

<b>SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS</b> <i>OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, AND 30</i>				1. REQUISITION NUMBER FOXBIN22390100		PAGE 1 OF 2				
2. CONTRACT NO. FA3010-04-S-0001		3. AWARD/EFFECTIVE DATE 30-Oct-2003		4. ORDER NUMBER		5. SOLICITATION NUMBER		6. SOLICITATION ISSUE DATE		
7. FOR SOLICITATION INFORMATION CALL:		a. NAME				d. TELEPHONE NUMBER (No Collect Calls)		8. OFFER DUE DATE/LOCAL TIME		
9. ISSUED BY 81ST CONTRACTING SQUADRON SONIA RUSHING 310 M STREET, RM 102 KEESLER AFB MS 39534-2147  TEL: 228-377-1806 FAX: 228-377-3298		CODE FA3010		10. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED <input type="checkbox"/> SET ASIDE: % FOR <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> SMALL DISADV. BUSINESS <input type="checkbox"/> 8(A)  SIC: SIZE STANDARD:			11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE  <input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)  13b. RATING  14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input type="checkbox"/> RFP		12. DISCOUNT TERMS	
15. DELIVER TO  <b>SEE SCHEDULE</b>				16. ADMINISTERED BY  <b>SEE ITEM 9</b>						
17a. CONTRACTOR/ OFFEROR MAX MUSCLE GAUTIER LLP TOM OWENS P.O. BOX 718 GAUTIER MS 39553  TEL. 228-497-9895		CODE		18a. PAYMENT WILL BE MADE BY INCOME NO PAYMENT WILL BE MADE BY THE GOVERNMENT KEESLER AFB MS 39534						
17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER		FACILITY CODE		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a. UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM						
19. ITEM NO.		20. SCHEDULE OF SUPPLIES/ SERVICES			21. QUANTITY		22. UNIT	23. UNIT PRICE	24. AMOUNT	
		<b>SEE SCHEDULE</b>								
25. ACCOUNTING AND APPROPRIATION DATA <b>See Schedule</b>							26. TOTAL AWARD AMOUNT <b>\$2,400.00</b>			
27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3, 52.212-5 ARE ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED										
27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-5 IS ATTACHED. ADDENDA <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED										
28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED HEREIN.				COPIES		29. AWARD OF CONTRACT: REFERENCE <input type="checkbox"/> OFFER DATED . . . YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:				
30a. SIGNATURE OF OFFEROR/CONTRACTOR				31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)			31c. DATE SIGNED 30-Oct-2003			
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT)		30c. DATE SIGNED		31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT) REGGIE E. TEMPLE / FLIGHT B, TEAM B LEADER TEL: 228-377-1817 EMAIL: reggie.temple@keelser.af.mil						
32a. QUANTITY IN COLUMN 21 HAS BEEN <input type="checkbox"/> RECEIVED <input type="checkbox"/> INSPECTED <input type="checkbox"/> ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED				33. SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL		34. VOUCHER NUMBER		35. AMOUNT VERIFIED CORRECT FOR		
32b. SIGNATURE OF AUTHORIZED GOVT. REPRESENTATIVE		32c. DATE		36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL			37. CHECK NUMBER			
41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT				38. S/R ACCOUNT NUMBER		39. S/R VOUCHER NUMBER		40. PAID BY		
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER		41c. DATE		42a. RECEIVED BY (Print)						
				42b. RECEIVED AT (Location)						
				42c. DATE REC'D (YYMM/DD)		42d. TOTAL CONTAINERS				

AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 1449 (10-95)  
Prescribed by GSA  
FAR (48 CFR) 53.212

Section SF 1449 - CONTINUATION SHEET

ITEM NO	SUPPLIES/SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT
001		12	Months		

Nutrition Center at Blake Fitness Center  
 FFP – this is a concessionaire contract to provide a nutrition center at Blake Fitness Center on Keesler AFB, MS. The vendor shall perform Services in accordance with Article I thru Article IV.  
 PURCHASE REQUEST NUMBER: FOXBIN22390100  
 SIGNAL CODE: A

ACRN AA Funded Amount

**CONTRACT DOCUMENTS, EXHIBITS, OR ATTACHMENTS**

ATTACHMENT 1	Statement of Work	1 Nov 03	2 Pages
ATTACHMENT 2	Concessionaire Contract	1 Nov 03	13 Pages
ATTACHMENT 3	Wage Determination No. No 994-2301	05/30/03	9 Pages

Exhibit/Attachment Table of Contents

DOCUMENT TYPE	DESCRIPTION	PAGES	DATE
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## CONCESSIONAIRE CONTRACT FORMAT

**Contract No.FA3010-04-S-0001**

### ARTICLE I:

That:

