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MARINE CORPS ORDER 7010.20

From: Commandant of the Marine Corps
To: Distribution List

Subj: MARINE CORPS COMMUNITY SERVICES NONAPPROPRIATED FUND PROCUREMENT
POLICY (SHORT TITLE: MCCA NAF PROCUREMENT POLICY)

Ref: (a) DoD Instruction 4105.67, "Nonappropriated Fund (NAF) Procurement Policy and Procedure," February 26, 2014
(b) SECNAV 7043.5B
(c) MCO P1700.27B W/CH 1
(d) MCO 7010.19 W/CH 1
(e) DoD Directive 7000.14-R, "Department of Defense Financial Management Regulation (DoD FMR)," June 2011
(f) DoD 5500.07-R, "Joint Ethics Regulation," August, 1 1993.
(g) DoD Directive 5500.07, "Standards of Conduct," November 29, 2007
(h) MCO P5800.16A W/CH1-7
(i) SECNAV M-5210.1
(j) MCO P10110.31H
(k) NAVMED P-5010-1
(l) 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
(m) DoD Instruction 1330.21, "Armed Services Exchange Regulations," July 14, 2005
(n) MCO 1754.9A
(o) SECNAVINST 5211.5E
(p) U.S. Code
(q) DoD Instruction 1330.09
(r) Federal Acquisition Regulation (FAR)
(s) Public Law 103-465
(t) U.S. Army Public Health Command Circular 40-1
(u) Executive Order 11246
(v) Code of Federal Regulations
(w) DoD Directive 1015.2

Encl: (1) USMC NAF PROCUREMENT POLICY

1. Situation. To publish policies for Marine Corps Nonappropriated Fund (NAF) purchasing and contracting operations for use by Marine Corps NAF Business and Support Services Division (MR) and Marine Corps Community Services (MCCA).

2. Cancellation. MCO P7010.20.

DISTRIBUTION STATEMENT A: Approved for public release; distribution is unlimited.

3. Mission. This Order provides policy for NAF procurement. The mission for the NAF procurement system is to satisfy program requirements by procuring the best value products and services on a timely basis, and in accordance with applicable laws, regulations, and references (a) through (w).

a. Reference (a) sets the guidelines for procurement within the Department of Defense (DoD) for NAF instrumentalities.

b. Reference (b) establishes procurement policy for NAF procurement within the Department of the Navy (DoN).

c. This Order issues amplifying guidance regarding Marine Corps NAF procurement policy. Current versions of procurement resources may be found under MCCS Crossroads >> Headquarters >> NAF Procurement at: <http://crossroads/MRB/default.aspx> or by contacting the Procurement Branch CMC(MRB).

d. Per reference (b), Marine Corps NAF instrumentalities not having contracting authority will seek procurement and purchase card support from a NAF procurement office (MR or MCCS). If a NAF procurement office is not accessible, the services of an appropriated fund (APF) procurement office may be used.

4. Execution

a. Commander's Intent and Concept of Operations

(1) Commander's Intent. MR, MCCS, and other Marine Corps NAF instrumentalities shall have a uniform system for conducting NAF procurement. Detailed policy and procedures are at the enclosure.

(2) Concept of Operations. The goal of NAF procurement is to obtain supplies and services in a fair, equitable, and impartial manner, and to the best advantage of MR, MCCS, and other NAF instrumentalities in compliance with applicable laws and regulations. The activity branch head or program manager is responsible for his/her respective program and is responsible to identify requirements and verify receipt and acceptance of items procured. The contracting officer is responsible to solicit, evaluate, negotiate, award, and administer contracts. The activity branch head or program manager and the contracting officer are jointly responsible to ensure the contract represents a business arrangement that meets program requirements.

b. Subordinate Element Missions. Installation Commanders, Assistant Chiefs of Staff, MCCS Directors and all subordinate Branch and Section Heads shall implement the contents of this Order for Marine Corps NAF. This Order impacts the working conditions of NAF employees. Installation Commanders should ensure that it is passed to their servicing Human Resources Offices for a determination as to whether union notification is necessary based on the bargaining unit status of impacted employees. Where notification is necessary, implementation of this Order will be delayed as regards bargaining unit employees until negotiations are complete.

5. Administration and Logistics. Waivers from the policies contained in this Order must be authorized in writing by DC M&RA (MR). All policy waivers will be requested and issued through appropriate Marine Corps channels. Recommendations concerning the contents of this Order may be forwarded to CMC(MR).

JAN 20 2015

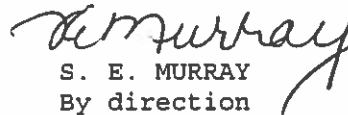
a. The generation, collection or distribution of personally identifiable information (PII) and management of privacy sensitive information shall be in accordance with the Privacy Act of 1974, as amended, per reference (o) and reference (p), Title 5 Section 552a. Any unauthorized review, use, disclosure or distribution is prohibited.

b. Records created as a result of this Order shall be managed according to National Archives and Records Administration approved dispositions per reference (i) to ensure proper maintenance, use, accessibility and preservation, regardless of format or medium.

6. Command and Signal

a. Command. This Order is applicable to the Marine Corps Total Force.

b. Signal. This Order is effective the date signed.


S. E. MURRAY
By direction

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LOCATOR SHEET

Subj: USMC NAF PROCUREMENT POLICY

Location: _____
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RECORD OF CHANGES

Log completed change action as indicated.

Change Number	Date of Change	Date Entered	Signature of Person Incorporated Change

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Chapter 1

Procurement Authority and Responsibility

1000. PURPOSE

1. This Manual establishes policies and procedures governing procurements made with nonappropriated funds (NAF) within the United States Marine Corps and includes, but is not limited to, Marine Corps NAF Business and Support Services Division (CMC(MR)) and Marine Corps Community Services (MCCS). Unless stated otherwise, references to MCCS within this document shall apply to MR, MCCS, and other Marine Corps NAFI procurement.

2. The goal of the NAF procurement system is to obtain products and services in a fair, equitable, and impartial manner, and to the best advantage of the MCCS. Accordingly, MCCS procurement personnel will:

- a. Conduct procurement actions with integrity and fairness.
- b. Perform in a timely, high quality, and cost-effective manner.
- c. Solicit team commitment and employ planning as an integral part of the overall process of acquiring products or services.
- d. Promote competition in the procurement process.
- e. Comply with applicable laws and regulations.

1001. EXCEPTIONS AND CLARIFICATIONS. Written requests for waivers, exceptions, and clarifications will be sent through the chain of command to CMC(MR).

1002. DELEGATION OF PROCUREMENT AUTHORITY. Per reference (c), procurement authority may be delegated by position title, letter of appointment, or warrant which is further clarified as follows:

1. "Position title" for individuals with a Retail Buyer position description at MR, Business Operations Directorate, Merchandising Branch (CMC(MRM)), to the extent that funds are approved and available in the Marine Corps Exchange (MCX) "open to buy" budget. Retail buyers are authorized to sign purchase orders, open purchase orders for replenishment, direct delivery agreements (DDAs) and consignment agreements for resale merchandise sold to MCCS patrons through MCX activities. Retail buyers do not have authority to sign blanket purchase agreements (BPAs), short and long-term concessionaire agreements, services contracts, or revenue-generating services contracts.

2. "Letter of Appointment" for nonappropriated fund (NAF) purchase card holders to the single and monthly purchase limits designated and to the extent funds are approved and available.

3. "Warrant" for purchasing agents or contracting officers to the limits specified in the warrant and to the extent funds are approved and available. CMC(MR) establishes MCCS NAF procurement policy and procedures, procurement training requirements, and appoints NAF contracting officers and purchasing agents via a warrant.

a. The Installation Commander (or the AC/S or Director, MCCS, if designated) has the responsibility to:

(1) Nominate contracting officers and purchasing agents.

(2) Ensure contracting officers and purchasing agents receive the required training.

(3) Exercise fiduciary responsibility by reviewing contracts and purchase orders, as desired.

b. In accordance with their warrant, NAF contracting officers and purchasing agents are delegated the authority to obligate MCCS, to the extent funds have been approved and made available by the requesting activity.

c. NAF procurement personnel may not obligate appropriated funds unless separately authorized under appropriated fund procurement regulations.

4. Limited Authority. Unless otherwise stated below or provided herein, only a warranted MCCS NAF contracting officer or purchasing agent has authority to sign agreements or contracts for equipment, supplies, and services, including but not limited to: concessionaires (short-term or long-term commodity sales), revenue-generating services, support services, construction, maintenance and repair, professional services (consultants), vending machine stocking (including removal or replacement of machines), entertainment (including bands and DJs), sports professionals (paid instructors, coaches, or referees), and information technology hardware, software and support.

a. Local DDAs and Consignment Agreements for Retail and Resale Merchandise. Although the majority of retail merchandise is purchased at CMC(MR), Central Buying Office (CBO), there is still a need for some local DDA and consignment agreements. Local agreements must be signed by a warranted contracting officer or purchasing agent or CMC(MR) Buyer. If both a CMC(MR) contract and a local MCX contract exist for the same merchandise, the CMC(MR) contract takes priority; the local contract will be terminated based upon the expiration/termination clause and will be coordinated between CMC(MR) and the local contracting officer or purchasing agent to prevent a lapse in coverage and to address agreement termination fees (if any). The local MCCS may not negotiate separate contracts where a CMC(MR) contract exists. The local MCCS must notify the CMC(MR) buyer if aware of better pricing than what is available on the CMC(MR) contract.

b. Nonappropriated Fund (NAF) Purchase Cards. Appointed cardholders may use the NAF purchase card within his or her specified dollar limits. Unless otherwise allowed by policy, cardholders may not purchase fixed assets, sign a bi-lateral (two-party) contract, or sign vendor agreements listing terms and conditions (i.e., equipment rental agreements). Cardholders may not purchase resale merchandise from GSA contracts unless GSA and the contractor specifically authorize use. The cardholder appointment letter also restricts purchase of services to the lower of either \$2,500 or the single purchase limit, and purchase of construction to the lower of either \$2,000 or the single purchase limit. The procurement of services and construction is restricted due to legislative requirements. Refer to Chapter 6 for additional information and the MCCS NAF Purchase Card Standard Operating Procedures for complete guidance at <http://crossroads/MRB/Purchase%20Card/Forms/AllItems.aspx>.

c. Petty Cash. If unable to use a NAF purchase card, petty cash is authorized for use per reference (d), Chapter 3, paragraph 1.a.(4).

d. Call Orders. Call orders placed by designated/authorized ordering agents against BPAs or DDAs where the master BPA or DDA was signed by a warranted purchasing agent, contracting officer, or CMC(MRM) buyer.

e. Subsistence Food. Call orders for food and food service items placed by the Food and Hospitality Manager or designee against the Joint Services Prime Vendor Program contract or against a BPA that was signed by a warranted contracting officer or purchasing agent. Purchase cards may be used within designated limits and as allowed by policy. Purchase requests for all other food and supply requirements (including food or support to be provided from a catering company) must be submitted to the procurement office, and the contracting officer will award an order or contract as appropriate.

f. Pro Shop Merchandise. Pro shop personnel (golf, bowling, etc.) may make purchases for pro shop resale merchandise using their NAF purchase card within designated limits or against a BPA issued by a warranted contracting officer or purchasing agent. All other purchase orders or contracts for pro shop merchandise must be signed by a CMC(MRM) buyer (for resale merchandise only) or a warranted contracting officer or purchasing agent (for equipment, supplies, services, or resale merchandise).

g. Recreation and Tour Tickets. As designated within the joint service agreement or within the BPA ordering agent appointment letter, the Recreation/Information Ticket and Tours Manager or designee may place calls for recreation and tour tickets to entertainment venues against existing joint services agreements (Military Ticket Program or Military Ticket Voucher Program) or a BPA issued by a warranted contracting officer or purchasing agent. All other purchase orders, BPAs, DDAs, or contracts with entertainment venues (i.e., theme parks, ski resorts, etc.) must be signed by a warranted contracting officer or purchasing agent.

5. Exceptions. The following are not covered by this policy:

a. Patron Agreements. The MCCS activity manager or designee is authorized to sign agreements between the MCCS activity and an authorized patron (hereafter referred to as "patron" which is defined in reference (c), Chapter 1, Section 2, paragraph 1200). Patron agreements do not require signature of a warranted contracting officer or purchasing agent except as required by local procedure (for example, requirements involving NAF or UFM funds). Patron agreements include, but are not limited to: catering agreements between a patron and the Food and Hospitality or Catering Manager; golf event agreements between a patron and the Golf Course Manager; marina slip rentals between a patron and the Marina Manager; and recreation, tickets, or tours between a patron and a Recreation/Information Tickets and tours (Rec/ITT) Manager. MCCS activities are encouraged to coordinate patron agreement formats and standard terms with the procurement office and Counsel. Purchase of supplies or services from a vendor to support a patron agreement (i.e., canopy or chair rentals, food concessions, etc.) must follow regular NAF procurement procedures.

b. Commercial Sponsorship Agreements. Retail buyers and officials responsible for procurement or contracting are not authorized to solicit sponsorship. This does not preclude normal NAF contracting in support of commercially sponsored MCCS Morale, Welfare and Recreation (MWR) activities and/or events. MCCS commercial sponsorship coordinators are authorized to enter into a commercial sponsorship agreement in compliance with reference (c), paragraph 9608.

c. Volunteer Coaches. Contracts signed by a warranted contracting officer or purchasing agent are not necessary for volunteer coaches. Individuals may volunteer to be a coach in compliance with installation requirements and applicable personnel, certification, and insurance requirements.

d. Memorandums of Agreement (MOA) and Memorandums of Understanding (MOU). MOAs and MOUs with another government entity may be signed by the installation commanding officer, MCCS Director, or designee per Marine Corps policy.

1003. APPOINTMENT AS CONTRACTING OFFICER OR PURCHASING AGENT

1. A warrant is the instrument by which CMC(MR) grants individuals the authority to enter the MCCS into legally binding contracts. This authority recognizes an employee's qualifications to be appointed as a NAF contracting officer or purchasing agent. Throughout this document, the title "Contracting Officer" and "Purchasing Agent" will be considered interchangeable as appropriate. Upon recommendation of the Installation Commander (or AC/S or Director, MCCS, if designated), assignment to a procurement position, and demonstration of compliance with training, education, and experience requirements, the Director, CMC(MR) may appoint the individual as contracting officer or purchasing agent granting the authority to execute and administer contracts on behalf of MCCS commensurate with organizational needs.

a. The command nomination will specify whether the individual is to be appointed as contracting officer or purchasing agent, the dollar level of the appointment, and any limitations on contract types. Purchasing agents will primarily handle unilateral (one-party) purchase orders and delivery orders whereas contracting officers will generally handle more complex bilateral (two-party) contracts. Nominations will document the individual's training, education, and experience per paragraph 1007.

b. Exceptions to the qualification requirements in paragraph 1007 may be requested for individuals who, due to their experience or circumstances, should be granted contracting officer or purchasing agent authority. Requests should include the individual's name, training, education, experience, and whether the individual presently holds a warrant. Exceptions must be authorized by CMC(MR).

c. If the nominated employee does not meet requirements of paragraph 1007 and has not been authorized a waiver, CMC(MR) may issue an Interim Warrant granting the authority to execute and administer contracts on behalf of the MCCS for a specified period of time until the employee meets the specified training and education requirements.

2. Termination of appointment as a contracting officer or purchasing agent may be made for reasons such as non-compliance with policy, unsatisfactory performance, reassignment, re-organization, or termination of employment. CMC(MR) may reduce or terminate procurement authority for non-compliance with policy and will provide the Installation Commander or designee written notice of such changes. The Installation Commander (or AC/S or Director, MCCS, if designated) may reduce or terminate procurement authority for unsatisfactory performance or reassignment. Notice for terminations of warrant authority must indicate the effective date and may not be made retroactively. Termination of employment automatically terminates procurement authority. CMC(MR) will be notified of all terminations of NAF procurement authority.

1004. AUTHORITY OF CONTRACTING OFFICER AND PURCHASING AGENT

1. MCCS contracting officers and purchasing agents have authority to enter into, administer, or terminate contractual actions and to make related decisions. NAF contracts are contracts of the U.S. Government, but they do not obligate appropriated funds of the U.S. Contracting officers and purchasing agents may bind the MCCS only to the extent of the authority delegated to them. Contracting officers and purchasing agents will receive from the appointing authority clear instructions in writing regarding the limits of their authority. Information on the limits of authority will be readily available to the public and organizational personnel. Supervisors will not apply undue influence to coerce contracting officers or purchasing officials to perform unlawful or ill-advised procurements.

2. A contract action is defined as an award or modification of a purchase order, delivery order, or contract. Dollar value authority is applicable to each contract action. Contracting officers and purchasing agents will not amend or modify a contract that has a dollar value over the dollar limitations authorized by their warrant.

3. Guidance in deciding the dollar value in various contractual actions is provided below:

a. Fixed dollar contracts - the amount of contract award, including option periods.

b. Indefinite delivery contracts, direct delivery agreements, and open purchase orders - the value of the total estimated procurement for the current contract period including option periods (even if it is known that items and prices for later periods may be changed). The total estimated dollar amount shall include orders expected to be placed by other authorized NAFIs, if known.

c. Concession, vending and agency contracts - the estimated total gross sales for the term of the contract, including option periods.

d. Contract or order modification - the value of the contract or order as modified, even if the modification amount is within the dollar limitation of the warrant.

e. Purchase orders and delivery orders - the amount of the award.

4. No contract will be entered into unless the contracting officer or purchasing agent ensures that all requirements of law, executive orders, regulations, and other applicable procedures, including clearances and approvals, have been met.

5. To meet the goals of MCCA, contracting officers and purchasing agents will be allowed wide latitude to exercise business judgment. Contracting officers and purchasing agents will:

a. Verify that the purchase request is complete, including all required signatures, certification of funds availability, and provides enough descriptive data to make the purchase.

b. Be responsible for managing contractor relationships by overseeing the integrity and effectiveness of the procurement process, ensuring that contractors are treated fairly and objectively, and maintaining effective communications with contractors during contract performance.

c. Take into consideration the advice of specialists in audit, law, finance, engineering, transportation, and other fields, as appropriate.

6. NAF contracting officers and purchasing agents will be guided by the Standards of Conduct as prescribed by reference (f) especially in the areas of conflicts of interest, favoritism, gifts and gratuities, and post Government employment. Questions will be directed to local Ethics Counselors.

7. DoD Nonappropriated Fund civilian employees are subject to the same fiduciary responsibilities as appropriated fund civilian employees. Penalties for violations include administrative actions, monetary fines, or imprisonment per reference (p), Title 10 Section 147. Questions will be directed to MCCA Counsel.

1005. QUALIFICATIONS OF NAF CONTRACTING OFFICERS AND PURCHASING AGENTS

1. With the exception noted below, only U.S. Citizen Pay Banded (NF) and General Schedule (GS) salary plan civilian employees, or military personnel assigned to MCCA, will be appointed as NAF contracting officers or purchasing agents. At the request of the Installation Commander (or the AC/S or Director, MCCA, if designated) and upon the approval of MCCA Counsel, CMC(MR) may grant NAF contracting officer or purchasing agent authority up to \$50,000 to local national employees in overseas locations. Legal aliens of the U.S. may be granted a NAF warrant with approval of the installation security officer. Such approval will be forwarded to CMC(MR) with warrant requests.

2. The designation of contracting officer or purchasing agent will be given to personnel currently engaged in the procurement function. Individuals who have been appointed as a contracting officer or purchasing agent as a collateral duty will retain their current job titles; however, when performing the procurement function they will do so as the contracting officer or purchasing agent.

3. In selecting contracting officers and purchasing agents, the nominating authority will consider the following, commensurate with the nominee's assigned responsibility:

a. Demonstrated knowledge and experience in Government or commercial purchasing, contracting, contract negotiation, administration, or termination functions. This includes preparing solicitations, contracts, contract modifications, and supporting procurement documents; obtaining and analyzing product and price data for contract negotiations; and evaluating, reporting, and monitoring contractor performance.

b. Demonstrated knowledge and experience in rental or lease of supplies, services, and equipment through open-market methods, placement of purchase orders, and placement of orders under blanket purchase agreements or indefinite delivery contracts such as Federal supply schedules, or other commercial purchase procedures.

c. Demonstrated knowledge of the retail buying function, including review and evaluation of vendor products, price negotiation, placement of merchandise orders, product distribution, inventory control, and analysis of new trends.

d. Demonstrated personal integrity and ability to apply sound business judgment.

1006. PREVIOUS WARRANT AUTHORITY

1. Warrants issued by MR after August 2004, and continuously maintained with no break in service longer than 90 days, continue to be valid warrants unless otherwise terminated per paragraph 1003.2. Refer to the current NAF Procurement Training and Warrant Guide posted at <http://crossroads/MRB/default.aspx> for continuing education requirements.

2. Effective 5 August 2004 (the previous version of this policy), warrants or certificates of appointment issued by the local command are no longer effective. Coordinate with CMC(MR) to seek a warrant.

1007. PROCUREMENT EDUCATION, TRAINING, AND EXPERIENCE QUALIFICATIONS FOR NAF CONTRACTING OFFICER AND PURCHASING AGENT WARRANTS. Contracting officers and purchasing agents will comply with the current Marine Corps NAF Procurement Training and Warrant Guide for education, training, and experience requirements to qualify for and maintain a NAF warrant; the Guide is posted at <http://crossroads/MRB/default.aspx>.

1. Course or education equivalencies will be determined by CMC(MR).

2. Each MCCS is responsible to budget and pay training course fees and any associated travel, lodging, and per diem costs. Individuals should obtain supervisor approval and ensure that funding is available and approved prior to registering for training.

3. Waivers. Waivers for education, training, and experience requirements will be granted by CMC(MR) on a case by case basis when it is determined that the employee demonstrates analytical and decision making capabilities, job performance, and qualifying experience such that they overcome the need for the required formal education. A waiver to a requirement may be granted as completely or partially waived.

4. Appropriated fund GS-1102 personnel assigned to NAF procurement positions will comply with appropriated fund acquisition education, training, and experience requirements. Attendance at NAF procurement training courses is not required if the equivalent appropriated fund training courses have been completed.

1008. LETTER OF APPOINTMENT. Upon CMC(MR) issuance of a warrant, the Installation Commander (or AC/S or Director, MCCA, if designated) must issue a letter of appointment to the contracting officer or purchasing agent containing command specific guidance and applicability, as appropriate. The letter of appointment may include the dollar volume at which a higher-level review and approval will occur (i.e., the purchasing agent may have a \$100,000 warrant; however, his or her supervisor may elect to review all purchases over \$25,000 prior to award). At the threshold indicated in the letter of appointment, the reviewing official will review the purchase documentation and indicate approval by signing an approval block on the Record of Negotiations form (401-R) or Justification for Award memorandum. Upon receiving required approvals, the purchasing agent will sign the order up to the warrant limit. The contract file shall include evidence of reviews and approvals as required by the letter of appointment.

1009. LEGAL SUPPORT AND REVIEWS. The Office of Counsel for the Commandant (CL), and its field offices are component offices of the Navy Office of General Counsel and will provide legal support and assistance to MCCA and NAF contracting activities worldwide. All NAF procurement personnel are strongly encouraged to submit all questions of a legal, policy, or business nature on any subject that is of concern to them to their regional MCCA Counsel. If no regional MCCA Counsel is available, inquiries should be made to CMC(MR). Each request for legal review and assistance should include a statement of the issue, supporting documentation (including solicitation documents, contract files, etc.), and any other information needed to assist in resolving the matter.

1. MCCA procurement personnel will obtain legal review or consultation for the following:

a. All nonrevenue generating support service solicitations and contracts (including purchase orders and BPAs) anticipated to be in excess of \$100,000 over the term of the contract, including options. Contract awards that involve no changes to the solicitation do not need further legal review. Except for minor administrative changes, contracting officers will seek additional legal review for contracts that have changed since solicitation review and will identify such changes to simplify the review process.

b. All revenue generating concession or patron service solicitations and contracts. Counsel may choose to waive review for solicitations or contracts using MR-approved templates with total values below \$300,000 gross sales over the term of the contract, including options. Contract awards that involve no changes to the solicitation do not need further legal review. Except for minor administrative changes, contracting officers will seek additional legal review for contracts that have changed since solicitation review and will identify such changes to simplify the review process.

c. Solicitations and contracts recommending use of Alternative Dispute Resolution (ADR) procedures.

d. Determination of whether a proposed solicitation or contract supports the Exchange or MWR, and which Disputes Clause should be used when not clearly defined (refer to paragraph 7108).

e. Proposed awards that may result in a contract period in excess of five years.

f. Proposed awards that may result from an unsolicited proposal.

- g. Proposed awards that require the MCCA to sign the contractor's form, such as a license or support agreement.
- h. Offeror mistakes alleged before or discovered after contract award.
- i. All decisions concerning procurement protests (prior to and after contract award), inexcusable delays, claims, disputes, and appeals.
- j. Cure notices, show-cause and forbearance letters, and supporting documentation.
- k. Termination actions and supporting documentation. However, mutual terminations of contracts with a military service or family member with a permanent change of station (PCS) do not require legal review.
- l. Determination of whether a proposed service is for personal or non-personal services, when not clearly defined.
- m. Entertainment contracts to which the Service Contract Act applies, a royalty and copyright clearance is required, or the nature of the entertainment may present a physical risk to the entertainers, the audience, or property.
- n. All proposed contractual documents involving the purchase or lease of real estate or license to use real estate; refer to additional review and approval thresholds established by reference (a).
- o. Substantive changes to approved contract formats.
- p. Matters involving tax issues and MCCA tax status.
- q. Ratification of unauthorized commitments over the competition threshold (refer to paragraph 1013).
- r. Recommendations for suspension or debarment of any MCCA contractor.
- s. All Congressional inquiries pertaining to MCCA contracting actions.
- t. Freedom of Information Act (FOIA) responses and questionable or controversial FOIA issues.
- u. Questions regarding applicability and implementation of Federal statutes such as the Service Contract Act, Davis-Bacon Act, etc.
- v. Noncompetitive procurement actions exceeding \$25,000 (refer to paragraphs 6004 - 6007).
- w. All proposed contractual documents for medical, dental, or veterinary concession services (refer to paragraph 5329).
- x. Contracts or agreements for new endeavors that have not been previously contracted.
- y. All vending and food service contracts.
- z. All construction contracts exceeding \$2,000.

2. Notice of Legal Sufficiency. Legal Counsel will inform the contracting officer in writing whether a proposed action is legally sufficient (or the details of any insufficiency) and a recommended course of action to overcome the insufficiency. The contracting officer will take steps to overcome legal objections to the proposed action and document decisions reached. Documentation of legal review will be retained in the contract file.

1010. SEPARATION OF FUNCTIONS

1. It is imperative to the integrity of the procurement process that several distinct functions be performed sequentially by different personnel. These are:

a. Preparation of the Purchase Request and Certification of Funding Availability by Requesting Activity Personnel. A purchase request is required to initiate the procurement process. The purchase request must be approved by the requesting activity manager or designee. Additional approvals may be required per local procedures (i.e., senior management approval at specified dollar levels, finance office approval of funds, etc.).

b. Award of the Order or Contract by Procurement Personnel. Procurement personnel are responsible for requesting quotes, soliciting proposals, negotiating, making the award decision, and signing the order or contract. The order or contract must be signed by a warranted contracting officer or purchasing agent acting within his or her delegated authority.

c. Receipt of Goods or Services by Receiving or Warehouse Personnel or by Requesting Activity Personnel. The receiving document shall verify receipt and acceptance of the goods or services. Refer to paragraph 5106 for guidance on receiving reports.

d. Payment by Accounts Payable Personnel. Per reference (d), to ensure internal controls are properly maintained, a voucher may not be paid until a 3-way match between the procurement document (i.e., purchase order, delivery order, or contract), receiver, and invoice is obtained. In no event shall accounts payable personnel pay an invoice that does not match the items, quantities, and prices listed in the order or contract. Verbal authorization to pay a non-matching invoice is prohibited. Changes to the order or contract are only authorized by written modification issued by a warranted contracting officer or purchasing agent. Refer to reference (d), Chapter 3, paragraph 4, for additional information about partial shipments and exceptions to the 3-way match.

2. Small activities may not be able to assign separate personnel for each function; however, these duties must be separated to the maximum extent practicable to preserve checks and balances needed to preclude fraud, waste, and abuse. In no event will all of the above functions be performed by the same individual. Procurement personnel will not engage in receiving and/or invoice payment functions, or report to personnel responsible for those functions.

3. A limited exception to the separation of functions requirement is granted to individuals making purchases with a purchase card and individuals entering purchase requests and orders into an electronic procurement system.

1011. PROCUREMENT INTEGRITY

1. M CCS personnel involved in the procurement process, and in a position to influence the contract award decision, must comply with the following procurement integrity guidelines. Personnel includes, but is not limited to: contracting officer, purchasing agent, Counsel, requesting activity personnel, technical evaluation panel members, contracting officer's representative, etc. By awarding a contract (including delivery or purchase orders) the contracting officer certifies that during the procurement process:

a. He/she will not directly or indirectly discuss, solicit or accept future employment or any business opportunity with the contractor or any offeror.

b. He/she will not ask for, receive or accept an offer, promise or gift of any gratuity, entertainment, money or other thing of value from an offeror or contractor.

c. No information proprietary to another offeror or other procurement information (listing of offerors, prices offered, technical evaluations or rankings, and so forth) will be disclosed or given to any person not authorized by the contracting officer, until it would be available to the public under M CCS procedures.

2. If the contracting officer cannot certify compliance with these restrictions, the award will not be made (or delivery order or purchase order issued) and the contracting officer will report the circumstances in writing to M CCS Counsel.

3. Suspected violations of procurement integrity should be reported to M CCS Counsel or the Ethics Counselor.

1012. PROCUREMENT SUPPORT. In addition to the assigned responsibilities, M CCS procurement offices may support other M CCS activities or other NAF activities outside M CCS organizational responsibility. If support of other activities is to be handled on a continuing basis, a written Memorandum of Agreement (MOA) or Memorandum of Understanding (MOU) between the activities is recommended. Also refer to paragraph 4003.2.

