



# Department of Defense INSTRUCTION

**NUMBER** 4105.67

February 26, 2014

*Incorporating Change 1, April 7, 2016*

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USD(P&R)

**SUBJECT:** Nonappropriated Fund (NAF) Procurement Policy and Procedure

**References:** See Enclosure 1

1. PURPOSE. This instruction:

a. Reissues DoD Directive (DoDD) 4105.67 (Reference (a)) as a DoD instruction (DoDI) in accordance with the authority in DoDD 5124.02 (Reference (b)) to establish policy, assign responsibilities, and prescribe procedures for procurements using NAF.

b. Authorizes DoD nonappropriated fund instrumentalities (NAFIs) to enter into certain contracts and agreements with other federal agencies and instrumentalities in accordance with the authorities in sections 2484(h)(2)(A) and 2492 of Title 10, United States Code (U.S.C.) (Reference (c)).

c. Incorporates and cancels DoDI 4105.71 (Reference (d)) and DoDI 7060.03 (Reference (e)).

2. APPLICABILITY

a. This instruction applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this instruction as the "DoD Components").

b. This instruction creates no rights or remedies and may not be relied on by any person, organization, or other non-governmental entity to allege a denial of any rights or remedies.

3. POLICY. It is DoD policy that:

a. DoD NAFIs governed by DoDI 1015.15 (Reference (f)) are instrumentalities of the United States and have the inherent authority to enter into contracts and leases using NAF.

b. NAF procurements will be accomplished by trained procurement personnel in a fair, equitable, and impartial manner, and to the best value for the NAFI. *Appropriated fund (APF) and NAF procurement personnel must perform NAF-funded contract actions in accordance with NAF procurement procedures and will ensure the actions are not bound by the APF procedures listed in paragraph 3i of this instruction. However, when in the best interest of the NAFI, as determined by the NAFI, existing APF contracts may be used to fulfill NAF requirements in accordance with paragraph 1.a. of Enclosure 2 of this instruction.*

c. NAF procurements must be executed in compliance with the requirements of applicable statutes, regulations, and directives.

d. Personnel accomplishing NAF procurements must comply with DoDD 5500.07 (Reference (g)).

e. Personal service contracts, as defined in Volume 1403 of DoDI 1400.25 (Reference (h)), are prohibited.

f. The exchange services must implement a program that ensures private label and non-branded direct-import merchandise is not produced by child or forced labor ~~pursuant to as requested by~~ House Report 107-194, which accompanied the National Defense Authorization Act for Fiscal Year 2002 (Reference (i)), and in accordance with procedures in section 12 of Enclosure 2 of this instruction.

g. DoD favors and promotes the sale of U.S. merchandise items and services in overseas NAFIs as prescribed in Enclosure 3 of this instruction.

*h. DoD NAFIs will procure sustainable goods and services when they represent the best value to the NAFI.*

**hi.** The following do not apply to NAF procurements:

(1) Federal Acquisition Regulation (Reference (j)), the Defense Federal Acquisition Regulation Supplement (Reference (k)), or DoD Component supplements.

(2) Chapter 137, "Procurement Generally," of Reference (c).

(3) Section 631 et seq. of Title 15, U.S.C., also known as "the Small Business Act," as amended (Reference (l)).

(4) Sections 8301-8303 of Title 41, U.S.C. ((Reference (m)), also known and referred to in this instruction as "the Buy American Act (BAA)," and sections 2501-2581 of Title 19, U.S.C., also known and referred to in this instruction as "the Trade Agreements Act (TAA) of 1979" (Reference (n)), do not apply to NAFI purchases of resale items.

#### 4. RESPONSIBILITIES

a. Under Secretary of Defense for Personnel and Readiness (USD(P&R)). The USD(P&R) establishes uniform DoD NAF procurement policy.

b. Assistant Secretary of Defense for ~~Readiness and Force Management~~ Manpower and Reserve Affairs (ASD(~~R&FMM&RA~~)). Under the authority, direction, and control of the USD(P&R), the ASD(~~R&FMM&RA~~) establishes guidance for the proper administration and management of NAF procurements and monitors compliance as prescribed in this instruction.

c. DoD Component Heads. DoD Component heads:

(1) Establish NAF procurement procedures consistent with this instruction. They may delegate the authority to develop procurement procedures to the exchange services.

(2) Establish NAF procurement management oversight and internal control systems.

(3) May establish procurement advisory groups where NAF procurement personnel and legal counsel supporting NAFIs can meet to discuss means of improving procurement actions. Advisory groups will consist solely of U.S. Government personnel.

(4) Must review and approve NAF facility leases with an annual cost of \$200,000 or greater before contract award.

