(c) Ensure that the issuing Exchange Name, 10-digit facility number and a date are indicated on the gift certificate.

(d) Ensure that all Gift Certificates presented are originals and not copies.

(4) Ring the merchandise selected and total the sale.

(5) Tender the amount of the gift certificate(s) as Cash.

(6) If the amount of the sale is greater than the face value of the certificate(s), collect additional amount due from customer. If the amount of the sale is less than the face value of the certificate(s), give the customer change.

(7) Write the current date and the word "REDEEMED" on the front of the gift certificate(s) and ask the customer to endorse the back of the certificate(s).

(8) The Exchange will reimburse concessionaire for amount of valid gift certificates redeemed by exchange customers as follows:

(a) Concessionaire will enter the total face value amount of gift certificates redeemed, during a reporting

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period, on the Concessionaire Settlement Report, Exchange Form 6550-10, and deduct the gift certificate amount from fee payment due the Exchange.

(b) The gift certificates received and redeemed will be submitted to the supporting exchange accounting office with the settlement report. The supporting exchange accounting office will verify the gift certificate amount.

20. REFUNDS (DEC 88).

a. Concessionaire will be responsible for refunds to customers due to customer dissatisfaction with the item or service or due to any overcharges made on items or services furnished under this contract. Should concessionaire refuse or fail to promptly make any refund of overcharges to a customer, the Exchange may make such refund and charge such amount to concessionaire's account. If a customer cannot be located or if refund to a customer is otherwise not practicable as determined by the contracting officer, concessionaire will pay the amount of the overcharge to the Exchange within 15 calendar days from date of demand by the Exchange.

b. Requests for refunds not promptly honored will be considered complaints or claims and will be subject to the provisions of the Customer Complaints and Claims clause.

21. CUSTOMER CHECKS (MAY 05).

a. Concessionaire will accept both local and out-of-town checks in payment for merchandise and service. The Exchange will assist the concessionaire in the collection of non-sufficient fund checks.

b. Concessionaire may charge the customer for a dishonored check except when (1) the bank acknowledges the dishonor to be a bank error or (2) the return is the result of a concessionaire error. Concessionaire may not charge more than the administrative amount charged by the Exchange for dishonored checks. Losses from dishonored checks are concessionaire's responsibility.

c. With the approval of the local Exchange General Manager, concessionaires in CONUS, Hawaii, Guam and Panama may purchase equipment from the Exchange to access any available Exchange check verification system. The concessionaire will pay all costs associated with system, to include equipment, installation, maintenance, supplies, and line charges. The Exchange will not be liable for concessionaire losses caused by malfunction of equipment or system outages.

d. Under no circumstances will the concessionaire record the customer Social Security Number (SSN) on the check.

22. SAFEGUARDING OF CONCESSIONAIRE FUNDS ON ARMY AND AIR FORCE INSTALLATIONS (DEC 88).

a. When funds in excess of \$100 are kept in the concessionaire facility during nonoperational hours, they will be secured in a steel safe equipped with a three-position combination tumbler locking device.

b. When funds in excess of \$500 are held in the concessionaire facility during nonoperational hours, the safe must:

(1) be secured to the premises by being encased in a concrete bed; or

(2) be bolted or steel-strapped to a floor beam or an internal wall support beam with the bolts or straps concealed to prevent cutting or prying; or

(3) weigh in excess of 1,000 pounds.

23. INSPECTIONS (MAR 00).

a. The Exchange contracting officer, or any person designated by the contracting officer, may conduct inspections as may be considered necessary to insure compliance by the concessionaire with all provisions of this contract.

b. The Exchange may perform surveillance to verify concessionaire and concessionaire employee compliance with contract terms and to detect theft of funds. Such surveillance may include the use of electronic equipment.

Concessionaire will inform employees that such surveillance may be conducted and that individuals implicated in criminal activity may be prosecuted in Federal courts.

c. Concessionaire is liable and will pay the Exchange for losses under this contract detected by surveillance or otherwise discovered or incurred.