1013. RATIFICATION OF UNAUTHORIZED PROCUREMENT ACTIONS

1. An unauthorized procurement action is an agreement (either verbal or written) that commits M CCS funds and or resources to a concern that is not binding solely because the M CCS representative who made it lacked the authority to enter into that agreement on behalf of the Government. The ratification of an unauthorized procurement action is an after-the-fact approval of the purchase. An unauthorized procurement action purportedly on behalf of the M CCS may result in a void or voidable contract and, in some circumstances, may result in the personal liability of the individual making the unauthorized commitment.

2. Unauthorized procurement actions up to the competition threshold may be ratified by the senior contracting officer at the M CCS activity.

3. Unauthorized procurement actions that exceed the competition threshold may only be ratified by the Installation Commander, unless this authority has been delegated to the AC/S or Director, MCCS. The AC/S or Director, MCCS, may in turn delegate this ratification authority to the senior MCCS contracting officer.

4. Unauthorized procurement actions exceeding the competition threshold will receive legal review and approval prior to ratification.

5. To ratify unauthorized commitments, the supervisor of the individual who made the unauthorized commitment will prepare a request for ratification. The request will be sent to the ratifying official through appropriate channels as early as possible. The request will include the following information and documentation as appropriate to the circumstances:

- a. Name of the individual who made the unauthorized commitment.
- b. Date of the commitment.
- c. Name and address of the company or individual to whom the commitment was made.
- d. Item or service involved.
- e. A copy of the vendor's invoice (including quantities with unit and total dollar amount).
- f. The purchase request with supporting documentation.
- g. A written, signed statement by the individual who made the unauthorized commitment explaining the circumstances of the commitment.
- h. A statement of disciplinary action taken, or an explanation why none was considered necessary, and action taken to prevent recurrence of the unauthorized act.
- i. Any other information or recommendation about the commitment and the individual making the commitment.
- j. Recommendations regarding approval or disapproval, and the basis for making them.

6. Based on a review of the documents submitted, and concurrence by MCCS Counsel, the ratifying official will either ratify the unauthorized commitment, or prescribe an alternative course of action. If the ratifying official approves the purchase action, the contracting officer or purchasing agent will execute the appropriate purchase document.

1014. RELEASE OF ADVANCE PROCUREMENT INFORMATION. MCCS personnel will not provide potential contractors with advance information concerning proposed acquisitions. Such information will be released only by duly appointed contracting officers, acting within the scope of their authority.

1015. STANDARDS OF CONDUCT. References (f) and (g) apply to all DoD components, including NAFIs.

1. Designated Ethics Counselors. Supervision of the Marine Corps ethics program is shared between the Staff Judge Advocate to the Commandant (CMC (JA)) and Counsel for the Commandant (CMC (CL)), who are the designated agency ethics officials (DAEOs) for the Marine Corps per reference (h). CMC (JA) and CMC (CL) provide ethics advice, training, and monitor financial disclosure reporting in their areas of responsibility. Staff judge advocates and local CL attorneys serve as Ethics Counselors and supervise the ethics programs within their commands or areas of responsibility.

2. Ethics Training And Financial Disclosure

a. As required by Joint Ethics Regulation (JER) (reference (f)), all individuals involved directly or indirectly in the procurement process shall abide by the requirements of references (f) and (g). As required by reference (f), individuals involved in the NAF procurement process shall complete ethics training. Contracting officers and other personnel involved with the NAF acquisition process may be required to file financial disclosure reports (OGE Form 450).

b. Purchase cardholders and transaction approvers shall complete ethics training upon appointment and annually thereafter.

c. Individual supervisors may require additional personnel to have annual ethics training and complete OGE Form 450 if, in the supervisor's judgment, this individual is in a position to influence the integrity of the procurement process.

3. Gifts and Personal Purchases. MCCS personnel involved in procurement and related functions will not accept or solicit gifts given to them in their official capacity from any offeror or contractor, nor will they use their positions or influence to arrange for the direct purchase from any MCCS supplier of items for their personal use, or use by their families, or other MCCS employees. MCCS personnel will report the name, address, and circumstances of any request for personal preferential purchasing to the designated Ethics Counselor.

1016. REPORTING VIOLATIONS OF STANDARDS OF CONDUCT RELATING TO PROCUREMENT. Knowing and willful failure of MCCS personnel to report criminal conduct or standards of conduct violations to the MCCS supervisor may be grounds for disciplinary action. The contracting officer will obtain guidance from MCCS Counsel as to appropriate action when a procurement action is affected.

1017. POST-EMPLOYMENT RESTRICTIONS. Current and former DoD employees may obtain counseling and written advice concerning post-employment restrictions from the Ethics Counselor of the DoD command or organization from which they are leaving or have left federal Government service. Questions from MCCS procurement personnel should be referred to MCCS Counsel. Reference (f) discusses the issue in detail as well as statutory restrictions applicable to former military and civilian personnel.

1018. PROCUREMENT REFERENCE LIBRARY. Each NAF procurement office will maintain a current file of, or electronic access to, applicable regulations, directives, local implementing instructions and other publications as needed for accomplishing the procurement function.

1. Reference (a), DoD Instruction 4105.67, NAF Procurement Policy and Procedure, at www.dtic.mil/whs/directives.

2. Reference (b), SECNAV Instruction 7043.5B, Nonappropriated Fund (NAF) Procurement Policy, at <http://doni.daps.dla.mil/default.aspx>.
3. Reference (c), MCO P1700.27B W/CH1, Marine Corps Community Services Policy Manual, subsequent CMC(MR) policy letters, and regulations cited as references thereto.
4. Reference (g), DoDD 5500.07, Standards of Conduct, at www.dtic.mil/whs/directives.
5. Excluded Parties Listing System (EPLS) at the System for Award Management (SAM) at www.sam.gov.
6. U.S. Department of Justice UNICOR Federal Prison Industries Catalog at www.unicor.gov.
7. AbilityOne Catalog at www.abilityone.gov/index.html.
8. Department of the Treasury's Listing of Approved Sureties (Circular 570) for construction Performance and Payment Bonds at www.fms.treas.gov/c570/index.html.

1019. HEADQUARTERS, CMC(MR) PROCUREMENT RESPONSIBILITIES. CMC(MR) will:

1. Contract for equipment, supplies, support services, retail merchandise, and revenue-generating services for CMC(MR) and for system-wide or regional requirements that support several or all MCCS locations. Local MCCS procurement offices have limited authority to enter into cooperative effort contracts per paragraph 4004.
2. Provide procurement support for MCCS activities when a procurement action exceeds local warrant authority and support is not available from another MCCS procurement office as allowed by paragraph 1012.
3. Contract for organization-wide support agreements, including but not limited to: banking services, credit card processing services, employee and MCCS insurance health maintenance and organization plans.
4. Designate mandatory-use contracts. MCCS locations must seek a written waiver from CMC(MR) prior to contracting for products or services that are available from mandatory-use contracts. See paragraph 4000.
5. Assist MCCS procurement offices with procurement policy guidance.

Chapter 2

Administrative Policy and Taxes

2000. UNIFORM PROCUREMENT INSTRUMENT IDENTIFICATION NUMBERING SYSTEM (PIIN)

1. MCCS solicitations and contracts (including purchase orders, delivery orders, and agreements) will be numbered in the format shown below. The basic contract number assigned to the document will remain unchanged for the period of the contract, including any extensions. The PIIN has been designed to allow report sorting by command, MCCS NAFI, fiscal year, and contract type. Sample MCCS Contract Number QUM14-C-0001 is described below:

<u>COMPANY CODE & FY</u> 3 character & 2 character	<u>CONTRACT TYPE</u> 1 character	<u>SEQUENTIAL NUMBER</u> 4 character
POSITION	CONTENTS	DESCRIPTION
1-3	Company Code	Three character company code
4-5	Fiscal Year	The last two digits of the fiscal year in which the document was prepared
6	Contract Type Code	One-character contract type code (refer to contract type code listing below)
7-10	Sequential Number	Four digit sequential number - begins with 0001 each fiscal year for each contract type

CONTRACT TYPE* CODES:

- A AGREEMENT
- B BLANKET PURCHASE AGREEMENT
- C CONTRACT
- D INDEFINITE DELIVERY CONTRACT (DEFINITE QUANTITY or INDEFINITE QUANTITY) (includes requirements contracts)
- E CONSTRUCTION CONTRACT
- F DELIVERY/TASK ORDER (placed against existing MCCS contracts or contracts of other Government departments/agencies)
- G BASIC ORDERING AGREEMENT
- H REVENUE GENERATING CONTRACT (concession, vending, barber, fast food, etc.)
- I (Reserved)
- J (Reserved)
- K SHORT TERM COMMODITY SALES/CONCESSIONS CONTRACTS (30 days or less)
- L INDIVIDUAL SERVICE CONTRACT (instructors, entertainers)
- M (Refer to P)
- O BLANKET PURCHASE AGREEMENT RELEASE
- P PURCHASE ORDER (use M when P exhausted)
- Q REQUEST FOR QUOTATION
- R REQUEST FOR PROPOSAL
- S RESALE PURCHASES (if made using the non-Exchange purchasing system)
- T (Reserved for local use, such as internal transfer of funds)
- V NONAPPROPRIATED FUND PURCHASE CARD PURCHASES
- W WAREHOUSE INVENTORY ITEM (Camp Butler only)
- X DIRECT DELIVERY AGREEMENT (includes open purchase orders and retail/resale purchase orders)

Y RECEIVER
Z PURCHASE REQUEST

* See Chapter Six (6) for contract definitions

2. Merchandise purchased for Exchange resale are not required to follow this numbering system.

2001. CONTRACT FORMS PROVIDED BY THE CONTRACTOR. Signing contractor-provided contract forms on behalf of the MCCS is not authorized, unless prior concurrence has been obtained by MCCS Counsel.

2002. CONTRACT PERIOD

1. Generally MCCS contracts may be for any length of time up to five years. When contract requirements are repetitive, multi-year or multiple year contracting is recommended.

a. If future requirements and funding are unknown, the multi-year contract may specify an initial contract period of one year, with one-year contract renewal options up to a maximum of five years. Multi-year contracts expire at the end of the contract period if the option year is not executed via contract modification. Contracting officers shall prepare solicitations to require offerors to submit pricing for option years with the proposal package. Contract evaluation and award must consider option year pricing. The awarded contract shall include option year pricing.

b. Multiple year contracts are established for a period of more than one year (i.e., the initial contract period is five years). Contracting officers shall prepare solicitations to require offerors to submit pricing for the entire period in the proposal package. The price or fee must be determined for the entire period and be considered in the evaluation and award decision.

2. Purchase orders should generally not exceed one year; if a longer period is needed, a contract should be issued.

3. Delivery orders should generally not exceed one year. Delivery orders for licenses, maintenance, or service periods issued against authorized government (such as GSA) or sister-service contracts may be issued for one year with renewal options, not to exceed a maximum of five years. All delivery orders must be placed during the period allowed by the contract and comply with the terms of the contract.

4. Revenue generating service contracts, including food and hospitality concession contracts, may be negotiated for longer than five years if contractor capital investment is required. See paragraph 5325 on Contractor Capital Investment and paragraph 5326 on Public-Private Ventures.

5. MCCS activities may negotiate support service contract periods exceeding five years under special circumstances, such as noncompetitive service agreements (i.e., utility services).

6. Major support system contracts may be negotiated for longer than five years. The Justification for Award memorandum must reference the Project Justification Document approved by the MCCS Board of Directors or a detailed analysis documenting issues such as MCCS capital investment. Examples of major support system contracts include, but are not limited to, point of sale cash registers and software, banking and cash management services, purchase card services, human resources information systems. Major support system contracts will be awarded by CMC(MR).

7. MCCS Counsel will review and approve documentation supporting all contract periods greater than five years prior to contract award. This documentation will be retained in the official contract file.

2003. EXECUTION OF CONTRACT ACTIONS

1. Only contracting officers and purchasing agents will sign and execute NAF contract actions on behalf of the MCCS. The contracting officer/purchasing agent will personally sign all contracts, purchase orders, and supporting documents that require the signature of the contracting officer or purchasing agent.

2. The contracting officer or purchasing agent will ensure that the individual signing the contract for the contractor has authority to bind the contractor.

3. Order of Signatures

a. Unilateral instruments will be signed by the contracting officer or purchasing agent before sending to the contractor.

b. Bilateral instruments will be signed by the contracting officer or purchasing agent after they have been signed by the contractor, unless justified otherwise by the contracting officer or purchasing agent.

4. Documents signed in either of the following manners are considered acceptable:

a. Signatures on paper documents that are scanned and sent electronically (via fax or email).

b. Digital signatures.

2004. DISTRIBUTION OF CONTRACT INSTRUMENTS

1. Contracting officers and purchasing agents will distribute electronic or paper copies of signed unilateral contract documents as follows:

a. One copy to contractor.

b. One copy to be retained in the procurement office.

c. One copy to the requesting activity or Contracting Officer's Representative (COR).

d. One copy to the receiving activity if other than the requesting activity.

e. One copy to the accounting office.

2. Bilateral contract documents will be distributed as stated above in paragraph 2004.1. If the contract is lengthy, copies distributed internally may be limited to the signature page, list of items or services to be provided, price, and delivery or receipt and acceptance data.
3. Electronic copies may be distributed as above.
4. Due to the proprietary nature of many contract documents, additional distribution of contract documents should be only as required and kept to the minimum.

2005. OFFICIAL PURCHASE FILE

1. The purchase file will include the following for each action:
 - a. Purchase request, approved (in writing or with digital signature) by the requesting activity manager or designee, including specifications or statement of work and certified funding data (estimated total price and accounting codes).
 - b. Request for Quotes and price quotes received, or justification for noncompetitive procurement (refer to paragraph 6006).
 - c. Completed Record of Negotiations form (401-R) or Justification for Award memorandum (refer to paragraph 6003.2) for requirements above the competition threshold.
 - d. Purchase Order.
 - e. Receiving Report (if available).
 - f. Any other documents pertinent to the purchase.
2. Electronic storage of documentation is authorized, but must be stored in a manner to allow access to authorized procurement personnel. Storage that is only accessible by one individual is prohibited. Files that are stored in multiple locations shall cross-reference the location of file documentation.

2006. OFFICIAL CONTRACT FILE

1. A contract file folder will be established and maintained by the procurement office for each contract action. The complexity of the purchase normally dictates whether a hard cover multi-tab contract file folder or a plain manila folder will be used. Generally, lengthy contracts for supplies, equipment, patron services and support services will be filed in multi-tab folders. Data will be filed in chronological order. The front of the multi-tab folder will be labeled with the PIIN. Regardless of the folder used, the contract file will contain the following data as applicable:
 - a. Purchase request or document requesting the procurement action approved (in writing or with digital signature) by the requesting activity manager or designee, with certified funding data (estimated total price or revenues and accounting codes).
 - b. The statement of work, specifications, or purchase description forwarded by the requestor.

- c. Solicitation documents, including the Department of Labor Wage Determination for service contracts (refer to paragraph 5303), and any solicitation amendments or correspondence with potential offerors.
 - d. Source list to which the solicitation was issued.
 - e. Requests for review and approval, and review comments pertaining to the solicitation, award, and resulting contract.
 - f. Proposal Register, identifying the firms who submitted a proposal, and the date and time of receipt.
 - g. Summary or abstract of proposals, which lists the prices or fees proposed by each offeror.
 - h. Evaluation documentation, which reviews and ranks the proposals submitted by each offeror.
 - i. The envelope and any other relevant paperwork, which documents receipt of a late proposal (received after the date for receipt of proposals but prior to award).
 - j. Any other documents pertinent to negotiation and award of the contract, including memorandums of telephone calls made and received.
 - k. Justification for Award Memorandum.
 - l. Notice of Award Letter.
 - m. Unsuccessful proposals.
 - n. Notices to unsuccessful offerors regarding award.
 - o. The contract document as awarded.
 - p. Contractor performance or review documents, including inspection and audit reports.
 - q. Correspondence or memorandums of phone calls with the Contracting Officer's Representative (COR).
 - r. Contract administration documentation, including contract modifications (renewals or extensions), with appropriate justification for contract actions, and a record of any negotiations conducted, and updates to any Department of Labor Wage Determination.
 - s. Copies of all correspondence with the contractor.
 - t. Contract closeout records at the end of the contract period.
2. After awarding a contract, the contracting officer will review the contract file to make sure all required data is included. To avoid a cluttered file, duplicate copies and work papers not relevant to the solicitation or contract should not be in the file. All solicitation and contract actions (such as offer and award documents, contract modifications, memorandums, etc.) must be dated and signed.

3. Electronic storage of documentation is authorized, but must be stored in a manner to allow access to authorized procurement personnel. Storage that is only accessible by one individual is prohibited. Files that are stored in multiple locations shall cross-reference the location of file documentation.

2007. ADVANCE PAYMENTS. Advance payments may be provided on any type of contract. However, the contracting officer or purchasing agent will authorize advance payments sparingly. Advance payment is the least preferred method of contract financing and will not be authorized if other standard payments (partial, progress, and payment on receipt) procedures are available. If the terms of the sale require advance payment, the contracting officer or purchasing agent will coordinate with the MCCS accounting office to coordinate electronic funds transfer or to obtain a check to mail to the contractor.

2008. FIXED ASSETS. Fixed Assets (FA) is defined as NAF property, plant, and equipment with an expected life of two or more years, and with individual unit costing \$2,500 or more. FA may only be purchased by a contracting officer or purchasing agent. Requesting activities will identify if the item to be purchased is a FA on the purchase request. When FA are ordered, the contracting officer or purchasing agent will provide the MCCS accounting office with a copy of the purchase document for recording and tracking purposes.

2009. RETIRING OFFICIAL PURCHASE FILES AND CONTRACT FILES

1. When a contract instrument (including purchase orders, delivery orders, and agreements) expires through termination or otherwise, the file will be retired under procedures set out in reference (i), available at doni.daps.dla.mil/secnavmanuals.aspx. Current guidance states that, after final payment and close-out, orders and contracts shall be stored for a period of three years for actions below the simplified acquisition threshold and for a period of six years three months for actions exceeding the simplified acquisition threshold and for construction contracts above \$2,000. Identify orders/contracts by number on the outside of each box and keep a list of the files in each box. Keep a master list of all boxes and files, with location of the boxes, in the procurement office so they can be retrieved should the need arise.

2. To retire Blanket Purchase Agreement (BPA) files upon BPA expiration/cancellation, each BPA ordering agent must forward documentation to the contracting officer. The contracting officer will retain the BPA ordering agent's information with the official BPA file. If the BPA ordering agent's information is an exact replica of the required monthly call records previously submitted, then the contracting officer may discard the duplicate information. If the BPA ordering agent's documentation contains additional notes, supporting background, or other pertinent information, then the contracting officer shall retain the documentation with the BPA file.

3. If a claim or dispute is ongoing or anticipated, the contract file will not be retired until the claim or dispute is settled.

4. See paragraph 7212 for contract closeout requirements.

2010. MCCS PROCUREMENT CONFERENCES. CMC(MR) may schedule procurement conferences in compliance with current Department of Navy guidance. The AC/S or Director, MCCS, at each installation will budget travel, lodging, and per diem funds for at least one or two procurement representatives to attend. Conference participants should include NAF contracting and purchasing personnel, key operating personnel, and Counsel. Representatives from the installation appropriated fund procurement office may be invited. Topics for discussion may include: tactical plan objectives, improved procurement procedures, sources of supply, sharing of best practices, and the consolidated procurement of common items. Procurement personnel from installations located in the same geographic area are encouraged to hold joint meetings in addition to the MCCS conference.

2011. PROCUREMENT MANAGEMENT REVIEWS AND ASSISTANCE VISITS

1. CMC(MR) will conduct procurement management reviews of contracting and purchasing activities. Reviews will be documented with written reports that reflect significant observations, recommendations and areas of commendable performance or of serious deficiencies. Reviews will generally be conducted on a triennial basis unless otherwise scheduled by CMC(MR) or requested by the Installation Commander, AC/S or Director, MCCS. The purpose of the reviews is to:

- a. Evaluate compliance with policy and procedures as implemented at the MCCS.
- b. Follow up on prior audit or inspection findings.
- c. Provide management assistance in any problem areas.
- d. Provide for interchange of ideas and recommendations for improvement.
- e. Determine training needs.

2. CMC(MR) will conduct informal assistance visits to provide training, mentoring, or support as scheduled by CMC(MR) or as requested by the Installation Commander, AC/S or Director, MCCS. Assistance visits are recommended when there is turnover of senior procurement personnel. Trip reports will be prepared to summarize the support or training provided during the visit.

2012. GENERAL TAX RULES FOR NAFI'S. As an instrumentality of the United States, an MCCS NAFI is entitled to the same immunity accorded the U.S. Government from the taxes of states, the District of Columbia, Puerto Rico, and territories and possessions of the United States. Contracting officers and purchasing agents will familiarize themselves with the applicability of taxes to purchases made and contracts awarded in their locality. When a tax question arises, contracting officers and purchasing agents will request assistance from MCCS Counsel.

2013. STATE AND LOCAL TAXES IN THE UNITED STATES. Contracting officers and purchasing agents will analyze each purchase action to ensure that MCCS does not pay inapplicable taxes.

1. The following types of purchases often have state and local tax implications that must be considered:

a. Resale Merchandise - MCCA is not subject to direct state and local taxes on items purchased for resale.

b. Beer and Tobacco Products - State and local excise taxes on beer and tobacco products are usually the responsibility of the distributor. The distributor's tax expense would normally be an element in determining its price charged to MCCA for the goods. Most states have provided some type of exemption from cigarette taxes on sales made to Exchange retail and Club operations; most states have provided some type of exemption or credit on sale of beer to Exchange retail and Club operations.

c. Leased or Rented Equipment - Certain state and local taxes are the responsibility of the seller or lessor. Under these circumstances, assuming there is no independent exemption available on sales to the federal government, the vendor or lessor may include the cost of such taxes in the price charged to MCCA for the goods or services. The applicable law varies by state.

d. Gasoline - MCCA is responsible for payment of federal, state and local excise taxes on the sale of gasoline in the United States. Gasoline used in MCCA or other Government vehicles may be exempt, depending on state law.

2. Refer any questions on taxes to MCCA Counsel.

2014. MANUFACTURER'S EXCISE TAX. Items purchased for overseas MCCA activities, other than activities in Alaska and Hawaii, are exempt from the Federal Manufacturer's Excise Tax by virtue of exportation.

2015. FOREIGN TAXES. MCCA is precluded from paying or collecting foreign taxes. By virtue of international agreements, MCCA is exempt from most foreign customs, duties and taxes. Specific advice will be obtained from MCCA Counsel.

2016. CONTRACTOR TAXES

1. MCCA contractors are responsible for payment of all federal, state, host country, and local taxes applicable to the property, income, and transactions of the contractor. When required by applicable laws and regulations, patron service contractors will collect and remit sales taxes to the state.

2. As needed to comply with federal tax requirements, the contractor's Taxpayer Identification Number (TIN) and type of organization will be reported to the MCCA finance office on the W-9 Taxpayer Identification and Certification form (www.irs.gov/Forms-&-Pubs) upon contract award and per local procedures. The contract award document will not include the TIN which may be either an Employer Identification Number (EIN) or Social Security Number (SSN). The contracting officer shall disclose to the contractor that the TIN may be used by the MCCA to collect and report any delinquent amounts arising out of the contractor's relationship with the NAFI per reference (p), Title 31 Section 7701(c)(3).

2017. THRESHOLDS

a. Competition Threshold. The MCCS NAF competition threshold is \$5,000. Refer to applicable requirements for the Buy American Act and Trade Agreements Act (paragraph 4008-4011), Service Contract Act (paragraph 5303), and Davis-Bacon Act (paragraph 5314).

b. Micro-Purchase Threshold. For NAF procurement administrative purposes, policy or contract clauses that refer to the micro-purchase threshold will use the dollar amount as defined in the Federal Acquisition Regulation (FAR) 2.101, which is currently \$3,000.

c. Simplified Acquisition Threshold. For NAF procurement administrative purposes, policy or contract clauses that refer to the simplified acquisition threshold will use the dollar amount as defined in the Federal Acquisition Regulation (FAR) 2.101, which is currently \$150,000.

2018. CONGRESSIONAL APPROVALS. Congressional notification or approval is required for certain types of contracts. Reference (m) advises that Congressional notification is required for mini-storage facilities, medical and dental services including pharmacies, major construction, etc. Also refer to references (l) and (q) for reporting requirements for Public Private Ventures (PPVs). The requesting activity is responsible to coordinate the congressional notifications and/or obtain approvals as required; however, copies of notification or approval documentation shall be retained in the official contract file. All congressional notifications shall be routed officially through the chain of command, including coordination with CMC(MR).

Chapter 3

Procurement Planning

3000. GENERAL

1. Procurement planning is the key to successful development of a requirement and subsequent execution of the procurement. Where possible, requesting activity personnel will coordinate with the contracting officer early in the initial requirement development phase, preferably well in advance of the fiscal year in which contract award is requested. The contracting officer will provide the requesting activity with helpful advice or formats to simplify market research, requirement planning, and statement of work development, especially on large or complex requirements.
2. It is recommended that requesting activity personnel create a written procurement plan for all supply, service, and revenue-generating requirements (other than resale merchandise) that will (a) be complex and impact multiple programs, (b) have an overall project value at or above \$250,000, or (c) require MCCA Board of Director approval. In developing the plan, the requesting activity should obtain input from contracting, fiscal, legal, technical, and activity representatives. Refer to the MCCA Procurement Planning Handbook for procedures and templates.
3. As part of the procurement planning process, requesting activity personnel will research the market as a means of getting information on sources of supply and current state-of-the-art products and services. Suppliers/vendors will be advised that any requests for information are for research purposes only and that any inquiries by the MCCA will not be construed as a representation that a contract will be awarded.

3001. RESPONSIBILITY OF THE REQUESTING ACTIVITY. Determining requirements is the responsibility of the requesting activity or user. It is not a function of procurement personnel. The requesting activity will determine which supplies or services most adequately meet its needs and must clearly define those supplies or services on the purchase request. Specifications, purchase descriptions, and statements of work will be as precise as possible without unduly restricting competition. Requesting activities should clearly state minimum or mandatory requirements. Optional or desired requirements should be identified to allow the contracting officer the ability to structure the request for quotes or proposals accordingly. Where technical specifications are required, assistance may be obtained from the procurement office. Except as allowed with purchase cards, BPAs, and direct delivery agreements, the requesting activity shall not request quotes or proposals. To develop requirements and a budget, the requesting activity may conduct market research, but shall clearly communicate to suppliers that such information requests are market research only. Requesting activities may inquire in general terms about supplier pricing to determine a budget, but shall not request official quotes or proposals. Refer to paragraph 3000 for more information.

3002. PURCHASE REQUEST. The requesting activity will forward their requirements to the procurement office on a purchase request, also known as a procurement request or requisition. The purchase request will describe the supplies or services required, identify any recommended sources, indicate the amount budgeted for the procurement, the requesting activity's cost center, and the account number the purchase action will be charged to. The purchase request must certify that funds are available and that all required approvals have been obtained. Receipt of the purchase request in the procurement office begins the procurement process.

3003. AVAILABILITY AND CERTIFICATION OF FUNDS

1. The availability of funds for non-Exchange resale procurements will be ensured either through the electronic procurement system approval process or certification on a paper purchase request (including requests for contract extension or modification). Contracting officers and purchasing agents are prohibited from making purchases when funding is insufficient. If for any reason the originally certified funds become insufficient, additional funds must be certified as available from the requesting office before the purchase order or contract can be awarded or modified.

2. Other instruments such as Indefinite-Delivery type contracts, Basic Ordering Agreements (BOA's), and BPA's may be established prior to obtaining funding. Funds availability, however, will be certified prior to placing an order against these agreements.

3. Certification of funds availability is not required for the purchase of resale merchandise.

4. Additional requirements for funds certification may apply to requirements using Uniform Funding and Management (UFM) processes. Refer to current guidance available from CMC(MR) or the MCCS Chief Financial Officer.

3004. LEAD TIME

1. Requesting activities will make every effort to establish a realistic delivery date in order that the purchase can be properly accomplished. Purchase requests will be submitted to the procurement office in sufficient time to allow for the procurement process to be completed, production time, and delivery of the supplies or services by the required delivery date.

2. Contracts awarded after contract performance has commenced subject MCCS to numerous liability issues and will be avoided. If the contracting officer permits performance to begin prior to contract award, the circumstances leading to this situation and the contracting officer's justification for the late award will be documented in the contract award memorandum. To avoid this occurrence, a Letter Contract may be negotiated (refer to paragraph 5321). Unless otherwise excepted per emergency purchase procedures (refer to paragraph 6207), all other contract performance that begins without contracting officer approval shall be treated as an unauthorized procurement action per paragraph 1013.

3005. CONTRACTS VS PURCHASE ORDERS. The administrative cost of establishing and administrating two-party (bilateral) contracts is not warranted for much of the equipment, supplies, and merchandise purchased by MCCA. The preferred method of procurement will be by purchase order, delivery order, or purchase card (refer to paragraph 6401 for purchase card guidance regarding prohibited and regulated purchases).

1. Purchase Orders/Delivery Orders will be used for the following:
 - a. Purchase of commercial equipment, supplies, and support services.
 - b. Purchase of raw food products not supplied under a BPA or contract.
 - c. Orders against existing NAF or other Government agency contracts.
 - d. Customer Special Orders.

2. Bilateral contracts will be established for purchases of equipment, supplies, and services under the following circumstance:
 - a. When the items or services require detailed specifications, statements of work, performance standards, drawings, or special provisions.
 - b. When it is a revenue-generating concession, vending, or agency contract.
 - c. When a contract is desirable or needed to ensure product availability during periods of shortages, or to guarantee firm prices for the contract period.
 - d. When an Indefinite-Delivery contract is needed or desirable.
 - e. When the Service Contract Act or Davis-Bacon Act applies (refer to paragraphs 5303 and 5314).
 - f. When for any other reason the contracting officer determines that a bilateral negotiated contract rather than a unilateral purchase order would best serve MCCA interests.