5. PROCEDURES. Enclosure 2 provides general procedures for NAF procurements that are in the best interest of the NAFI and must be followed absent specific prohibition in federal law, federal regulation, Executive order, or DoD issuance. Enclosure 3 provides procedures for the international balance of payments program as it applies to NAFIs.

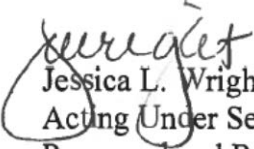
6. RELEASABILITY. **Unlimited Cleared for public release**. This instruction is ~~approved for public release and is~~ available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

7. EFFECTIVE DATE. This instruction

~~—a. *Is* effective February 26, 2014.~~

~~—b. Must be reissued, cancelled, or certified current within 5 years of its publication to be considered current in accordance with DoD Instruction 5025.01 (Reference (e)).~~

~~—cb. Will expire effective February 26, 2024 and be removed from the DoD Issuances Website if it hasn't been reissued or cancelled in accordance with Reference (e).~~

  
Jessica L. Wright  
Acting Under Secretary of Defense for  
Personnel and Readiness

Enclosures

1. References
2. NAF Procurement Procedures
3. NAFI International Balance of Payments Program Procedures

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ENCLOSURE 1

REFERENCES

- (a) DoD Directive 4105.67, “Nonappropriated Fund Procurement Policy,” May 2, 2001, as amended (hereby cancelled)
- (b) DoD Directive 5124.02, “Under Secretary of Defense for Personnel and Readiness (USD(P&R)),” June 23, 2008
- (c) Title 10, United States Code
- (d) DoD Instruction 4105.71, “Nonappropriated Fund (NAF) Procurement Procedure,” February 26, 2001, as amended (hereby cancelled)
- (e) DoD Instruction 7060.03, “International Balance of Payments Program – Nonappropriated Fund Activities,” December 7, 2005 (hereby cancelled)
- (f) DoD Instruction 1015.15, “Establishment, Management, and Control of Nonappropriated Fund Instrumentalities and Financial Management of Supporting Resources,” October 31, 2007, as amended
- (g) DoD Directive 5500.07, “Standards of Conduct,” November 29, 2007
- (h) DoD Instruction 1400.25, Volume 1403, “Department of Defense Civilian Personnel Management System: *“Nonappropriated Fund (NAF) Employment,”* ~~December 1, 1996, as amended March 20, 2015~~
- (i) House Report 107-194, which accompanied the National Defense Authorization Act for Fiscal Year 2002, (“Military Exchange Private Label Manufacturers,” page 293)<sup>1</sup>
- (j) Federal Acquisition Regulation (FAR), current edition
- (k) Defense Federal Acquisition Regulation Supplement (DFARS), current edition
- (l) Section 631 et seq. of Title 15, United States Code
- (m) Title 41, United States Code
- (n) Sections 2501-2581 of Title 19, United States Code
- ~~(o) DoD Instruction 5025.01, “DoD Directives Program,” September 26, 2012, as amended~~
- ~~(p)~~ DoD Instruction 1330.21, “Armed Services Exchange Regulations,” July 14, 2005
- ~~(q)~~ DoD Instruction 1015.10, “Military Morale, Welfare, and Recreation (MWR) Programs,” July 6, 2009, as amended
- ~~(r)~~ DoD Instruction 1015.08, “DoD Civilian Employee Morale, Welfare, and Recreation (MWR) Activities and Supporting Nonappropriated Fund Instrumentalities (NAFI),” December 23, 2005
- ~~(s)~~ DoD Instruction 1015.11, “Lodging Policy,” October 6, 2006, as amended
- ~~(t)~~ ~~DoD Instruction 1125.03, “Vending Facility Program for the Blind on DoD-Controlled Federal Property,” December 22, 2009~~ *Section 107 et seq. of Title 20, United States Code*
- ~~(u)~~ DoD Instruction 1015.13, “DoD Procedures *for* Implementing Public Private Ventures (PPVs) for Morale, Welfare, and Recreation (MWR), and Armed Services Exchange Category C Revenue-Generating Activities,” March 11, 2004
- ~~(v)~~ General Services Administration, “List of Parties Excluded” from federal procurement and nonprocurement programs, current edition<sup>2</sup>

<sup>1</sup> Copies may be obtained from the internet at <http://thomas.loc/home/thomas.php> <http://www.congress.gov/>

<sup>2</sup> Copies may be obtained from the internet at <https://www.sam.gov/portal/public/SAM/>