24. COMPLIANCE WITH CHAIN'S CURRENT IMAGE (JUN 01).

The constructed facility whether freestanding or conversion, will reflect the chain's current visual image and

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programs/methods. The concessionaire is responsible for implementing all changes to the current standards during the contract period within 90 (ninety) days of the chain's publication of the changes. This requirement is also subject to paragraph 4.d, Exhibit I.

25. CHARGE CARD AND MILITARY STAR CARD SALES (JUL 10).

a. Charge Cards: Concessionaire will accept at least two recognized U.S. commercial charge cards, Visa and MasterCard. Concessionaires will not require customer signature for Credit Card slips or Military Star Care Purchases of \$25 or less.

(1) Concessionaire will accept the GSA Smart Pay Card and Government Purchase Card (GPC) from authorized customers and DoD civilians for official purchases upon presentation of the charge card and a Government Identification Card.

(2) Concessionaire is responsible for the payment of any fees, charge backs, and other arranged costs levied by the charge card issuing companies.

b. Military Star Card:

(1) Concessionaire will participate in the Military Star card program for products/services as authorized in this contract. The Exchange, Navy Exchange System (NEXCOM), Marine Exchange System (MCX) and the Coast Guard Exchange System authorize the program for use within their facilities and within each exchange system. Primary responsibilities are as follows:

(a) Concessionaire will report such sales on the Concessionaire Settlement Report in the same manner as other credit card sales.

(b) The Exchange will provide procedures and forms required to process the Military Star card credit transactions.

(c) Concessionaire will be charged a processing fee of 2.0% of all Military Star card transactions, to include sales tax, less merchandise refunds or adjustments, which will be deducted from the Exchange reimbursement to the concessionaire. The fee percentage may be administratively reduced by the Exchange without contract amendment.

(d) The Exchange will pay the contractor in accordance with the Payments clause shown below.

(e) The Exchange will be responsible for collection of Military Star card account balances from customers.

(f) Concessionaire will handle refunds and adjustments under the Military Star card program in the same manner as other credit card sales.

(g) The term "daily sales receipts" in Special Provision 22, "Indebtedness", is expanded to include any funds payable to the concessionaire under the Military Star card program.

(2) Payment (CONUS):

(a) Payment will be made weekly based on concessionaire's weekly summary of Military Star card transactions as verified and reported by the local exchange. A check will be issued weekly covering the prior Monday through Sunday time period. The check will be sent out approximately one week after the Monday through Sunday transaction period.

(b) Date of payment is determined to be the earliest of the following:

((1)) Date of the check issued to the concessionaire, or

((2)) Date an electronic fund transfer is received by the concessionaire regardless of the date the financial institution posts the transfer, or

((3)) Date a withholding authorized by the contract is initiated by the Exchange.

(c) Payment will be made by mailing a check to the address shown on the contract, unless the concessionaire provides a different "remit to" address to the contracting officer.

((1)) If a contractor wishes to change the address (e.g., street, P.O. Box, city/state) to which payment should be sent or wishes its payments to also reflect a financial institution or a factor's name and be sent to a factor's address, the request must be in writing, signed by a responsible official of the contractor, and submitted to the contracting officer. Any such request must clearly establish which division or subsidiary of a corporation such changes apply to and the address that is superseded by the changes. These changes will become effective when approved by the contracting officer and on the date determined by the Exchange. This will normally be 30 days after approval. Changes will be done on an accommodation basis only, with the understanding that no legal obligation is imposed on the Exchange for failure to make payment to the new payee/address. The contractor may in similar manner, revoke such changes.

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((2)) Any request by the contractor to change the name shown on the contract or to assign contract performance must be sent to the contracting officer.

(d) Any questions or inquiries concerning payments should be directed to the exchange General Manager's office. Unidentified and duplicate payments must be brought to the attention of the exchange General Manager's office immediately upon discovery. The contractor is required to mail a copy of the Exchange check voucher received with unidentified or duplicate payment highlighted. Under no circumstances should unidentified payments be applied against other amounts due.

