

SECTION II

AGENCY ARRANGEMENT

1. The NAPMO hereby appoints the USG as its exclusive general agent with responsibility and authority to procure and manage the aircraft and engine, modernization efforts and related support services portions of the NATO E-3A programme (as specifically defined in Appendix 2) in accordance with the terms of this Agreement as it may be amended from time to time. For this purpose, the general relationship between the NAPMO and the USG shall be that of principal (the NAPMO) and agent (the USG).<sup>1</sup>

This Section states in full the arrangements for the USG to act as NAPMO's agent and, as such, is intended to exclude additional or different obligations that might result from the application of national laws or principles of international law pertinent to principal-agent relationships. It is recognized that the NAPMA General Manager is required to perform executive management of all aspects of the NATO AEW&C Programme. In order to facilitate this function, the USG, as agent, will, after consultation and in concurrence with the General Manager,<sup>2</sup> implement all major decisions and directions for the program. The appointment of the USG includes the authority to:

- (a) negotiate, enter into and administer contracts for and in the name of the NAPMO under the most advantageous terms and conditions available, consistent with DOD regulations and procedures except where this arrangement specifically provides otherwise;

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<sup>1</sup> SAF/AQI is understood to be primary agent and initial point of contact.

<sup>2</sup> For the case of contractor commitment documentation, NAPMA shall on a timely basis be given the opportunity to review these prior to their implementation. It is understood that given timely notification contractual commitments will not be implemented in the event of NAPMA or USG agent disagreement relative to the following

- (b) manage such procurement actions for the NATO E-3A programme concurrently and in parallel with the US and other E-3 programmes, recognizing that the overall goals of all programmes are in consonance;
- (c) as herein authorized by the NAPMO, obligate and expend NAPMO funds for contracts entered into as agent for the NAPMO;
- (d) within the limits of the approved operational, technical and financial elements of the programme, perform other acts not specifically mentioned herein which are necessary to the accomplishment of this programme;
- (e) redelegate, within USG channels, the authorities necessary and proper for the above purposes. The NAPMO will be kept fully informed of all redelegations.

In its function as agent, the USG will apply the same care as would be used in procuring and managing for itself. The provisions of Section V, para 2 of the MMOU, as addended, apply.<sup>3</sup>

## 2. The USG

- (a) will appoint contracting officers as appropriate to perform the functions described in paragraph 1. Such contracting officers shall be the only persons empowered to negotiate, enter into, administer and manage the contracts on behalf of and in the name of the NAPMO within the authority delegated herein. The following shall apply to these contracts:

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(until resolved as a matter of urgency by higher NATO authority): Price, schedule, performance, or consistence with respect to the NAPMO Charter, the MMOU, as addended, or the Acquisition Agreement.

<sup>3</sup> Subject to agreement by all participating governments to Section V, paragraph 2 of the MMOU, as addended, and legislative approval stated in Section V, paragraph 4 of the MMOU, as addended.

- (1) Each such contract shall stipulate that the rights, duties and obligations of the parties as set forth therein shall be interpreted, settled and determined according to the law of the United States as commonly applied to DOD procurements.
- (2) The parties to the contracts will be the particular contractor and the NAPMO. The USG will not be a party to the contracts, nor will US appropriated funds be obligated by the contracts.
- (3) The USG as agent will use DOD procurement regulations and existing DOD negotiating procedures in effecting such procurements as appropriate.
- (4) The terms and conditions in such contracts will, in substance, be those used in USG DOD contracts modified as appropriate. The "Disclosure and Consistency of Cost Accounting Practices" clause (FAR 52.230-3) and the "Administration of Cost Accounting Standards" clause (FAR 52.230-6) shall as a matter of sound accounting and fiscal policy, be included in all contracts with US contractors and US subcontractors but clauses shall be modified so as not to require flow-down to subcontractors in Euro-Canadian countries. Likewise, there will be omitted from such subcontracts those clauses used in the USG DOD contracts which reflect social or economic policies of the USG that are not germane or appropriate to contracts with Euro-Canadian contractors.