3. Resale items may be purchased by purchase order, delivery order, or bilateral contract. With required approvals, resale items may be purchased by purchase card (refer to paragraph 6401).

3006. SPECIFICATIONS

1. Specifications, including statements of work and purchase descriptions, will not be so restrictive as to improperly eliminate competition. Since specifications must be understood by both parties, industry-developed specifications should be used when possible. If it appears that a contractor prepared the statement of work or specifications, refer to paragraph 6301.6.

2. In the event of a dispute between the contractor and the MCCA concerning ambiguous specifications, it is a general contract law principle that the specification ambiguity will be construed against the drafter, usually the MCCA. It is therefore imperative that specifications be clear and that all sections of a contract be consistent with each other in order to effect timely and economical procurements.

3007. INSURANCE REQUIREMENTS

1. In compliance with CMC(MR) insurance guidelines, contractors will be required to carry insurance in amounts sufficient to protect the interest of the MCCA NAFI and the United States. Unless otherwise allowed by policy or guidance, the contracting officer will use the standard insurance clauses issued by CMC(MR).

2. The contractor must provide a copy of the required Certificate of Insurance (COI) to the contracting officer prior to beginning performance. The contracting officer shall review the COI to ensure the certificate complies with coverage types and limits as stated in the contract and is valid for the contract performance period. For one-time deliveries of products or installation access for a one-time meeting, it is sufficient to require Contractors to comply with installation access requirements rather than requiring submittal of auto liability insurance certificates.

3. Due to the nature of some contracted MCCA activities, additional insurance may be required. To determine the amount of additional insurance, the contracting officer will consider the following circumstances and obtain guidance from CMC(MRG).

a. The type of contract and the risks associated with the requirement (i.e., circuses, carnivals, martial arts, scuba).

b. Whether Government or MCCA property is provided for contractor's use per contract terms (i.e., fixtures for beauty and barber shop concessions).

c. Whether the contractor has adequate commercial insurance covering the specific type of risk associated with the activity or event.

4. MCCA must seek a written waiver from CMC(MRG) for approval to purchase any commercial insurance. MCCA procurement of insurance locally is prohibited. Refer to additional insurance guidance, including a list of prohibited activities that may not be offered or contracted for by MCCA, in the Composite Insurance Program (CIP) Manual at <http://crossroads/MRG/Composite%20Insurance%20Program%20CIP/Forms/AllItems.aspx> or MCCA Crossroads >> Headquarters >> Human Resources and Training >> Documents >> Composite Insurance Program (CIP).

5. Questions concerning types and amounts of insurance will be forwarded to CMC(MRG) or MCCA Counsel.

3008. BONDS

1. Performance bonds may be used for other than construction to protect the MCCA's interest when one or more of the following apply:

a. MCCA property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (i.e., when advance payment or startup costs are provided).

b. Substantial progress payments are made before delivery of end items start.

c. Contracts are for dismantling, demolition, or removal of improvements.

2. The contractor will furnish all bonds before receiving a notice to proceed with the work.

3. No bond will be required after the contract has been awarded if it was not specifically required in the contract, except as may be determined necessary for a contract modification.

3009. CMC(MR) CONTRACTING OFFICE. Contracting and purchasing personnel at CMC(MR) are available to assist MCCA procurement offices with procurement policy guidance, sample specifications/work statements, evaluation criteria, etc.

3010. APPROPRIATED FUND CONTRACTING OFFICE. MCCA procurement personnel are encouraged to request the assistance of installation/regional appropriated fund contracting personnel on source list development, local vendor information, etc.

Chapter 4

Procurement Sources

4000. MANDATORY SOURCES

1. CMC(MR) designates mandatory-use contracts for equipment, supplies, and services and posts ordering instructions to <http://crossroads/MRB/default.aspx>. MCCS procurement offices are required to use mandatory-use contracts unless granted a waiver.

2. Federal Prison Industries. The Federal Prison Industries (FPI), also referred to as UNICOR, is a mandatory source of products listed in the Schedule of Products made in Federal Penal and Correctional Institutions at prices not to exceed current market prices. Supplies manufactured and services performed by FPI are listed in the FPI Schedule, which can be accessed at www.unicor.gov or by submitting a written request to FPI. Purchase from FPI is not mandatory and a waiver is not required if the Contracting Officer makes a determination that the FPI product or service is not comparable to supplies available from the private sector that best meet MCCS needs in terms of price, quality, and time of delivery; the supplies are acquired and used outside the United States; acquiring listed items totaling less than the micro-purchase threshold; or acquiring services. The following procedures will be followed prior to purchasing products listed in the FPI Schedule:

a. Conduct market research to determine whether the FPI item is comparable to products or services available from the private sector that best meet MCCS needs in terms of price, quality, and time of delivery. This is a unilateral determination made at the discretion of the contracting officer.

b. Prepare a written determination that includes supporting rationale explaining the assessment of price, quality, and time of delivery, based on the results of market research comparing the FPI item to products or services available from the private sector.

c. If the FPI item is comparable, purchase the item from FPI following the ordering procedures at www.unicor.gov, unless a waiver is obtained. Requests for waivers to purchase supplies or services listed in the FPI Schedule from another source shall be processed in accordance with the procedures as www.unicor.gov.

d. If the FPI item is not comparable in one or more of the areas of price, quality, and time of delivery:

(1) Acquire the item using competitive procedures.

(2) Include FPI in the solicitation process and consider a timely offer from FPI for award in accordance with the requirements and evaluation factors in the solicitation.

3. Nonprofit Agencies Employing People Who Are Blind or Severely Disabled. The Javits-Wagner-O'Day (JWOD) Act requires the Government, including military NAFIs, to purchase supplies and services on the Procurement List from AbilityOne participating nonprofit agencies if they are available within the period required. The Committee for Purchase from People Who Are Blind or Severely Disabled (the Committee; previously known as National Industries for the Blind and National Industries for the Severely Handicapped (NIB/NISH)) is an independent Government activity that is responsible for determining the supplies and services on the Procurement List, establishing prices for the supplies and services, and establishing rules and regulations to implement the JWOD Act.

a. The Procurement List identifies the item designation for each commodity, including military resale commodities, and any limitation on the portion of the commodity that must be procured under the JWOD Act. "Military resale commodities" are those sold for the private, individual use of authorized patrons of commissaries and exchanges, or like activities of other Government departments and agencies. Many items on the Procurement List are identified in the General Services Administration (GSA) Supply Catalog with an "AbilityOne/NIB/NISH Mandatory Item" icon.

b. When identical commodities or services are on the Procurement List and the Schedule of Products issued by Federal Prison Industries, Inc., ordering activities will purchase supplies and services in the following priorities:

(1) Supplies

(a) Federal Prison Industries, Inc., per reference (p), Title 41 Section 48.

(b) AbilityOne participating nonprofit agencies.

(c) Commercial sources.

(2) Services

(a) AbilityOne participating nonprofit agencies.

(b) Federal Prison Industries, Inc., or commercial sources.

c. The "Procurement List" may be obtained at www.abilityone.gov/index.html.

4001. SMALL BUSINESS ACT. The provisions of the Small Business Act (15 U.S.C. Section 631 et seq.) do not apply to NAF procurements. Small business, small disadvantaged business, and minority business concerns will be encouraged to compete for MCCS requirements.

4002. U.S. GOVERNMENT SOURCES

1. Other Government activities, both appropriated fund and NAF, are authorized sources for goods and services. The agencies that may be in position to supply MCCS requirements include but are not limited to the General Services Administration (GSA) at www.gsa.gov, Defense Logistics Agency (DLA), Defense Personnel Support Center (DPSC), Defense Commissary Agency (DeCA), and other military exchange services and Morale, Welfare and Recreation (MWR) activities. GSA and DeCA will not be used as a source for resale items.

a. MCCS may, but is not required to, purchase items available through the USMC ServMart with GSA. Contracting officers and purchasing agents are responsible for obtaining the most advantageous prices and terms on equipment, supplies, and support services.

b. MCCS may, but is not required to, place delivery orders against GSA contracts. GSA contracts are often referred to as "Schedule" contracts, but are also known as "Multiple Award Schedule" or "Federal Supply Schedule" contracts. Schedule contracts are indefinite delivery/indefinite quantity, multiple award type contracts, meaning they provide for an indeterminate number of orders and can be awarded to multiple contractors at once. GSA contracts do not qualify as a valid justification for single or sole source procurement based solely on designation as a GSA contract. Refer to paragraph 6004 for competition requirements regarding GSA contracts.

2. Per reference (p), Title 10 Section 2482(a), MCCS NAFIs may enter into a contract or other agreement with another element of the DoD or other Federal department, agency, or instrumentality to provide or obtain goods and services beneficial to the MCCS NAFI. Consult MCCS Counsel for additional guidance.

4003. DoD NAF COOPERATIVE EFFORTS. MCCS NAFIs will participate in DoD NAF cooperative efforts contracts that are designated as mandatory-use and are encouraged to participate in contracts designated as available for system-wide use.

1. Air Force Nonappropriated Fund Purchasing Office (AFNAFPO)

a. A Memorandum of Agreement (MOA) authorizes the Marine Corps MCCS to participate in Air Force Nonappropriated Fund Purchasing Office (AFNAFPO) programs. AFNAFPO invites all DoD NAFI's to participate in consolidated DoD-wide procurements. AFNAFPO obtains low prices by dealing directly with the manufacturer. Through volume purchasing of common need items, significant savings can be achieved.

b. To request a list of AFNAFPO procurement programs and catalogs, contact AFNAFPO via mail at AFNAF Purchasing Office, 9504 IH 35 North, Suite 370, San Antonio, TX, 78233-6636, phone at (800)722-3623, or www.afnafpo.com.

c. Each MCCS will issue its own delivery order for the product desired per the terms of the AFNAFPO contract. Delivery orders placed against AFNAFPO contracts or negotiated on behalf of the MCCS by AFNAFPO satisfy Marine Corps requirements for competitive NAF purchasing. If a problem develops with an order, the MCCS activity will make the initial contact with the vendor to try and resolve the issue. If the vendor fails to respond, the MCCS will contact the appropriate AFNAFPO contracting officer for assistance.

2. In addition to informal cooperative agreements, the MCCS also has Memorandums of Agreement (MOA) or Memorandums of Understanding (MOU) with fellow NAFI exchange and MWR organizations that allow CMC(MR) and MCCS to participate in selected contracts. MOAs and MOUs with other NAFIs for contracts must be signed by CMC(MR). Also refer to paragraph 1012.

4004. MCCS COOPERATIVE EFFORTS

1. MCCS activities will participate in regional or system-wide MCCS contracts designated as mandatory-use. These consolidated procurements help reduce costs and standardize products throughout the Marine Corps. Regional or system-wide contracts for equipment, supplies, support services, or revenue-generating services exceeding the simplified acquisition threshold per year require CMC(MR) approval prior to release of the request for proposals.

2. Unless prohibited, contracting officers will include contract clauses in their contracts that permit other MCCS activities to participate in their contracts. Each MCCS activity will fund and place individual delivery orders against these contracts.

4005. COMMERCIAL SOURCES. MCCS policy is to purchase standard commercial products readily available in commercial trade whenever feasible. Purchasing of standard commercial products does not normally involve development of specifications. Specifications will only be used when determined necessary to establish quality standards as a basis for competition when brand is not a factor. Specifications or purchase descriptions that establish minimum quality standards may also be used in the purchase of subsistence food, except when brand-name products may be justified. When specifications are needed, performance specifications are preferred over manufacturing specifications.

4006. PURCHASING ALCOHOLIC BEVERAGES

1. Alcoholic beverages purchased for resale (either through Exchange retail or Club operations) in the continental United States will be bought from the most competitive source and distributed in the most economical manner, price and other factors considered, except that:

a. Malt beverages and wine will be purchased from, and delivery accepted from, a source located in the same State as the military installation.

b. If the military installation, located in the continental United States, is located in more than one State, the purchase of malt beverages and wine may be made from a source of supply in either State.

2. Under Federal law per reference (p), Title 10 Section 2488, all alcoholic beverages purchased for military resale in Alaska and Hawaii will be purchased from in-state sources.

3. The types of alcoholic beverages purchased for military resale (either through Exchange retail or Club operations) is determined by market share of specific brands. Single source negotiation will be conducted with the approved distributors for the supply of the desired items to MCCS.

4. The U.S. alcoholic beverage industry is highly regulated with the production, distribution and sale governed by Federal and State laws and regulations. Questions concerning the purchase or resale of alcoholic beverages will be referred to MCCS Counsel.

4007. PURCHASING FROM OTHER THAN THE PRIME SOURCE

1. MCCS activities will purchase from the prime source when possible, unless industry practice deems it more appropriate to purchase from vendor representative firms. Factors to consider include, but are not limited to, a comparison of prices, minimum reorder quantities, distribution, freight terms, reduction in MCCS administrative and operational expense, and delivery time.

2. Procurement from vendor representative firms may be necessary to obtain the following services:

- a. Information on new products, coming promotions, product knowledge, etc.
- b. Shelf counts, shelf stocking, and rotation of merchandise.
- c. Authorization for return of damaged or dated merchandise.
- d. Training sales personnel, and providing product demonstrations and displays.

4008. BUY AMERICAN ACT. Per reference (p), Title 10 Section 2533(a), the Buy American Act applies to supply purchases/contracts and to the supply portion of a services contract for use by MCCS in the United States for actions above the micro-purchase threshold unless otherwise exempted by a Trade Agreement. The effect of applying the Buy American Act is to give a six percent preference to suppliers of domestic-end products in evaluation for contract award.

1. The Buy American Act does not apply to purchases:

- a. For use outside the United States.
- b. Of items not mined, produced or manufactured in the United States in sufficient quantities of satisfactory quality (for administrative purposes, refer to the current list of nonavailable articles that are exempt from the Buy American Act per reference (r), part 25.104).
- c. Of information technology that is a commercial item.
- d. Of retail merchandise for resale in exchanges or other DoD NAFIs.
- e. If any Trade Agreement applies (refer to paragraph 4010).

2. In evaluating proposals subject to the Buy American Act, the contracting officer must add six percent to the offered cost (the end product cost plus actual or constructive costs of handling and transportation to the final destination, plus applicable customs duty) of any nondomestic end product.

3. Refer to additional guidance regarding application of Buy American Act and Trade Agreements Act at <http://crossroads/MRB/default.aspx> or MCCS Crossroads >> NAF Procurement.

4009. DOD INTERNATIONAL BALANCE OF PAYMENTS PROGRAM. The DoD International Balance of Payments Program (IBOP) (often referred to as the Gold Flow Program) applies to the purchase of foreign goods and services outside the United States, its possessions and Puerto Rico. See reference (a) for IBOP procedures.

4010. TRADE AGREEMENTS. The World Trade Organization Government Procurement Agreement (WTO GPA) per reference (s) and the Trade Agreements Act per reference (p), Title 19 Section 2501 et seq., waives the Buy American Act and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States or that meet certain other criteria such as being a least developed country. At the thresholds specified in the Trade Agreements, offers of eligible products receive equal consideration with domestic offers.

1. This restriction does not apply to:

- a. Purchases of resale merchandise.
- b. Purchases from Federal Prison Industries, Inc., or AbilityOne.

2. The applicable dollar thresholds are adjusted approximately every two years to reflect the value of the U.S. dollar against the currencies of other nations. For NAF procurement administrative purposes, refer to the published thresholds listed in the Federal Register or reference (r), Part 25.4.

3. Least developed countries. For procurements covered by the WTO GPA, least developed country end products and services must be treated as eligible products.

4011. APPLICATION OF BUY AMERICAN ACT AND TRADE AGREEMENTS

1. Different guidelines apply to purchases subject to the Buy American Act and Trade Agreements based upon:

a. Where the procurement office is located; that is, whether the procurement office is located inside or outside the U.S..

b. The estimated dollar amount of the procurement.

c. Where the items being purchased will be used.

2. The estimated dollar amount of the procurement is the estimated dollar amount for the entire contract period for the smallest portion of the solicitation which may be awarded as one contract. For example, in a solicitation in which the items to be purchased are grouped in line item groups and offerors are advised that award will be made by line item group, each line item group is a separate procurement for purposes of determining which guideline applies. As a result, it is possible for a different guideline to apply for each procurement; in this example, every line item group.

3. The estimated dollar amount of a procurement is determined based upon MCCS' estimates and is not changed during the procurement as a result of the offers received in response to the solicitation. For example, if a contracting officer determines that the estimated dollar amount for line item group A, a "procurement," is \$150,000, the appropriate guideline will be chosen based upon that estimate. Even if offers received in response to the solicitation all are approximately \$200,000, the estimated dollar amount for this procurement is still considered to be \$150,000 for this purpose.

4012. FOREIGN SOURCES

1. Contracting officers will not purchase any items that cannot be lawfully imported into the United States because of governmental restrictions, such as counterfeit trademarked items or copyright limitations on trade names.

2. Services and construction requirements at locations outside the United States may be negotiated with eligible sources consistent with host-country laws, treaties, or status of forces agreements.

3. MCCS activities located outside the United States will, within the limits of sound business practice, stock merchandise of U.S. origin in preference to equivalent merchandise from foreign sources.

4. Questions concerning purchasing jurisdiction in foreign areas will be forwarded to MCCS Counsel.

4013. PURCHASES OF FOREIGN GOODS IN THE UNITED STATES

1. Purchases in the U.S. of duty-paid foreign goods physically located in the U.S. are authorized. Importers having an exclusive franchise for distribution in the U.S. of foreign items are considered the prime source for these items.

2. A tax "drawback" will be applied for, when applicable. Drawback is a refund of U.S. customs duty paid on goods imported and later exported; for example, when a contractor imports sugar for a product that is later exported to overseas activities. The contract should include a tax drawback provision. In such cases, the contractor agrees to process claims for drawback of customs duty or refund Federal excise tax and to remit proceeds, less the cost of processing the claim, to MCCS. Contracting officers may use drawback information (amount of duty paid) to compute the cost of an item excluding duty.

4014. TRADEMARK ITEMS. U.S. registered trademarked items will be bought directly from trademark owners or from authorized, designated or franchised distributors. MCCS will not buy and sell counterfeit items bearing registered trademark logos.

4015. SOURCE FILES. Source files may be paper or electronic.

1. Source files are required for items or services purchased by competitive solicitation. Source files are not required to purchase brand-name products from prime sources.

2. Names of sources may be developed from the internet, trade publications, associations, interviews, telephone directories, Chambers of Commerce, Small Business Administration, Minority Business Development Agencies, and other NAFLI or Government purchasing offices.

4016. SOURCE LISTS

1. A source list is required for each competitive solicitation. It is developed prior to each solicitation from the source files and is retained in the solicitation file. The source list will contain a reasonable number of eligible sources to ensure adequate competition. Determining a reasonable number of sources is a contracting officer's judgment decision. It is based on the dollar amount of the purchase, competitiveness of the market, and number of interested offerors. There is no requirement to solicit all available sources for each purchase.

2. Always solicit an incumbent contractor unless the incumbent has clearly indicated no interest, becomes ineligible, or had a default termination on the prior contract. In that case, the defaulting contractor may be given the solicitation only on specific request.

3. State licensing agencies that provide rehabilitation services to the blind and other handicapped may, upon request, be placed on source lists to receive solicitations for services. See paragraph 5205 for applicability of Randolph-Sheppard Act requirements to contracts for non-Exchange vending and cafeteria operations.

4. Minority Business Development Agencies (MBDA), or firms they identify, should be placed on source lists if requested.

4017. INELIGIBLE SOURCES. MCCS requirements will not be purchased from individuals or firms who:

1. Are on the "Excluded Parties Listing System (EPLS)" available at the System for Award Management (SAM) at www.sam.gov, or on similar lists of offshore suppliers published by installation commanders.

2. Are active duty military personnel or civilian employees of the Government, unless the contracting officer determines there is no potential for or apparent conflict of interest. Immediate family members of military personnel or MCCS employees may also be considered as sources if there is no potential for or apparent conflict of interest. In making this determination, contracting officers will consider the position of the individual, any relationship with MCCS, and the potential for the appearance of favoritism or undue influence. Solicitation and contract files will be documented to show the contracting officer's determination. MCCS Counsel will be consulted in questionable situations. MCCS may not award contracts to MCCS or military personnel to perform the same work under contract as they perform for MCCS in their MCCS or military position.

4018. REMOVAL OF SOURCES FROM SOURCE LISTS. Firms or individuals in a source file or on a source list who are later debarred or suspended, or who are otherwise determined to be ineligible, will be removed from source files and lists to the extent required by such debarment, suspension, or other determination of ineligibility.

4019. ORGANIZATIONS AND CLUBS. Unless otherwise prohibited, the MCCS may issue an order or contract with a private organization when the total amount is under the competition threshold and when the service is infrequent. For example, holiday gift wrapping services from the Officer's Wives Club and air show support from unit clubs. Obtain Counsel approval prior to issuance.

4020. WAREHOUSE CLUB MEMBERSHIP CARDS. The MCCS may use a purchase order or petty cash to purchase a warehouse club membership. The membership card must be issued in the MCCS name versus an individual's name. A warehouse club is a low-price retail outlet that sells annual memberships to consumers and businesses (i.e., Costco, Sam's, BJ's, etc.). Membership cards shall not be used to circumvent mandatory sources and competition. The MCCS may not obtain a merchant credit card for the warehouse club (i.e., Costco Visa Card). Refer to the MCCS Purchase Card Standard Operating Procedure (SOP) for additional guidance.

Chapter 5

Contract Types

5000. GENERAL. A contract defines the legal rights and obligations of the contracting parties. Contracts may, under specified conditions, be established on simple documents such as purchase orders, or they may be complex in nature, containing detailed specifications and performance standards. The following must be present for a valid contract: Competent parties, legal subject matter, legal consideration, mutual agreement, and mutual obligation.

5001. CONTRACT TYPES

1. MCCS will enter into fixed-price type contracts; MCCS will not enter into cost-reimbursement contracts without the prior approval of CMC(MR). MCCS fixed price contracts will be established by written purchase order, delivery order, or contract. The selection of the type of contract and the purchasing procedure to be used in a particular situation will be determined by the contracting officer.

2. MCCS contracts may also be described as Exchange and non-Exchange contracts. This distinction is important for legal jurisdiction over contract disputes. The Contract Disputes Act applies to Exchange contracts and subjects MCCS to the jurisdiction of federal courts during contract disputes. Non-exchange contracts are not subject to federal court jurisdiction and should not be drafted in such a manner as to imply such jurisdiction. See paragraph 7108 for additional guidance.

Chapter 5: Contract Types

Section 1: Equipment, Supply, and Merchandise Contracts

5100. GENERAL. This section primarily addresses contracts for off-the-shelf commercial equipment, supplies, and merchandise that are purchased for use or resale of the MCCS. An off-the-shelf item is produced and placed in stock by a supplier before orders are received. Much of the following, however, is also applicable to the section on consumable items.

5101. INSPECTIONS. The NAF contracting officer or purchasing agent will ensure that equipment, supply, and merchandise contracts contain a clause giving MCCS the right to inspect and accept or reject items in order to ensure that MCCS receives exactly what it purchased. The extent of the inspection depends upon the item being inspected. The inspection should be thorough enough to determine whether the item conforms to the specifications. Receiving or requesting activity personnel are responsible to receive, inspect, and accept goods and services.

5102. DEFECTS. Defects in the product can constitute grounds for rejection of the item. Patent defects, such as items damaged in shipment or items with parts clearly missing, are generally evident upon first visual inspection. Latent defects are not often evident upon first visual inspection and may not be noted until after the item has been accepted and payment issued. If an inspection cannot be performed upon receipt, the receiving ticket should be marked "received and accepted pending inspection." A full inspection should be accomplished promptly in order to ensure that any defects are reported to the contractor within a reasonable period of time. A prompt inspection should also reveal concealed damage that was not evident upon initial receipt. Any defects or damages noted will be reported to the contracting officer immediately to allow the contracting officer to reject the items and to require corrective action.

5103. NONCONFORMING ITEMS

1. Nonconforming items are not necessarily defective. For example, a product in a 12-ounce bottle is ordered, but 24-ounce bottles are delivered. Accepting nonconforming items is discouraged but not prohibited, and the contracting officer is responsible for their acceptance or rejection. In determining whether to accept or reject items, the contacting officer will base his or her decision on the following:

- a. An explanation as to how the item nonconforms to specifications and how extensive the nonconformance is.
- b. Advice from the receiving activity on whether the item is acceptable to use and will perform its intended function.
- c. A recommendation from the receiving activity (with supporting documentation) on whether to accept or reject the item.
- d. The nature and extent of the contractual adjustment that will result from either decision.

2. If the decision is made to accept the item, the contracting officer will seek an equitable adjustment in the price of the item, negotiate any other adjustments necessary as a result of acceptance, and issue a written contract modification to reflect the change. If the decision is made to reject the item, the contracting officer will so notify the contractor and give the contractor the opportunity to correct the problem within the required delivery schedule.

5104. REJECTION PROCEDURES. The contracting officer will notify the contractor promptly in writing when items are being rejected, giving the reasons for the rejection. Whenever any items are rejected, the contract file will be documented to reflect that a rejection occurred, the basis on which the items were rejected (i.e. nonconforming or defective items), and the corrective action taken.

5105. ACCEPTANCE. Once items have been accepted, the acceptance is considered final (unless otherwise provided in the contract) except for latent defects, fraud, or gross mistakes amounting to fraud. Consequently, once the MCCA has accepted the shipment, it cannot be rejected later unless the acceptance can be voided because of one of these exceptions. If a defective or nonconforming item is not rejected within the time provided for in the contract or in the absence of such a provision, within a reasonable amount of time, MCCA is considered to have accepted it.

5106. RECEIVING REPORTS. Receiving or requesting activity personnel are responsible to receive goods or services, ensure that a sufficient inspection has occurred, and notify the finance and procurement office that payment is authorized for items received in good working order and for services which are satisfactorily completed. Receiving or requesting activity personnel must perform the inspection and acceptance functions in a timely manner, normally within 5 days of receiving the goods or services. If goods or services are not acceptable or the packing slip, delivery ticket, or invoice is incorrect, the requesting activity should first coordinate with the contractor. If unable to resolve the error, the requesting branch should then escalate the issue to the procurement office.

1. To indicate receipt and acceptance, the receiving or requesting activity must use one of the following methods based on local procedures:

a. Prepare a receiver in the electronic procurement system to indicate that an item or service has been received.

b. Provide a written receiving report by completing the receiving block of the purchase order or by adding the following statement to the contractor's packing slip, delivery ticket, or invoice: "Received, Accepted, and Approved to Pay." Include the approver's signature, printed name, office code, and date. Forward the document to the finance office.

c. Prepare an e-mail or memo to the finance office which lists the order or contract number, describes the item or service received, indicates date received or performance periods, states that the item or service has been accepted and that payment is to be made. An e-mail acceptance shall bear the e-mail address of the sender who is providing acceptance and a closing line bearing the acceptor's name, office code, and phone number.

2. Under no circumstances shall acceptance be made verbally or telephonically; there must always be a written or electronic record of receipt and acceptance.

5107. RETURNING EXCESS EQUIPMENT, SUPPLIES, OR MERCHANDISE. Unless defective or nonconforming to contract requirements or otherwise provided for in the contract, MCCA has no contractual right to return excess equipment, supplies, or merchandise that was ordered by MCCA. This does not prevent MCCA from negotiating with a contractor and issuing a modification to return excess items.

5108. WARRANTIES

1. The requiring activities are responsible for monitoring warranties to ensure that when a repair or service is required, the warranty is invoked. Contracting officers will ensure warranty provisions and clauses are incorporated in contracts. In addition, contractors will be required to provide copies of warranties associated with the procurement of services, supplies and construction. When the supplier requires that forms be returned in order to enforce the warranty, the requiring activities will complete and return.

2. The basic remedy provided under a typical warranty clause requires the contractor to replace or correct defective supplies, or to reduce the price if the MCCA wishes to keep the supplies without correction or replacement. If MCCA requires correction or replacement, any transportation charges involved will be borne by the contractor or per the contract terms. If MCCA decides to keep the items without correction, an appropriate equitable adjustment will be sought.

3. Contracting officers will not agree to contractor proposed open-ended indemnity clauses. Consult MCCA Counsel for guidance.

5109. ONE-TIME-BUYS. A one-time-buy is defined as a nonrecurring purchase of resale items not regularly carried. Examples include items for promotional purposes, seasonal requirements, emergencies because of shortages or non-availability of regular stock, or to satisfy unique requirements of command, military or Government sponsored programs. The term "one-time-buy" doesn't limit the purchase to a single purchase order or single source. The requirement may involve more than one delivery destination or multiple suppliers.

5110. GUARANTEED SALES CONTRACTS

1. A purchase on a guaranteed sale is a purchase where MCCA receives resale items into inventory and the contractor agrees to accept returns for credit all unsold quantities after a set period. Guaranteed sales contracts may be used for short-term promotions such as sidewalk/truckload sales and in addition for the following items or categories.

a. Periodicals, books, maps, hobby items, sporting goods, sunglasses, seasonal items, etc.

b. Products that expire and have date codes, such as packaged food items, medicine and vitamins, when guaranteed sales are the industry practice.

c. Other items or other circumstances as authorized by CMC(MR).

2. Each contract awarded for guaranteed sale will provide that the contractor agrees to accept the return of unsold quantities by a specified date, for reimbursement or credit at the option of MCCS. Title to the merchandise initially passes to MCCS under the prescribed FOB terms in the contract. However, the contract should specify that when returns are made, title (and risk of loss) pass back to the contractor. Transportation and handling costs for returning items to the contractor will be negotiated by the purchasing agent or buyer before contract award and incorporated into the contract. Normally, the contractor is responsible for return costs. Before awarding a contract on a guaranteed-sale basis and before starting a return, the purchasing agent or buyer must insure the contractor is financially capable of repaying MCCS for items returned under the guaranteed sale provision. The purchasing agent or buyer is responsible for insuring that items are returned by the specified date and that a request is made to the contractor for reimbursement or credit.