- (~~w~~v) DoD Instruction 7600.06, "Audit of Nonappropriated Fund Instrumentalities (NAFI) and Related Activities," November 5, 2012
- (~~x~~w) DoD Instruction 4165.71, "Real Property Acquisition," January 6, 2005
- (x) *DoD Instruction 4165.70, "Real Property Management," April 6, 2005*
- (y) DoD Instruction 7700.18, "Commissary Surcharge, Nonappropriated Fund (NAF), and Privately Financed Construction Reporting Procedures," December 15, 2004
- (z) DoD Instruction 1340.25, "Combat Zone Tax Exclusion (CZTE)," September 28, 2010
- (aa) Joint Publication 1-02, "Department of Defense Dictionary of Military and Associated Terms," current edition

ENCLOSURE 2

NAF PROCUREMENT PROCEDURES

1. PROCUREMENT METHODS

a. Existing NAF and ~~appropriated fund (APF)~~ contracts and agreements will be used to satisfy NAF requirements when such contracts or agreements are available, cost-effective, and meet the needs of the requiring activity. To encourage cooperative initiatives, DoD NAFIs will authorize other NAFI organizations to place delivery orders against their contracts to the maximum extent practical.

b. Procurement methods and procedures that result in firm fixed-price contracts are preferred, unless otherwise determined by the contracting officer as being in the best interest of the NAFI.

c. Alternative purchase methods, such as the use of NAF purchasing agreements, master vendor agreements, purchase cards, and emergency procurement procedures, may be authorized. NAFIs will use the Government Commercial Purchase Card (GCPC) or other purchase cards for the purchase of non-resale items and services procured with NAF when appropriate and cost effective.

d. Pursuant to section 2492 of Reference (c), NAFIs that directly support the operations of exchange services; military and DoD civilian morale, welfare, and recreation (MWR) programs; or lodging programs are authorized to enter into contracts or other agreements with another *DoD* element ~~of the DoD~~ or another federal department, agency, or instrumentality to provide or obtain items and services that are beneficial to the efficient management and operation of the exchange services, military and DoD civilian MWR systems or lodging programs. *These NAFIs:*

(1) ~~DoD NAFIs m~~May enter into contracts or agreements to provide or obtain those items and services specifically authorized for:

- (a) Exchange services as defined by DoDI 1330.21 (Reference (~~po~~)).
- (b) Military MWR activities as defined by DoDI 1015.10 (Reference (~~qp~~)).
- (c) Civilian MWR activities as defined in DoDI 1015.08 (Reference (~~rq~~)).
- (d) Lodging activities as defined in DoDI 1015.11 (Reference (~~sr~~)).

(2) ~~Pursuant to this authority, DoD NAFIs m~~May *enter into contracts or agreements to provide items or services inherent to their internal operation or obtain food services beneficial to the efficient management and operation of the dining facilities on military installations offering food services to Service members.*



(3) ~~DoD NAFIs~~ Will not enter into contracts or agreements with DoD elements or other federal departments, agencies, or instrumentalities for the provision of items or services that will result in the loss of jobs created pursuant to ~~DoDI 1125.03-section 107 et seq. of Title 20, U.S.C., also known as “the Randolph-Sheppard Act”~~ (Reference (ts)), sections 8501 through 8506 of Reference (m), also known as the “~~Javits-Wagner-O’Day Act (JWOD)-Committee for Purchase from People Who Are Blind or Severely Disabled Statute,~~” or small business programs.

*(4) Will not enter into additional contracts or agreements pursuant to section 2492 of Reference (c) with APF-funded DoD elements, or with other federal departments or agencies, except as authorized in paragraphs 1.d.(1) and 1.d.(2) of this enclosure. Renewal or extension of existing contracts or agreements entered into before December 19, 2014 for items or services not authorized in paragraphs 1.d.(1) and 1.d.(2) of this enclosure is permitted.*

(45) Before entering into a contract or other agreement pursuant to section 2492 of Reference (c), ~~the NAFI~~ will ensure that the agreement or contract will benefit the NAFI.

## 2. PROCUREMENT AUTHORITY

a. The DoD Component Head or their designee(s) will prescribe criteria for determining when central or regional procurement offices will be used to accomplish NAF procurements. Such criteria will specify, as appropriate, separate offices to serve different Military Services, programs, dollar thresholds, etc.

b. The contracting authority will:

(1) Prescribe, in accordance with their DoD Component’s procedures, organizational authority, limitations, and levels of approval for solicitation, negotiation, award, administration and termination of contracts, resolution of ratifications, and resolution of protests, contractor claims, and subsequent appeals in accordance with section 9 of this enclosure.

(2) Ensure individual responsibility for properly using NAF resources and preventing waste, loss or unauthorized use. Procedures regarding individual liability for unauthorized commitments of NAF resources must be specified.