1. This Concessionaire contract by and between the Blake Fitness Center hereinafter referred to as the NAFI, and Max Muscle Pro Shop, hereinafter referred to as the Concessionaire, is for the Concessionaire to provide sports drink beverages, protein bars, health snacks, vitamin supplement products, and light accessories (gloves, wrist and knee wraps to authorized patrons at assigned space at Keesler AFB, MS for a period of 12 months, beginning 01 Nov 03 and ending 31 Oct 04 . The hours of operations of this concession will be the same as those of the NAFI where the Concessionaire has been assigned space or as specified in writing by the Contracting Officer. The Concessionaire will be responsible for maintaining/providing the following:

- a. All cabinets, counter tops, signs, bar stool, etc..
- b. All plumbing and electrical needs required inside of the unit to operate equipment, but will not be responsible for any plumbing and electrical brought up to the unit.
- c. All equipment associated with operating the Nutrition Center and shake/juice bar.
- d. Concession items such as nutritional products, specialty clothing (aerobic wear, workout clothing, body building gear, belts, straps, wraps, etc.), vitamins herbs beverages, food, low fat snacks.
- e. Nutritious shakes prepared on site. Shakes will contain fresh fruits, meal replacement powders, water, etc., but will not include any dairy products.
- f. Stocking all vending machines (Except for AAFES machines) within the center with sodas, juices, waters, etc. NOTE: The contractor will be given exclusive rights to all concessions sold inside the Fitness Center including but not limited to beverages, food, clothing, nutritional products and vitamins.
- g. Provide a limited number of vitamins and supplements.
- h. Keeping the unit open a minimum of (60) hours a week, six or seven days a week, depending on traffic count. Will be open for additional hours as long as Fitness Center's daily traffic count justifies it.

2. Concessionaire will pay the NAFI a fee in the amount of xx. Payment of fees due to NAFI must be made monthly, no later than the 5<sup>th</sup> workday of each month.

### ARTICLE II. The Concessionaire must:

1. Provide products or services of a quality satisfactory to the NAFI manager or his or her duly authorized representative.
2. Before beginning performance under this agreement, the Concessionaire will submit a listing of items, with corresponding selling prices, to the Contracting Officer for approval or disapproval action. The final approved listing is considered part of this agreement. Place the price list in a conspicuous spot for patrons to see.
3. At Concessionaire's expense, obtain all permits, give all necessary notices; pay all license fees; and comply with all municipal, perfectural, and national laws, rules, ordinances, and regulations, and any publication published by the military relating to public health or applicable to the business carried on under this agreement and assume complete and sole liability for all national, state, and local taxes applicable to the property, income, and transactions of the concession.
4. Comply with all applicable laws pertaining to wages, worker's compensation, equal opportunity, Service Contract Act, and so forth, as implemented by Air Force directives and required by law.
5. Comply with all memoranda, bulletins, and letters of instruction issued by or in behalf of the NAFI manager or their duly authorized representative.
6. Keep the concession area clean, orderly, attractive, secure, and in a safe and sanitary condition to the satisfaction of the NAFI managers.
7. Employ only persons who meet the health standards prescribed by law or regulations which pertain to the jobs for which they are hired.
8. Furnish a sufficient number of trained employees for the efficient performance of this Concessionaire contract. Concession personnel must meet the health and security standards prescribed by applicable regulations, and must obtain installation passes and permits and security clearances as applicable. Concession personnel must give prompt and courteous treatment to authorized customers. Concession personnel must be neatly dressed and meticulous in their personal grooming at all times. Concessionaire provides employees clean uniforms or, when uniforms are not required, ensures that all clothing worn by employees is clean and in good condition at all times. A nameplate must be worn.
9. Remove from employment in the concession, on the request of the NAFI manager, any servant, agent, or employee of the Concessionaire if, in the opinion of the NAFI manager or their duly authorized representative, the conduct of such person, while in and about the premises covered by this contract interferes with proper services or discipline.
10. Obtain insurance for all non-government property and merchandise used by the Concessionaire in the operation of the concession against theft, fire, storm, flood, and damage, or destruction through any other force of nature; or in lieu thereof, to relieve the NAFI from any liability arising from such theft, loss, damage, or destruction. The Concessionaire must have liability insurance commensurate with the risks involved, and furnish proof of such to the Contracting Officer.
11. Not leave cash on the premises during non-operational hours.
12. Be responsible for paying all operating expenses not expressly undertaken by the NAFI.

ARTICLE III.