(e) Contractors are to wait at least 30 days past the due date of the payment before writing the exchange General Manager's office. Any interest penalties due to contractor will be computed in accordance with the Prompt Payment Act, 31, U.S.C. 3901-3906 as amended.

26. SMOKING POLICY (DEC 86).

The smoking policy for concession operations will be as directed by the general manager.

27. HEAVY METAL LEACHING (DEC 07).

Concessionaire warrants that any product that can reasonably be used to carry food or liquid for human consumption and made of a substance prone to heavy metal leaching such as and to include pewter ware, earthenware, ceramic ware, chinaware, ironware, lacquer ware, bronze ware, brassware, leaded crystal ware, and coated/plated items with a heavy metal base furnished under this contract, contains no leachable levels of metals dangerous to users. Maximum leachable levels and test methods are established by the U.S. Food and Drug Administration. The Exchange reserves the right to test concessionaire products on an unannounced basis. If a heavy metal leaching failure is found, concessionaire agrees to reimburse the Exchange for all follow-up costs to sample test the remainder of his items for the duration of the contract. This provision does not supersede, replace, or cancel other remedial provisions allowed by the contract. Concessionaire further warrants that products have been tested by either the U.S. Food and Drug Administration or a nationally recognized independent test laboratory and found to be in compliance with the current U.S. Food and Drug Administration action levels and test methods. Test data will be furnished to the Exchange upon request by the contracting officer.

28. THE EXCHANGE/VENDOR PARTNERSHIP MARKETING PROGRAM (JUL 94).

The Exchange Marketing Program consists of numerous elements to enhance the sale of consumer products and services. At the contractor's request, the Exchange will give the contractor the opportunity to participate in selected elements of the Program. All participation will be in conjunction with the sale of authorized products and services to authorized customers. The Exchange reserves the right to limit the degree of participation based on availability, designated themes of special events, and the overall goals of the program.

29. ORGANIZATIONAL SALES (NOV 00).

Concessionaire may sell items to authorized official organizations and activities of the U.S. Armed Forces. Sales will be recorded on the cash register at the time the sales transaction is made. Any losses incurred as a result of organizational sales are concessionaire's responsibility.

SECTION I

Instructions to Offerors -- Amendment of Solicitation. The following instructions apply unless specified otherwise in an Exchange letter accompanying this amendment.

a. Offerors must acknowledge receipt of this amendment prior to the hour and date specified for receipt of proposals in the original solicitation, or the hour and date specified in this amendment if such has been amended. Offeror must acknowledge by one of the following means:

- (1) By signing and returning all except one copy of this amendment.
- (2) By acknowledging receipt of this amendment on each copy of the proposal submitted;
- (3) By separate letter or telegram which includes a reference to the solicitation and amendment number.

b. Proposals must be based upon and refer to the solicitation as amended. Unless an acknowledgment of this amendment is received by the contracting officer before the hour and date specified for receipt of proposals, offeror's proposal may be considered nonresponsive.

c. If you desire to revise a proposal previously submitted, such revision must be received prior to the hour and date specified for receipt of proposals enclosed in a sealed envelope addressed to the issuing office, with the name and address of the offeror and the solicitation number on the face of the envelope. Telegraphic proposals will not be considered unless authorized by the solicitation; however, proposals may be modified by telegraphic notice provided such notice is received prior to the time set for receipt of proposals. Telegraphic modifications should not reveal the amount of the original or of the revised proposal.

SECTION II

Instructions to Contractor -- Amendment of Contract.

Unless otherwise instructed, all except one copy of this amendment are to be executed by the person authorized to bind the firm contractually and returned to the contracting officer. The effective date will be the date the amendment is signed in block 6 by the contracting officer or the date(s) indicated in block 4, whichever is later.