(3) Delegate and oversee NAF procurement authority, and limit delegation of NAF procurement authority to federally- or NAFI-employed personnel.

(a) NAF procurement personnel with procurement authority must be designated in writing, *either by name or by position or job title. These written designations may be made* via a certificate of appointment, a ~~written~~ letter of appointment, ~~by position or job title a regulation or similar issuance,~~ or an equivalent document. These documents will state the scope and limitations of NAF procurement authority and be posted within public view or made available on request.

(b) Personnel with APF procurement authority are not required to have a separate NAF procurement authority to support installation NAF contracting offices.

3. TRAINING. The contracting authority will establish training requirements, continuing education, and certification requirements for procurement personnel based upon the scope and complexity of the NAF procurements to be accomplished.

#### 4. SOLICITATION DEVELOPMENT AND CONTRACT FORMATION

a. Each NAF contract will identify the specific NAFI that is party to the contract. The NAF contract must state no APF of the United States will be obligated, due, or payable to a contractor.

b. NAF contracts must include contract clauses required by applicable statutes, regulations, or DoD issuances. Each NAF contract will:

(1) Contain clauses governing: changes, examination of records, claims, and terminations.

(2) Apply the BAA and the TAA to non-resale procurements.

c. NAFIs will use competitive procurement procedures to the maximum extent practicable.

(1) Offers will be solicited from a reasonable number of sources except when non-competitive procurement is justified.

(2) The DoD Component Head or their designee(s) must prescribe criteria for non-competitive procurements.

d. Solicitations and resulting contracts to outsource or privatize NAF activities, or for public-private ventures (PPVs), will include analysis and approvals to document that the award provides the best value to the NAFI. The procedures in DoDI 1015.13 (Reference ~~(u)~~) apply to PPVs.

e. Sources of supply will only be selected from legitimate offerors. In addition to contracts entered into directly with commercial suppliers, use of other established Government and NAFI contracts will be considered. These may include the General Services Administration, federal prison industries, blind licensees under the Randolph-Sheppard Act, AbilityOne-authorized nonprofit agencies employing people who are blind or significantly disabled under the ~~JWOD Act~~ *Committee for Purchase from People Who Are Blind or Severely Disabled Statute*, Defense Logistics Agency, Defense Commissary Agency, exchange services, and DoD MWR NAFIs.

#### 5. CONTRACTING OFFICER'S REPRESENTATIVE (COR)

a. CORs serve a critical role in assuring contractors meet the performance requirements of contracts. A COR will be appointed for more complex contracts, usually services and construction contracts, where performance cannot be readily monitored by the contracting officer.

b. A COR does not have the authority to make any commitments or changes that affect price, quality, quantity, delivery, or other contract terms and conditions, nor to “supervise” contractor employees.

c. If applicable to contract, the contracting officer will appoint the COR and, if needed, an alternate contracting officer’s representative (ACOR) before contract award. The contracting officer will ensure training specified by the NAFI contracting office is completed for CORs and ACORs before contract award, or within 30 days of their appointment for replacements, and ~~biennially~~ *at least every 3 years* thereafter as long as the person is a COR or ACOR.

## 6. CONTRACT AWARD

a. NAF contracts will be awarded to responsible companies offering the best value to the NAFI. NAF contracting officers will not award, extend, or exercise option years of contracts to contractors on the General Services Administration’s list of parties excluded from federal procurement and non-procurement programs (Reference (~~vi~~)).

b. NAFIs must ensure sound cash management principles are considered in procurement decisions. Payment terms will be set in the contract.

## 7. CONTRACT DOCUMENTATION. The contracting authority will establish standards and procedures to ensure sufficient documentation of procurement actions.

a. NAFI contracts will be documented in either hardcopy or electronic format. Separate documentation standards and procedures may be established for resale items.

b. Except for resale items, procurement documentation must contain:

- (1) The requirement for the procurement.
- (2) Statement of funds availability for non-revenue generating contracts.
- (3) Evidence of competition or justification for non-competitive procurement.
- (4) Proposals received.
- (5) Record of negotiations.
- (6) Abstracts or summaries of proposals.

- (7) Determination of responsibility.
- (8) Required approvals.
- (9) Contract award information.
- (10) Record of contract performance.
- (11) Any applicable contract modifications, changes, or termination actions.

8. CONTRACT ADMINISTRATION. The contracting authority will:

a. Establish standards and procedures to promote the effective administration of procurement actions, including monitoring contractor performance and delivery, receipt or acceptance of items, services, property and facilities, and legal review.

(1) At a minimum, legal review will be required for protests, claims, novations, ratifications, and terminations.