Concessionaire will not:

1. Represent or permit itself to be represented to the public as an agent or employee of the NAFI by the use of the name of the NAFI on letters, bills, signs, or by any other means. The Concessionaire, its servants, agents, and employees, are in no sense agents of the United States, the NAFI, the commander of the installation within which the concession exists, or of any other entity having to do with the operations of the NAFI.
2. Sell or remove any property which is owned by the NAFI or any other part of the Federal Government and is used in the operation of the concession.
3. Engage in or permit gambling or possession or use of any gambling device on the concession premises or elsewhere on the installation.
4. Sell, deal in, or otherwise possess or transfer, on the concession premises, any form of intoxicating liquors or narcotics.
5. Loan money to or borrow money from customers or others, which includes Federal Government (including NAFI) employees and military personnel.
6. Sell merchandise or services for anything other than US currency, unless authorized in writing by the Contracting Officer.
7. Sell merchandise or services on credit.
8. Give or offer to any officer or employee of the NAFI, or any other part of the Federal Government, any gift, privilege, special benefit, discount, or anything else of material or personal nature whereby the individual or employee would receive preferential treatment.

ARTICLE IV:

That:

1. Air Force Auditor General personnel, or any person designated by the installation commander, will have the right to inspect or audit the accounts and methods of internal control established by Concessionaire, and to make such inspection or audits as may be considered necessary to ensure strict compliance by Concessionaire with all provisions of this contract and with applicable Air Force regulations.
2. This contract, unless sooner terminated as herein provided, may be extended for additional periods, each of which may not exceed 12 months by mutual agreement of the parties in writing, subject to approval in the same manner as this instrument. In no event will the period of performance exceed five (5) years. This contract is automatically terminated in the event the NAFI is dissolved.
3. Any monies due and payable to the NAFI from the Concessionaire on the date of this contract must be paid in full or will remain due and payable until final settlement.

CONTRACTUAL CONTENTS: This contract consists of the following documents:

Attch 1 - Concessionaire Contract/Special Provisions/Clauses	Pages 1 thru 12
Attch 2 - Stament of Work (SOW)	Pages 1 thru 2
Attch 3 - Wage Determination No. 94-2301 Rev No. 21 Dtd 05/30/03	Pages 1 thru 9

FOR THE NAFI:

FOR THE CONCESSIONAIRE:

\_\_\_\_\_  
Signature of Contracting Officer

\_\_\_\_\_  
Signature of person authorized to sign contract

\_\_\_\_\_  
SSAN

REGGIE E. TEMPLE

\_\_\_\_\_  
Type or print name

\_\_\_\_\_  
Type or print name

310 M Street Bldg 4605 Room 102  
Keesler AFB MS 39534-2147

\_\_\_\_\_  
Address and phone number/Date

\_\_\_\_\_  
Address and phone number/Date

## SPECIAL PROVISIONS

### (CONCESSIONAIRE CONTRACT)

1. **Additional Definitions.** The terms Concessionaire and Contractor are used synonymously and mean the individual, partnership, corporation, or other entity which is a party to this contract and who is responsible for all actions and applicable regulations and performance hereunder.
2. **Termination:** Notwithstanding the clause titled "Termination for Convenience" of the General Provisions relative to termination of this Concessionaire contract, it is mutually agreed that this Concessionaire contract may be terminated in whole or in part by either party:
  - a. Immediately on written notice to the other party in the event of breach of this Concessionaire contract by the other party.
  - b. On 1-day notice in writing to the other party. No liability ensues to either party for terminations rendered pursuant to this subparagraph b.
3. **Actions To Be Taken Upon Termination (Including Expiration).** Concessionaire will promptly settle its account with the NAFI, including payment in full of all amounts due, yield up the facilities and all NAFI furnished property, clean and leave premises in as good order and condition as when received (exceptions are damages due to acts of God or the US Government, and ordinary wear and tear) ; surrender all installation passes, decals, and so forth, and complete satisfactory settlement of all customer complaints and claims. Termination of the Concessionaire contract does not release the Concessionaire from the obligation to satisfactorily settle customer complaints and claims. The Concessionaire will promptly remove all Concessionaire owned fixtures and supplies. On failure to remove the Concessionaire's property, the Contracting Officer may cause Concessionaire's property to be removed and stored in a warehouse at the Concessionaire's expense. If the Concessionaire is indebted to the NAFI, the Concessionaire authorizes and empowers the Contracting Officer to take possession of the Concessionaire's property and dispose of same by public sale without notice, and out of the proceeds of sale, satisfy all costs and indebtedness to NAFI.
4. **Indebtedness:**
  - a. The Concessionaire will pay promptly and in accordance with the terms all indebtedness incurred in connection with the performance of this Concessionaire contract.
  - b. The NAFI may charge the Concessionaire for a dishonored check received from the Concessionaire, except when the bank acknowledges the return to be the result of bank error or the return is the result of a NAFI error. The amount charged by the NAFI will not exceed the administrative amount normally charged NAFI customers for dishonored checks.
5. **Packaging/Price Marking.** If required by the Contracting Officer, the Concessionaire will furnish, at its own expense, suitable bags, "sold" labels, and so forth, for securing a customer's purchase. If required, the packaging will be approved by the Contracting Officer. All items will be marked to reflect the selling price.
6. **Claims by Concessionaire.** No claim by the Concessionaire relating to this Concessionaire contract may be considered by the Contracting Officer unless such claim is submitted in writing to the Contracting Officer not later than 90 days after the effective date of termination or expiration of this Concessionaire contract. This clause does not extend the period for filing claims where specifically limited by another clause.
7. **Nonwaiver of Defaults.** Any failure by the NAFI to enforce or require strict performance of any terms or conditions of this Concessionaire contract will not constitute a waiver, and will not affect or impair such terms and conditions in any way or effect the right of the NAFI at any time to avail itself of such remedies as it may have for breach or breaches of such terms and conditions.
8. **Trade Fixtures and Supplies.** The Concessionaire will furnish, at its expense, all trade fixtures and supplies required for performance of this Concessionaire contract.
9. **Quality/Warranty.** All products authorized for the Concessionaire to sell will be marketable and sufficient for use intended, and not be "seconds" as the term is usually understood in the trade. All items will be acceptable to the customer and the Contracting Officer and will be subject to inspection and test for workmanship and quality at all times by the Contracting Officer or designee. Any item found to have a latent defect(s) may be returned to the Concessionaire for replacement or refund as determined by the Contracting Officer.
10. **Customer Complaints, Claims, and Refunds.** The Concessionaire agrees to adhere to the NAFI policy of customer satisfaction guaranteed and will be responsible for refunds to customers due to customer dissatisfaction with an item or due to overcharges. All customer complaints, claims, and refunds will be resolved and made at Concessionaire's expense. Any disagreement that cannot be resolved between Concessionaire and the customer will be referred to the Contracting Officer, whose decision will be final and not subject to the Disputes clause. If the Concessionaire fails to process complaints or claims and make refunds in a timely manner, the NAFI may settle customer complaints or claims and make such refunds, and charge the settlement cost to Concessionaire's account.
11. **Internal Controls of Charge-Card Sales:**