5111. PURCHASES ON CONSIGNMENT. A purchase on consignment is a purchase where the contractor retains title to the merchandise until it is sold. Title first passes to MCCS and then to the customer at the time of sale. MCCS pays the contractor for the quantities sold.

5112. INDEFINITE DELIVERY, INDEFINITE QUANTITY (IDIQ) CONTRACTS. Indefinite delivery contracts are used when the exact times and/or exact quantities of future deliveries are not known at the time of award. There are three types of these contracts: indefinite quantity, definite quantity, and requirements. These contracts are often referred to as (IDIQ) contracts. Delivery orders placed against these contracts must be within the scope, issued within the period of performance, and be within the maximum value of the contract.

1. Indefinite-quantity contracts provide for an indefinite quantity, within stated limits, of supplies or services during a fixed period. Individual delivery orders are placed against the contract when quantities are defined. A minimum order amount must be specified in the solicitation and resulting award, as well as the maximum the contractor is expected to provide.

2. Definite-quantity contracts provide for a definite quantity, within stated limits, of supplies or services during a fixed period when delivery times and destinations cannot be predetermined. Individual delivery orders are placed against the contract as they are identified.

3. A requirements contract provides for the filling of all actual purchase requirements of designated supplies or services with one provider during the specified period. Individual orders are placed against the contract for deliveries or performance. The estimated quantity is not a representation to the offeror that the estimated supplies or services will be required or ordered. Requirements contracts are primarily used when faster delivery of production items is required, as the contractor is usually willing to maintain limited stocks when the MCCS will obtain all of its actual purchase requirements from the specified source.

4. Many GSA, DoD, MR, and sister-service contracts are IDIQ contracts. To use these contracts, the contracting officer or purchasing agent will issue a delivery order against the IDIQ contract. The delivery order will include language referencing the IDIQ contract number and stating that the order is issued subject to the IDIQ contract's terms and conditions. MCCS may not change the contract terms. Procurement personnel shall review the terms and conditions of the IDIQ contract to determine if special fees or usage instructions apply.

5113. LEASE OR PURCHASE OF EQUIPMENT

1. It may occasionally be more economical to acquire certain equipment by short-term lease rather than by purchase. A service contract format will be used for equipment leases. The decision to lease rather than to purchase must be made on a case-by-case basis, applying the following criteria:

a. The MCCS need is short-term or intermittent, and purchase would be costlier than leasing.

b. It is likely that the equipment will become obsolete within a short period and replacement will become necessary.

c. The lessor will provide the equipment, as well as sustainment, restoration, and modernization of service, at a price lower than would otherwise be available to the MCCS through an outright purchase.

(1) Sustainment means the recurrent, day-to-day, periodic, or scheduled work required to preserve equipment in such a condition that it may be used for its designated purpose.

(2) Restoration means the repair or replacement to restore equipment damaged by inadequate sustainment, excessive age, natural disaster, fire, accident, or other causes.

(3) Modernization means the alteration or replacement of equipment solely to implement new or higher standards, to accommodate new functions, or to replace components.

2. Documentation as to the rationale used for lease versus purchase will be retained in the contract file.

5114. CAPITAL LEASES. MCCS activities are authorized to enter into capital leases. For a lease to be classified as a capital lease versus an operating lease or rental contract, the agreement must meet any one of the following criteria:

1. The lease transfers ownership of the equipment to the MCCS by the end of the lease term.

2. The lease term is equal to 75 percent or more of the estimated economic life of the leased equipment.

3. The lease contains a bargain purchase provision allowing MCCS, at its option, to purchase the leased equipment for a price that is sufficiently lower than the expected fair market value of the item. This option is made known at the inception of the lease.

5115. USED OR REFURBISHED ITEMS. It may occasionally be more cost effective to purchase used or refurbished items rather than new (for example, equipment, parts, or vehicles). Documentation as to the rationale for purchasing used or refurbished items will be retained in the contract file and shall include the intended purpose of the items as well as a price and warranty analysis. Requesting activity personnel shall coordinate approvals with finance for used or refurbished fixed asset requirements.

Chapter 5: Contract Types

Section 2: Consumables and Subsistence Contracts

5200. GENERAL

1. Consumable items are products that lose their identity during use or are consumed during the course of daily business. These are classified as non-edible items. Consumable items include, but are not limited to, paper products, fuel, postage stamps, and airline tickets.

2. Subsistence includes all food and beverage items. These are classified as edible or drinkable items.

5201. SUBSISTENCE FOOD PROCUREMENT. Specifications for subsistence food items will be written per generally accepted industry standards. While it is important to define exactly what is needed, the specifications should not be so stringent as to limit the choice of suppliers. For meat products, the Institutional Meat Purchase Specifications (IMPS), and the National Association of Meat Purveyors (NAMPS), approved by the United States Department of Agriculture (USDA), are generally sufficient.

5202. FOOD SOURCES

1. The purchase of subsistence items must meet Department of Defense Veterinary/Medical Laboratory Food Safety and Quality Assurance Program Operations requirements for food consumption and must originate only from approved sources, as defined in reference (j) and from the Directory of Sanitarily Approved Food Establishments for Armed Forces Procurement per reference (t). The establishments listed in the following publications may serve as sources for Armed Forces Procurement for the covered or coded products: Interstate Certified Shellfish Shippers List (ICSSL); Interstate Milk Shippers (IMS) List; Dairy Plants Surveyed and Approved for USDA Grading Service; USDC Approved List of Fish Establishments and Products; Directory of Grading Offices and Plants Operating Under USDA Poultry and Egg Grading Programs; Meat, Poultry, and Egg Product Inspection Directory. A copy of the current Directory and complete listing of approved commercial sources is available through phc.amedd.army.mil/topics/foodwater/ca/Pages/DoDApprovedFoodSources.aspx, installation veterinarians, or 410-417-3725. Questions concerning approved food sources may be forwarded to the installation PMO or veterinary representative. Sources which indicate interest in doing business with MCCS, and which are not on the approved list, should be encouraged to apply for approval.

2. MCCS direct-run food service activities are required to use the Joint Services Prime Vendor Program (JSPVP) for approximately 80 percent of food and supply requirements. Waivers from participating in this mandatory program must be submitted in writing by the MCCS AC/S or Director to CMC(MR).

5203. FOOD INSPECTIONS

1. All food processing and sanitation on Marine Corps installations, whether a direct or indirect (contract) operation, will comply with the requirements of reference (k), (www.med.navy.mil/directives/Pages/Publications.aspx). Contracting officers will include this requirement in all MCCS contracts for food services (including short-term concessionaires). To ensure compliance, food service activities are subject to random inspection by the installation Veterinary Service representative. The decision with respect to the wholesomeness and acceptability of food products, as well as food storage, preparation, and disposal procedures, the cleanliness of food service spaces, equipment, and utensils, and the medical screening of food service personnel, remains with the military veterinary officer. In the event of a conflict between the NAVMED, any relevant Marine Corps Order, or the contractor's own food processing and sanitation requirements, reference (k) will take precedence, unless one of the others is more stringent.

2. When a wholesomeness problem not creating an imminent health hazard is reported by the MCCS food facility manager or installation veterinary representative, the contracting officer will immediately send a cure letter to the contractor requesting corrective action be taken within ten calendar days and to provide a report of the actions taken. If the contractor's action is considered inadequate as evidenced by subsequent veterinary reports, a show-cause letter will be initiated by the contracting officer and followed by contract termination if appropriate.

3. Whenever a veterinary inspector reports that fresh dairy food(s) create or appear to create an imminent health hazard, the contracting officer will immediately coordinate with Counsel and issue a cure letter to the contractor. The letter will state that corrective action is required within 24 hours, or within three calendar days of receipt of the notice, depending on type of health hazard. Should the contractor fail to take the designated action, the contracting officer will issue a show-cause letter, followed by contract termination if appropriate for those item(s) creating or appearing to create an imminent health hazard. Emergency purchases from another approved source can be made during the period deliveries cannot be accepted from a contractor.

4. Contract personnel employed in MCCS food facilities will comply with introductory and annual food service sanitation and food safety training requirements specified in reference (k). The resulting Food Safety Training Certificate (NAVMED 4061/1) will be retained on site at the food facility.

5204. BRAND NAME RETAIL FOOD PRODUCTS

1. MCCS activities may stock and sell brand-name food items. Requirements are generally based on customer preference and/or demand and therefore require no formal competition, however competition will be obtained when the brand name is available from multiple sources.

2. The conditions established above for purchasing institutional food products from approved sources and related sanitary and wholesomeness requirements apply to purchasing retail food items. Brand name food manufacturers or distributors will notify MCCS activities if food products are recalled.

5205. RANDOLPH-SHEPPARD ACT. Per reference (p), Title 20 Section 107, the Randolph-Sheppard Act requires that a priority be given to the blind in the establishment of contracted non-Exchange vending and cafeteria operations on federal property. Contact CMC(MR) for additional guidance.

Chapter 5: Contract Types

Section 3: Service Contracting

5300. GENERAL. A service contract is a contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. A service contract can cover services performed by either professional or nonprofessional personnel and can be performed by an individual or an organization. Services operations may sell ancillary products similar to those sold in commercial firms. If product sales are permitted, the contract will include this requirement (or option) and address product pricing.

5301. PERSONAL AND NON-PERSONAL SERVICES CONTRACTS

1. A non-personal services contract is a contract under which the personnel rendering the services are not subject, either by the contract terms or by the manner of its administration, to the supervision and control of the MCCS/Government.

2. A personal services contract is a contract that, by its express terms or as administered, makes the contractor personnel appear, in effect, as MCCS/Government employees. MCCS may not enter into personal services contracts unless specifically authorized to do so. Questions regarding personal service contracts will be forwarded to MCCS Counsel.

3. To ensure that non-personal service contracts do not become personal service contracts by the manner of its administration, MCCS will adhere to the following:

a. Contracts shall not be used for performance of "inherently governmental functions." An "inherently governmental function" is one so closely related to the public interest as to mandate performance by Government employees. These functions imply the use of Government discretion or authority, or the making of decisions on behalf of the Government.

b. All contractor personnel attending meetings, answering MCCS telephones, and working in other situations where their contractor status is not obvious to third parties are required to identify themselves as such to avoid creating an impression in the minds of members of the public and any non-MCCS officials or employees that they are MCCS officials or employees.

c. All documents and reports produced by contractor personnel will be marked as contractor products or ensure that contractor participation is appropriately disclosed.

5302. CONTRACT PERSONNEL REQUIREMENTS. MCCS contractors and their employees performing tasks and services in the United States must be U. S. Citizens or lawfully admitted aliens for permanent residence. Questions regarding personnel requirements will be directed to MCCS Counsel; questions concerning specific contract personnel will be directed to the installation security office. Solicitation and/or contract clauses shall identify local procedures for contractor installation access, identity, and security requirements.

5303. SERVICE CONTRACT ACT OF 1965

1. Per reference (p), Title 41 Sections 351 through 358, the Service Contract Act of 1965 as amended requires that contractors pay not less than prevailing wages and fringe benefits and provide safe conditions of work under contracts for the performance of services in the U.S. through the use of service employees. The Department of Labor, Wage and Hour Division, designates hourly wage rates for labor service categories.

2. The Service Contract Act (SCA) applies to service contracts that exceed \$2,500. The contracting officer will obtain the wage determination prior to issuing a request for quotes (RFQ) or request for proposals (RFP) for each new contract and extension to an existing contract through the Department of Labor's website at www.wdol.gov. The wage determination shall be issued as part of the RFQ or RFP. If the term of the contract is more than one year, the contracting officer must modify the contract after one year and not less than every two years to include the updated wage determination. As a result of the updated wage determination, equitable adjustments in contract fee or price may be necessary. For contracts with periods expected to be greater than five years, the contracting officer must request, in writing and prior to issuing the RFP, a variance from the Department of Labor (DOL); submit the variance request through appropriate channels to the Navy Labor Advisor. Refer to Department of Labor, Wage and Hour Division, web site for more information at www.dol.gov/whd/.

3. Where no matching labor category exists, contracting officers must submit requests for a new wage determination by using the "e98" system. Copies of applicable Collective Bargaining Agreements (CBA) will also be submitted to the DoL. The DoL Wage and Hour Administrator will issue wage determinations in response to the e98 system if the Act applies. Where a CBA is in place, the DoL will require the contractor to comply with it.

4. The SCA is applicable to support service contracts (such as janitorial, landscaping, maintenance, etc.) and to revenue generating service contracts (such as concession, vending, special events, etc.). The SCA also has special requirements for service contracts where the contract employees receive tips from patrons.

5. The SCA is not applicable to contracts for professional, consultant or administrative services; sole proprietorships where the owner performs all the work; and contracts for construction. Refer to reference (p), Title 41 Section 356, for other exemptions from the Act. If a wage determination or CBA is not applicable to the MCCS contract, employees of the contractor are required to be paid not less than minimum wage under the Fair Labor Standards Act.

6. Questions regarding the applicability or implementation of the SCA will be directed to MCCS Counsel or CMC(MR).

5304. LABOR DISPUTES. When a labor dispute arises between a contractor and the contractor's employees, MCCS personnel will remain impartial and will refrain from the conciliation, mediation, or arbitration of any such dispute. MCCS personnel will cooperate, and encourage contractors to cooperate, with Federal and State agencies responsible for enforcing requirements concerning safety, health, and sanitation; maximum hours and minimum wages; equal pay for equal work; child and convict labor; and equal employment opportunity. The contracting officer will require the contractor to report any ongoing or potential labor dispute that might have an impact on delivery or performance.

5305. EQUAL EMPLOYMENT OPPORTUNITY (EEO) REQUIREMENTS. The EEO provisions of reference (u), as amended, will be included in contracts over \$10,000 per year in the U.S. For contracts and each contract modification of \$10,000,000 or more, a pre-award clearance must be obtained. Contact CMC(MR) for additional guidance.

5306. MCCS USE OF PRIVATE SECTOR TEMPORARIES

1. Contracting officers may enter into contracts or basic ordering agreements with temporary help service firms for the brief or intermittent use of the skills of private sector temporaries consistent with the regulatory requirements per reference (v), Title 5 Part 300 Subpart E. Services furnished by temporary help firms will not be regarded or treated as personal services. These services will not be used in lieu of regular recruitment under MCCS direct-hire practices or to displace an MCCS employee. The NAF contracting officer will require the activity to submit a statement giving the circumstances of the project for which the short-term services are needed. For any extension beyond the initial period of services, an exception must be obtained from the supporting personnel office. The personnel officer will determine whether a direct-hire is the appropriate method versus temporary services.

2. An exception to the above term limit is granted at overseas locations when authorized in the Status of Forces Agreement.

5307. INDIVIDUAL SERVICE CONTRACTS

1. An Individual Service Contract (ISC) is a non-personal services contract where payment is made on a per job or per student/patron basis. ISCs are for temporary or intermittent requirements of less than one year; examples include arts and crafts or aerobics instructors. Per paragraph 2000, ISC's should be numbered using an "L" designator.

2. MCCS activities may contract with MCCS employees and active duty members for individual services, such as recreational instructors and entertainers, when no conflicts of interest exist and it is necessary to obtain the services of an individual with unique skills, experience, or knowledge. Refer to paragraph 4017 regarding ineligible sources.

3. Contracts with individuals are not subject to the Service Contract Act (paragraph 5303). Refer to paragraph 2016 for contractor tax requirements.

5308. PROFESSIONAL AND CONSULTANT SERVICES. Professional services are provided by members of a recognized profession, such as training, accounting, or engineering. Consulting services are those of an advisory nature. Professional and consultant services are provided by persons and/or organizations that have knowledge and special abilities not generally available within the MCCS.

1. Using professional and consultant services is a legitimate way to improve MCCS services and operations. These services are used to help managers achieve maximum effectiveness or economy in their operations. In rendering the foregoing services, outputs may take the form of information, advice, opinions, alternatives, analyses, evaluations, recommendations, training, or the day-to-day aid to support personnel needed for the successful performance of ongoing MCCS operations. The MCCS may contract for professional and consultant services, when essential to the MCCS's mission, to-

- a. Obtain outside points of view on critical issues.
 - b. Obtain advice regarding developments in industry, university, or foundation research.
 - c. Obtain the opinions, special knowledge, or skills of noted experts.
 - d. Enhance the understanding of, and develop alternative solutions to, complex issues.
 - e. Support and improve the organizational operations.
 - f. Ensure the efficient or effective operation of information technology systems.
2. The MCCS may not contract for professional or consultant services:
- a. To perform work of a policy-making, decision-making, or managerial nature that is the direct responsibility of MCCS officials.
 - b. To bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures.
 - c. Contracted for on a preferential basis to former MCCS or Government employees.
 - d. To aid in influencing or enacting legislation.
 - e. To obtain professional or technical advice that is readily available within the MCCS or another Federal agency.
3. The contracting officer is responsible for determining whether the requested contractual action, regardless of dollar value, is for professional or consultant services. Before processing any contractual action for these services, the contracting officer will ensure that the required documentation is complete and included in the contract file. Questions concerning such contracts will be referred to MCCS Counsel.
4. MCCS may not contract for legal services without express authorization from the Counsel for the Commandant (CL), HQMC. Such requests must be submitted with justification through the regional MCCS Counsel and CMC(MR).
5. For additional guidance regarding contractor personnel involvement in statements of work, requests for proposals, and technical evaluations, refer to paragraphs 6301 and 6319.

5309. SPORTS PROFESSIONALS

1. The services of sports professionals (i.e., golf, tennis, ski) may be obtained by direct-hire NAF employment or by professional service contract when determined to be in the best interest of the MCCS. Competitive solicitations should include evaluation factors such as, but not limited to, flat rates (per lesson or hour) or "percentage" of the fee per lesson and instructor credentials. Negotiation of contracts for sports professionals may be conducted on a limited or single source basis and shall include the following:

a. The professional's competence, such as teaching ability, past accomplishments, and technical expertise is of greater importance than price or fee consideration.

b. There are a limited number of professionals with the technical expertise to meet MCCS needs.

2. The contract must identify how the patron fee will be split. For contracted golf pros, the MCCS may not accept less than a 90-10 split.

3. For direct-hire MCCS employees providing pro services during his or her regular work schedule, 100% of the patron fee belongs to the MCCS.

4. MCCS may contract for professional services with MCCS employees where no conflict of interest exists; refer to paragraph 5307. Coordinate with Counsel for contracts with direct-hire MCCS employees.

5310. ENTERTAINMENT CONTRACTS. Contracts for entertainment will be solicited and awarded based on the following criteria:

1. The popularity of the entertainers and/or groups, patron preference, availability, participatory draw, profit margin, and past performance. These types of contracts are considered revenue-generating contracts when awarded on a percentage basis. When booking entertainment, the use of an entertainment agency is encouraged when feasible.

2. Since an entertainer is usually available through only one agent, and because the selection is based in large part on customer preference, competition is generally not required. Where there is more than one agent who can provide entertainment of equivalent quality at comparable prices in a given geographical area, the use of available agents will be rotated.

3. Entertainment contracts shall contain a cancellation clause substantially the same as the following: "Cancellation Clause. The contractor shall notify the contracting officer, or authorized representative, immediately of any cancellation, or potential cancellation, and make a reasonable effort to obtain substitute entertainment which is, as determined by the contracting officer, equal or better. All such cancellations must be in writing, must provide satisfactory rationale for cancellation, and must be acceptable to the contracting officer." The contracting officer shall document the file as to the action taken, including remedies.

5311. SPECIAL EVENTS

1. Carnivals, circuses, rodeos, and similar events require advance approval from the Installation Commander, or designee, in writing. Requirements for installation support, such as law enforcement, first aid, and traffic control personnel, will be documented in advance of the event.

2. Since operators of these events often schedule their bookings months in advance, solicitation planning should begin eight to twelve-months in advance of the desired event date(s). To determine contractor responsibility, the contracting officer will require a minimum of three references from each offeror. References from a public institution, such as a county government are preferred. Prior to award, the police department of the city or county where the offeror recently performed should be contacted for information on safety issues such as property damage, personal injuries, and control of money.

3. Special event contracts will identify types and number of rides, acts, exhibits, or games, and ticket prices or fees charged. Contracting officers will ensure special events with potentially unsafe practices, such as riding devices, animal shows, or food sales, meet applicable safety and sanitation requirements. Contracts shall include provisions to indemnify the MCCS and U.S. Government.
4. Recurring special events will be competitively solicited and awarded via multi-year contracts (i.e. a one-year contract with four one-year renewal options, or a three or five year contract specifying events in alternating years).
5. The Service Contract Act is applicable to providers of special events, and its provisions will be included in special event contracts. Entertainment and short-term commodity sales concessions, held in conjunction with special events, will comply with requirements of paragraphs 5310 and 5322.
6. Air Shows are command-sponsored events and as such should be funded by appropriated funds; however, most air shows have a significant MCCS NAF component (concessions, entertainment, runway events, golf tournaments, etc.) which support the command event. MCCS contracts issued to support air shows will be coordinated with the air show point of contact.

5312. INTERIOR DESIGN REQUIREMENTS

1. To preserve the integrity of the design process, procurements for all interior and kitchen design requirements, regardless of whether design was done in-house (i.e., MCCS plan) or by contract (i.e., Architect-Engineer or interior design firm) or as part of a construction project, should be treated as a single source procurement (refer to paragraph 6005). The contracting officer is encouraged to negotiate contract terms, conditions and pricing.
2. Items specified for purchase may be procured without further comparison or substitution, unless such a substitution is due to non-availability, and is first approved by the designer. The interior design package integrity shall be maintained during the procurement process to the maximum extent possible.
3. During the development stages of an interior design project, the designer will consider quality and life cycle costs. Designers will ensure selected items comply with applicable laws and regulations. Interior designers developing an office design will consider office furniture manufactured by the Federal Prison Industries (FPI). Should FPI products be considered acceptable, for purposes of the design, a market survey will be conducted to ensure that the FPI products are comparable to the private sector in price, quality, and delivery. The designer will include a memorandum of record detailing the considerations given the FPI products and the basis of the decision if FPI products are not incorporated in the design.
4. A market survey for purchase of office furniture not a part of a design package will be accomplished prior to purchase. If it is determined that an FPI product is not comparable in price, quality and delivery to the private sector product, the product will be acquired competitively and FPI given the opportunity to compete.

5313. MAINTENANCE CONTRACTS. Facilities maintenance contracts cover the upkeep of MCCS facilities (buildings, grounds, and interior facilities) or the regular care and reconditioning of MCCS tools and equipment (including but not limited to computers, photocopy machines, forklifts, etc.). NAF maintenance contracts are service contracts and are awarded when appropriated fund monies or support is not authorized. Services such as routine building/grounds maintenance and equipment/systems maintenance may also be contracted.

5314. CONSTRUCTION CONTRACTS. All MCCS facilities construction, repair, and maintenance projects will be coordinated with the installation Public Works Officer prior to execution.

1. MCCS NAF construction requirements above \$2,000 may be accomplished by the MCCS contracting officer only as appointed with construction warrant authority. MCCS contracting officers with a construction warrant shall comply with this policy, the Memorandum of Agreement with Naval Facilities Engineering Command (NAVFAC), and MCCS NAF Construction Contracting Standard Operating Procedures.

2. If a delegation of construction contracting authority has not been issued, MCCS requirements exceeding \$2,000 will be forwarded to the installation Resident Officer In Charge of Construction (ROICC) for procurement action, or to an activity with NAF construction contracting authority.

3. Construction contracts over \$2,000 are subject to the Davis-Bacon Act, which requires prevailing wage rates that must be paid to laborers and mechanics employed by contractors and subcontractors working on public works and buildings. Direct questions regarding the applicability or implementation of the Davis-Bacon Act to Counsel or CMC(MR).

4. MCCS contracting officers and purchasing agents may contract for minor repair or maintenance projects up to \$2,000.

5315. PATRON SERVICE CONTRACTS. These revenue-generating contracts involve contractor sale of goods and services to authorized patrons within the military community. (Non-revenue generating service contracts, by contrast, normally provide a service to the MCCS, it is not sold directly to the military community, and the MCCS pays the contractor). Patron service contracts are designed to ensure contractor-operated activities provide the desired level of customer service. To do this, various types of contracts are used. The concession contract is the most common; others include vending, agency, and short-term commodity sales contracts.

5316. CONCESSION CONTRACTS

1. Concession contracts grant a concessionaire the right to sell selected items or to provide a specific service in a designated location for a specific period of time. The actual work may be done inside the MCCS facility or outside the military installation, or a combination of the two.

2. In concession contracts the contractor (concessionaire) pays a fee to MCCS. Commissions from concession contracts will be based on a percentage of sales. Concession contracts are usually awarded for a minimum of one year and are generally subject to the Service Contract Act.

3. Refer to paragraph 5203 and reference (k) for contract requirements related to food safety, hygiene, sanitation, and contractor employee training for contracts involving food services, mobile food services, temporary food services, barber and beauty services, etc.

5317. PATRON SERVICE TEST CONTRACTS

1. Patron service test contracts may be negotiated on a noncompetitive basis when a potential concessionaire presents a unique patron service operation to the MCCS. If the MCCS is unsure of the business viability of the operation, a one-year or lesser term test contract may be negotiated.

2. The purpose of the contract is to test the feasibility and profitability of the operation for both the MCCS and the concessionaire. If after one year the test is successful based on patron response and return to MCCS, the MCCS will:

a. Competitively solicit the service and award any follow-on contract using standard procurement practices.

b. Choose to operate the service on a direct basis.

3. If the contract is not successful, MCCS will cancel the requirement.

4. The contracting officer will determine offeror responsibility and price reasonableness prior to award of the test contract. Findings will be documented in the Justification for Award memorandum. The contract will state the contract period is limited to one year.

5. MCCS Counsel will review all patron service test contracts prior to award.

5318. DIRECT PATRON CONTRACTS. Solicitations and resulting contracts for concession services with direct patron contact (i.e., barber, beauty, optical) will include:

1. Whether the operators will be required to have state licenses and/or certificates of training.

2. Specific sanitation requirements concerning the use of clean brushes, towels, etc.

3. Procedures for handling customers who have communicable diseases (such as scalp irritation).

5319. VENDING CONTRACTS. Vending contracts are similar to concession contracts in that they also generate revenue and are subject to the Service Contract Act, although many large vending firms have Collective Bargaining Agreements in place. Vending contracts are "Exchange" (MCX) contracts and are subject to the Contract Disputes Act (refer to paragraph 7108). Refer to paragraph 5203 for food safety and sanitation requirements.

1. Under a standard Vending Contract for food and beverage items, the MCCS owns the vending machines and competes the product cost. The prices of the items vended are determined by MCCS, and are not a factor in negotiations with the contractor. The contractor may be required to restock the vending machines, or deliver the product to a central MCCS location where it is restocked by MCCS personnel.

2. Under a Vending Machine Rental and Service contract, M CCS rents machines, purchases restocking services, and buys a product from the contractor. M CCS sets the prices of the items vended. Competition is on the product cost and machine rental and service charge.

3. Contracts for video and arcade games, as well as "kiddy rides", are usually similar to Vending Machine Rental and Service Contracts (unless the machine is owned by the M CCS). Contracts for rented machines will specify the frequency of machine rotation.

5320. AGENCY CONTRACTS. In an agency contract, M CCS acts for or represents the contractor in a transaction with the customer. The contractor is the principal, and M CCS is the agent. M CCS accepts patron orders for services or items on behalf of the contractor who then fills the order. In some cases, M CCS may rent the contractor's items to the patron. In both cases, the M CCS accepts payment from the patron. M CCS liability is limited to that of an agent. M CCS will not contract to perform any obligations of the principal. M CCS forwards monies and taxes collected minus commission to the contractor. The commission to M CCS will be competed in agency contracts. Agency contracts will be considered an indirect operation for M CCS reporting purposes.

5321. LETTER CONTRACTS. If failure to award a contract by a specific date will result in the loss of M CCS property or assets, a Letter Contract may be negotiated. A Letter Contract authorizes the contractor to begin performance prior to award of the standard contract. It is signed by the contracting officer and contractor, must specify the maximum liability of M CCS; and must indicate the time period in which the contract will be definitized (awarded by a standard contract). Letter Contracts will be avoided if another procurement instrument is available. Letter Contracts will be coordinated with Counsel prior to execution.

5322. SHORT TERM COMMODITY SALES/CONCESSIONS. This is a concession contract for the display and sale of merchandise from temporarily assigned space. It is primarily used for the sale of handicraft items and other merchandise customarily sold at events, craft fairs, or in conjunction with promotional programs at commercial shopping centers and malls.

1. A short term concession contract is established for a performance period of 30 days or less. The 30 day period of performance does not necessarily mean 30 consecutive days. For example, the contract may specify a period of every Monday for a period of 30 weeks.

2. Short term concession contracts may be awarded on a noncompetitive basis. The contracting officer shall document the file justifying the noncompetitive action. Concessions offering the same or similar commodities will be rotated.

3. At a minimum, a short term concession contract will include:

a. M CCS-furnished supplies (for example, space allocated, electricity, water).

b. Concessionaire furnished supplies and services (for example, signage, canopies, chairs, displays, generators, and uniformed staff).

c. Limitations (for example, concessionaire advertisement may not extend beyond assigned booth area; any restrictions on selling beyond booth area; items for resale beyond those stated in contract).

d. Days and hours of operation and any other time requirements, as applicable.

e. Concessionaire's responsibility for site appearance, including trash disposal and signage.

f. MCCS event coordinator and concessionaire points of contact, with 24-hour telephone numbers.

g. Responsibility for obtaining licenses, passes, and permits; health and safety procedures and requirements.

h. Mandatory clauses.

4. Item restrictions and cost price limitations applicable to Exchange retail facilities apply to commodity concessions per reference (m).

