

11. May place the requisite contracts in "then-year" price terms, i.e., price terms adjusted for anticipated inflation over the period of the contract.

12. May include economic price adjustment provisions in the contracts. These will provide for the upward or downward revision of contract prices in the event that unanticipated economic fluctuations occur that were specifically defined and agreed upon between the prime contractor and the USG.

13. Will be responsible for maintaining financial accounting records in accordance with established DOD accounting procedures and provide to the NAPMO appropriate accounting data.

14. Retains all rights with respect to, and the responsibility for, sales to third countries of all items under the US E-3 and the NATO AEW&C programs developed with USG funding alone.

15. Will not transfer rights to, or sell to, or use on behalf of, nonparticipant Governments, any items specifically developed for the NATO AEW&C program under NAPMO funding, except with the explicit authority of the NAPMO. However the USG is authorized to use in US sponsored Airborne Early Warning & Control programmes, items developed with NAPMO funds, as set forth in the MMOU, as addended. Where transfers, sale or use occur:

(a) The USG will charge a levy on the selling or transfer price of all such items sold by the USG and transfer the levy to the NAPMO for the credit of the program, in accordance with the provisions on recoupment in the Multilateral Memorandum of Understanding (MMOU), as addended.

(b) If, in such sales by the USG to nonparticipant Governments, the USG utilizes NAPMO funded tooling, facilities, and other property, the USG will impose, in accordance with USG regulations, a charge for this usage on the sale price of the equipment, which charge will be paid to the NAPMO in full, for credit to the program.

16. Will, as appropriate, insert in contracts and require to be extended to all subcontracts under this program, provisions necessary to comply with this Agreement and the MMOU, as addended.

B. The NAPMO:

1. Agrees to pay the USG the total cost (including the costs set forth in paragraph A.10. above) of the items listed and described in Appendix 1, even if the final costs exceed the amounts estimated in Appendix 1.

2. Agrees to make timely payment(s) for the items by check(s) or by wire transfer to the DFAS Center.

3. Agrees, if terms specify payment by dependable undertaking, to pay the USG such amounts as specified in monthly billing statements in order to meet payments required by contracts under which articles and services are being procured and any damages and costs that may accrue, or have accrued, from termination of contracts by the USG because of NAPMO's cancellation of this Agreement under paragraph B.10. USG requests for funds may be based upon estimated requirements for progress payments to suppliers or delivery forecasts or evidence of constructive delivery, as the case may be. It is USG policy to obtain such funds 30 days in advance of the time the USG makes payments on behalf of the NAPMO.

4. Agrees, if terms specify payment on delivery, that bills may be dated as of the date(s) of delivery of the articles or rendering of the services, or upon forecasts of the date(s) thereof.

5. Agrees that requests for funds or billings under paragraphs B.3. and B.4. are due and payable in full on presentation, or, if a payment date is specified in the request for funds or billings on the payment date so specified even if such payment date is not in accord with any estimated payment schedules. Without affecting the NAPMO's obligation to make such payment(s) when due, documentation concerning advance and progress payments, estimated termination liability or evidence of constructive delivery of shipment in support of request for funds or bills will be made available to NAPMO by the USG upon request. When appropriate, NAPMO will request adjustment of any questioned-billed items by subsequent submission of required discrepancy reports in accordance with paragraph B.9.

6. Agrees to pay interest on any net amount by which it is in arrears on payments, *determined by considering collectively all billings presented against open NAPMO accounts with USG.* Interest shall be calculated on a daily basis. The principal amount of the arrearage shall be computed as the excess of cumulative financial requirements of the NAPMO over total cumulative payments after monthly billing payment due dates. The rate of interest paid shall be a rate not less than a rate determined by the US Secretary of the Treasury taking into consideration the current average market yield on outstanding short-term obligations of the USG as of the last day of the month preceding the net arrearage and shall be computed from the date of net arrearage. In addition to interest charges, the NAPMO shall bear all other financial consequences associated with late payment(s).

7. Shall furnish shipping instructions to include:

- (a) Offer/Release Code,
- (b) Freight Forwarder Code, and
- (c) the Mark for Code, as applicable.

8. Shall be responsible for obtaining the appropriate insurance coverage and customs clearances and, except for items exported by the USG, appropriate export licenses.