a. Concessionaire will establish internal control procedures consistent with provisions of this Concessionaire contract and with NAFI directives for a complete and accurate accounting of all transactions.

b. Each sale will be recorded at the time sale is made. The form will be prepared in duplicate, reflecting the applicable sales data, and signed by the customer. The original of the completed form is attached to the Concessionaire Settlement Report and submitted to the supporting NAFI accounting office. The duplicate copy is retained by the Concessionaire.

c. Concessionaire may accept national charge cards customarily recognized in their commercial trade for customer payment of purchases. Concessionaire is responsible for the payment of any fees, charge backs, and other arranged costs levied by the charge-card-issuing companies.

d. The Contracting Officer, or designee, may conduct inspections considered necessary to ensure strict compliance by the Concessionaire with all provisions of this Concessionaire contract.

12. Concessionaire Settlement Report. At the conclusion of the sales period or as specified by the Contracting Officer, Concessionaire will prepare a Concessionaire Settlement Report signed by the Concessionaire showing the gross sales for the period and percent due the NAFI, and give the NAFI the fees due for that period. The original of the form reflecting sales data will be attached. AF Form 2555 is the preferred form to be used.

13. Utilities. The NAFI will furnish sufficient quantities of space, heat, water, and electricity to satisfy the normal needs of Concessionaire for lighting, heating, drinking, sanitation, and the operation of suitable support equipment.

NOTE: If the Concessionaire is required to reimburse the United States Government for utilities furnished, then the rates are set by the installation commander and agreed to by both parties.

14. Premises. The assignment of space is revocable and is not construed as the creation of tenancy. Concessionaire is liable for any damage to or loss of the premises and NAFI furnished property or injury to persons resulting from acts or omissions of Concessionaire, its employees, or agents, whether or not covered by insurance. Sublet of any of the premises assigned or assignment to another concession is not authorized. Use of the premises and NAFI furnished property for any purpose other than those specifically set forth herein is prohibited. Concessionaire will not make any alterations in the facilities provided without prior authorization from the NAFI manager. Concessionaire will comply with installation fire and safety regulations, and applicable health and sanitation regulations. Concessionaire will post or display on the premises any sign furnished by the NAFI.