5323. CONCESSION CONTRACT REQUIREMENTS. In addition to the contract requirements listed at paragraph 2006, clauses concerning the following, regardless of the supply or service under contract, will be included in each concession contract. Most of these requirements are also applicable to vending, agency, and short-term commodity sales concession contracts:

1. Service Contract Act Wage Determination, when applicable.
2. Identify the commission as a percentage of total sales, and the method and time of payment.
3. Require the concessionaire to conspicuously post a price list for all goods or services available. The concessionaire must adhere to the prices specified.
4. Require the concessionaire to furnish cash registers or similar business machines, and or pre-numbered sales slips approved by the activity manager, or that the concessionaire use equipment and or sales slips furnished by the MCCS.
5. Require the concessionaire to keep complete and accurate records of all transactions and to ring all sales in the customer's view.
6. Identify reports that the concessionaire must provide to the MCCS.
7. Require the concessionaire to safeguard all assets in his or her possession in which the MCCS or the Government has an interest.
8. Require the concessionaire to certify the integrity of his or her financial records and reports.
9. Provide MCCS the authority to audit or inspect (or to have audited or inspected) the records, premises, and operations of the concessionaire for the purpose of ensuring contract compliance.

10. Require separate physical inventories to be taken of all MCCS and Government owned equipment at the time that the concessionaire occupies the premises and annually thereafter, and on the final day of contract performance.

11. Notice of veterinary inspection when food products are sold in the activity (refer to paragraph 5203).

12. If contractor will accept payment cards, include a contract clause requiring the contractor to comply with Payment Card Industry Data Security Standards.

5324. CONTRACTOR FINANCED BUILDING IMPROVEMENTS. If the contractor is required to provide the capital for improvements to the contractor-operated facility, the commission payment to MCCS may be lower than if the contractor does not incur these costs. If this option is chosen, the solicitation will clearly state what improvements are required. The MCCS activity will assist the contractor in obtaining all required command approvals.

5325. CONTRACTOR CAPITAL INVESTMENT

1. Revenue generating service contracts, including food and hospitality contracts, requiring contractor capital investment will normally not exceed a contract period of five years. A contract period of up to 25 years may be considered, if the contractor's capital investment:

a. Is largely unrecoverable at the end of a five-year contract period (i.e., contractor-financed construction or renovation of Government property).

b. Is of such magnitude that a longer period is necessary to allow reasonable return to MCCS and the contractor, and is consistent with industry amortization standards.

2. MCCS activities having a requirement that meets the above criteria will document the basis for their decision. The supporting payback analysis will be retained in the contract file.

3. All contracts with a contract period in excess of five years will receive MCCS Counsel review and approval prior to award. Approval documentation will be retained in the contract file.

5326. PUBLIC - PRIVATE VENTURES (PPVs). PPVs offer an alternative source of funding for large capital projects, and must be considered prior to investment of NAF funds. MCCS activities will follow the procedure in references (c) and (1) for review and approval. Upon contract award, the PPV contractor may provide a portion or all of the financing, design, construction, services or facilities to the MCCS.

5327. INSTALLATION SUPPORT AGREEMENTS. In certain situations the MCCS may provide support services (i.e., maintenance, grounds keeping, food services) to the installation. Agreements of this type will be reviewed and approved by MCCS Counsel prior to award.

5328. INFORMATION TECHNOLOGY

1. Requirements for the procurement of Information Technology (IT) hardware, software, or support systems will be coordinated with CMC(MR) to determine compatibility with existing systems and the MCCA network.

2. Contracting officers will request a complete copy of the company warranty and software licensing agreement as part of the offerors proposal. IT license, support, and services agreements will receive close review to ensure they are in compliance with MCCA contract clauses. IT contracts or agreements which require MCCA to sign the contractor's form will be reviewed by MCCA Counsel prior to signature by the contracting officer.

5329. MEDICAL AND DENTAL CONCESSION SERVICES. Medical services include, but are not limited to, dental, optometry, audiology, and pharmacy activities. Proposals for individual activities must be submitted 60 days in advance to PDUSD(P&R) for Congressional notification; refer to reference (m). The contract action shall comply with requirements for direct patron and concession contracts. The contract shall require the contractor to maintain professional malpractice liability insurance in addition to other required insurance coverage; coordinate with CMC(MR) for insurance types and amounts. Contracts of this type will be reviewed and approved by MCCA Counsel prior to award.

5330. CONFERENCES AND SPEAKER FEES. The requesting activity will coordinate and obtain required approvals for hosting conferences, attending conferences, and speaker fees. The requesting activity will submit the approval documentation with the purchase request. The contracting officer or purchasing agent will include the approval documentation in the contract file.

5331. FRANCHISE AGREEMENTS. MCCA may contract with a franchisor to provide supplies or services; however, contracting officers will not sign an agreement to become the franchisee without seeking written approval from CMC(MR) and Counsel.

Chapter 6

Negotiated Procurement

6000. CONDUCTING NEGOTIATED PROCUREMENT

1. MCCA procurement is accomplished by competitive negotiation. The manner in which MCCA conducts its business with industry directly shapes its image and reputation in the business community. Negotiation with suppliers will be consistent with these guidelines: obtain the best possible prices, terms and conditions that are fair to the seller, giving consideration to the cost factors of both MCCA and the supplier, and is in the best interest of MCCA. It may be appropriate to consider factors such as the effect on future negotiations, maintenance of sources of supply, incentives to good performance, and performance under unique circumstances.

2. It is the responsibility of the contracting officer or purchasing agent to obtain required competition or approve justifications for non-competitive procurement, conduct evaluations and negotiations, determine price reasonableness, determine responsibility, and make the award decision based on best value to meet the needs of the requesting activity. Contracting officers and purchasing agents will not rely on market research information provided by requesting activity personnel as adequate evidence of competition or price reasonableness.

6001. RESPONSIBILITY

1. Responsibility refers to an offerors ability to perform a contract. No MCCA contract or purchase order may be awarded to any person or firm unless the contracting officer determines that the prospective contractor is responsible within the meaning of this paragraph. A determination of responsibility is made prior to the time of award. To be considered responsible, the potential contractor must:

- a. Have adequate financial resources.
- b. Be able to meet the proposed delivery or performance schedule.
- c. Have a satisfactory performance record.

d. Be otherwise qualified and eligible to receive an award under applicable laws and regulations. Prospective contractors shall not be listed on the "Excluded Parties Listing System (EPLS)" available at the System for Award Management (SAM) at www.sam.gov.

2. For each procurement over the competition threshold, the contracting officer's determination of responsibility will be documented and retained in the contract file. For simple procurement actions this determination may be made on the Record of Negotiations (MCCA Form 401-R). For complex procurement actions (i.e., a revenue generating or multi-year contract), this determination will be documented in the Justification for Award memorandum. Procurement actions under the competition threshold do not require a determination of responsibility unless the contracting officer has reason to suspect or has information to indicate that a contractor is not responsible. See paragraph 5303 for applicable Service Contract Act and paragraph 5314 for applicable Davis-Bacon Act requirements.

3. When a negative responsibility determination is made against a prospective contractor, a written determination of non-responsibility will be prepared, signed by the contracting officer, and retained in the contract file. Documented reasons must be included in any determination of non-responsibility. The contracting officer will coordinate all proposed determinations of non-responsibility with MCCA Counsel.

4. To assist in determining an offerors responsibility, written solicitations for multi-year contracts will be accompanied by a request for a financial statement. Solicitations for multi-year revenue-generating contracts will also request a projected operating statement.

6002. SOURCES OF INFORMATION REGARDING RESPONSIBILITY

1. Information on prospective contractors may be obtained from the following sources:

a. Excluded Parties Listing System (EPLS) which is a single comprehensive list of individuals and firms excluded by Federal government agencies from receiving federal contracts or federally approved subcontracts as posted on the System for Award Management (SAM) at www.sam.gov.

b. The prospective contractor.

c. Existing information within the DoD including records on file and knowledge within the activity making the purchase, other purchasing offices, or other NAF activities.

d. Dunn and Bradstreet reports.

e. Other sources including suppliers, subcontractors and customers of the prospective contractor; banks and financial institutions; commercial credit agencies; Government departments and agencies; purchasing and trade associations; Better Business Bureaus and Chambers of Commerce.

2. All information regarding prospective contractors must be put in writing, the source of information identified and retained in the contract file.

6003. FAIR AND REASONABLE PRICE DETERMINATION

1. MCCA contracts and purchase orders will include a fair and reasonable price determination based on the following considerations:

a. Price is acceptable to the buyer and to the seller.

b. Price is competitive with other vendors providing similar products or services.

c. Price is not excessive for the time that delivery is required or that the service be performed.

d. Cost of administering the purchase is not excessive.

2. For each non-resale procurement over the competition threshold, the contracting officer's determination of fair and reasonable pricing will be documented and retained in the contract file. For simple procurement actions, this documentation may be made on the Record of Negotiations Form (MCCS Form 401-R). For complex procurement actions (i.e., revenue generating or multi-year contracts), this determination will be documented in the Justification for Award memorandum.

a. Price reasonableness addresses the issue of whether the price is too high and may be determined based on one or more of the following:

- (1) Adequate competition.
- (2) Market research.
- (3) Comparison with previous competitive purchase of same or similar item.
- (4) Current catalog/published price list/advertisement.
- (5) Value analysis by contracting officer or purchasing agent.
- (6) Comparison to an independent cost estimate.

b. When only one quotation or offer is received, the Record of Negotiations Form (MCCS Form 401-R) or Justification for Award will explain why no other responsive offerors responded. When only one quotation or offer is received, determination of price reasonableness must be based on a reason other than competition.

c. If the price difference among responses lacks adequate competition, a statement will be included in the file establishing the basis on which a determination of fair and reasonable price was made.

3. Procurement actions under the competition threshold do not require a determination of price reasonableness unless the contracting officer has reason to suspect or has information to indicate that a price may not be reasonable (i.e., comparison to the previous price paid or personal knowledge of the supply or service). See paragraph 5303 for applicable Service Contract Act and paragraph 5314 for applicable Davis-Bacon Act requirements.

4. Contracting officers or purchasing agents placing orders against CMC(MR) contracts, DoD NAFI cooperative effort contracts, or GSA Schedule contracts are not required to make a separate determination of fair and reasonable pricing. These prices have already been determined to be fair and reasonable by the contracting officer awarding the contract. DoD NAFIs include Navy Exchange Command (NEXCOM); The Exchange (previously known as Army and Air Force Exchange Services (AAFES)); Commander, Navy Installations Command (CNIC), Fleet and Family Readiness (F&FR); Army Family and Morale, Welfare and Recreation (Army MWR); Air Force Nonappropriated Fund Purchasing Office (AFNAFPO); and Coast Guard Exchange System (CGES).

5. Per reference (p), Title 15 Section 13, the Robinson-Patman Act prohibits vendors from discriminating among their commercial customers by offering different prices to different customers for commodities of like quality and grade (other factors being equal, i.e. quantity, date of delivery, etc.). However, it is not applicable to the U.S. Government. Therefore, vendors may legally negotiate lower prices with MCCS activities than what they offer to their commercial customers. Evidence of the contractor's prices being equal to or lower than those offered to commercial customers (other factors being equal) may be used to document price reasonableness.

6004. COMPETITION

1. The preferred method of MCCS procurement is to obtain competition by requesting quotations or soliciting proposals from multiple sources. However, the following requirements may be solicited from only one source if the price is determined fair and reasonable, the potential contractor is determined responsible, and:

a. The requirement is for a brand-name resale item.

b. The purchase is for packaged beverages to be obtained from the franchised distributor in the area.

c. The estimated cost of equipment, supplies, or services is below the competition threshold. Refer to applicable requirements for the Buy American Act and Trade Agreements Act (paragraph 4008-4011), Service Contract Act (paragraph 5303), and Davis-Bacon Act (paragraph 5314).

d. When no competitive interest is apparent in contracts for services, including revenue-generating services, having average monthly sales of \$2,500 or less. The contract file shall be documented to reflect attempts to generate competitive interest.

e. When contracting for short-term commodity sales concessions (refer to paragraph 5322).

f. When the purchase is made from a prescribed mandatory source such as Federal Prison Industries (FPI) or AbilityOne (refer to paragraph 4000).

g. When the purchase is made from a DoD NAFI cooperative effort contract. DoD NAFIs include Navy Exchange Command (NEXCOM); The Exchange (previously known as Army and Air Force Exchange Services (AAFES)); Commander, Navy Installations Command (CNIC), Fleet and Family Readiness (F&FR); Army Family and Morale, Welfare and Recreation (Army MWR); Air Force Nonappropriated Fund Purchasing Office (AFNAFPO); and Coast Guard Exchange System (CGES). MCCS need not seek further competition or make a separate determination of fair and reasonable pricing when using these sources because the contracting officer whom awarded the original contract has already justified the competition requirement and determined the prices to be fair and reasonable.

h. When the purchase is made from a competitively awarded GSA contract. However, GSA contracts that are referred to as "Schedule" contracts, but are also known as "Multiple Award Schedule (MAS)" or "Federal Supply Schedule" contracts require the contracting officer to review, compare, and award based on best value. GSA Schedule contracts are indefinite delivery/indefinite quantity, multiple award type contracts, meaning they provide for an indeterminate number of orders and can be awarded to multiple contractors at once. GSA Schedule contracts do not qualify as a valid justification for single or sole source procurement based solely on designation as a GSA contract. It is the contracting officer's decision whether to issue a solicitation or to use GSA Schedule contracts. If issuing a solicitation, the contracting officer may include GSA contractors on the source list and advise all offerors to propose their best pricing, either GSA or open market. If the requirement exceeds the simplified acquisition threshold, then the contracting officer must issue a competitive solicitation. When using GSA schedule contracts:

(1) The MCCA contracting officer will consider reasonably available information about the supply or service offered under MAS contracts by surveying at least three schedule contractors through the GSA Advantage! on-line shopping service, by reviewing the catalogs or pricelists of at least three schedule contractors, or by requesting quotations from at least three schedule contractors. When using GSA schedule contracts, MCCA ordering activities are not required to make a separate determination of fair and reasonable pricing, except for the price evaluation required when ordering services requiring a statement of work. By placing an order against a schedule contract using these procedures, the ordering activity has concluded that the order represents the best value and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the MCCA's needs. Although GSA has already negotiated fair and reasonable pricing, ordering activities may seek additional discounts before placing an order.

(2) In addition to price, when determining best value for GSA schedule contracts, the contracting officer may consider, among other factors, the following:

- (a) Past performance.
- (b) Special features of the supply or service required for effective program performance.
- (c) Trade-in considerations.
- (d) Probable life of the item selected as compared with that of a comparable item.
- (e) Warranty considerations.
- (f) Maintenance availability.
- (g) Environmental and energy efficiency considerations.
- (h) Delivery terms.

(3) Minimum documentation. The contracting officer shall document:

(a) The schedule contracts considered, noting the contractor from which the supply or service was purchased.

(b) A description of the supply or service purchased.

(c) The amount paid.

(d) When an order exceeds the simplified acquisition threshold, evidence of competition.

(e) The basis for the award decision.

i. When negotiating for the purchase of training requirements up to \$25,000, excluding travel and lodging expenses, providing:

(1) Training courses will be commercially available through a regular dealer.

(2) Prices are determined fair and reasonable.

(3) The requesting activity must prepare a memorandum to document their reasons for selecting training sources, at least annually survey the market to ensure MCCS obtains the best value for their training programs, and rotate training sources as appropriate. The memorandum shall include an approval from the MCCS training manager. Submit the memorandum with the purchase request to the procurement branch for retention in the purchase or contract file.

j. When the purchase is made from a nonprofit institution or federally funded research and development center.

k. Marine Corps Ball Venue. It may be reasonable to justify a single source contract award based on unique features regarding performance, technical, functional or aesthetic characteristics offered by the venue that are not available from another source. For such noncompetitive procurements, the requesting activity (i.e., the unit Marine Corps Birthday Ball representative) must write and submit a single source justification request memo with the purchase request. The memo should reference the unique features of the venue per paragraph 6005.2.a. and explain the customer's entertainment preference per paragraph 5310.2 (i.e., preference was based upon survey, committee, etc.). The contracting officer should obtain competition for the Ball venue when there is more than one location that will satisfy the requirements. The contracting officer must obtain competition for supporting contracts for the flowers, photography, etc., or otherwise justify noncompetitive procurement.

2. Under no circumstances will a requirement be split to avoid contracting procedures or competition requirements.

6005. NONCOMPETITIVE PROCUREMENT. Noncompetitive procurement is a contract for the purchase of supplies or services after negotiating with only one source.

1. Sole Source. Competition is not required when the supplies or services are only available from a sole source, the source is determined responsible, and no other type of supplies or services will satisfy MCCS requirements. Such determination will be based on the following:

a. M CCS's minimum needs can only be satisfied by unique supplies, services, or capabilities available from one source, and no other types or sources of supplies or services will satisfy M CCS requirements.

b. The items or services are protected by limited rights in data, patents, copyrights, secret processes, trade secrets, or other proprietary restrictions, and are available only from the originating source.

c. The requester has determined that only specified brands or models of equipment, components, or accessories, or only specific academic or professional credentials will satisfy the requirement.

d. The requirement is for unique repair or replacement parts for existing equipment for which substitutions cannot be made.

e. Access to such utility services as electric power or energy, gas (natural or manufactured), water, cable or satellite television or other utility services, is restricted by local law, custom, or availability, and only one supplier can furnish the service within that geographical area; or when the contemplated contract is for construction of a part of a utility system and the local utility company is the only source available to work on the system.

f. Supplies or services may be considered to be available from only one source if the source has submitted an unsolicited proposal (refer to paragraph 6012).

2. Single Source. Supplies or services are also exempt from competition when there is reasonable justification to conclude that M CCS minimum needs can only be satisfied by one single source, as a result of:

a. The specific performance, technical, functional or aesthetic characteristics of a particular brand, model, or style of supplies or services is unavailable from another source.

b. The added cost to the M CCS of duplicating design or development efforts already performed by the source selected.

c. The added cost to the M CCS of training, briefing, or otherwise educating an alternate source on the progress of the project or program in which the source selected has already participated.

d. The documented inability of other potential sources to meet the stated delivery requirements.

e. The unique credentials of a firm or other technical consultant or expert.

3. Resellers. Resellers, value added resellers, or distributors are companies that sell products, possibly in combination with additional support or services. Some manufacturers only sell their products through a reseller. If a requesting activity has a need for a specific brand, they must prepare a single source justification request even if multiple resellers may sell that specific brand. Contracting officers will seek competition from a reasonable number of resellers for brands with approved single source justifications. Also see paragraph 6006.3.

4. Noncompetitive procurement actions must be justified as required in paragraph 6006.

6006. JUSTIFICATION FOR NONCOMPETITIVE PROCUREMENT ACTIONS

1. A contracting officer will not commence negotiations for noncompetitive procurements, unless he or she:

a. Ensures technical personnel and requiring activities provide documentation to support their recommendation for noncompetitive procurement.

b. Ensures the justification contains sufficient facts and rationale to justify noncompetitive procurement.

2. For each procurement action over the competition threshold, the requesting activity shall prepare and submit a written justification memorandum for sole or single source procurement citing the specific policy paragraph(s) that allows such procurement. The memorandum will include approval blocks for the contracting officer and other required reviews. The contracting officer will retain the justification for noncompetitive procurement, including follow-on noncompetitive procurement actions, in the contract file. The contracting officer's Record of Negotiations (MCCS Form 401-R) or Justification for Award memorandum shall reference the single or sole source justification for noncompetitive procurement.

3. Standardization Objectives

a. When the requesting activity identifies standardization objectives for name-brand supplies, equipment, or services that may impact current and follow-on requirements, the requesting activity must develop a Single Source Standardization Justification memorandum, designating the standardization objective, for approval by the contracting officer. The justification must be supported by a detailed analysis including, but not limited to, DoD policies, the previous standard and considered alternatives, life-cycle costs, etc. The recommended format for the analysis is a Procurement Plan. The initial purchase request and all follow-on requirements related to a standardization objective must reference the corresponding approved Single Source Standardization Justification.

b. The requesting activity must review and update the Single Source Standardization Justification on a periodic basis, but at least once every five years.

4. Given the fact that the majority of MCCS procurements involve commercial off-the-shelf equipment and supplies, noncompetitive procurements will be discouraged.

6007. FOLLOW-ON NONCOMPETITIVE PROCUREMENT REQUIREMENTS

1. Equipment and supplies may be deemed to be available only from the original source in the case of a follow-on contract for continued development or production (for example, additional units, replacement items, license or maintenance fees related to a software package, or for integration with existing systems) when it is likely that award to any other source would result in:

a. Substantial duplication of cost to MCCS that is not expected to be recovered through competition.

b. Unacceptable delays in fulfilling MCCS requirements.

2. Services may be deemed to be available only from the original source in the case of follow-on contracts for the continued provision of highly specialized services, to include professional services (for example, highly specialized services provided by a research analysis contractor who has a patent on research tools used to collect USMC data in past years where MCCS would have to pay additional money to reconstruct the data used in the past as well as the current timeframe in order to obtain a comparative analysis between past and current data), when it is likely that award to any other source would result in:

a. Substantial duplication of cost to MCCS that is not expected to be recovered through competition.

b. Unacceptable delays in fulfilling MCCS requirements.

3. In addition to the above, follow-on contracts for equipment, supplies, or services may be deemed available only from the original source when multiple quotations are not reasonably obtainable or when competitive negotiation is otherwise impractical.

4. Justification for follow-on noncompetitive procurement actions will comply with paragraph 6006 requirements.

6008. REQUESTS FOR QUOTATION

1. A request for quotation (RFQ) is a request for pricing and delivery data for the future purchase of standard commercial goods or services, and is used for informational purposes. A quotation is not an offer and cannot be accepted by the MCCS to form a binding contract. An order issued by a contracting officer or purchasing agent in response to a supplier's quotation does not establish a contract. The order is an offer by MCCS to the supplier to buy certain supplies or services upon specified terms and conditions and only becomes a contract when the supplier accepts the offer (usually by performance) or the supplier signs the order creating a bilateral order which is a binding contract.

2. Orders for service requirements that are subject to the Service Contract Act require a bilateral order or contract (refer to paragraph 5303).

6009. TELEPHONIC REQUESTS FOR QUOTATION

1. As provided below, price quotations may be solicited over the phone if the equipment, supplies, or services to be purchased are simple enough to only require a price quote, and award is made by purchase order or delivery order. The purchasing agent will keep records of telephonic price quotations to show the basis of placing the order at the price paid with the supplier concerned. These records will consist of the date, names, and phone numbers of the suppliers contacted, the names of the persons quoting, the prices, and other applicable terms quoted by each. Telephonic quotes are the least preferred method of obtaining quotations.

2. Requesting quotations via the telephone is authorized under the following conditions:

a. Estimated cost of equipment or supplies is under the competition threshold.

b. Estimated cost is over the competition threshold but under \$10,000 for standard off-the-shelf items that can be easily identified and oral quotation involves only a price and delivery offer.

c. Quotations for prices against BPAs for fresh meats and poultry, eggs, frozen products, fresh fruits and vegetables, and other food products.

d. Due to urgency, sufficient lead-time is not available to permit an electronic or mailed request for quotation for items over \$10,000. In this case the requesting activity must document the short lead time in the purchase request.

6010. FACSIMILE (FAX) OR ELECTRONIC REQUESTS FOR QUOTATION

1. Use of the facsimile (fax) machine or e-mail to issue electronic Requests for Quotation (RFQ) in writing is preferred over telephonic price quotes.

2. The RFQ faxed or e-mailed to each source, the price quotations and terms and conditions received from each offeror, and all cover sheets and receipt confirmation pages will be retained in the purchase file. All faxed or e-mailed correspondence will clearly identify the date, company name, phone number, fax number or e-mail address, and the name of the individual submitting the fax or electronic quote. Negotiations between the purchasing agent and offeror(s) concerning the electronic RFQ will be documented and retained in the purchase file.

6011. MAILED REQUESTS FOR QUOTATION

1. Mailed requests for quotation may be used for any purchase action, and will be used when obtaining oral or electronic quotes is not considered economical or practicable (i.e., some companies will not give telephonic or electronic price quotes).

2. Published price lists, such as those provided with a vendor's catalog are considered to be mailed quotes. However, contracting personnel will contact the vendor to ensure price information is current and MCCS obtains the benefit of applicable discounts before placing an order.

6012. UNSOLICITED PROPOSALS

1. An unsolicited proposal is a written proposal submitted to the MCCS for the purpose of obtaining a contract with the MCCS and is not in response to a formal or informal request. Upon receipt, unsolicited proposals will be forwarded to the contracting officer for coordination, evaluation and disposition.

2. Advertising material, commercial product offers, or technical correspondence are not unsolicited proposals. An unsolicited proposal must:

a. Be innovative and unique, and not generally available from a competitive source.

- b. Be independently originated and developed by the offeror.
 - c. Be prepared without Government or MCCA input.
 - d. Include sufficient detail so MCCA can determine if the service is worthwhile and the proposed work could benefit the MCCA mission.
 - e. Does not resemble a pending competitive procurement requirement.
3. An unsolicited proposal will be evaluated based upon:
- a. The unique or innovative method, approach, or concept demonstrated by the proposal, and the potential benefit to the MCCA mission.
 - b. The offerors capabilities, related experience, and the qualifications of key personnel assigned to the project.
4. If the unsolicited proposal is determined acceptable for award without competition, the contracting officer and potential contractor will use the proposal as the basis for negotiation of price and terms.
5. Contracts for studies, analyses, or consulting services will not be entered into without competition on the basis of an unsolicited proposal without the prior approval of CMC(MR).
6. Unsolicited proposals will receive legal review prior to commencement of negotiations.

6013. BUY-INS

1. "Buying-in" refers to the practice of offerors trying to obtain a contract award by knowingly offering a price that is below or approximate to anticipated costs, or a fee that is so high as to preclude a reasonable return. MCCA policy does not prohibit buy-ins if performance of the contract will not be jeopardized. If a contract is awarded at a buy-in price or fee, the contracting officer will be alert to any inappropriate attempt to increase the contract price, lower the fee, substitute items or provide less service than that prescribed by the contract, or failure to deliver buy-in priced items.
2. When a price or fee appears unrealistic, the contracting officer will outline the actions taken and summarize the decision on why the offer was accepted in the Justification for Award memorandum.

6014. ELECTRONIC COMMERCE. Use of electronic commerce in executing purchase orders, delivery orders, and contracts is recommended for MCCA contracting officers and purchasing agents.

1. Electronic commerce is a paperless process including electronic mail, electronic bulletin boards, electronic funds transfer, electronic data interchange, and similar techniques accomplishing business transactions.
2. Electronic data interchange (EDI) is electronically transferring information between computers, using established and published formats and codes, as authorized by the applicable Federal Information Processing Standards (FIPS).

6015. ELECTRONIC PROCUREMENT SYSTEMS. MCCS requiring activities, contracting officers, purchasing agents, and receiving activities will use the CMC(MR) designated procurement systems for purchase requests, orders and contracts, and receiving reports.

Chapter 6: Negotiated Procurement

Section 1: Retail Buying

6100. ITEM SELECTION

1. Insofar as practical, the selection of resale items should be comparable to practices and procedures in the commercial retail trade. Market research techniques include review of trade publications, attendance at trade shows, and vendor product presentations.
2. MCCS objective is to stock items and brands most in demand by customers. Broad consumer acceptance of an item in the commercial sector is adequate evidence of customer demand for the item to be stocked.
3. Products will be evaluated based on selection factors such as quality, price, consumer trends, customer acceptance, and past sales experience.
4. Eligible sources may present products for purchase consideration. Buyers will record visits by vendors and contractors to include a summary of matters discussed in the interview. Products will be evaluated on a fair and impartial basis along with all others. When products are not selected, if requested the vendor will be told the reasons why. Examples of proper reasons for not selecting a product or service include:
 - a. Insufficient customer demand.
 - b. Price and quality of products are not considered equivalent in value to similar products.
 - c. Merchandise or service is not authorized for stocking or resale in the exchange.
 - d. Vendor's delivery period is excessive.
 - e. Marketability of the product(s) or service(s) has not been established in either exchange or commercial markets.
 - f. For military uniform items, supplier is not a certified manufacturer of insignia or articles of the uniform.
 - g. Vendor is unable to comply with minimum electrical standards prescribed by MCX or MCCS.
 - h. Documented unsatisfactory past performance of the firm or substandard packaging, packing or crating.
 - i. Limitations on space and funds available for inventory investment precludes stocking an additional line that duplicates items currently stocked.
 - j. The vendor rejects mandatory MCX or MCCS terms and conditions or refuses to comply with MCX or MCCS mandatory programs such as Electronic Data Interchange (EDI).

5. Merchandise for U.S. resale in MCCA activities will be limited to the items or categories and cost limitations authorized in the Armed Services Exchange Policy per reference (m).

6101. BRAND-NAME MERCHANDISE. Because of the nature of the MCCA mission, most resale items will be purchased on a noncompetitive basis from the prime sources of brand-name products. Identification of brand name items in the stock assortment justifies noncompetitive purchase from the prime source.

6102. NON BRAND-NAME MERCHANDISE. Unless otherwise justified, competitive procedures will be used when buying non brand-name items. The resale items will be standard commercial products readily available in the retail trade.

6103. SOCIAL RESPONSIBILITY AND LABOR STANDARDS. Suppliers and manufacturers of private label merchandise, or manufacturers of merchandise imported directly by MCCA or MCCA subcontractors, will comply with Social Responsibility and Labor Standards requirements.

Chapter 6: Negotiated Procurement

Section 2: Purchasing

6200. GENERAL. This section applies to procurement actions made through the use of a purchase order or similar document. It is applicable to the purchase of equipment, supplies, merchandise and support services. If the contractor's social security number is required by finance to process appropriate Internal Revenue Service (IRS) forms, it will not be included as a part of the purchase order, delivery order, agreement, contract, etc., or stored in the NAF electronic procurement systems. The Privacy Act precludes open access to certain information such as social security numbers per reference (o).