(2) Legal services may be provided by or through lawyers in the offices of the Judge Advocates General, lawyers in the offices of the DoD Components' General Counsel, or legal staff within the NAFI organization.

b. Prescribe criteria for audit review of NAF contracts. As provided in DoDI 7600.06 (Reference (wv)), the Defense Contract Audit Agency may provide audit services to evaluate price proposals, audit contracts, and review NAF contract claims against contractors.

9. RESOLUTION OF CLAIMS, PROTESTS, AND APPEALS

a. Contracting officers will make reasonable efforts to resolve claims. Contracting officer decisions on claims will be provided in writing and are considered final unless appealed.

b. In claims that are subject to authority of sections 7101-7109 of Reference (m), also known as "the Contract Disputes Act (CDA)," the contracting officer's final decision may be appealed to the Armed Services Board of Contract Appeals or the U.S. Court of Federal Claims.

c. For protests or claims where the CDA does not apply, the contracting officer's final decision in NAF procurements may be appealed to a level above the contracting officer who issued the decision or other designated authority.

d. Protest appeals of decisions made by the contracting officer may be filed in accordance with the NAFI's appeals procedures.

e. The protestor has the right to elevate the appeal to a final authority assigned within the DoD Component for resolution.

## 10. FACILITY LEASES

a. NAF facility leases with an annual cost of \$200,000 or greater must be reviewed and approved by the DoD Component head concerned before contract award.

b. NAF facility leases with annual cost of ~~\$750,000~~ *\$1,000,000* or greater must be approved by the ASD(~~R&FMM&RA~~) before contract award.

c. NAF facility leases with annual costs in excess of \$1,000,000 must also be approved by the Under Secretary of Defense for Acquisition, Technology, and Logistics pursuant to DoDI 4165.71 (Reference (~~xw~~)).

d. NAFIs are not authorized to lease general purpose office space in urban areas for themselves, unless the General Services Administration delegates such authority to them.

*e. NAF outleases will be completed pursuant to DoDI 4165.70 (Reference (x)) as applicable.*

11. DEFENSE BUSINESS SYSTEMS. Defense business systems, ~~with that will have~~ a total cost in excess of \$1,000,000 over the period of the current future-years defense program, ~~procured using NAF whether APF or NAF~~, must be certified by the Defense Business System Management Committee before obligation. *However, this requirement does not apply to systems used exclusively by and within DoD exchange services or other DoD NAFIs conducted for the MWR of Service members using NAFs.*

12. EXCHANGE SERVICE PRIVATE LABEL AND NON-BRANDED DIRECT-IMPORT MERCHANDISE. The contracting authority will ensure that the exchange service implement a program that assures exchange service private label and non-branded direct-imported merchandise is not produced by child or forced labor pursuant to Reference (i).

a. The program will include a code of conduct that reflects the values and expectations the exchange service has of their suppliers.

b. Exchange services will develop an implementation plan for the code of conduct that includes steps to communicate the elements of the code to internal staff, business partners, and factory workers and to train them on these elements.

c. Exchange services will develop a monitoring effort to ensure the codes of conduct are upheld.

d. Exchange services will use government agencies, such as the Departments of State and Labor, retailers, and the International Labor Organization, as resources for information and insights that would facilitate structuring their program. Exchange services will establish ongoing communications with these organizations to help them stay abreast of information that would facilitate their implementation and monitoring efforts to assure that exchange service merchandise is not produced by child or forced labor.

e. Exchange services will pursue efforts to implement a program jointly to minimize costs where there are opportunities to minimize costs.

13. MWR TELEPHONE SERVICES FOR PERSONNEL IN COMBAT ZONES. Pursuant to the section 2304 note of Reference (c) titled, "Telephone Services for Military Personnel Serving in Combat Zones," the following procedures apply to any proposed new contracts, renewals, or extensions of existing contracts for, or including, MWR telephone services (as defined in the Glossary) for military personnel serving in combat zones. These procedures do not apply to other for-fee telephone services, internet, or television services available through personal information services.

a. MWR telephone services within combat zones must be procured from commercial providers using competitive procedures.

b. Before soliciting bids or proposals for new contracts or exercising renewal options on existing contracts for MWR telephone services in combat zones, the Military Department will obtain an ASD(R&FMM&RA) determination whether it is in the best interest of the Department to require bids or proposals, or adjustments for the purpose of extending a contract, to include options that minimize user costs while providing flexibility to use phone cards from other than the prospective or current vendor.

(1) The Military Department will submit the request for determination to the ASD(R&FMM&RA) at least 270 days before contract expiration.

(2) Determination requests will include documentation that the proposed contract action is in the best interest of DoD.