15. Taxes:

a. Concessionaire assumes complete and sole liability for all Federal, State, host country, and local taxes applicable to the property, income, and transactions of the Concessionaire, and where required by applicable laws and regulations, will collect and remit to the State applicable sales taxes. Sales taxes which have been collected are excluded from the computation of gross receipts in the determination of the fee payable to NAFI. The amount of taxes excluded will not exceed the actual sum payable to the State. Where required by State law or regulation, the concessionaire will obtain and conspicuously display the State sales tax permit.

b. The Concessionaire warrants that the amount payable to the NAFI has not been reduced by the amount of any tax or duty from which the Concessionaire is exempt. If any such tax or duty has been included the pricing or consideration through error or otherwise, the contract pricing or consideration will be correspondingly reduced or adjusted. If for any reason after the contract date, the Concessionaire is relieved in whole or in part from the payment or the burden of any tax or duty included in the contract pricing or other consideration, the contract pricing and other consideration will be correspondingly reduced or adjusted.

## GENERAL PROVISIONS

1. DEFINITIONS (JUN 2001) - As used throughout this contract, the following terms and abbreviations have the meanings set forth below:
  - a. The term "contract" means this agreement or order and any modifications hereto.
  - b. The abbreviation "NAFI" means Nonappropriated Fund Instrumentality of the United States Government.
  - c. The term "Contracting Officer" means the person executing or responsible for administering this contract on behalf of the NAFI, which is a party hereto, or their successor or successors.
  - d. The term "Contractor" means the party responsible for providing supplies and/or services at a certain price or rate to the NAFI under this contract.
  - e. The abbreviation "FAR" means Federal Acquisition Regulation.
2. DISPUTES (JUN 2001)
  - a. Except as otherwise provided in this contract, any dispute or claim concerning this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall state his decision in writing and mail or otherwise furnish a copy of it to the Contractor. Within 30 days from the date of receipt of such copy, the Contractor may appeal by mailing or otherwise furnishing to the Contracting Officer a written appeal addressed to the Armed Services Board of Contract Appeals, and the decision of the Board shall be final and conclusive; provided that if no such appeal is filed, the decision of the Contracting Officer shall be final and conclusive. The Contractor shall be afforded an opportunity to be heard and to offer evidence in support of any appeal under this clause. Pending final decision on such a dispute, however, the Contractor shall proceed diligently with the performance of the contract and in accordance with the decision of the Contracting Officer unless directed to do otherwise by the Contracting Officer.
  - b. This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph "a" above, provided, that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.
3. LAW GOVERNING CONTRACTS (JUN 2001) - In any dispute arising out of this contract, the decision of which requires consideration of law questions, the rights and obligations of the parties shall be interpreted and determined in accordance with the substantive laws of the United States of America.
4. LEGAL STATUS (JUN 2001) - The NAFI is an integral part of the Department of Defense and is an instrumentality of the United States Government. Therefore, NAFI contracts are United States Government contracts; however, they do not obligate appropriated funds of the United States.
5. EXAMINATION OF RECORDS (JUN 2001)

This clause is applicable under contracts that are entered into by means of negotiation and where price and costing data are required to support a determination of price reasonableness. This clause does not apply to commercial items or when the Contracting Officer determines that prices agreed upon are based on adequate price competition. The Contractor agrees that the Contracting Officer or his duly authorized representative shall have the right to examine and audit the books and records of the Contractor directly pertaining to the contract during the period of the contract and until the expiration of three years after the final payment.
6. ASSIGNMENT (JUN 2001) - The Contractor or its assignee's rights to be paid amounts due as a result of performance of this contract, may be assigned. No assignment by the Contractor, assigning its rights or delegating its obligations under this contract will be effective and binding on the NAFI until the written terms of the assignment have been approved in writing by the Contracting Officer.
7. GRATUITIES (JUN 2001)
  - a. The NAFI may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found, after notice and hearing, by the Secretary of the Air Force or their duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent, or representative of the Contractor, to any officer or employees of the Government or the NAFI with a view toward securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract.
  - b. In the event this contract is terminated as provided in paragraph "a" hereof, the NAFI shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of contract by the Contractor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Secretary of the Air Force or their duly authorized representative) which shall be not less than three nor more than ten times the cost incurred by the Contractor in providing any such gratuities to any such officer or employee.
  - c. The rights and remedies of the NAFI provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.
8. TERMINATION FOR CONVENIENCE (JUN 2001) - The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the NAFI. If this contract is for supplies and is so terminated, the Contractor shall be compensated in

accordance with FAR, Sub Parts 49.1 and 49.2 in effect on this contract's date. To the extent that this contract is for services and is so terminated, the NAFI shall be liable only for payment in accordance with the payment provisions of this contract for services rendered prior to the effective date of termination, providing there are no Contractor claims covering nonrecurring costs for capital investment. If there are any such Contractor claims, they shall be settled in accordance with FAR, Sub Parts 49.1 and 49.2.

9. CANCELLATION BY MUTUAL AGREEMENT (JUN 2001) - Should the situation warrant, the parties upon mutual agreement and no costs, may cancel this contract.