6201. PURCHASE ORDERS

1. A purchase order (PO) is a purchase instrument for the future delivery of equipment, supplies, merchandise or for the future performance of services. The contracting officer or purchasing agent will incorporate all contract clauses required for or applicable to the particular procurement. A PO obligates the MCCS to pay the supplier the amount stated on the purchase order, if the contractor performs in accordance with the terms and conditions of the purchase order. The decision to issue a unilateral or bilateral purchase order is at the discretion of the contracting officer.

a. A unilateral purchase order is one that is signed only by the contracting officer or purchasing agent. It constitutes an offer by the MCCS to pay for the future delivery of supplies or performance of services and does not require written acceptance by the supplier. It gives the MCCS the opportunity to cancel the order at any time before the supplier initiates performance without liability to the MCCS. It does not, however, create a contract nor ensure that the supplier will perform in accordance with the terms of the order. When a unilateral telephone order is placed, a written order will be prepared and documented as a confirming order to avoid duplicate shipments. When a unilateral order is accepted by the supplier (usually by performance), the PO becomes a binding contract and may only be changed or terminated by modification. Unilateral purchase orders are recommended for simple, commercial-off-the-shelf requirements.

b. A bilateral purchase order is one that is signed by both the contracting officer or purchasing agent and the supplier. It creates a binding contract between the MCCS and supplier and cannot be changed or terminated without a written modification. Bilateral purchase orders are recommended for complex requirements, including but not limited to, requirements with customized specifications, critical delivery schedules, and annual maintenance agreements.

2. Direct Delivery Agreements and Open Purchase Orders are bilateral purchase orders open for an extended period of time during which multiple product deliveries or the performance of services are scheduled. These purchase agreements are generally used for the purchase of resale merchandise and performance of related support services such as shelf stocking.

6202. UNPRICED PURCHASE ORDERS. An unpriced purchase order is an order for supplies or services, the price of which is not set at the time the purchase order is issued. Unpriced purchase orders will not be used when the price of an item or service is available. Unpriced purchase orders will only be used if the total anticipated (or actual) price of the transaction will not exceed the competition threshold and it is impractical or impossible to obtain the exact price in advance (i.e., repair or maintenance services). The unpriced purchase order will specify a "Not To Exceed" amount. The necessity for use of an unpriced purchase order will be documented on the Record of Negotiations (MCCS Form 401-R).

6203. DELIVERY ORDERS

1. A delivery order (DO) is an order for the future delivery of equipment, supplies, merchandise or services, placed against an existing contract or agreement. It may be used for orders of any dollar amount. It obligates the MCCS to pay the supplier the amount on the DO, if it is placed per the terms and conditions of the basic contract, and if the supplier performs per the terms and conditions of the contract.

a. Most DOs are placed against contracts awarded by the General Services Administration, other nonappropriated fund instrumentalities (such as the Air Force Nonappropriated Fund Purchasing Office (refer to paragraph 4003)), and CMC(MR). Each DO will include the contract number that the DO is placed against.

b. A task order is similar to a DO, but is an order for services (vs. for products) placed against an existing contract. For simplicity, the MCCS has elected to use the term delivery order for all orders placed against existing contracts.

2. Prior to issuing a DO, the contracting officer or purchasing agent will:

a. Ensure the basic contract authorizes DOs to be placed against it.

b. Review the prices, specifications, and terms of the basic contract, and all modifications to that contract, to ensure it will meet the needs of MCCS.

3. MCCS procurement personnel and/or the supplier may not change the prices, specifications, or terms of the basic contract. If such a change is desired, it must be requested from and negotiated by the original contracting officer and the supplier. Once the basic contract has been modified, the MCCS contracting officer or purchasing agent may issue a DO against the contract, as modified.

6204. BASIC ORDERING AGREEMENTS (BOA)

1. A Basic Ordering Agreement (BOA) is a written document containing terms and conditions of performance that have been negotiated by the contracting officer and the supplier. It contains clauses that apply to future orders between the parties. It is not a contract in and of itself, but serves as a tool intended to simplify purchasing procedures. In addition, a BOA contains a description of the supplies or services to be covered under the agreement, their prices, and the method by which future orders may be issued.

2. A BOA may be used when precise requirements are not known but a significant number of requirements are expected to be purchased against the agreement. The BOA will contain no guarantees that purchases will be made against it and will not be used to restrict competition.

6205. BLANKET PURCHASE AGREEMENTS (BPA)

1. Blanket Purchase Agreements (BPAs) provide a simplified method of purchasing recurring requirements by establishing monthly charge accounts with qualified sources when use of the MCCS Nonappropriated Fund (NAF) Purchase Card is not practical. BPAs reduce administrative costs since separate purchase orders and multiple payments are not necessary.

2. The contracting officer negotiates BPAs to provide sources of supply for MCCS activities. The BPA must include a list of the items or services furnished, dollar limitation of the orders that may be placed against it, and the names and/or job titles of the individuals authorized to place orders against the BPA. MCCS contracting officers designate individuals to serve as BPA ordering agents per paragraph 6206.

3. To encourage competition, BPAs will be issued to more than one supplier for requirements of the same type. A BPA is complete when the purchases under it equal the amount funded or its term expires.

4. Refer to the BPA Standard Operating Procedure for guidance in establishing and administering BPAs.

6206. APPOINTMENT/DELEGATION OF ORDERING AGENTS. MCCS contracting officers may appoint individuals as ordering agents to place small dollar value orders against BPAs, open purchase orders, or existing contracts. Appointments will be in writing and must specify the maximum dollar limitation on orders authorized against the agreement, however, delegated authority shall not exceed the competition threshold. Placement of individual orders in excess of the competition threshold will be limited to contracting officers and purchasing agents acting within the limits of their warrant authority.

6207. EMERGENCY PURCHASE PROCEDURES

1. Emergency purchases by personnel without a procurement warrant, or designation as an ordering agent, are authorized for emergency-type services or repairs or for purchase of goods that are needed immediately due to unforeseeable circumstances requiring immediate action. To be considered an emergency, such requirements cannot be obtained through the use of normal purchase procedures and the delay of action may cause destruction or loss of MCCS property or assets. Emergency purchase procedures will not be used to alleviate the need for prior planning or to circumvent normal procurement procedures.

2. Emergency purchase actions will be reported in full detail to the MCCS procurement office the next duty day after the emergency action. The contracting officer or purchasing agent will complete the procurement action by preparing an after the fact PO or DO. Documentation explaining the emergency procurement action will be retained in the purchase file. In the absence of valid emergency criteria and prompt formalization of the purchase, actions will be handled as unauthorized commitments and will be processed per Paragraph 1013 of this Manual.

Chapter 6: Negotiated Procurement

Section 3: Competitive Negotiation

6300. GENERAL. Competitive negotiation, as distinguished from sealed bidding, allows the contracting officer more flexibility in arriving at a fair and reasonable price and mutually-agreed-upon contract terms. Competitive negotiation is a method of contracting that involves soliciting proposals, receiving proposals without a public opening, and further negotiation to allow for revision of offers prior to contract award. Contract award may also be made from initial proposals received without further negotiation.

6301. SOLICITATION AND REQUEST FOR PROPOSALS (RFP)

1. A Request for Proposals (RFP) is a written solicitation that provides a potential contractor with the opportunity to offer a price and a plan for accomplishing a particular procurement action. RFP's are used in negotiated procurements to communicate MCCS requirements to prospective contractors and to solicit proposals to meet these requirements. RFP's will contain the information necessary to enable prospective contractors to prepare proposals properly. Solicitation provisions and contract clauses will be included in the solicitation or incorporated by reference. A proposal received in response to a RFP is an offer that may be accepted by MCCS to create a binding contract following negotiations.

2. By contrast, an Invitation for Bid (IFB), using sealed bid procedures, furnishes a requirement and potential contractors provide only prices. With an IFB, there is no opportunity for the bidder to negotiate the terms of the contract and no deviations from the terms of the IFB are allowed. IFB's are an appropriated fund procurement method and will not be used by MCCS activities.

3. RFPs may be used at the discretion of the contracting officer for any procurement, however, they will be used for:

a. Complex requirements, drawings and/or detailed specifications are involved.

b. Contracts that will be awarded based on best value with consideration given to price and non-price technical evaluation factors. The two methods of best value procurement include the trade-off process and the lowest price technically acceptable (LPTA) process. Refer to Appendix A for definitions.

4. Contracting officers will ensure identical information concerning the procurement action is furnished to all prospective offerors.

5. For single or sole source procurements, the contracting officer may either negotiate contract pricing and terms directly with the potential contractor or may issue an RFP to the potential contractor as a negotiating tool to receive better terms (i.e., the potential contractor is not notified that the requirement is approved as a single source procurement).

6. M CCS personnel should prepare their own specifications or statements of work; however, M CCS may contract for the development of statements of work (SOWs) and specifications. If a contractor is contracted to prepare and furnish SOWs or specifications (in part or in whole) to be used in a competitive procurement, the contractor shall not be allowed to furnish the item or service, either as a prime contractor or a subcontractor. Refer to paragraph 6319 for contractor involvement in evaluation panels. Other than input obtained through regular market research, requests for information or pre-solicitation conferences, if a contractor provides assistance in any significant manner to develop the Statement of Work or RFP, the contracting officer must include a written determination in the contract file identifying:

- a. The contractor's skills, training, or capabilities that are not readily available from M CCS or government personnel.
- b. That use of the specific contractor will not create a conflict of interest.
- c. M CCS Counsel review and approval.

6302. SOURCE LIST DEVELOPMENT. To promote competition contracting officers will ensure an appropriate number of sources are solicited; the minimum number is three. Sources may be found in the local community, through industry websites, and business/trade associations. To achieve competition, contracting officers may advertise their requirement in a Government medium, such as FedBizOps or GSA eBuy, or through websites designed to promote commercial business opportunities.

6303. PRE-SOLICITATION NOTICES AND CONFERENCES

1. If a source file is excessively long or if a solicitation is complex, the contracting officer may send a pre-solicitation notice to the firms in the source file to determine interest. Those indicating no interest, or failing to respond, will not be solicited. Responses to pre-solicitation notices will be retained in the contract file. Pre-solicitation notice may be accomplished orally and documented by memorandum when more appropriate. The pre-solicitation notice should:

- a. Show the date firms should answer by to receive the solicitation.
- b. Describe the requirement in enough detail so firms can make an intelligent judgment as to whether they are interested.
- c. Notify firms that if they are not interested to advise the issuing office if they want to be retained on the source file for future solicitations.

2. As a market research tool, the requesting activity, in coordination with the contracting officer, may conduct a pre-solicitation conference.

a. Use care to ensure that one firm does not gain an unfair competitive advantage. When specific information about a proposed procurement that would be necessary for preparing proposals is disclosed to one or more potential offerors, that information shall be made available to all potential offerors in order to avoid creating an unfair competitive advantage. Materials distributed at the pre-solicitation conference must be made available to all potential offerors upon request. Exercise caution to maintain security of internal MCCS procurement-sensitive information (budget, future projects, etc.).

b. Pre-solicitation conference participants may include the contracting officer, the MCCS program manager, industry representatives, and other participants in the procurement process. Maintain copies of meeting invitations and responses.

c. Create an agenda prior to the conference. Pre-solicitation conferences may be used to identify and resolve concerns regarding a procurement strategy, including but not limited to: proposed contract type, terms and conditions, procurement planning schedules, the feasibility of the requirement (including performance requirements), statements of work, and data requirements.

d. Record and maintain meeting minutes. Use a meeting sign-in sheet or otherwise document name, title, and company of all meeting participants.

e. Ensure that all parties understand that the contracting officer is the primary/only contact for MR/MCCS communication after release of the solicitation or a Request for Information.

f. Ask potential offerors to identify any confidential information that must not be disclosed if doing so would reveal the potential offerors confidential business strategy.

6304. SOLICITATION AND CONTRACT FORMAT. Contracting officers will prepare solicitations and resulting contracts using standard contract formats. Upon implementation and availability, the contracting officer shall use the contract formats and clauses available in the contract management system for all newly issued solicitation and contracts. Refer to contract management system guidance for procedures related to contracts awarded prior to implementation of the contract management system. Based on the complexity and estimated dollar volume of the contract, the contracting officer will select one of the following:

1. Basic Contract Format. This contract format will be used for simple procurement actions valued up to \$25,000, and is recommended for two party contracts such as instructors, entertainment, and minor repair and maintenance. At a minimum, the simple contract format will consist of: specifications or statement of work, price or fee schedule, contract period, mandatory contract clauses, signatures of both parties and date signed, and attachments as appropriate.

2. MCCS Contract Format. This format will be used for most revenue generating contracts and support service contracts. Contract sections will follow the specified format, as appropriate to the specific procurement action.

3. Uniform Contract Format. The Uniform Contract Format will be used for complex procurement actions or at the option of the contracting officer.

6305. CONTRACT CLAUSES

1. All MCCS contracts and purchase orders, despite the format used, require specific clauses be included. MCCS contracts will include the following mandatory clauses per reference (a): Changes, Examination of Records, Claims (Disputes), and Terminations.

2. All MCCS NAF contracts will identify the responsible NAFI, and will state that no appropriated funds of the U.S. will be obligated, due or payable to the contractor.

3. Each MCCS contract will include contract clauses required by applicable statutes, regulations or DoD issuances.

6306. EVALUATION FACTORS. Factors considered in evaluating offers will be tailored to each procurement and include only those factors that will have an impact on selecting the source. Price or fee is a factor in all MCCS procurements, as is past performance and/or experience. Other evaluation factors that may apply are technical, management capability, personnel qualifications, and present ability to meet the performance schedule. Solicitations using complex evaluation techniques, such as Best Value or weighted factors will receive legal review and concurrence prior to issuance.

6307. SOLICITATION DISTRIBUTION

1. The RFP and any subsequent amendments will be distributed as follows:

a. One complete copy will be sent to each offeror.

b. One complete copy will be retained in the contracting office.

c. One complete copy will be provided to the requesting activity. Prior to issuing the solicitation, the contracting officer will coordinate the RFP with the requesting activity and obtain their concurrence on whether the solicitation meets their needs.

2. It is acceptable to issue electronic copies of the solicitation. Care must be taken to ensure that offerors do not change the solicitation language or clauses without the knowledge of the contracting officer. Contracting officers may issue the electronic document as a .pdf file to prevent unmarked changes.

6308. AMENDMENTS

1. After the solicitation has been issued, but before the closing date, it may become necessary to make changes to the solicitation. Such changes may include changes in quantity, specifications, or delivery schedule; correcting defects or ambiguities; or changing the closing date for receipt of proposals. Such changes will be made by issuing a solicitation amendment to all firms who were sent the original solicitation. Before issuing an amendment, the contracting officer will decide whether the closing date for receiving proposals needs to be extended and will coordinate this change with the requesting activity. Proposals received before an amendment is issued will be returned to the respective offerors with a copy of the amendment unless the contracting officer considers that the return is not practicable due to short lead time, minor significance of the amendment, or other good reason. Solicitation amendments with significant changes will be coordinated with MCCS Counsel.

2. If changes in requirements are needed after receipt of proposals but before award of contract, it is better to cancel and re-solicit if the change is significant. When this is done, return proposals received to the respective offerors with the notice of cancellation and advise of the re-solicitation. If the change in requirements is minor, the solicitation may be amended following procedures in paragraph 1 above.

3. Amendments to solicitations will be made on the MCCS Amendment of Solicitation form available on the MCCS intranet. Document the file stating the basis for the amendment with a Memorandum for the Record.

4. When it is determined after the time set for receipt of proposals that changes to a solicitation are required that would change the method of evaluation, it may be more appropriate to cancel and issue a new solicitation in lieu of amending the original solicitation. The contracting officer will document the file to explain the basis for cancellation. See paragraph 6315.

6309. SOLICITATION PROTESTS AND APPEALS BEFORE AWARD. Any interested party may forward a written objection to a solicitation. This objection is a Protest, and may be received either before or after award. Refer to paragraphs 7101 through 7105 for guidance.

6310. TWO-STEP NEGOTIATION

1. Two-step procurement procedures may be used for the purchase of services, equipment and supplies when specifications are inadequate for usual solicitation procedures.

2. The two-step procedure will be considered when all of the following conditions exist:

a. Specifications or purchase descriptions are indefinite or incomplete, or are too restrictive.

b. Definite criteria exist for evaluating technical proposals and deciding which is to the best advantage of MCCS.

c. More than one technically qualified source is available.

d. Sufficient time is available for the two-step method.

3. Step one is getting unpriced technical proposals. After evaluating proposals, the contracting officer advises offerors if they're acceptable. The contracting officer may clarify or resolve related requirements such as management approach, facilities, or conformity to technical requirements; however, data related to the subsequent negotiation (step two) will not be discussed.

4. Step two is the single or multiple source negotiation with offerors submitting acceptable technical proposals.

5. Under the two-step negotiation method, technical expertise must be used to determine requirements, establish criteria for evaluation, and make the proposal evaluation.

6311. PRE-PROPOSAL CONFERENCES. Pre-proposal conferences may be used as a means of briefing prospective offerors after a solicitation has been issued but before offers are prepared. Generally, pre-proposal conferences are used in complex procurements to explain or clarify requirements. The pre-proposal conference will be conducted by the contracting officer; technical and legal personnel will attend as appropriate. All prospective offerors will be furnished identical information on the proposed procurement, regardless of whether or not they attend the conference. A complete record, including names, organizations, and mailing addresses of the conference attendees, will be prepared and retained in the contract file.

6312. CLOSING DATE. The specified date, time and time zone for receipt of proposals will be clearly stated in the solicitation. The time is computed from the date of mailing of the solicitations to the date set for the receipt of proposals.

6313. RECEIPT, OPENING, AND SAFEGUARDING OF PROPOSALS

1. When responses to solicitations are received, the contracting officer or designated individual will ensure the submission is promptly marked with date and time received. Proposal receipt will be recorded in a proposal register that includes the following information: MCCA solicitation number, description of product or service, closing date and time, contracting officer's name, and a space to list the company name with date and time of receipt.

2. Proposals will remain unopened in their original envelopes and kept in a locked drawer, cabinet, or safe until the scheduled time and date of the official opening. Proposals will not be left unattended on desks, in mail trays or in work areas.

3. Proposals opened by mistake before the official opening will be resealed immediately and delivered to the person designated for receipt. The individual who opened the proposal will make a notation on the envelope indicating the circumstances.

4. On or soon after the date and time specified for receipt of proposals, the contracting officer will open the proposals in the presence of two MCCA witnesses. Upon opening proposals, the contracting officer will complete a Summary of Proposals or Abstract of Proposals document that includes the following information: offeror name, prices or fees, offeror acknowledgement of any amendments, and determination of responsiveness (i.e., offeror complied with all proposal submit all requirements). In no event shall evaluations begin prior to the closing date and time.

5. Electronic and facsimile proposals may be authorized in the solicitation. Electronic proposals must be received into a secure system that will identify date/time of receipt. If any portion of a proposal received by the contracting officer electronically or by facsimile is unreadable, the contracting officer shall notify, in a timely manner, the offeror and permit the offeror to resubmit the unreadable portion of the proposal. The method and time for resubmission shall be prescribed by the contracting officer after consultation with the offeror and documented in the file. The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complies with the time and format requirements for resubmission prescribed by the contracting officer.

6. Throughout the source selection process, the contracting officer is responsible to safeguard proposals, the proposal register, and the summary of proposals until contract award is made and to ensure proposal data is released only to people having a need to know. Individuals performing review and approval of proposed awards must safeguard proposal data while in their possession. The contents of proposals received from offerors are procurement sensitive and are to be held in confidence by all personnel involved in the source selection process. Before award, proposals and summaries or abstracts of proposals must be kept in a locked drawer, cabinet or safe at all times. If personnel not having a need to know have access to these spaces, the documents must be kept in sealed envelopes. Disclosure of proposal information to any unauthorized person before award of the contract is a violation of MCCA policy and business ethics and may subject the violator to disciplinary action.

6314. LATE PROPOSALS. A late proposal is defined as any proposal or amendment that is received after the time and date set in the solicitation for receipt of proposals. MCCA reserves the right to consider late proposals or late revisions to proposals when it would be to MCCA advantage to do so; however, late proposals will not be solicited nor encouraged.

1. Late proposals (including revisions) will be opened to determine if it would be to MCCA's advantage to consider them. A late proposal that results in a tie with the most competitive offer timely received will not be considered.

2. If a later proposal is received that displaces the most competitive timely proposal received, and it meets MCCA basic needs and offers lower prices or higher fees, it may be considered if it is technically acceptable. If so, all offerors who submitted technically acceptable proposals (including the late one) will be advised that a late proposal was received and is being considered. All offerors will be given the opportunity to revise their proposals via solicitation amendment procedures (refer to paragraph 6308).

3. A late proposal or late revision should not be considered if it appears that the integrity of the competitive negotiation process might be jeopardized. Proposals that are substantially late (i.e., 2 days or more) are more likely to jeopardize the integrity of the process.

4. If a proposal or amendment is determined to be late and will not be considered for award, the contracting officer will notify the offeror in writing and advise that the proposal will be retained in the contract file.

5. Proposals or amendments received after contract award are late, may not be considered, and should be returned unopened with a written explanation and a notice of the award.

6. Include the following information regarding each proposal received, if available, in the Justification for Award memorandum or a memorandum for the record:

a. The date of mailing.

b. The date and hour of receipt; by whom; how received.

c. All relevant facts.

d. Whether or not considered for award. Include the envelope, wrapper, or other evidence in the contract file which explains the circumstances and actions taken.

6315. CANCELLATION OF SOLICITATIONS. A solicitation may be cancelled at any time before award when the contracting officer determines it is in the best interest of MCCS. All firms that submitted a proposal will be advised in writing (letter, fax, or solicitation amendment may be used) and all proposals will be returned. The Justification for Award memorandum will be destroyed. If a new solicitation is to be issued, the offerors will be advised in the cancellation notice. Offers received under the cancelled solicitation will not be disclosed.

6316. EVALUATION OF PROPOSALS

1. The three basic elements for evaluating proposals are (1st) responsiveness, (2nd) best value analysis (i.e., evaluation of price/fee and technical factors) and (3rd) responsibility, and they are normally considered in the order listed.

2. Award of contract will be made to the responsible prospective contractor whose offer is responsive to the solicitation and is most advantageous to MCCS and its customers, considering price/fee or other evaluation factors set forth in the solicitation. Determining the successful offeror is the responsibility of the contracting officer, but necessary technical assistance (legal, engineering, services, transportation, quality assurance, and so forth) may be obtained to help in making a determination.

6317. RESPONSIVENESS. A proposal is responsive when it fulfills all substantive requirements set out in the solicitation. A substantive requirement is one which would have an impact on price or fee or some other material aspect of a proposal. Except as provided in paragraphs 1 and 2 below, proposals with substantive deficiencies, which still meet MCCA's basic needs, may be cured through negotiation with offerors to make proposals fully responsive. The contracting officer will document the solicitation file to explain any action taken under this paragraph, including the reasons actions were taken, and record all contacts with offerors, including name and position of persons contacted.

1. If a proposal for purchase of equipment, supplies, or services doesn't meet MCCA's basic needs (for example, the offeror submits a proposal on pickups when vans were solicited, or in services, an offeror submits a proposal on TV rental only when a full-line equipment rental service was required), the contracting officer will determine the proposal nonresponsive and not further consider it for award. (It is not necessary to determine the competitive standing in those instances when an offer is conspicuously nonresponsive and non-correctable.) All other proposals, including any that may vary from the stated requirements of the solicitation yet still meet MCCA's basic needs, will be evaluated for competitive standing. If the most competitive proposal meets MCCA's basic needs but varies somewhat from the stated requirements, the contracting officer will proceed as set out in paragraph 3 below unless award is made under paragraph 2.

2. The contracting officer may award a contract without conducting negotiations if there are sufficient proposals meeting all requirements to ensure adequate competition and there appears to be no significant advantage to MCCA to consider the proposals that vary from the solicitation requirements. The contracting officer may reject proposals that vary from the solicitation requirements as nonresponsive and not further consider them for award. If the most competitive offer is complete except for omission of non-substantive information, the contracting officer may contact the offeror to obtain the missing information. Non-substantive information is information that does not impact on the price or fee offered, or the ability of the offeror to perform the contract. Examples include information on case pack, weight, cube, shipping point, or offeror representations on the face of the proposal. An offeror's failure to give price or fee information is not an omission that can be corrected by this procedure. When considering whether to use this procedure, the contracting officer must determine whether the offeror has merely omitted information or has made a mistake that should be handled using mistake procedures. If an offeror responds to a request for clarification with an amendment to price or fee, this is the equivalent of a late modification and the contracting officer must follow the procedures for receipt of late proposals.

3. If award is not made in accordance with paragraph 2 above, the contracting officer may enter into oral or written negotiations with all offerors meeting MCCA's basic needs and in the competitive range. The extent of the negotiations and the number of offerors considered to be within the competitive range is a matter of contracting officer judgment based on the facts of the requirement. Refer to paragraph 6325.

6318. DISCLOSURE OF PRE-AWARD PROPOSAL INFORMATION. Information contained in any proposal will normally not be disclosed until after contract award. Refer to paragraph 6328 for post-award disclosure guidance.

1. When it appears, however, that the period of evaluation of proposals and award of contract is likely to exceed 30 days, the contracting officer, on determination that a proposal is not competitive or is otherwise unacceptable, may provide notice of that fact to the source submitting the proposal. For example, offerors who submitted proposals to a construction project solicitation determined to be clearly outside the zone of consideration may be advised at any time in advance of contract award of a contract. This early notification will permit the offeror to obtain release from any proposal and performance bond commitments related to the particular project. Early notice to obviously unsuccessful offerors should not be provided, however, when such notice or disclosure may in some way prejudice the MCCS interest or compromise the procurement process.

2. The time element for evaluating proposals and the time required for reviewing and approving a proposed contract award are the relevant factors in determining whether early notification is appropriate.

6319. TECHNICAL AND PRICE EVALUATION PANELS. Complex, technical, or high dollar procurement actions may call for the establishment of an evaluation panel to assist the contracting officer in evaluating offeror proposals.

1. With the assistance of the requesting activity, the contracting officer will appoint several individuals to a technical and/or price evaluation panel. Panel members will be chosen based on their experience and understanding of the functional or technical requirements of the solicitation, their ability to analyze the proposed offers, and their integrity and understanding of the procurement process. If the contracting officer appoints panel members that will have access to both technical and price information, the panel members may not review pricing information until after completing the technical review to maintain impartiality. The contracting officer will not be a member of the evaluation panel; however, the contracting officer may monitor the evaluation panel meetings to ensure compliance with technical evaluation procedures.

a. Usually two or more representatives from the requesting activity will be appointed to the technical evaluation panel. In the event offerors include information in the price proposal that may impact the technical evaluation, the contracting officer may choose to provide a redacted copy of the price proposal to the technical evaluation panel for review; the redacted copy shall block or remove prices or fees.

b. If price proposals consist of unusual or complex pricing, the contracting officer may determine a price evaluation panel is necessary. The price evaluation panel usually consists of members with financial or business management experience.

c. In addition to MCCS activity personnel, evaluation panel members may include installation representatives or personnel from other MCCS, NAFI, or DOD activities.

d. If the contracting officer plans to use contractors in any capacity during the evaluation, the solicitation must specify that they will be used and must identify the specific company name and the specific role that the contractor will perform. Failure to include this information in the solicitation will preclude the contractor from any exposure to the proposal or evaluation deliberations. Contractors are not authorized to be voting members of the evaluation panel; however, contractors may be used to support the panel. Any contractor personnel that are used to support the evaluation panel must sign and submit a Confidentiality Agreement for Contractors. The contracting officer must include a written determination in the contract file identifying:

(1) The contractor's skills, training, or capabilities that are not readily available from MCCA or government personnel.

(2) That use of the specific contractor will not create a conflict of interest and that the contract contains adequate restriction on future contractor activities.

(3) MCCA Counsel review and approval.

(4) Refer to paragraph 6301.6 for contractor involvement in developing statements of work.

2. To ensure the integrity of the procurement process, the contracting officer will prepare evaluation forms using the evaluation factors stated in the solicitation. A copy of the solicitation and evaluation form will be provided to the panel members. The contracting officer will instruct evaluation panel members on the evaluation process, including the requirement to evaluate proposals against the RFP and not against other proposals. Upon completion of their evaluation, panel members will submit documentation explaining their recommendation. The contracting officer may require evaluation panel members to reach a consensus decision, or require each member submit an individual recommendation without consultation of other panel members. In both cases, documentation supporting the recommendation will be signed and dated by each panel member, and will include all work papers used during the evaluation process.

3. Evaluation panel members may not divulge or discuss proposal data with anyone other than the contracting officer or other evaluation panel members. The contracting officer shall obtain signed "Evaluation Panel - Nondisclosure Forms" from each evaluation panel member and shall retain copies in the contract file.

4. The contracting officer will use the specified evaluation data in determining contract award, however the contracting officer is not required to follow panel recommendations. The contracting officer will document the findings of the evaluation panel(s), and the basis for his or her decision, in the Justification for Award memorandum. Refer to paragraph 6326.

5. All evaluation panel recommendations and supporting documentation will be retained in the contract file.

6320. ORAL PRESENTATIONS

1. Oral presentations by offerors may be used to supplement written information. Use of oral presentations as a substitute for portions of a proposal can be effective in streamlining the source selection process. Oral presentations may occur at any time in the procurement process, and are subject to the same restrictions as written information, regarding timing and content. Oral presentations provide an opportunity for dialogue among the parties in competitive, single, and sole source acquisitions.

2. Oral presentations usually provide the methods that prospective offerors will use, and allow for questions and answers. Oral presentations may also allow the evaluation panel members to speak directly with the personnel who will perform the contract.

3. The contract file will contain a record of oral presentations to document what M CCS relied on in making the award decision. The method and level of detail of the record (i.e., M CCS notes, written minutes, videotaping, copies of offeror briefing slides or presentation notes) will be at the discretion of the contracting officer. If the oral presentation includes information that the parties intend to include in the contract, the information will be in writing.

6321. PRICE/FEE ANALYSIS

1. The procurement objective is to promptly satisfy an M CCS requirement at a fair and reasonable price or fee. Determining a fair and reasonable price or competitive fee requires sound judgment by the contracting officer based on pertinent facts. A higher price, or lower fee, compared to other offerors may still be found to be fair and reasonable, and to the best advantage of the M CCS.

2. Price or fee analysis is required with every contract, and will be documented in the Justification for Award memorandum. Adequate competition is the most common basis for determining the proposed price or fee is fair and reasonable.

6322. EVIDENCE OF POSSIBLE COLLUSION BY OFFERORS. If responses to multiple-source solicitations appear to have been arrived at by collusion of the offerors (for example, artificially high or identical prices), the contracting officer will inform M CCS Counsel.