- (5) Each such contract shall contain a clause specifically recognizing the contractor and the NAPMO as the only parties to the contract and specifically stating that the USG and its employees will enter into same only as agent for NAPMO and specifically excluding any financial liability whatsoever on the part of the USG, its officers, agents and employees arising from, or in connection with, such contract.
- (6) Each such contract shall stipulate that the ownership of, the legal title to, the risk of loss of, and all property rights in the subject matter of such contract shall pass directly from the contractor to NATO and shall not vest at any time in the USG, as agent.
- (7) Each such contract shall contain the NATO standard arbitration clause, and in this regard, the USG is authorized to include a provision appointing the Armed Services Board of Contract Appeals as the agreed arbiter in the event of disputes.
- (8) All interface concerning these contracts with prime and all subcontractors will be through the USG. All correspondence with such contractors concerning these contracts will be signed by the appropriate contracting officer or his designated representative. Direct contact with these contractors by the NAPMO or participating governments or their personnel concerning these contracts will require specific approval of the

USG contracting officer; special arrangements for the NAPMO may be made by mutual agreement between the USG and the NAPMO.

- (9) Each such contract will contain a clause stipulating that termination of any part of the contracts is to be accomplished by the contractor in the most economical manner to the NAPMO.
- (b) Will provide contract administration services and other services in regard to the contracts including the following:
- (1) Contract administration services including auditing, accounting, budgeting, price analysis, management analysis, program control, and computer programming;
  - (2) Engineering and technical services, quality assurance, inspection, test and evaluation;
  - (3) Government test facilities as required on a non-interference basis;
  - (4) Government-owned tools and equipment operated by the contractors on a non-interference basis;
  - (5) Storage, transportation, packaging, crating, handling of material and technical documentation.
- (c) Will provide and/or participate in periodic reports of a type and quality essentially equivalent to the program assessment review used within the USAF. Such reports will be provided to a level of NATO management and at times and places to be specified by the NAPMO. The USG will provide and/or participate in other

reports, discussions, meetings, or conferences, written and verbal, formal and informal, as required by the NAPMO; and will immediately notify appropriate NAPMO representatives of any occurrence, fact, condition or other item that may affect efforts performed under this arrangement with respect to performance, cost or schedule.

- (d) Will, unless for particular end items the NAPMA General Manager specifically requests that his prior concurrence be obtained, make final acceptance of contract end items for and in the name of the NAPMO, and provide for delivery of the same to the NAPMO in accordance with terms, conditions and schedules of this Agreement.
- (e) Will include economic price adjustment provisions in the contracts to provide for adjustments in contract price to cover economic escalation over and above that economic escalation contained in the initial contract price.
- (f) Will provide contract administration services, including quality assurance services, at an installation and checkout contractor and at Euro-Canadian subcontractors if adequate participating government services are not available in time to meet the contract schedules. In either event, available personnel of the participating governments will assist the USG staff.
- (1) When quality assurance is needed for Euro-Canadian contracts and adequate participating government services are available in time to meet

the contract schedules, the USG will request such services in accordance with STANAG 4107.

- (2) Representatives designated by the contracting officer may participate in such quality assurance services when necessary to attain consistent contract interpretations or to otherwise achieve effective programme implementation. Representatives of the USG may also provide other forms of contract administration support not available from the participating governments. The activities of these representatives will be governed by explicit terms of reference agreed to by the affected participating governments.
- (3) Allied Quality Assurance Publication 1, the contractual quality programme specification, may be supplemented by the USG.
- (g) With respect to items being procured, and upon timely notice, will attempt to the extent possible to obtain any particular or special contract provision desired by the NAPMO.

### 3. The NAPMO:

- (a) Agrees to provide the USG such amounts and at such times as specified in forecasted USG monthly billing statements in order to meet payments required by contracts under which articles and services are being procured. Should billings exceed the forecast, the NAPMO shall provide the necessary additional funding as delineated in the MMOU, as addended. USG requests for funds are to be based

upon cumulative deliveries plus financial forecasts for the next month less cumulative collections. Such funds will be made available prior to the beginning of each month during which the USG makes payments on behalf of the NAPMO.