10. TERMINATION FOR CAUSE (JUN 2001)

a. (1) The NAFI may, subject to paragraphs (c) and (d) below, by written notice of cause to the Contractor, terminate this contract in whole or in part if the Contractor fails to-

- (i) Deliver the supplies or perform the service within the time specified within this contract or any Extension;
- (ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below);or
- (iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The NAFI's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of notice from the Contracting Officer specifying the failure.

b. If the NAFI terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will remain liable to the NAFI for any excess costs for those supplies or services. However, the Contractor must continue the work not terminated.

c. The Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) act of the NAFI in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and; (9) unusually severe weather. Defaults by subcontractors at any tier for any reason do not constitute causes beyond the control and without the fault or negligence of the Contractor.

d. If this contract is terminated for cause, the NAFI may require the Contractor to transfer title and deliver to the NAFI as directed by the Contracting Officer, any

- (1) completed supplies, and
- (2) partially completed supplies and materials, parts, tool dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as manufacturing materials in the clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the NAFI has an interest.

e. The NAFI shall pay the contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes Clause. The NAFI may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the NAFI against loss because of outstanding liens or claims of former lien holders.

f. If, after termination, it is determined that the cause by the Contractor was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for convenience of the NAFI.

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

11. INSPECTION AND ACCEPTANCE (JUN 2001) - Inspection and acceptance will be at destination, unless otherwise provided in this contract. Notwithstanding the requirements for any NAFI inspection and test contained in specifications applicable to this contract, except where specialized inspections or tests are specified for performance solely by the NAFI, the Contractor, shall perform or have performed the inspections and tests required to substantiate that the supplies provided under the contract conform to the drawings, specifications, and contract requirements listed herein, including if applicable the technical requirements for the manufacturers' part numbers specified herein. The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or replacement of nonconforming services at no increase in contract price. Acceptance of the supplies or services or a written notice of rejections must be accomplished on or before the fifth working day following delivery of the supplies or services, unless otherwise specified in this contract.

12. VARIATION IN QUANTITY (JUN 2001) - No variation in quantity of any item called for by this contract will be accepted unless authorized by the Contracting Officer.

13. PARTIAL DELIVERIES (JUN 2001) - Partial deliveries are not permitted unless authorized by the terms of the contract or approved by the Contracting Officer.

14. PAYMENTS (JUN 2001) - Partial payments will be made when deliveries are authorized or as approved by the Contracting Officer. Payments and penalties for late payments are subject to the requirements established by the Prompt Payment Act, as amended, and as implemented for NAFI's. If the NAFI makes payment but such payment fails to include a prompt payment penalty due to the Contractor within 10 days from when the contract payment is made, penalty amounts will not be paid unless the Contractor makes a written request within forty days after the date of payment.

15. HOLD AND SAVE HARMLESS (JUN 2001) - The Contractor shall indemnify, hold and save harmless, and defend the NAFI, its outlets and customers from any liability, claimed or established for violation or infringement of any patent, copyright, or trademark right asserted by any third party with respect to goods hereby ordered or any part thereof. Contractor further agrees to hold the NAFI harmless from all claims or judgments for damages resulting from the use of products or services listed in this contract, except for such claims or damages caused by, or resulting from negligence of NAFI customers, employees, agents, or representatives. Also, Contractor shall at all times hold and save harmless the NAFI, its agents, representatives, and employees from any and all suits, claims, charges, and expenses which arise out of acts or omissions of Contractor, its agents, representatives, or employees.

16. MODIFICATIONS (JUN 2001) - No agreement or understanding to modify this contract will be binding upon the NAFI unless made in writing and signed by a Contracting Officer from the office that issued the contract or its successor.

17. TAXES (JUN 2001)

a. Except as may be otherwise provided in this contract, the contract price includes all taxes, duties or other public charges in effect and applicable to this contract on the contract date, except any tax, duty, or other public charge, which by law, regulation or governmental agreement, is not applicable to expenditures made by the NAFI or on its behalf; or any tax, duty, or other public charge from which the Contractor, or any subcontractor hereunder, is exempt by law, regulation or otherwise. If any such tax, duty, or other public charge has been included in the contract price, through error or otherwise, the contract price shall be correspondingly reduced.

b. If for any reason, after the contract date of execution, the Contractor or subcontractor is relieved in whole or in part from the payment or the burden of any tax, duty, or other public charge included in the contract price, the contract price shall be correspondingly reduced; or if the Contractor or subcontractor is required to pay in whole or in part any tax, duty, or other public charge which was not applicable at the contract date of execution the contract price shall be correspondingly increased.