6323. MISTAKES BEFORE AWARD. Contracting officers will review proposals for minor informalities, irregularities and clerical errors. Discussions with offerors to clarify these matters do not constitute negotiation, and usually resolve the inaccuracies. When an award without discussion is considered, the contracting officer will comply with the following:

1. If the contracting officer suspects a mistake, the contracting officer will inform the offeror and request verification. If the offeror verifies the proposal, award may be made.

2. If an offeror alleges a mistake, the contracting officer will advise the offeror that the proposal may be withdrawn, or that correction may be sought as explained in paragraph 3 below.

3. If an offeror requests permission to correct a mistake, the contracting officer may make a written determination permitting the correction, provided that it can be proven that a mistake was made, and provided a legal review is obtained prior to making the determination.

4. If the determination cannot be made and the contracting officer is still considering award without discussion, the offeror will be given final opportunity to withdraw or verify the proposal.

5. When making clarifications with one offeror, the contracting officer need not make clarifications with all offerors.

6. If correcting a mistake, however, requires the use of documents, worksheets, or other data outside the solicitation and proposal in order to establish the existence of the mistake, its correction will be considered a matter for negotiation and will open negotiation with other offerors as described in paragraph 6325.

6324. COMPETITIVE RANGE. The contracting officer will determine which proposals are in the competitive range for the purpose of conducting written or oral negotiation. Competitive range is determined by price and other evaluation factors stated in the solicitation and will include all proposals that have a reasonable chance of being selected for award.

6325. CONDUCTING NEGOTIATIONS. Negotiation is a flexible contracting procedure that permits contracting personnel to bargain in the sense of clarification of initial assumptions and positions, give-and-take, and persuasion. These negotiations may apply to price, schedule, technical requirements, or other terms of a proposed contract.

1. The contracting officer may conduct written or oral negotiations with the most competitive offeror, or all offerors in the competitive range (paragraph 6324), without considering the lower technically ranked proposals. When having discussions with offerors in the competitive range, the contracting officer must have discussions with all in the competitive range; however, if the contracting officer wants to make clarifications with one offeror, he or she need not make clarifications with all offerors (refer to paragraph 6323). The distinction between clarifications and discussions is whether an offeror has been given an opportunity to revise its proposal. The contracting officer will prepare a Memorandum for the Record citing names and positions of offerors with whom negotiations were conducted, elements of the solicitation and proposal discussed, and elements and results of the negotiations.

2. The content and extent of the negotiations will be determined by what the contracting officer decides is appropriate. The purpose of the negotiations, as appropriate, may be to:

a. Advise offerors of any apparent deficiencies, omissions, deviations or mistakes in their proposals (for example, an offer was made on light bulbs packed two per package when the requirement was for four-packs).

b. Resolve apparent uncertainties or misunderstandings pertaining to the solicitation (for example, qualifying statements that would render the proposal nonresponsive if not withdrawn, such as liability or warranty limitations).

c. Ascertain that a proposal is based on an amended solicitation, when an offeror fails to acknowledge an amendment.

d. Negotiate with regard to prices, discounts, delivery terms, minimum order quantities, frequency of orders, minor changes to specifications, etc.

3. Negotiations will encompass those elements of the solicitation imposing substantial costs on the contractor that may not have been considered or anticipated by the contracting officer when developing the solicitation. If the negotiations fail to achieve a reasonable price, the requesting activity may recommend that the solicitation be canceled.

4. During the course of negotiations with offerors, the contracting officer will not engage in auction techniques such as:

a. Indicating cost or price the offeror must meet. (It is permissible to tell an offeror that its price is too high, overall or as to specific items.)

b. Advising an offeror of its standing in relation to other offers or disclosing which other firms are participating.

c. Furnishing information about other offerors prices or terms.

5. If negotiations with offerors in the competitive range result in a change in evaluation criteria or a change in MCCS' requirements, an amendment to the solicitation must be sent to all offerors on the original source list. If the change is major, the contracting officer should consider cancellation and re-solicitation.

6. Upon completion of negotiations, the contracting officer will request offerors to submit final proposal revisions. The contracting officer may request or allow proposal revisions to clarify and document understandings reached during negotiations. The request for final proposal revisions will include notification that:

a. Negotiations are concluded.

b. The offeror is requested to submit a final proposal revision by a specified time and date.

c. Offerors original proposals will be considered in the absence of submission of a revised offer (unless the offer has expired).

7. After receipt of final proposal revisions, the contracting officer will not reopen negotiations unless a significant advantage to MCCS appears possible. If negotiations are reopened, the provisions of paragraph 8 below apply.

8. Further Negotiation

a. Services. If the contracting officer believes the proposals might be improved, further negotiations may be undertaken with the most competitive offeror or with all offerors in the competitive range.

b. Equipment and Supplies. Further negotiation may be considered under these circumstances:

(1) After opening proposals, the most competitive proposal is fully responsive but there is reason to believe the offeror might be willing to improve the proposal. In this case, further negotiation should be opened with the most competitive offeror, or negotiations may be opened with all responsive offerors in the competitive range, without considering the non-responsive proposals received.

(2) Subsequent to any actions taken to cure deficiencies in nonresponsive proposals, and after receipt of final proposal revisions, there is still uncertainty that the most competitive proposal offers the best advantage to MCCS. In this case, further negotiation with the most competitive offeror may be conducted where it appears that the proposal might be improved.

c. When further negotiation is undertaken, each of the offerors selected will be given the same opportunity to amend their proposal. Do not give any offeror information that would afford an advantage over any other offeror. Safeguard amended proposals in the same manner as original proposals.

d. In conducting further negotiations, the objective is to arrive at a contract that best satisfies the MCCS requirement without violating the good faith of the competing offerors and the integrity of the procurement process. Negotiations should encompass those elements of the solicitation imposing substantial costs on the contractor that may not have been considered or anticipated by the contracting officer when developing the solicitation. If the negotiations fail to achieve reasonable price/fee levels, the recommendation of the requesting activity should be obtained to determine if the solicitation should be canceled. If a solicitation must be canceled under this circumstance, consider developing the new solicitation to relax or eliminate those requirements that impose undue costs on the potential contractor if such is possible within the general context of the requirement. Attempt to develop additional sources to receive the new solicitation to broaden the competitive base.

e. The contracting officer will request each offeror with whom further negotiations were opened, to submit a written or electronic final proposal revision by a specified time and date.

9. Contracting officers will document the results of negotiations in the Justification for Award memorandum.

6326. JUSTIFICATION FOR AWARD. At the conclusion of evaluation and negotiations, but prior to award, the contracting officer will prepare a Justification for Award memorandum documenting the award decision. All appropriate information regarding the solicitation, solicitation amendments, evaluation findings, any subsequent discussions and negotiations, and the basis for award will be included or referenced in this memorandum. Memorandum content and level of detail is the decision of the contracting officer, but at a minimum, must include a positive determination of contractor responsibility and that the proposed prices or fee are fair and reasonable. Where required, documentation of legal review and award concurrence by a senior MCCS official will be included. The Justification for Award memorandum will be signed by the contracting officer and retained in the contract file.

6327. MAKING THE AWARD. Contracts will be awarded by the contracting officer by signing and dating the contract document and mailing or otherwise furnishing a signed copy of the complete contract to the successful offeror. The contracting officer's signature on the contract affirms that a determination of offeror responsibility and technical acceptability have been made.

1. The contracting officer is responsible for making sure the proposal and/or contract has been signed by an individual having authority to bind the offerors firm contractually before making the award.

2. Strikeovers, paste-overs, erasures or pen-and-ink changes to the contract document will be avoided, and may only be used for minor changes. If used, such changes will be initialed by the contracting officer and the contractor on the contractor's copy of the contract and the official file copy.

3. The contract becomes effective on the date of award unless a different date is given in the contract itself. Backdating an award date is prohibited.

4. The contracting officer may choose to convene an award board for high value/high visibility procurements. The award board provides senior leadership the opportunity to review the contract evaluation and award process and to "concur or non-concur" with the contracting officer's decision. The award board is not a source selection authority and does not have the power to decide the offeror to be awarded the contract. The contracting officer has final authority for source selection and will determine the offeror to be awarded the contract. If an award board is used, the contracting officer will plan in advance and will include this step in the procurement timeline. Upon Counsel's determination of legal sufficiency, the contracting officer will prepare the award board briefing. The award board may consist of the M CCS Director or designee and senior MR/M CCS personnel as appropriate. The contracting officer will lead the briefing and may include Counsel, the technical and/or functional evaluation panel chairman, the price evaluation panel chairman, and others as necessary to participate in the briefing. The award board may request additional information from the contracting officer and evaluation panel chairmen. If the award board concurs with the contracting officer's decision to award to a particular company, the contracting officer proceeds with the award. If the award board non-concurs, the contracting officer may choose to re-visit the documentation to ensure the selection materials were interpreted correctly, amend the RFP within the competitive range, or cancel the procurement and start over.

6328. POST-AWARD NOTIFICATION TO OFFERORS. When an award is made using competitive solicitation procedures, the contracting officer will give written notice of award to the successful offeror. When this notice has been issued, the contracting officer will then promptly give written notice to the unsuccessful offerors that their proposals were not accepted. A post-award notification is not required when a pre-award notification was previously issued per paragraph 6318. This post-award notification will include the name of the successful offeror and may include the award price. Technical information will not be provided. The notification will advise that the offeror may request a debriefing within seven (7) calendar days of receiving the post-award notification. Upon request of an unsuccessful offeror, the contracting officer will conduct a debriefing.

6329. DEBRIEFINGS. A debriefing is an explanation why an offeror did not win a competitive solicitation. Offerors must submit a request for a debriefing within seven (7) calendar days after receipt of the notice of award. In complex or high dollar procurement actions, the contracting officer will coordinate debrief material with MCCS Counsel prior to the debriefing. The contracting officer will document results of the debriefing and retain in the contract file.

1. Debriefings may be done verbally (including by telephone) or in writing by the contracting officer who may request support from the evaluation team. The contracting officer shall document the debriefing in the contract file.

2. A debriefing may include the following:

a. Significant deficiencies or weaknesses in the proposal or a summary of the rationale for eliminating the offeror from the competitive range.

b. Overall rating of the successful offeror and the debriefed offeror.

c. Past performance information on the debriefed offeror.

d. Summary of the rationale for award.

e. Reasonable responses to questions on the source selection process contained in the solicitation and applicable regulations that were used.

3. A debriefing is not:

a. A page-by-page analysis of the proposal.

b. A point-by-point comparison of proposals.

c. A debate over the award decision.

d. A release of any offerors proprietary information to other offerors.

6330. MISTAKES ALLEGED OR DISCOVERED AFTER CONTRACT AWARD

1. When a non-substantive mistake is discovered after award, it may be corrected by a modification to the contract, if the correction is favorable to the MCCS and if it does not change the essential requirements of the contract. In all other cases, the contracting officer will review the documentation provided by the contractor and coordinate findings with MCCS Counsel. The contracting officer will consider:

a. Advice from the requesting activity on whether the item is acceptable to use and will perform its intended task.

b. A recommendation from the requesting activity (with supporting documentation) on whether to accept or reject the item.

c. The nature and extent of the contractual adjustment that will result from either decision.

2. If the decision is made to accept the item, the contracting officer will seek an equitable adjustment in the price of the item and negotiate any other adjustments necessary as a result of acceptance. If the decision is made to reject the item, the contracting officer will so notify the contractor and give the contractor the opportunity to correct the problem within the required delivery schedule.

Chapter 6: Negotiated Procurement

Section 4: Purchase Card

6400. PURCHASE CARD USE. CMC(MR) will authorize MCCS participation in the designated Nonappropriated Fund Purchase Card program or commercial purchase card program. MCCS activities may not enter into local purchase card programs without prior approval of CMC(MR). Benefits of card usage include rebates based on total dollars spent, shorter turn-around-time to receive goods, and reduced administrative costs. CMC(MR) encourages maximum participation in the card program and recommends that cards are issued to trusted individuals at the requesting activities and the procurement office. Refer to the MCCS Purchase Card Standard Operating Procedure (SOP) for additional guidance.

6401. PURCHASE CARD PROGRAM. The Purchase Card program provides a streamlined method of purchasing commercially available supplies and services. The NAF Purchase Card Program Manager for MCCS NAF use of the purchase card program is CMC(MR).

1. Agency Program Coordinator. A senior NAF procurement employee should be designated as the MCCS NAF Agency Program Coordinator (APC). The APC will be appointed in writing to manage the purchase card program for the installation MCCS activity. This individual will have overall responsibility for the purchase card program within the MCCS activity. The APC will develop internal purchase card policy, approve who participates in the purchase card program, and issue a delegation of authority to each cardholder who may then obligate NAF funds of the MCCS activity as a purchase cardholder. The APC will suspend or terminate accounts as necessary due to misuse and report actual or suspected cases of fraud or intent to commit fraud to the MCCS Director and CMC(MR). The APC will terminate the cardholder account for reassignment of termination of employment.

2. Delegation of Authority

a. Cardholders and approving officials will be appointed in writing. Cardholders will be appointed with specific levels of procurement authority identifying their single and monthly purchase limits. Both approving officials and cardholders will complete training and be appointed prior to receiving a NAF purchase card account.

b. In limited circumstances cardholders may also be appointed as an approving official; however, the cardholder may not be his or her own approving official.

3. Approving Officials. Approving officials will review and sign their cardholders' monthly purchase card statements prior to certifying and forwarding for payment.

4. Purchase Cardholders. The single purchase limit may not exceed the competition threshold per order for cardholders, or the warrant authority level for MCCS contracting officers or purchasing agents. All purchases are subject to mandatory sources (UNICOR, AbilityOne), and purchases in excess of the competition threshold must be competed. (Note: The purchase card may not be used to purchase services in excess of \$2,500 when the Service Contract Act applies, nor purchase construction in excess of \$2,000 when the Davis-Bacon Act applies).

5. Training. All participants (APC, approving officials, and cardholders) will complete required training prior to appointment.

6. Ethics Standards. The purchase card is embossed with the cardholder's name and will only be used by that individual. Cardholders in one MCCA branch or activity may not use their card to purchase for another branch or activity unless authorized by the MCCA APC. APCs, approving officials, and cardholders will complete annual ethics training as applicable. Questions will be directed to the local Ethics Counselor or MCCA Counsel.

7. Prohibited Purchases. The purchase card will not be used for the following:

- a. Personal Purchases.
- b. Cash Advances.
- c. Rental or lease of land or buildings.
- d. Purchases that require signing of a contract or agreement.

e. Purchases of official NAF travel related expenses (transportation, lodging, meals, etc). Travel related expenses should be purchased using the official government travel card. Individuals who do not have an official government travel card account should coordinate with their administrative travel office.

f. Refer to the MCCA Purchase Card SOP for a complete list of prohibited purchases.

8. Regulated Purchases. Purchase card purchases of the following items are regulated. Refer to your Agency Program Coordinator for specific guidance.

- a. Conference room rentals, A/V equipment, and refreshments.
- b. Merchandise for resale.
- c. Personal clothing or footwear when required by work requirements.
- d. Maintenance and repair services.

e. Supplies or services to be obtained from designated sources, such as MCCA/installation supply warehouses.

f. MWR Resale/Exchange Retail. Only special order exchange retail merchandise approved in advance by the installation Head of Retail and the APC may be purchased with the purchase card. Traditional MWR resale merchandise may be purchased with the purchase card if approved by the APC and/or NAF Contracting Officer. MWR resale items may not be purchased from GSA Schedules or GSA Advantage unless so authorized by GSA and the contractor.

g. Subsistence food items for resale in compliance with food safety and sanitation requirements at Chapter 5, Section 2. The purchase card may be used for occasional, small quantities of food items that cannot be met through the Joint Services Prime Vendor Program (JSPVP).

h. Refer to the MCCS Purchase Card SOP for a complete list of regulated purchases.

9. Authorized Purchases. The purchase card may be used for official purchases at the military exchange and commissary.

10. Conditions for Use. Cardholders are authorized to use the purchase card only when the following conditions are met:

a. Appropriate approvals have been obtained prior to making a purchase.

b. The supplies and services do not require technical inspection.

c. Equipment does not require the purchase of extended service warranties or maintenance agreements. Purchase requests for equipment requiring extended service warranties or maintenance agreements will be forwarded to the MCCS contracting office for purchase.

d. Purchases may not be split into smaller buys to avoid procurement limitations. Requirements exceeding the single purchase limit will be forwarded to the MCCS contracting office for purchase.

e. Purchases are for official U.S. Government/MCCS purposes and are exempt from state and local taxes. Each card is embossed with the words "U.S. Govt. Tax Exempt" for additional clarification.

11. Fixed Asset Exception. Fixed Assets (FA) may not be purchased with the purchase card, unless purchased by a cardholder who is a contacting officer or purchasing agent (refer to paragraph 2008).

12. Appropriated Fund Purchase Card. MCCS military and civilian personnel may also be designated as appropriated fund purchase cardholders and approving officials. The installation appropriated fund procurement office will provide applicable guidance to these individuals.

6402. DEBIT CARD USE. Per reference (n), a Family Readiness Officer (FRO) may be assigned the responsibility for executing funds intended to support unit, personal, and family readiness needs including unit recreational, social and family readiness activities. To accomplish this responsibility, the local MCCS and Unit Commander may establish a debit card account for use by the FRO within the below designated dollar limits. The Unit Commander must accept responsibility for the debit card as established in reference (n). For requirements exceeding the below stated limits, the FRO or Commander shall prepare and submit a purchase request, certifying funds availability, to the local or assigned APF or MCCS procurement office based on type of funds. Requirements shall not be split to avoid this dollar limit. Procurements are subject to the governing APF or MCCS procurement policy.

a. For APF funds, the FRO is authorized to purchase up to the micro-purchase threshold for supplies, \$2,500 for services, and \$2,000 for construction.

b. For NAF funds, the FRO is authorized to purchase up to the competition threshold for supplies, \$2,500 for equipment, \$2,500 for services, and \$2,000 for construction. The FRO shall comply with NAF purchase card policies and procedures.

Chapter 7

Contract Administration

7000. GENERAL. Contract administration is the management of a contract from the time of award through its expiration or termination and final retirement of records. The purpose of contract administration is to ensure that the contractor performs according to the contract provisions and that MCCS receives the quantity and quality of the goods or services for which it contracted.

7001. DESIGNATION OF CONTRACTING OFFICER'S REPRESENTATIVE. To aid in the contract administration function, especially where contract performance is remote from the contracting officer's location or program expertise is required, the contracting officer may appoint a Contracting Officer's Representative (COR). Final responsibility for contract administration rests with the contracting officer.

1. COR's are primarily liaisons between the contractor and the contracting officer on technical matters relating to the contract. COR's have no authority other than that which has been delegated to them by the contracting officer.

2. The head of the requesting activity will nominate an individual for COR appointment; usually the individual is involved in developing the statement of work and the technical evaluation process.

3. The Contracting Officer will appoint the COR in writing, designating the individual's name and position title. When it is necessary to change the terms of the appointment, it will be done in an amendment to the appointment or by the issuance of a new appointment. The COR will certify acknowledgement of the appointment letter to indicate an understanding and acceptance of the COR duties and responsibilities.

4. A COR is not delegated authority to make any commitments or changes that affect price, quality, quantity, delivery or other terms and conditions of the contract; may not award a contract or agree to or issue a change to a contract; and may not "supervise" contractor employees. A contracting officer may authorize a COR to make minor changes, not involving the above items, and to resolve problems as long as such authorizations are not prohibited by the contract. The COR will refer contract interpretation questions to the contracting officer.

5. Upon designating a COR, the contracting officer will provide the COR with a complete copy of the contract, the appointment letter, and any other relevant materials. The contracting officer and COR should jointly develop a contractor surveillance plan to ensure the contractor's performance conforms to contract requirements, is periodically evaluated based on contract criteria, and shortcomings are dealt with expeditiously. The surveillance plan may include such items as timeliness, cleanliness, courtesy to patrons, etc, as required by the contract.

6. COR duties and responsibilities may not be transferred or re-delegated to another, unless designated by the contracting officer.

7. CORs are required to complete the COR training specified by the contracting officer before contract award, or within 30 days of appointment for replacements CORs, and biennially thereafter as long as the individual is a COR. The contracting officer may choose to grant a temporary waiver to the training requirement, but shall document the file accordingly with the justification and timeline to complete the training. The contracting officer shall maintain evidence in the contract file that the COR completed required COR and Ethics training.

8. The contracting officer shall periodically, but at least annually, review COR files to ensure the COR is adequately performing the appointed duties and shall document the contract file with review results. If the review is less than acceptable, the contracting officer will provide counseling or training to correct the COR deficiencies. If major or continuing deficiencies are found, the contracting officer shall make a determination to either continue counseling and training or to rescind the COR appointment.

7002. EQUAL EMPLOYMENT OPPORTUNITY AND MINIMUM WAGE NOTICES. The contracting officer will provide Equal Employment Opportunity (EEO) and Minimum Wage notices to the contractor at the time of award.

1. EEO Poster. Every employer covered by the non-discrimination and EEO laws is required to post the "Equal Employment Opportunity is the Law" poster on its premises. The notice must be posted prominently, where it can be readily seen by employees and applicants for employment. The notice provides information concerning the laws and procedures for filing complaints of violations of the laws with the Office of Federal Contract Compliance Programs (OFCCP). [Refer to reference (u), as amended]. Posters may be obtained from www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm.

2. Fair Labor Standards Act (FLSA) Minimum Wage Poster. Every employer of employees subject to the Fair Labor Standards Act's minimum wage provisions must post, and keep posted, a notice explaining the Act in a conspicuous place in all of their establishments so as to permit employees to readily read it. The content of the notice is prescribed by the Wage and Hour Division of the Department of Labor. An approved copy of the minimum wage poster is made available for informational purposes or for employers to use as posters at www.dol.gov/whd/resources/posters.htm.

7003. CONTRACTOR PERFORMANCE FEEDBACK. Contractor nonconformance is usually discovered during quality inspection or as a result of MCCA user or customer complaint. Contractor nonconformance is the failure of a contractor to comply with delivery schedules, performance standards, or other provisions of the contract. The contracting officer must be made aware of the nonconformance, act within the framework of the contract to correct the deficiencies, maintain a suspense file of all deficiencies noted, and follow through with required action until resolved. Documentation of the nonconformance and action taken will be retained in the contract file.

7004. CONTRACT MODIFICATIONS. Contracts may be modified using appropriate forms and procedures. All contract modifications begin at number one (1) regardless of any solicitation amendments. Modifications to contracts are either unilateral (signed by only the contracting officer) or bilateral (signed by both the contractor and contracting officer) actions. All modifications will be documented in a memorandum explaining the action. The memorandum will be signed by the contracting officer and retained in the contract file. The contracting officer must modify the contract as needed to reflect actual requirements; if a contract contains a line item or statement of work description for supplies or services that are no longer needed, the contracting officer shall negotiate a price adjustment and issue a modification accordingly.

7005. OPTION CLAUSES

1. An option clause may allow MCCS to purchase additional supplies or services or to extend the period of the contract, if the action is taken within the time specified in the contract's option clause, and when determined to be in the best interest of the MCCS. Option clauses will not be used when:

a. The supplies or services are readily available on the open market at better prices.

b. The contractor will incur undue risk, such as the inability to estimate the price or availability of required materials and labor for future requirements.

c. Market prices for supplies or services are likely to change substantially.

2. Prior to issuing a contract modification to exercise an option clause, the contracting officer and COR will review the contractor's performance under the contract (i.e., quality, timeliness, etc.). The contracting officer will include the review results in the memorandum explaining the modification.

7006. CHANGE ORDERS. The Changes clause of the contract permits the contracting officer to make unilateral changes in those areas identified in the clause, and provides an equitable adjustment to the contractor if the change causes an increase or decrease in the cost of the work or in the time required for performance. Change orders can place undue hardships on contractors, and should not be used if a mutually agreeable modification can be negotiated, which is the preferred method.

7007. CONSTRUCTIVE CHANGES. Constructive changes are defined as any conduct by a contracting officer or other authorized representative, other than a formal change order or supplemental agreement, which has the effect of requiring the contractor to perform new work or different work from that required by the contract. Such changes entitle the contractor to relief under the Changes clause and will be avoided.

7008. NOVATION AGREEMENT. A Novation Agreement is used to transfer the operation or performance of a contract to another party. In the novation, the NAF contracting officer agrees to recognize the third party as a successor in interest to the MCCA contract. Novations may be approved where it would provide advantages such as continued performance of the contract. Novations should not be used where it appears the contractor's motive is to sell the contract soon after award or otherwise gain a profit from a "buy in." Coordinate all novations with MCCA Counsel.

1. A novation agreement is not used to change the name of a contractor when no change in ownership occurs. A contract modification is used for this purpose.

2. Under a novation agreement, the new party (transferee), with MCCA consent, takes over from the contractor (transferor) and assumes responsibility for performance of the contract and provides certificates of insurance as required. Based on the terms of the novation, the former contractor may be relieved of all future responsibility for prior actions under the contract.

3. MCCA may recognize a third party as a successor in interest to an MCCA contract under any of these circumstances:

a. The third party's interest is incidental to the transfer of all assets of the contractor.

b. The third party's interest is incidental to the transfer of that part of the contractor's assets involved in the performance of the contract.

c. The contractor requests to transfer interest in a contract to a successor for continued performance. Examples of such circumstances include, but are not limited to, sale of assets by a contractor, transfer of such under a merger or consolidation, and incorporation of a proprietorship or partnership.

d. Novating the contract is more advantageous to MCCA than terminating the contract and re-soliciting or allowing the contract to expire.

4. When a contractor requests MCCA recognize a successor in interest, the contractor will be required to furnish the contracting officer with documentary evidence that the successor in interest is a responsible contractor, such as:

a. Evidence of experience, financial and technical ability, or other capability of the transferee to perform the contract.

b. Written consent of the sureties on contracts where bonds are required.

c. In the case of patron or retail service contracts involving processing customer owned property or customer orders, an inventory of unclaimed customer orders or orders in progress, acknowledged by the transferee.

5. When the novation is due to a contractor transferring or selling its assets, the contractor will be required to provide evidence of the sale, such as a bill of sale, certificate of merger, resolution of the board of directors, or copy of the certificate and articles of incorporation.

6. When the decision has been made to recognize a successor in interest to an MCCS contract, the contracting officer will execute a novation agreement with the transferee and transferor. This three-way contract modification will be assigned a consecutive contract modification number. The contracting officer will complete a Memorandum for the Record to document the action. A novation format is available from CMC(MR).

7. A contract in which a novation has been executed will be considered to have been in force from the effective date of the original contract.

7009. DELAYS IN DELIVERY OR PERFORMANCE

1. Excusable delays are due to causes beyond the control of the contractor. The standard procedure to be used in the case of an excusable delay is to extend the delivery or performance schedule by a bilateral modification to the contract. If the goods or performance are required before the contractor can deliver, the contract may be terminated for convenience (refer to paragraph 7207).

2. Inexcusable delays are not due to causes beyond the control of the contractor. A thorough analysis of the situation and possible courses of action should be made to determine the most efficient and economical method of resolution. MCCS Counsel will be consulted for any situation involving an inexcusable delay.

7010. FINANCIAL OBLIGATIONS

1. All MCCS financial obligations will be processed in a timely manner as called for by the Prompt Payment Act per reference (p), Title 31 Section 3901 et. seq. Failure to meet contract payment obligations will result in the requirement for MCCS to pay interest to the contractor. Failure to make interest payments on time may result in the accrual of additional penalties for MCCS.

2. For revenue generating contracts, the contracting officer shall establish a monitoring system to ensure timely and accurate submittal of fees. The contracting officer shall ensure late payment penalties are appropriately applied and collected.

7011. MODIFICATION EFFECTIVE DATES. Unless indicated otherwise, the effective date of a contract modification is the date it is signed by the contracting officer.

7012. SUSPENSION OF WORK AND STOP WORK ORDERS

1. During contract performance, a situation may arise that requires the MCCS to suspend work or to order a work stoppage. The contracting officer is the only official authorized to suspend or stop a contractor's work.

a. The contracting officer may issue a stop-work order in any fixed-price supply or service contract when determined by the contracting officer to be appropriate. Work stoppage may be required for reasons such as state-of-the-art advancements, engineering breakthroughs, and realignment of programs.

b. The contracting officer may order a suspension of work under a construction contract for a reasonable period of time. If the suspension is unreasonable, the contractor may submit a written claim for any increase in costs (excluding profit) incurred as a result of the suspension.

2. In general, a stop-work order will be issued only if it is advisable to suspend work pending a decision by the MCCS and a bilateral modification providing for the suspension of work is not feasible. Issuance of a stop-work order shall be coordinated with MCCS Counsel. Stop-work orders shall not be used in place of a termination notice after a decision to terminate has been made.

3. Stop-work orders will include the following elements:

a. A description of the work to be stopped and the effective dates.

b. Instructions concerning the contractor's ordering of additional supplies or services.

c. Instructions to the contractor concerning any action to be taken on subcontracts.

d. Suggestions to the contractor concerning minimizing costs, since the MCCS may be required to pay the contractor an equitable adjustment.

4. As soon as possible after a stop-work order has been issued, the contracting officer will discuss the stop-work order with the contractor and make any necessary modification to the stop-work order or contract.

5. As soon as possible after a stop-work order has been issued and before it expires, the contracting officer will take one of the following actions:

a. Terminate the contract.

b. Cancel the stop-work order, with MCCS Counsel coordination.

c. Extend the period of the stop-work order, if necessary, and if the contractor agrees to such an extension. Extension of a stop-work order shall be issued by a bilateral modification to the stop-work order or contract.

6. Contracting officers may insert a suspension or stop-work order clause in the contract if determined to be in the best interest of the NAFI.

a. The contracting officer may insert the stop-work order clause in solicitations and contracts for supplies or services.

b. The contracting officer shall insert the suspension of work clause when a fixed-price construction contract is contemplated.