(3) The NAFI will not solicit for a new contract or renew or extend an existing contract until the ASD(R&FMM&RA) has informed the Military Department of its determination.

(4) If the ASD(R&FMM&RA) imposes the requirement to include these options in the new contract solicitation, renewal, or extension, and the submitted bids either prove to be cost-prohibitive to the exchange service or there are no reasonable responses to the solicitation, the Military Department may request that the ASD(R&FMM&RA) reconsider the original determination.

(a) To avoid interruption of telephone service, the Military Department must submit reconsideration requests to the ASD(R&FMM&RA) at least 120 days before contract expiration.

(b) The ASD(~~R&FMM~~&RA) will make the reconsideration determination based on the best interest of the DoD.

14. DoD NAF PROCUREMENT WORKING GROUP. Representatives of the USD(P&R) and the DoD Components will meet at least annually to review NAF procurement matters and to address opportunities for cooperation, joint procurement initiatives, and contract standardization. DoD Component representatives will include key NAF procurement personnel representing the exchange services, military and civilian MWR programs, lodging programs, and other supplemental mission programs in accordance with Reference (f). When appropriate, representatives of the DoD General Counsel and NAFI legal counsel will attend working group meetings.

ENCLOSURE 3

NAFI INTERNATIONAL BALANCE OF PAYMENTS PROGRAM PROCEDURES

1. PROCUREMENT AND STOCKING

a. General. Overseas exchange service officers and heads of other overseas procuring NAF activities will, within the limits of sound business practice, stock U.S. merchandise in preference to equivalent merchandise from foreign sources, and take the following steps to maximize the sale of U.S. merchandise by NAF resale activities:

- (1) Label and segregate foreign merchandise displays.
- (2) Display U.S. merchandise prominently.
- (3) Avoid inferior foreign imitations and substitutes of U.S. merchandise.
- (4) Respond rapidly to consumer preference for U.S. merchandise through established exchange service procurement channels.
- (5) Cooperate with potential U.S. suppliers in meeting foreign competition where customer demand in overseas exchange services indicates a shift to foreign products.

b. Foreign Goods For Resale. It is recognized that, when locally available foreign goods are procured by U.S. personnel in overseas areas, a more favorable effect on the U.S. balance of payments will result if such items are purchased through U.S.-operated NAF resale activities rather than procured directly on the local economy or from other foreign outlets.

(1) Restrictions. Overseas NAF resale activities may procure foreign goods available in the local market for resale to authorized personnel, subject to the same restrictions that apply to the exchange services contained in Reference (p) and under these conditions:

(a) The price of foreign goods sold in NAF activities will be based on a markup percentage that is no less than that applied to similar categories of U.S. merchandise. Other provisions notwithstanding, the resale price of an item need not exceed the local price.

(b) Only foreign goods available on the local market will be sold by NAF instrumentalities, except under these conditions:

1. Foreign goods purchased with excess foreign currencies may be stocked and sold.

2. In remote geographic areas where DoD personnel are isolated and where a local market does not exist, the Combatant Commander may authorize foreign goods to be stocked to the extent dictated by morale and welfare considerations.



(c) Transshipment of foreign goods between NAF instrumentalities in different market areas is authorized where the resale price of the transshipped items, including markup and transshipment transportation costs, results in significant savings to the authorized patrons compared to purchase of the items from local importers at the resale area. No appropriated funds will be used in this transshipment of merchandise, except when commercial transportation is not available or in contingency operations.

(2) Exceptions to Restrictions. The following categories of foreign goods procured by overseas NAF resale activities are not subject to the conditions stated in paragraph 1b(1) of this enclosure.

(a) Perishable subsistence items, beverages, and similar items purchased for consumption on the premises of NAF activities engaged in serving foods and beverages. However, these purchases should be reviewed continuously with the view to change to U.S. sources if feasible and financially advantageous.

(b) Items for which there are no acceptable substitutes of U.S. manufacture and which are required to operate or maintain customer-owned equipment, such as 220v/110v transformers; bulbs, sockets and accessories; and repair parts for watches, radios, electronic equipment, and household appliances.

(c) Infant caskets.

(d) Distinctive unit insignia.

(e) Printed matter such as maps, postcards, magazines, newspapers, travel books, greeting cards, and newsprint and ink for printing of "Stars and Stripes."

(f) Soft drinks.

(g) Items of supply and materials for use in connection with hobby craft shop and craft programs of the Military Departments.

(h) Purchases made or required pursuant to treaty or Executive agreement.

(i) Emergency purchases.

(j) High octane gasoline, kerosene, and heating and cooking fuels; which are not otherwise available from; appropriated fund stocks.