18. PROOF OF SHIPMENT (JUN 2001) - (Applicable to shipments outside the United States through the Defense Transportation System [DTS] and Parcel Post shipments to overseas destinations.)

a. Notwithstanding any clause of this contract to the contrary, payment will be made for items not yet received, upon receipt of an invoice accompanied by an appropriate proof of shipment. If shipment is made by insured parcel post, the contractor must furnish a copy of the Insured Mail Receipt issued by the US Postal Service. Otherwise, a stamped copy of a Certificate of Mailing issued by the US Postal Service must be furnished. If shipment is made by a common carrier (rail, air or motor freight), the Contractor must furnish a signed copy of the shipping document on which items are received for by the common carrier. A signed receipt by a NAFI representative at the delivery point (CCP or POE) is also acceptable evidence of proof of shipment.

b. Forwarding a proof of shipment and an invoice for payment by the Contractor shall be construed as a certification by the contractor that the items shipped conform to the specifications.

c. Notwithstanding any provisions of this clause or any payment made pursuant to the terms of this clause prior to receipt of the items contracted for, the NAFI retains the right to inspect upon receipt and the right to reject nonconforming items. The liability of the Contractor with respect to items for which payments have been made will, after inspection by the NAFI or after the expiration of a reasonable time following delivery to the NAFI within which inspection may be made, whichever occurs first, be limited to (i) exceptions taken at the time of inspection, and (ii) latent defects, fraud, or such gross mistakes as amount to fraud.

19. COMMERCIAL WARRANTY (JUN 2001) - The Contractor agrees that the supplies or services furnished under this contract shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such supplies or services and that the rights and remedies provided herein are in addition to and do not limit any rights afforded to the NAFI by any other clause of this contract. The printed terms and conditions of such warranty will be provided to the NAFI with the delivery of any supplies covered.

20. ADVERTISEMENTS (JUN 2001) - Contractor agrees that none of its nor its agent's advertisements, to include publications, merchandise, promotions, coupons, sweepstakes, contest, sales brochures, etc, shall state, infer or imply that the Contractor's products or services are approved, promoted, or endorsed by the NAFI. Any advertisement, including cents-off coupons, which refers to a NAFI will contain a statement that the advertisement is neither paid for, nor sponsored in whole or in part by, the particular activity.

21. DISCOUNTS FOR PROMPT PAYMENT (JUN 2001)

a. Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a prompt payment discount in conjunction with the offer, offerors awarded contracts may include prompt payment discounts on individual invoices.

b. In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice,

provided the agency annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

## 22. INVOICES (JUN 2001):

- a. An invoice is a written request for payment under the contract for supplies delivered or for services rendered. In order to be proper, an invoice should include (and in order to support the payment of interest penalties, must include) the following:
- (i) Invoice date;
  - (ii) Name of Contractor;
  - (iii) Contract number (including order number, if any), contract line item number, contract description of supplies or services, quantity, contract unit of measure and unit price, and extended total;
  - (iv) Shipment number and date of shipment (Bill of Lading number and weight of shipment will be shown for shipments on Government Bills of Lading)
  - (v) Name and address to which payment is to be sent (which must be the same as that in the contract or on a proper notice of assignment);
  - (vi) Name (where practicable), title, phone number and mailing address of person to be notified in event of a defective invoice; and
  - (vii) Any other information or documentation required by other provisions of the contract (such as evidence of shipment).

Invoices shall be prepared and submitted in duplicate (one copy shall be marked "Original") unless otherwise specified.

### b. For purposes of determining if interest begins to accrue under the PROMPT PAYMENT ACT (PUBLIC LAW 97-177):

- (i) A proper invoice will be deemed to have been received when it is received by the office designated in the contract for receipt of invoices and acceptance of the supplies delivered or services rendered has occurred.
- (ii) Payment shall be considered made on the date on which a check for such payment is dated.
- (iii) Payment terms (e.g., "Net 20") offered by the contractor will not be deemed Required payment dates.
- (iv) The following periods of time will not be included:
  - (A) After receipt of improper invoice and prior to notice of any defect or impropriety, but not to exceed three days for meat and meat food products, five days for perishable agricultural commodities, and 15 days in all other cases, and
  - (B) Between the date of a notice of any defect or impropriety and the date a proper invoice is received. When the notice is in writing, it shall be considered made on the date shown on the notice.

23. ELECTRONIC FUND TRANSFER PAYMENTS (JUN 2001) – Federal law requires Federal payments to be made by electronic fund transfer. Any payment made on this contract has to be made by EFT (unless otherwise specified within the contract or exempted by law). After award of the contract the EFT Partner Enrollment Form will be provided and must be completed to accomplish EFT payments.

24. NOTIFICATION OF DEBARMENT/SUSPENSION STATUS (JUN 2001) - The Contractor shall provide immediate notice to the Contracting Officer in the event of being suspended, debarred or declared ineligible by any other Federal Department or agency, or upon receipt of a notice of proposed debarment from another DOD Agency, during the performance of this contract.