- (b) May request from the USG documentation concerning progress payment(s) or evidence of constructive delivery or shipment in support of USG requests for funds or billings. Such requests for data will not affect the NAPMO's obligation to make such payment(s) when due.
- (c) Agrees to make funds available for paying contract costs in accordance with the following:
  - (1) Timely payment(s) for the articles and services will be made by check(s) or wire transfer in US dollars to designated accounts.
  - (2) Payments to contractors will be authorized by the contracting officer upon receipt of appropriate contract administration review and certifications.
  - (3) The NAPMO is liable for all costs under these contracts.
- (d) Agrees to bear the financial responsibility of funding any changes required by the contract provisions. These changes shall be as determined by the USG in contractual negotiations with the contractor(s) and with the cooperation of the NAPMO.
- (e) Will bear all financial consequence of failing to meet the payment due dates specified in the forecasted USG monthly billing statements including any resulting termination costs. Failure of the NAPMO to provide such funds when

and as required may be a basis for the USG to issue stop work orders. The NAPMO will pursue, where possible, alternative funding.

- (f) Agrees to bear all financial consequences resulting from stop work orders. It is understood that only in unusual and compelling circumstances where the USG deems it in the best interest of the NATO AEW&C Programme will the USG issue a stop work order prior to obtaining concurrence of the NAPMO.
- (g) Will pay all U.S. dollar payments in accordance with paragraph 3.(a) and (c) (1) above. The NAPMO will pay all non-U.S. dollar payments with the currencies of participating governments for Euro-Canadian subcontractors in their national currencies.
- (h) Will use the items sold under the contracts only for the purposes specified in the North Atlantic Treaty and the NATO AEW&C MMOU, as addended, and will not transfer title to, or possession of, the articles, components and associated support material, related training or other services (including any plans, specifications or information), or technology furnished under Appendix 2 of this Agreement to anyone not an officer, employee, or agent of NATO (excluding transportation agencies) and whose governing authority is not a NATO nation, and will not use or permit their use for purposes other than those authorized, unless the written consent of the United States Department of State, Office of Defense Trade Controls has first been obtained. For the purposes of this paragraph, personnel of participating Governments and the personnel of NATO military headquarters

exercising operational control or command of the NATO E-3A are deemed to be agents of NATO. To the extent that any items, plans, specifications, or information furnished in connection with this Agreement can be classified by the USG for security purposes, the NAPMO will maintain a similar classification and employ all measures necessary to preserve such security in accordance with NATO document C-M(55)15(Final), dated 31 July 1972, entitled "Security within the North Atlantic Treaty Organization" and its amendments. The USG will use its best efforts to notify the NAPMO if the classification is changed. The NAPMO will ensure, by all means available to it, respect for proprietary rights in any article and any plans, specifications, or information furnished, whether patented or not.

- (i) Agrees that all equipment and components of the NATO E-3A system which are to be manufactured in Europe or Canada under a subcontract to the Prime Contractor must be equivalent to the equipment and components manufactured in the US to ensure the following:
  - (1) Complete interchangeability of all spares and components.
  - (2) Compatibility of all common US E-3 technical data.
  - (3) Compatibility of all common and peculiar US E-3 ground support equipment.
- (j) Will assist when requested in the provision of European and Canadian government facilities and services relative to European and Canadian

subcontractors. Such facilities and services may, as required, include base, supply, maintenance and test facilities, auditing, quality assurance and inspection.

- (k) Will take possession of delivered systems at the time and place such systems are actually delivered by and accepted from the contractors.
- (l) Will be responsible for intransit accounting and settlement of claims against common carriers after title has passed.

#### 4. Configuration Management

Configuration Management will be as stated in Section I.

#### 5. Disputes/Controversies

In the event of a dispute under this Section, the parties hereto agree to negotiate the matter in good faith at the lowest practical level. If such negotiations fail to resolve the issue within a reasonable time, the issue will then be referred to the NAPMO Board of Directors (BOD). During the pendency of any proceedings under this paragraph, the USG is authorized to take whatever action is deemed appropriate to minimize adverse impact and/or costs to both USG and NATO E-3 programmes.