Chapter 7: Contract Administration

Section 1: Contract Protests, Claims, Disputes, and Appeals

7100. RELEASING INFORMATION

1. Contracting officers shall process requests from the public for specific procurement information, including proposed press releases, through MCCS Counsel and the public affairs office, if applicable. In coordination with MCCS Counsel, contracting officers shall ensure that a proper decision on whether to withhold information is made. Considerations include proprietary data, the protection of procurement sensitive information, and information protected by privacy considerations.

2. In all instances of protests, claims, disputes or appeals regarding a procurement action, there will be no release of information regarding the procurement when a simple explanation (such as name of the awardee or contract price) will resolve the inquiry. If detailed information or procurement documents are sought, the approval of MCCS Counsel will be obtained prior to release.

7101. PROTESTS. The first step in resolving any concern or issue raised by an offeror is for the contracting officer to consider the matter and respond to the offeror accordingly. Many times, a concern or issue raised by an offeror may be resolved with a simple explanation of the reason for the contracting officer's decision. For the matter to be considered further where the concern or issue cannot be resolved through informal discussion between the contracting officer and offeror, the offeror must file a written protest and must state that a protest is intended. When a protest is received orally, the contracting officer will advise the protestor that, in order to be considered, the protest must be submitted in writing or MCCS will deem the matter closed. The contracting officer's notification shall provide the address to which the individual should submit a protest, and inform the individual that the protest is subject to timeliness standards.

1. Only interested parties may file protests. An interested party is an actual or prospective offeror whose direct economic interest would be affected by the award or failure to award a particular contract. The contracting officer will coordinate with MCCS Counsel before determining a protestor is not an "interested party."

2. The contracting officer is responsible for promptly processing or resolving all protests received. Protests may be received either before or after contract award. Any protest lodged with other than the contracting activity will be referred or sent immediately to the appropriate contracting officer. Protests involving NAF contracts (except when issued by APF contracting officers) are not subject to the jurisdiction of the General Accounting Office (GAO) or courts.

3. Upon receipt of a protest, the contracting officer will notify MCCS Counsel and shall coordinate all protest responses with MCCS Counsel.

4. Protests that cannot be resolved by meeting with the protestor or that the contracting officer determines have no merit, require a written decision and reply to the protestor by the contracting officer explaining the rationale for the decision.

5. The contracting officer will document the results of all protest actions, including advice of Counsel, in a memorandum and retain in the solicitation or contract file.

6. Protests shall be submitted in writing to the contracting officer's attention and shall be concise and logically presented. The contracting officer may dismiss protests that do not substantially comply with the following requirements. Protests shall include the following:

- a. Name, address, email address, telephone and fax numbers of the protestor.
- b. Solicitation or contract number.
- c. Statement that a protest is intended.
- d. Detailed statement of the legal or factual grounds for the protest, to include a description of resulting prejudice to the protestor.
- e. Copies of relevant documents.
- f. Request for ruling by the MCCS.
- g. Statement as to the form of relief requested.
- h. All information establishing that the protestor is an interested party for the purpose of filing a protest.
- i. All information establishing the timeline of the protest.

7102. PROTESTS BEFORE AWARD

1. Protests based on alleged improprieties in a solicitation that are apparent on the face of the solicitation must be filed with the contracting officer, in writing, before the closing date for receipt of proposals. Protests to the contents of an amendment to the solicitation must be filed, in writing, before the closing date (or amended closing date) for receipt of proposals of the amendment.

2. When a protest is received before contract award, the award will be delayed until the protest (including appeals) is resolved, unless the contracting officer determines that one of the following applies:

- a. The supplies or services are urgently required.
- b. Delivery or performance will be unduly delayed by failure to make a prompt award.
- c. The current contract is expiring and continued service is required.
- d. A timely award will otherwise be advantageous to the MCCS.

3. Before awarding a contract under the above-cited circumstances, the advice of MCCS Counsel will be obtained. The Justification for Award memorandum will fully document the award decision and be retained in the contract file.

4. If the contracting officer delays award of the contract, he or she will conduct discussions or convene whatever meetings or conferences are necessary to determine the merits of the protest. When the contracting officer finds a protest has merit (e.g., ambiguous specifications, flawed evaluation process), he or she will promptly take action to correct the situation. Such possible actions include, rejecting all proposals and issuing a new or amended solicitation, revising specifications, or changing evaluation criteria. In amended solicitations, the receipt date of proposals will be extended accordingly. If resolution of the protest makes previously ineligible offerors eligible for award, appropriate notification will be given to the offerors concerned.

7103. PROTESTS AFTER AWARD

1. All protests will be handled expeditiously. The contracting officer will give a copy of the protest to the awardee, to any interested party, to MCCA Counsel, and to appropriate MCCA personnel. The contracting officer may allow any party so notified to submit written comments regarding the protest for consideration by the contracting officer. The time limit for such comments to be filed should be established by the contracting officer when the party is notified of the protest. Where the protest contains information claimed by the protester to be procurement sensitive or otherwise protected from disclosure, the contracting officer should send a summary of the grounds of protest and not an actual copy of the protest, unless the protester or contracting officer has redacted the protected information (refer to paragraph 7104). MCCA personnel in procurement and requirements positions may not disclose protected information or procurement sensitive information.

2. A protest must be filed in writing with the contracting officer no later than ten calendar days after the protestor knew or should have known the basis of protest through the exercise of reasonable diligence, whichever is earlier. When a protest is received by the contracting officer after the contract has been awarded, contract performance need not be suspended or terminated, unless it appears likely the award may be invalidated and non-delivery or non-performance is not prejudicial to the activity's interest. If the protester presents compelling reasons why contract performance is to be postponed or suspended, the contracting officer will promptly notify the awardee, in writing, and will provide instructions regarding the postponement or suspension of contract performance. If the protester presents compelling reasons why the award should be invalidated, the contracting officer will attempt to negotiate a mutual agreement with the awardee for performance to be suspended at no-cost, until the protest is resolved. If a no cost suspension cannot be negotiated, seek the advice of MCCA Counsel.

7104. CLAIMS OF PROCUREMENT SENSITIVE INFORMATION. The burden to show that information is procurement sensitive or otherwise protected from disclosure is on the party making the claim for withholding. Where the protest or comments filed by an interested party contain information clearly marked as being procurement sensitive or otherwise protected from disclosure, the contracting officer should take steps to safeguard the information pending further investigation into the matter. For example, when notifying a party of a protest, the contracting officer should delete or redact any such information before sending a copy of the protest. The contracting officer will coordinate offeror claims of procurement sensitive information with MCCA Counsel prior to action.

7105. PROTEST DECISIONS AND APPEALS OF THE CONTRACTING OFFICER'S PROTEST DECISION

1. Protests require a written decision by the contracting officer to the protester explaining the rationale for the decision. The reply will be coordinated with MCCS Counsel and sent via certified mail with a return receipt or other equivalent method that provides delivery confirmation. The contracting officer's decision must inform how it may be appealed. MCCS contracting officer decisions may be appealed to the Installation Commander. MR contracting officer decisions may be appealed to the Director, CMC(MR). The notice to the protester will include the following: "You are advised that you may appeal this decision within ten calendar days from receipt of this letter by mailing or otherwise furnishing a written appeal addressed to (insert the full mailing address of the Installation Commander (or Director CMC(MR), as appropriate). The written appeal should indicate that an appeal is intended and must reference this decision. The Installation Commander's (or Director CMC(MR) as appropriate) protest decision is final and may not be further appealed."

2. Only matters raised in the original protest may be appealed. An offeror may not raise new issues or grounds for protest not considered by the contracting officer. Appeals raising new issues or grounds for protest will be dismissed by the appeal authority.

3. Upon notification of a protest appeal the contracting officer will forward a completely documented solicitation or contract file to MCCS Counsel to include:

a. The letter or document that initiated the protest, together with all supporting evidence submitted by the person making the protest.

b. A copy of the proposal of the protesting offeror and a copy of the proposal of the offeror who is being considered for award (or the successful proposal).

c. Any other documents relevant to the protest.

d. A copy of the contracting officer's protest decision.

e. A statement signed by the contracting officer providing a preliminary analysis of the matter, together with any additional information or evidence considered necessary in determining the validity of the protest.

4. The Installation Commander (or Director CMC(MR), as appropriate) or designee will obtain the written advice of MCCS Counsel before deciding the appeal. The standard of review for the decision on the protest appeal is whether the contracting officer's denial of the protest was arbitrary, capricious, an abuse of discretion, or a violation of applicable law or regulation. The Installation Commander (or Director CMC(MR) as appropriate) must respond to the appeal in writing within thirty days of receipt.

7106. INVALIDATED AWARD. If a contract award is to be terminated as a result of the protest decision, or protest appeal decision, the contracting officer will seek a mutual agreement with the awardee to stop performance on a no-cost basis. Should this not be possible, a termination for convenience will be initiated.

7107. CONTRACT CLAIMS

1. Whenever a contractor requests a change in the terms of the contract, whether monetary or otherwise, the contracting officer will determine whether it is a claim or merely a routine request for contract modification. A claim is defined as 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 the contract. The process for resolving a claim is commonly referred to as "dispute resolution." Contractor claims must be submitted to the contracting officer per the claims or disputes clause contained in the contract. Upon receipt of a claim, the contracting officer will immediately forward a copy of the claim to MCCS Counsel. Before committing any funds to settle a claim, the contracting officer must obtain certification of additional funds from the requesting activity when the amount of available funds on the purchase request would be exceeded.

2. MCCS may also submit claims against the contractor. Prior to submitting any such claim, the contracting officer will coordinate with MCCS Counsel.

7108. DISPUTES

1. Disputes are a disagreement between the contractor and the contracting officer regarding the rights and obligations of the parties under a contract. It is the duty of the contracting officer to make every reasonable attempt, consistent with the provisions of the contract and good business practice, to resolve the dispute amicably without resort to the claims or disputes clause. The contracting officer will convene meetings or conferences as necessary and negotiate in good faith concerning the merits of the dispute and the respective positions of the parties. Due to the unique nature of the MCCS supporting both Exchange and MWR contracts, two different versions of the claims or disputes clause are used. The contracting officer will ensure the correct contract claims or disputes clause is included in the solicitation and resulting contract:

a. In disputes that are subject to the Contract Disputes Act of 1978, per reference (p), Title 41 Sections 7101-7109, 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.

b. In cases where the Contract Disputes Act of 1978 does not apply, the contracting officer's final decision in non-resale NAF procurements may be appealed to a level above the contracting officer who issued the decision or other designated authority.

2. Refer to the contract management system for current clause language. Contact MCCS Counsel for additional guidance.

7109. DISPUTE PROCEDURES

1. If attempts to resolve the dispute fail, the contracting officer will first request the contractor to state the facts of the dispute in writing with evidence substantiating the disputed amount. The contractor has the burden of establishing, to the satisfaction of the contracting officer, the amount proposed. The contracting officer will review all available facts pertinent to the dispute, and obtain the assistance of legal, technical, and professional experts. The contracting officer will render a final decision after an independent review of all relevant facts.

2. The contracting officer's decision must be in writing. It will include a statement of all facts sufficient to enable the contractor to understand both the decision and the basis for the determination. Normally, the decision will be in the form of a statement of the claim or other description of the nature of the dispute, with necessary references to pertinent contract provisions. It will include a statement of the relevant facts to which the parties agree and, as clearly as possible, the area(s) of disagreement. The contracting officer's statement will include his or her decision, and advise the contractor on the process to appeal the decision.

3. The contracting officer's decision on a dispute shall contain the following paragraph: "This is a final decision of the contracting officer which may be appealed in accordance with the disputes or claims clause of the contract. If you decide to make such an appeal, written notice of the appeal must be mailed or otherwise furnished to the contracting officer within 90 days from the date you received the final decision. Such notice should indicate it is intended as a "notice of appeal" and should cite this decision and identify the contract. If a notice of appeal is filed, it will be forwarded to the (insert address)." Insert the appropriate forwarding office based upon the claims or disputes clause included in the contract; see paragraph 7110 below.

4. The contracting officer's decision will be mailed to the contractor by certified mail, return receipt requested, or other equivalent method that provides delivery confirmation. Dispute decisions will be reviewed by MCCA Counsel prior to release to the contractor.

7110. APPEALS OF THE CONTRACTING OFFICER'S DISPUTE DECISION. Under the claims or disputes clause in the contract, the contractor may appeal the decision of the contracting officer. When the contracting officer receives a notice of appeal, he or she will indicate the date of mailing or the date of receipt, if otherwise conveyed, on the document. The contracting officer will forward the notice of appeal, together with an envelope showing the postmark, to the office identified in the contract claims or disputes clause. No comment concerning the appeal will be made on the cover letter. The contracting officer will forward a copy of the notice of appeal and letter of transmittal to MCCA Counsel.

1. In disputes that are subject to the Contract Disputes Act of 1978, the contractor may appeal the contracting officer's decision by mailing or otherwise furnishing to the contracting officer a written appeal addressed to the Armed Services Board of Contract Appeals (ASBCA) within 90 days, or filing an action in the United States Court of Federal Claims within 12 months, of receipt of the contracting officer's decision. The CDA appeal must follow specific instructions for submittal requirements, including: preparation of the appeal file, a comprehensive report, witness expense, action by the commander for appeals to ASBCA, and copies furnished. Coordinate with MCCA Counsel for submittal requirements and timelines.

2. In cases where the Contract Disputes Act of 1978 does not apply, the contractor may appeal the contracting officer's dispute decision by mailing or otherwise furnishing the written appeal to the appellate authority indicated by the claims or disputes clause included in the contract and furnishing a copy of the appeal to the contracting officer within 90 days of receipt of the contracting officer's decision. The decision of the level above the contracting officer or other designated authority, which should be made expeditiously, is final and not appealable.

3. If coordinated with MCCS Counsel prior to contract award, an Alternate Dispute Resolution (ADR) clause may be included in the contract.
4. The decision reached in the appeal (or ADR) process is final.
5. Pending final decision on an appeal in any dispute, the contracting officer will advise the contractor of his duty to proceed with contract performance and in accordance with the contracting officer's decision.
6. The contracting officer will document the result of all disputes and appeals, including the advice of Counsel and the basis for the contracting officer's decision, in a memorandum and retain in the contract file.

Chapter 7: Contract Administration

Section 2: Contract Termination

7200. TERMINATION OF CONTRACTS

1. Generally, MCCA contract clauses provide that contracts may be terminated for contractor default, MCCA convenience, or inactivation of installation or MCCA activity.

2. If included in the contract, MCCA contracts may also be terminated by written notice by either party to the other party within a designated period of time or by mutual consent of both parties. Refer to paragraph 7209.

3. Since termination of a contract may cause a lapse of service, a shortage of supply, or require a quick response by other MCCA offices, the contracting officer will notify appropriate offices of pending termination actions.

7201. CONTRACTOR DEFAULT. A contracting officer's major objective is to ensure that MCCA receives the goods or services required in the quality, quantity and at the time and place required. If a contractor does not comply with contract terms, it may be appropriate to terminate the contract for default. A contract may be terminated for default only after coordination with MCCA Counsel.

7202. CORRECTIVE ACTIONS PRIOR TO TERMINATION FOR DEFAULT. Minor operational deficiencies not amounting to a breach of contract which exist because of the contractor's failure to comply with contractual requirements, but do not seriously affect MCCA operations or patron service, should normally be resolved by oral requests to the contractor by the contracting officer or the MCCA representative responsible for the contract surveillance. At the option of the contracting officer, a warning letter may be issued.

7203. CURE LETTERS. When a contractor fails to comply with oral requests or warning letters and the frequency of noncompliance or the magnitude of contract deficiencies warrants additional action, the contracting officer will issue a cure letter.

1. A cure letter formally advises a contractor of specific failures to comply with the contract and requires corrective action within a specified time. If the contractor fails to cure the performance, normally the contracting officer will initiate termination action by issuing a show-cause letter.

2. Cure letters will reference the contract number, contract date, and describe the acts or omissions constituting the default and cite the contract clauses that have been breached.

3. Cure letters will not be issued to contractors when MCCA is participating in or issuing delivery orders against other NAF or appropriated fund contracts. The issuing NAF or appropriated fund contracting officer that issued the contract is the official responsible for issuing a cure letter in such an instance.

7204. SHOW-CAUSE AND FORBEARANCE LETTERS

1. If a contractor fails to cure performance, the contracting officer should issue a show-cause or forbearance letter. The show-cause and forbearance letters advise the contractor of the contracting officer's intent to terminate the contract for default unless the failure was due to causes beyond the control and without the fault or negligence of the contractor. Fires, flood, epidemics, quarantine restrictions, freight embargoes, strikes, and other events that preclude performance through no fault of the contractor are normally excusable reasons for nonperformance.

2. Show-cause and forbearance letters will reference the contract number, contract date, and describe the acts or omissions constituting the default and cite the contract clauses that have been breached. The show-cause and forbearance letters will require the contractor to respond in writing to the circumstances that caused the breach of contract.

3. For service contracts, if the contractor fails to cure the default within the period specified in the cure letter, the contracting officer may issue a letter of forbearance instead of a show-cause letter. The letter of forbearance will advise the contractor that if the contractor defaults again within the time specified (usually three months), the contracting officer will immediately issue a default termination at that time.

4. The contracting officer will seek guidance from MCCS Counsel prior to issuing show-cause or forbearance letters.

7205. TERMINATION FOR DEFAULT. When termination for default is appropriate, the contracting officer normally will issue a Notice of Termination for Default. The termination notice will:

1. Include the contract number and contract award date.

2. Describe the acts or omissions constituting the default and cite the contract clauses that have been breached.

3. Cite the fact there has either been no reply to the cure letter, show-cause letter or forbearance letter, or that the contractor has failed to show the default was beyond their control and without fault or negligence.

4. Establish a definite termination date.

5. The contracting officer will obtain from the MCCS accounting office the amount of any debts due MCCS and coordinate with Counsel and other contracting officers regarding collection of this debt from the contractor's operation(s) at other MCCS activities.

6. Other factors to consider include the previous payment of any advance or progress payments, costs on undelivered work, profit on uncompleted items, and re-procurement costs.

7. In revenue-generating patron service, concession, or vending contracts, the contracting officer will coordinate with Counsel regarding exercising MCCS's contractual right to take possession of the contractor's equipment on the installation to satisfy these debts.

7206. LEGAL REVIEW AND PROCESSING. The contracting officer will coordinate cure, show-cause, forbearance and termination actions, and withdrawal of termination letters, with MCCA Counsel. On coordination with Counsel, cure and show-cause letters may be dispensed with, or a combination of cure and show-cause letters may be issued.

7207. TERMINATION FOR CONVENIENCE

1. Terminations for convenience are normally used when the MCCA no longer has a need for the supplies or services under contract. The termination for convenience provides for an equitable adjustment to the contractor for work already performed. It does not entitle a subcontractor to a claim against the MCCA.

2. In the event a contract must be terminated for convenience of the MCCA, the contracting officer will attempt to terminate the contract on a no-cost basis to either party. If this is not possible, the contractor will be required to submit a settlement request to the contracting officer in writing. A settlement should compensate the contractor fairly for the work done and the preparations made for the terminated portion of the contract, if any, and profit on completed work. If an equitable adjustment cannot be negotiated, the contracting officer will make a final decision concerning the settlement request, in writing, and provide this to the contractor in a timely manner. Any dispute arising as a result of this process will be resolved using the Disputes process.

3. As a general rule, a Termination for Convenience may not be used to terminate a defaulting contractor, nor be immediately followed by a new contract for the same requirement.

7208. TERMINATION BASED ON INACTIVATION. When a contract is terminated based on inactivation of an installation or MCCA activity, normally the contracting officer will advise the contractor in writing at the earliest possible date of termination. The letter will cite the clause that provides for termination of the contract because of inactivation of the installation or MCCA activity and the date of termination.

7209. ALTERNATE TERMINATION METHODS

1. Mutual Termination. Contracts may be terminated by mutual consent via a bilateral modification to reduce the requirement and revise the contract end date.

2. Notice termination. A contract may be terminated by MCCA or the contractor by written notice to the other party within the specified notice period, provided this termination clause is included in the contract. The specified time period is normally 30 to 90 days, so that the MCCA may have time to negotiate a new contract.

a. Upon receipt of a notice termination, the contracting officer will acknowledge the notice in writing, clearly establish the time and date of termination, and direct other action as appropriate.

b. If notice is not provided in writing or within the specified time period, and the contractor pursues termination, the contract may be in default.

7210. CONTRACTOR CLAIMS IN CONJUNCTION WITH TERMINATION. Termination of a contract is not in itself a final decision on a contractor claim. If, after a termination notice is received, a contractor requests monetary or other relief, the contracting officer will coordinate appropriate action with MCCS Counsel.

7211. RELEASE OF CLAIMS. MCCS will obtain a Release of Claims, which absolves the MCCS from further contractor claims, as part of all termination actions. Consult MCCS Counsel for additional guidance.

7212. CONTRACT CLOSEOUT

1. Contracts shall be closed out in a timely manner and maintained in a filing system in accordance with paragraph 2009. Contract files will not be closed if a contract is in litigation or under appeal, or if a termination is involved and the termination actions are not completed. Contracts are considered to be closed when all of the following conditions have occurred:

- a. The contractor has completed the required deliveries and the equipment or supplies have been accepted by the MCCS.
- b. The contractor has performed all services, including warranty work, and they have been accepted by the MCCS.
- c. All option provisions, if any, have expired, or MCCS elects not to exercise option provisions.
- d. Final payment has been made.

2. Upon contract close-out, CORs must forward files to the contracting officer for retention with the official file.

3. If outsourcing for contract closeout services, the MCCS shall use the mandatory AbilityOne Contract Close-Out Support Services Indefinite Delivery/Indefinite Quantity (IDIQ) contract; refer to www.acq.osd.mil/dpap/policy/policyvault/USA005132-10-DPAP.pdf.

7213. ELECTRONIC SYSTEM CLOSEOUT. In compliance with retention standards per paragraph 2009, completed procurement actions in the electronic procurement system will be closed-out and cancelled so the records are purged from the system.

Appendix A

Definitions

Agency Contract - In an agency contract, MCCS acts for or represents the contractor in a transaction with the customer. Refer to paragraph 5320.

Basic Ordering Agreement (BOA) - a written instrument of understanding negotiated between the MCCS and contractor that contains terms and clauses applying to future contracts between the parties, a description of items or services, and methods for pricing, issuing, and delivering future orders against the agreement. The BOA itself is not a contract.

Best Value - The expected outcome of a procurement that, in the NAFFI's estimation, provides the greatest overall benefit in response to the requirement.

Best Value Procurement - a negotiated procurement using one or a combination of source selection approaches with a "best value continuum" where the relative importance of cost or price may vary. Two specific techniques are (1) Tradeoff Process and (2) Lowest Price Technically Acceptable (LPTA). The term "Best Value" was previously used synonymously with Tradeoff Process.

Tradeoff Process - This process is appropriate when it is in the interest of the MCCS to consider award to other than the lowest price offeror or the highest technically rated offeror. All evaluation factors and significant sub-factors that will affect contract award and their relative importance shall be clearly stated in the solicitation; and the solicitation shall state whether all evaluation factors other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price. This process permits tradeoffs among cost or price and technical (non-cost factors) and allows the MCCS to accept other than the lowest priced proposal. The perceived benefits of the higher priced proposal shall merit the additional cost, and the rationale for tradeoffs must be documented in the Justification for Award memorandum.

Lowest Price Technically Acceptable (LPTA) - The LPTA source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price. The evaluation factors and significant sub-factors that establish the requirements of acceptability will be stated in the solicitation. Solicitations will specify that award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for technical (non-cost) factors. Past performance may be included as an evaluation factor. In making the award decision, tradeoffs are not permitted; proposals are evaluated for acceptability but not ranked using the non-cost/price factors.

Blanket Purchase Agreement (BPA) - a bilateral agreement establishing terms and conditions that apply to future orders placed against the BPA. The BPA may be priced or unpriced, and may either spell out specific items to be purchased or identify broad categories of items or services. Billing is usually monthly versus after each call. The BPA is not a contract, and does not obligate the MCCS to purchase. BPAs are used when there are regular reoccurring actions with a vendor. This reduces the amount of paperwork; thereby costs, to the procurement office. Calls against BPAs exceeding the competition threshold must be competed.

Competition Threshold - the MCCA NAF competition threshold is \$5,000.

Concession Contract - grants the concessionaire the right to sell a particular type of item or to provide a specific service in a designated location for a specific period of time.

Consignment - contractor retains title to purchased merchandise until it is sold. Title first passes to MCCA and then to the customer at the time of sale. MCCA pays the contractor for the quantities sold. Applicable to resale contracts.

Construction Contract - a contract with a commercial concern for the design, construction, or renovation of facilities. MCCA NAF construction requirements above \$2,000 may be accomplished by the MCCA contracting officer only as appointed with construction warrant authority.

Delivery Order - an order for items placed against an established contract (e.g. GSA contract, AFNAFPO contract) or with a government source. When placing a delivery order against an existing contract, reference that contract number on the order. The Terms and Conditions/Clauses of the established contract are applicable to the delivery order.

Direct Delivery Agreement (DDA) - a bilateral agreement that establishes pricing for a designated period of time on specific products and services to be delivered according to a delivery frequency that may be designated in the agreement. No specific quantity or dollar limits are established in the agreement as the vendor will automatically send their delivery truck to an activity to replenish product. Contractor invoices monthly. Primarily applies to consumable retail or resale merchandise.

Exchange - Refer to references (m) and (q).

Guaranteed Sales - MCCA receives the merchandise into inventory and the contractor agrees to accept returns for credit all unsold quantities after a set period. Applicable to resale contracts.

Imprest Fund - also called petty cash fund - a cash fund of a fixed amount, controlled by a designated custodian, used as needed to make payments in cash for relatively small amounts.

Indefinite Delivery Contracts - there are three different types of indefinite delivery contracts. All allow MCCA stock to be maintained at minimum levels, with direct shipments upon placement of delivery orders.

Indefinite Delivery/Definite Quantity (IDDQ) - provides for delivery of a definite quantity for a fixed period of time, with established prices, and with deliveries or performance upon issuance of an order.

Indefinite Delivery/Indefinite Quantity (IDIQ) - provides for an indefinite quantity for a fixed period of time, with fixed prices, and with deliveries or performance upon placement of orders against the contract. A minimum quantity is usually specified which obligates the MCCA.

Requirements - the MCCA promises to purchase all requirements for a specified supply or service from the designated contractor at established prices, for a specified period of time, with deliveries or performance upon issuance of orders against the contract.

Individual Service Contract (ISC) - a non-personal services contract where payment is made on a per job or per student/patron basis. ISCs are for temporary or intermittent requirements of less than one year; examples include arts and crafts or aerobics instructors.

Memorandum of Agreement (MOA) - Memorandums that define general areas of conditional agreement between government agencies or between MCCA activities where what one part does depends on what the other party does (e.g., one party agrees to provide support if the other party provides the material or funds). MOA's should define the support, basis for reimbursement, billing and payment process, and other terms and conditions of the agreement.

Memorandum of Understanding (MOU) - Memorandums that define general areas of understanding between government agencies or between MCCA activities that explains what each party plans to do; however, what each party does is not dependent on what the other party does (e.g., does not require reimbursement or other support).

Micro-Purchase Threshold - For NAF procurement administrative purposes, policy or contract clauses that refer to the micro-purchase threshold will use the dollar amount as defined in reference (r), Part 2.101, which is currently \$3,000.

Military Morale, Welfare, and Recreation (MWR) Programs - Military programs, defined per reference (w), located on DoD installations or on property controlled (by lease or other means) by a Military Department or furnished by a DoD contractor, that provide for the mission sustainment, community support, and revenue generating programs for authorized personnel.

Nonappropriated Fund Purchase Card - a purchase card issued to authorized personnel to use to acquire items and services within stated limits.

Options - a unilateral right by which, for a specified period of time, the contracting officer may elect to purchase additional items or services, or extend the term of the contract. Options shall not be used to circumvent the competition requirement.

Purchase Order (PO) - an offer by the Government to purchase which, if accepted by the contractor, becomes a contract. Normally unilateral but can also be bilateral if required. Clauses are attached to, or printed on reverse of, order.

Request for Proposal (RFP) - a more formal solicitation issued when there is an intention to award, and the need dictates the use of detailed specifications or statement of work, clauses, and evaluation criteria. A proposal in response to a RFP can be accepted by the MCCA to form a contract.

Request for Quote (RFQ) - a simplified way to obtain competition. Can be a form, letter, issued by mail, facsimile or e-mail, or obtained verbally. The request for quotation is not an offer to purchase, and does not bind the quoter to perform.

Requesting Activity - the activity, office, branch or division that has a need for supplies or services. Other terms for Requesting Activity: Requesting Branch, Requestor, Requiring Activity, Requisitioner, Program Office, Program Point of Contact, etc.

Revenue Generating Contract - contractor pays a fee (dollar amount or percentage of sales) to the MCCS.

Service Contract - a non-personal contract that engages the time and effort of a contractor to perform an identifiable task rather than to furnish an end item of supply. Used to obtain services from either professional or nonprofessional personnel on either an individual or an organizational basis.

Short Term Commodity Contract - a noncompetitive concession contract for the display and sale of merchandise from temporarily assigned space.

Simplified Acquisition Threshold - For NAF procurement administrative purposes, policy or contract clauses that refer to the simplified acquisition threshold will use the dollar amount as defined per reference (r), Part 2.101, which is currently \$150,000.

Single Source Procurement - Multiple sources could provide the goods or services, but the requiring activity has a justified need for obtaining the goods or services from a particular single source. Refer to paragraph 6005.

Sole Source Procurement - Goods or services are available from only one sole source. Refer to paragraph 6005.

Task Order - an order for services placed against an established contract (e.g. GSA contract, AFNAFPO contract) or with a government source. The Terms and Conditions/Clauses of the established contract are applicable to the task order.

Unpriced Purchase Order - an order where price is not established at time of award. Used when not practical to obtain pricing in advance (e.g. repairs). A monetary limit is used which cannot be exceeded without approval. The monetary limit is an obligation subject to readjustment when price is established.

Vending Contract - Vending contracts are revenue-generating contracts where the contractor stocks the items to be vended and MCCS may rent or own the machines. Refer to paragraph 5319.