9. Shall accept title to the articles at the initial point of shipment (see A.4 above). The NAPMO shall be responsible for intransit accounting and settlement of claims against common carriers. Title to articles transported by parcel post shall pass to the NAPMO on date of parcel post shipment. USG Standard Form 364 shall be used in submitting claims to the USG for overage, shortage, damage, duplicate billing, item deficiency, improper identification or improper documentation and shall be submitted promptly by the NAPMO. Claims of \$200.00 or less will not be reported for overages, shortages, or damages. Claims received after one year from date of passage of title or billing, whichever is later, will be disallowed by the USG, unless the USG determines that unusual and compelling circumstances involving latent defects justify consideration of the claim.

10. May cancel this Agreement with respect to any or all of the items listed in Appendix 1 of this Agreement at any time prior to the delivery of articles or performance of services (including training). It shall be responsible for all costs resulting from cancellation under this paragraph.

11. Shall use the items sold hereunder only for the purposes specified in the North Atlantic Treaty and the NATO AEW&C Multilateral Memorandum of Understanding, as addended.

12. Shall not transfer title to, or possession of, the articles, components and associated support material, related training or other services (including any plans, specifications or information) furnished under Appendix 1 of this Agreement to anyone not an officer, employee, or agent of NATO (excluding transportation agencies), and shall not use or permit their use for purposes other than those authorized by paragraph B:11 above, unless the written consent of the USG has first been obtained. For the purposes of this paragraph, personnel of participating Governments and the personnel of NATO military headquarters exercising operational control or command of the NATO E-3A are deemed to be agents of NATO. To the extent that any items, plans, specifications, or information furnished in connection with this Agreement may be classified by the USG for security purposes, the NAPMO shall maintain a similar classification and employ all measures necessary to preserve such security, equivalent to those employed by the USG, throughout the period during which the USG may maintain such classification. The USG will use its best efforts to notify the NAPMO if the classification is changed. The NAPMO will insure, by all means available to it, respect for proprietary rights in any article and any plans, specifications, or information furnished, whether patented or not.

C. Configuration Management

1. "Configuration management" is the management of technical requirements which defines systems, system equipment, software or individual equipment and changes thereto. It is

implemented through procedures by which uniform and mutually supporting methods for configuration identification, control and accounting are established and maintained for systems and equipment and of components for systems and equipment.

2. The fundamental objectives of the two parties are to achieve and preserve interoperability and to avoid configuration changes to the standard configuration baseline unless such changes are clearly essential and cost effective (e.g., life cycle cost savings). Within the scope of this Agreement, configuration control will be implemented in accordance with existing USG regulations and procedures. The USG will assure that NATO has complete visibility into all changes to the E-3 system (USG and NATO), except when constrained by USG security interests. The NAPMA designated representative at HQ ESC will be a full participating member of the E-3 System Program Office (SPO) Configuration Control Board (CCB) and the Joint Tactical Information Distribution System (JTIDS) Joint Program Office (JPO) CCB for changes which affect the NATO E-3A system.

3. Within the scope of this Agreement, the USG CCB Chairman will act as Chairman for the USG CCB proceedings concerning both the US national E-3 and the NATO E-3A programs. Should either of the two parties desire a configuration change, it will forward a change request to the other party together with any such substantiating information and cost estimates as may be available.

4. The configuration change request will be processed through the existing CCB procedures, normally within 30 days. Following the initial review by the CCB, an Advanced Change Study Notice (ACSN) will be contractually transmitted to the contractor to authorize the

preparation and submittal of a formal Change Proposal (normally within 90 days). Final decision authority for US and NATO configuration control aspects will be exercised by the USG CCB Chairman and by the NAPMA CCB Chairman for their respective programs. It is recognized that in the event the cost impact would be significant, NAPMA would require consideration and concurrence of the BOD. Following the review process, the USG will implement the NAPMO decision for the NATO aircraft through signature on a Configuration Control Board Directive. In the event the NATO and US configurations diverge from commonality, the provisions of paragraph 5 below will apply.

5. The nonrecurring costs of configuration changes made by the USG and NATO to their respective aircraft will be shared on a pro-rata basis according to the total number of aircraft (USG and NATO) in which the changes are made. Recurring production costs and costs associated with installation and retrofit will devolve to the particular program to which they are applicable. When either the USG or NATO makes a change not adopted by the other party, the party making the change will pay all acquisition/retrofit costs incurred in making such a change to its system and equipment. It is recognized that in some cases a change implemented by only one party may impact costs to be borne by the other party's program including the following areas:

- (a) Production/schedule impacts
- (b) Support equipment
- (c) Spare parts and spare parts inventories
- (d) Maintenance support requirements

(e) Engineering/technical documentation and manuals

(f) Future changes to a diverging baseline

(g) Software

6. Notwithstanding other provisions of this Agreement, safety of flight changes, determined by the US CCB to be necessary for the system, shall be incorporated into all US and NATO E-3 systems.