(k) Automotive supplies for U.S.-made cars where supplies of American manufacture are not available from either bonded warehouses or foreign distributors and where existing facilities preclude these supplies otherwise being made available for the upkeep of privately owned vehicles.

c. Foreign Goods Not For Resale

(1) Overseas NAFIs are authorized to buy, but not to sell, foreign goods if procurement is:

(a) Made pursuant to treaty or Executive agreements.

(b) Estimated not to exceed \$100,000 in foreign currency.

(c) Obtainable from foreign sources only and for which it is not feasible to forego filling the requirements or to provide a U.S.-made substitute for them.

(2) Procurement of other “not for sale” items, except as provided in section 3 of this enclosure, must be U.S. materials and end products from domestic suppliers provided the cost of U.S. goods (including transportation and handling costs) is estimated to be no more than 6 percent above the cost of foreign goods if the domestic offer is from a large business or no more than 12 percent, if the domestic offer is from a small business concern.

2. CONSTRUCTION, SUSTAINMENT, RESTORATION, AND MODERNIZATION OF REAL PROPERTY OUTSIDE THE UNITED STATES. Nonappropriated-funded construction, sustainment, restoration, and modernization projects on real property outside the United States will be accomplished in accordance with the procedures in DoDI 7700.18 (Reference (y)).

3. EXCEPTIONS

a. Canada, Korea, and Mexico. NAF activities located in these countries are authorized to purchase and sell items produced or manufactured in the respective countries notwithstanding paragraphs 1b, 1c(1), and 1c(2) of this enclosure.

b. Greenland. NAF activities located in Greenland are authorized to purchase and sell items produced or manufactured in the Kingdom of Denmark without application of the pricing provisions of paragraphs 1b, 1c(1), and 1c(2) of this enclosure.

c. Excess Foreign Currencies. NAF activities are authorized to purchase, with excess foreign currencies acquired from the U.S. disbursing officer, items produced or manufactured in countries in which the U.S. Treasury holds an excess supply of the currency of the country concerned. Payments for such procurements may also be made in both local currency and dollars if the dollar portion is limited to the supplier’s validated direct-dollar costs of the portion of the procurement that was exported from the United States. Purchase and sale of such items and services are not subject to the other provisions of this instruction.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

ACOR	alternate contracting officer's representative
ASD( <del>R&amp;FMM&amp;RA</del> )	Assistant Secretary of Defense <del>Readiness and Force Management for</del> <i>Manpower and Reserve Affairs</i>
APF	appropriated fund
BAA	Buy American Act
CDA	Contract Disputes Act
COR	contracting officer's representative
DoDD	DoD Directive
DoDI	DoD instruction
GCPC	Government Commercial Purchase Card
<del>JWOD</del>	<del>Javits-Wagner-O'Day Act</del>
MWR	morale, welfare, and recreation
NAF	nonappropriated funds
NAFI	nonappropriated fund instrumentality
TAA	Trade Agreements Act
U.S.C.	United States Code
USD(P&R)	Under Secretary of Defense for Personnel and Readiness

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purpose of this instruction.

appeal. A process by which a protest related to a dispute with the contracting officer's final decision is raised to the next higher level for review and decision.

best value. The expected outcome of a procurement that, in the NAFI's estimation, provides the greatest overall benefit in response to the requirement.

claim. A written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to a contract. A voucher, invoice, or other

routine request for payment that is not in dispute when submitted is not a claim. The process for resolving a claim is commonly referred to as “dispute resolution.”

combat zones. Defined in DoDI 1340.25 (Reference (z)).

competitive negotiation. The method of procurement that permits oral and or written responses to a solicitation and subsequent negotiation of prices, terms or conditions of the proposed contract to achieve the best value for the NAFI. This method of procurement allows the contracting officer the widest latitude in arriving at a fair and reasonable price and mutually agreed upon terms.

construction. Includes erection, installation, or assembly of a new facility; the addition, expansion, extension, alteration, conversion, or replacement of an existing facility; the relocation of facilities and equipment; the adjustment of interior arrangements or other physical characteristics of a facility; the installation of utilities and equipment made a part of a facility, and related site preparation, excavation, filling and landscaping or other improvements. It includes pouring, dredging, excavating, and painting. It does not include installation of carpet, wall covering, or draperies.

contract. An agreement that creates a legal obligation. The elements of a contract are a mutual agreement; between competent parties; for a legal purpose; involving the exchange of legal consideration; and that creates a mutuality of obligation to perform between the parties. The term contract, as used in this instruction, includes without limitation, formal bilateral contracts, purchase orders, consignment sales agreements, amendments and modifications thereto, as well as other agreements entered into by an authorized contracting officer acting within his or her authority.

contracting authority. The position(s) prescribed by the DoD Component’s procedures (or exchange procedures if delegated in accordance with paragraph 4c(1) of *the responsibilities in* this instruction) as responsible for the procurement authority of the NAFI(s).

contracting officer. An individual delegated with the authority to legally bind the NAFI by entering into, modifying, administering, and terminating contracts.