25. NON WAIVER OF DEFAULTS (JUN 2001) - Any failure by the NAFI at any time, or from time to time, to enforce or require strict performance of any terms or conditions of this contract will not constitute waiver thereof and will not affect or impair such terms or conditions in any way or the NAFI's right at any time to avail itself of such remedies as it may have for any breach or breaches of such terms and conditions.

## LIST OF FAR CLAUSES INCORPORATED BY REFERENCE

The provisions of the following clauses set forth in the Federal Acquisition Regulation (FAR) or DoD FAR Supplement are hereby incorporated into this order or contract by reference with the same force and effect as though herein set forth in full. As used in the following clauses, the term "Government" is deleted and the abbreviation "NAFI" is substituted in lieu thereof. The date of each clause shall be the current date set forth in FAR or DoD FAR Supplement on the issuance date of this order or contract. Clauses made inapplicable by the reference or by the kind of order, contract (e.g., orders or contract for services instead of supplies) or dollar amount are self-deleting. The complete text of any clause incorporated in this order or contract by reference may be obtained from the contracting officer.

<b>CLAUSE NO.</b>	<b>REFERENCE</b>	<b>CLAUSE TITLE</b>
26	52.243-1	Changes - Fixed-Price
27	52.222-13	Compliance with Davis-Bacon and related Act Regulations
28	52.222-41	Service Contract Act of 1965, as Amended
29	52.225-11	Buy American Act-Balance of Payments Program-Construction Materials under Trade Agreements
30	52.222-4	Contract Work Hours and Safety Standards Act-Overtime Compensation
31	52.246-16	Responsibility for Supplies
32	52.222-20	Walsh-Healy Public Contracts Act
33	52.222-26	Equal Opportunity
34	252.225-7001	Buy American Act and Balance of Payments Program
35	52.222-3	Convict Labor
36	252.225-7002	Qualifying Country Sources as Subcontractors
37	252.203-7001	Prohibition on Persons Convicted of Fraud or Other Defense-Contract Felonies
38	52.222-21	Prohibition of Segregated Facilities

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT			1. CONTRACT ID CODE	PAGE OF PAGES	
			J	1	2
2. AMENDMENT/MODIFICATION NO. P00001	3. EFFECTIVE DATE 30-Oct-2003	4. REQUISITION/PURCHASE REQ. NO. FOXBIN22390100		5. PROJECT NO.(If applicable)	
6. ISSUED BY 81ST CONTRACTING SQUADRON SONIA RUSHING 310 M STREET, RM 102 KEESLER AFB MS 39534-2147	CODE FA3010	7. ADMINISTERED BY (If other than item 6)  <b>See Item 6</b>		CODE	
8. NAME AND ADDRESS OF CONTRACTOR (No., Street, County, State and Zip Code) MAX MUSCLE GAUTIER LLP TOM OWENS P.O. BOX 718 GAUTIER MS 39553			9A. AMENDMENT OF SOLICITATION NO.		
			9B. DATED (SEE ITEM 11)		
			X 10A. MOD. OF CONTRACT/ORDER NO. FA3010-04-S-0001		
			X 10B. DATED (SEE ITEM 13) 30-Oct-2003		
CODE			FACILITY CODE		
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS					
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offer <input type="checkbox"/> is extended, <input type="checkbox"/> is not extended.					
Offer must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.					
12. ACCOUNTING AND APPROPRIATION DATA (If required)					
13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS. IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.					
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.					
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(B).					
X C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: Special Provisions, Para 16					
D. OTHER (Specify type of modification and authority)					
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return <u>1</u> copies to the issuing office.					
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.) Change vendor address					
Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.					
15A. NAME AND TITLE OF SIGNER (Type or print)			16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) REGGIE E. TEMPLE / FLIGHT B, TEAM B LEADER TEL: 228-377-1817 EMAIL: reggie.temple@keelsers.af.mil		
15B. CONTRACTOR/OFFEROR  (Signature of person authorized to sign)	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA  BY _____ (Signature of Contracting Officer)		16C. DATE SIGNED  03-Nov-2003	

EXCEPTION TO SF 30  
APPROVED BY OIRM 11-84

30-105-04

STANDARD FORM 30 (Rev. 10-83)  
Prescribed by GSA  
FAR (48 CFR) 53.243

SECTION SF 30 BLOCK 14 CONTINUATION PAGE

**SUMMARY OF CHANGES**

To change block 17a as read “MAX MUSCLE GAUTIER LLP  
TOM OWENS  
P. O. BOX 718  
GAUTIER MS 39553”

To read: “MAX MUSCLE PRO SHOP  
Ian Domingue  
2101 Atkinson Road  
Biloxi MS 39531”

(End of Summary of Changes)