D. Material

1. Packing, Crating, and Handling (PC&H) and Transportation costs will be charged for items shipped from DOD facilities by USG operated or arranged transportation. A cost will not be added on for items shipped from contractors' facilities. When the source of supply changes, the NAPMO agrees to an automatic adjustment of these accessorial charges.

2. When parcel post shipments are made, the NAPMO agrees that the accessorial charge specified in the latest DOD Regulation will be additive.

3. When either the point of delivery or the transportation responsibility or both of them change, the NAPMO agrees to an automatic adjustment of accessorial charges and a change of place of title passage, if appropriate. When USG operated or arranged transportation is provided, the provisions of paragraph E apply.

4. When staging is established for the benefit of the NAPMO, the NAPMO agrees to automatic application of an accessorial charge, specified in the latest DOD Regulation.

5. A freight forwarder should be obtained by the NAPMO. Any delays and costs caused by not obtaining a freight forwarder will be the sole responsibility of the NAPMO. Availability

times shown are estimates of shipment to the freight forwarder unless articles will be delivered in country.

E. USG Furnished Transportation

1. When the USG provides transportation services to the Point of Delivery, the articles will be transported at the NAPMO's risk.

2. The NAPMO will accept USG delivery listings as the basis for billing and proof of shipment.

3. The NAPMO will accept responsibility for clearance of material through customs at the point of debarkation, and for movement of the material from its port of debarkation to the ultimate destination.

4. The NAPMO will appoint a duly authorized official to accept and sign for material at the port of debarkation and submit outrun message and report.

5. The NAPMO will absorb losses of material the USG does not, in fact, recover from an independent carrier or handler, including where the USG is self-insured.

6. The NAPMO will self-insure such shipments, or obtain commercial insurance without any right of subrogation of any claim against the United States.

7. The USG will assist the NAPMO in processing any claims that may arise for lost or damaged shipments, in the same manner it processes claims for US Government owned material. Collection of revenue, if any, resulting from approved claims will be credited to the NAPMO's account.

F. Training

1. Tuition rates are estimates only. Initial billing will be at the tuition rate which is current at the time the students enter training. All prices are subject to adjustment during final cost reconciliation of the case.

2. Failure to notify USG (SAF/IAE) at least 60 days in advance of scheduled course start date, for either cancellation or rescheduling, will result in a cancellation charge of 50 percent of the tuition rate. Once a student enters a course a charge will be made, on a pro rata basis, of not less than 50 percent of the tuition rate, if the student fails to complete the course.

3. Students must meet all prerequisites for each course, as outlined in AFCAT 36-2223, including an English Comprehension Level (ECL) of not less than 70, except for air crew, computer and mission avionics maintenance personnel, who will require an ECL of not less than 80.

4. The NAPMO will be responsible for all students' transportation, per diem, pay and allowances. On-base quarters will be provided to unaccompanied students to the extent feasible, subject to standard USG billeting fees. No on-base dependent housing will be provided.

G. Indemnification and Assumption of Risks

1. It is understood by the NAPMO that the USG in procuring and furnishing the items specified in this Agreement does so on a nonprofit basis for the benefit of the NAPMO. The NAPMO therefore undertakes, subject to paragraph A.3 above, to indemnify and hold the USG, its agents, officers, and employees harmless from any and all losses or liability (whether in tort or in contract) which might arise in connection with this Agreement because of:

- (a) injury to or death of personnel of NAPMO or third parties;

(b) damage to or destruction of;

(1) property of the DOD furnished to the NAPMO or suppliers specifically to implement this Agreement;

(2) property of NAPMO (including the items ordered by the NAPMO pursuant to this Agreement, before or after the passage of title to the NAPMO); or

(3) property of third parties; or

(c) patent infringement.

2. Subject to any express, special contractual warranties obtained for the NAPMO in accordance with paragraph A.2 above, the NAPMO agrees to relieve the contractors and subcontractors of the USG from liability for, and will assume the risk of loss or damage to:

(a) the NAPMO's property (including the items procured pursuant to this Agreement, before or after passage of title to the NAPMO); and

(b) property of the DOD furnished to suppliers specifically to implement this Agreement, to the same extent that the USG would assume for its property if it were procuring for itself the items procured pursuant to this Agreement.