COR. An individual authorized in writing by a contracting officer to monitor contractor performance and/or help administer a contract. This definition applies to contracting officer’s technical representative and ACORs.

determination of responsibility. The contracting officer’s judgment that a prospective contractor has adequate financial and technical resources or the capability to get the resources, and a satisfactory record of performance demonstrating its capacity to perform the contract.

exchange services. The Army & Air Force Exchange Service, the Navy Exchange Service Command, and the Marine Corps Exchange.

excess foreign currencies. The currencies of countries held by the U.S. Treasury in excess supply for all U.S. Government needs, and periodically declared to the Office of Management and Budget by the U.S. Treasury as excess. The lists of countries are transmitted to the DoD Components from time to time by appropriate DoD issuances.

final decision. A contracting officer's written determination in response to a protest or claim.

foreign goods. Items produced or manufactured in a foreign country and physically located outside the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States, including items located in bonded warehouses or foreign trade zones within the aforementioned areas. This term does not include foreign-made or -produced exchange-type retail merchandise purchased from sources within the United States.

items. All property (including articles, goods, materials, supplies, equipment, software, and parts) except facilities, land, or interests in land. Also known as goods.

legitimate. In accordance with law or established legal forms and requirements and conforming to recognized business principles and accepted business rules and standards. Being exactly as purposed: neither spurious nor false.

local market. The area surrounding a NAFI that provides services to U.S. personnel who are served by such NAF activity, as defined by the regional Combatant Commander. Combatant Commanders will include only the area in which there is effective competition with the NAF activity.

MWR telephone services. Unofficial telephone calling center services supporting calling centers provided by an exchange service or any other DoD NAFI, which are conducted for the comfort, pleasure, contentment, or physical or mental improvement of Service members.

NAF. Defined in Reference (f).

NAFI. Defined in Reference (f).

novation. The act of transferring a contract from one legal entity to another or substituting a new contract for an old one by mutual agreement between the parties. Transfer of a Government contract is illegal without the Government's consent.

personal information services. Include but are not limited to Internet, telephone, and television access via any delivery method such as wired or wireless mode.

private label merchandise. Includes products carrying the exchange service's own name or a name created exclusively for that exchange service or more than one exchange service.

procurement. Includes purchasing, renting, and leasing of real or personal property; construction (including third-party financed projects), renovation, and alteration of real property; professional

architect or engineer services; and obtaining items, and services for either direct use of the NAFI or for resale to its authorized patrons. Procurement also includes all functions that pertain to the selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. Procurement does not include the determination of requirements, which is the identification of items, services, or property including quality or performance standards, quantity, and delivery schedule, or the certification of available funds.

procurement action. Includes, but is not limited to: written contracts and purchase orders, delivery orders, task orders, contract modifications, blanket purchase agreements, orders placed electronically, and purchases made using purchase cards.

procurement personnel. All personnel assigned to a NAF procurement office, including buyers, contracting officers, contract specialists, procurement analysts, contract administrators, purchasing agents, and contracts and procurement clerks. Also includes purchase card holders.

protest. A written objection by an interested party to a solicitation or other request for offerors for a contract, cancellation of a solicitation or other request, an award or proposed award of a contract and a termination or cancellation of an award of the contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

purchase cards. Include NAF purchase cards, GCPC, debit cards, single use cards, and other Government or commercial purchase cards authorized for use by the contracting authority.

ratification. The act of validating an unauthorized commitment for the purpose of paying for the supplies or services provided to the Government as a result of the unauthorized commitment.

real property. Defined in Joint Publication 1-02 (Reference (aa)).

resale. Defined in Reference (f).

responsible offeror. A responsible offeror must: have, or be able to obtain, the technical capability to perform contract requirements and adequate financial resources; have a satisfactory performance record; and be otherwise qualified and eligible to receive an award under applicable laws and regulations.

termination. The cessation or cancellation, in whole or in part, of work under a prime contract, or a subcontract there under, for the convenience of or at the option of, the Government, by mutual agreement at no cost or liability to either party, or due to failure of the contractor to perform in accordance with the terms of the contract (i.e., default).

unauthorized commitment. An agreement that is not binding solely because the Government representative who made it lacked the authority to enter into a contract on behalf of the Government.

U.S. merchandise. Items produced or manufactured in the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States. Also known as U.S. goods.