EXHIBIT H

U.S. Department of Labor Wage Determination

Services Contract Act

1. The attached U.S. Department of Labor Wage Determination applies to the operation of a concession activity at the following location:

<u>Location</u>	<u>Wage Determination No.</u>
Aberdeen Proving Ground, MD	2014-0368

2. Any contract awarded as a result of this solicitation will be subject to the Service Contract Act of 1965. If applicable, contractor must comply with all requirements of the Act and must pay wages and fringe benefits not less than those specified in a wage determination issued by the Department of Labor. Any offeror participating in the solicitation does so with the understanding that a wage determination not yet received from the Department of Labor will upon receipt be applicable to any contract awarded as a result of this solicitation. Upon receipt of a reply from the Department of Labor, the solicitation will be amended to add the wage determination.

WD 14-0368 (Rev.-2) was first posted on www.wdol.gov on 06/10/2014
Fast Food Services

REGISTER OF WAGE DETERMINATIONS UNDER
THE SERVICE CONTRACT ACT
By direction of the Secretary of Labor

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
WASHINGTON, D.C. 20210

Diane C. Koplewski Division of Wage
Director Determinations

Wage Determination No: 2014-0368
Revision No: 2
Date Of Revision: 06/03/2014

State: Maryland
Area: Maryland Counties of Anne Arundel, Baltimore, Baltimore City, Carroll,
Harford, Howard, Queen Anne's

Fringe Benefits Required Follow the Occupational Listing

OCCUPATION CODE - TITLE	FOOTNOTE	RATE
07080 - Fast Food Shift Leader		9.92
07090 - Fast Food Worker		9.02

The FAST FOOD INDUSTRY covers establishments with the following characteristics:

1. A limited fixed menu which can be prepared by workers following a short training period.
2. No alcoholic beverages served.
3. Customers ordering meals at counter or drive-up locations.
4. Food available almost immediately after order is placed.
5. Tipping not encouraged.

ALL OCCUPATIONS LISTED ABOVE RECEIVE THE FOLLOWING BENEFITS:

HEALTH & WELFARE: \$.66 per hour or \$26.40 per week or \$114.40 per month

VACATION: \$.17 per hour in paid vacation after 1 year of service with a contractor or successor. Length of service includes the whole span of continuous service with the present contractor or successor, wherever employed, and with the predecessor contractors in the performance of similar work at the same Federal facility. (29 CFR 4.173)

HOLIDAYS: \$.09 per hour in holiday pay. (29 CFR 4.174)

** UNIFORM ALLOWANCE **

If employees are required to wear uniforms in the performance of this contract (either by the terms of the Government contract, by the employer, by the state or local law, etc.), the cost of furnishing such uniforms and maintaining (by laundering or dry cleaning) such uniforms is an expense that may not be borne by

an employee where such cost reduces the hourly rate below that required by the wage determination. The Department of Labor will accept payment in accordance with the following standards as compliance:

The contractor or subcontractor is required to furnish all employees with an adequate number of uniforms without cost or to reimburse employees for the actual cost of the uniforms. In addition, where uniform cleaning and maintenance is made the responsibility of the employee, all contractors and subcontractors subject to this wage determination shall (in the absence of a bona fide collective bargaining agreement providing for a different amount, or the furnishing of contrary affirmative proof as to the actual cost), reimburse all employees for such cleaning and maintenance at a rate of \$3.35 per week (or \$.67 cents per day). However, in those instances where the uniforms furnished are made of "wash and wear" materials, may be routinely washed and dried with other personal garments, and do not require any special treatment such as dry cleaning, daily washing, or commercial laundering in order to meet the cleanliness or appearance standards set by the terms of the Government contract, by the contractor, by law, or by the nature of the work, there is no requirement that employees be reimbursed for uniform maintenance costs.

The duties of employees under job titles listed are those described in the "Service Contract Act Directory of Occupations", Fifth Edition, April 2006, unless otherwise indicated. Copies of the Directory are available on the Internet. A link to the Directory may be found on the WHD home page at <http://www.dol.gov/whd/> and through the Wage Determinations On-Line (WDOL) website at <http://wdol.gov/>.