

IDS Terms and Conditions Guide
Section H

Clause Number: H126
Effective: 12/15/2006

POLITICAL CONTRIBUTIONS, FEES, AND COMMISSIONS

This clause applies when this contract is for \$500,000 or more and Buyer's prime contract is for the use of the armed forces of a foreign country or international organization. This clause is derived from the ITAR at 22 CFR 130, which requires Buyer to obtain from Seller a disclosure of political contributions or fees or commissions paid, or offered or agreed to be paid, by Seller with respect to Buyer's prime contract.

(a) Definitions

1. "Fee or commission" means, except as provided in paragraph (a) 2 below of this clause, any loan, gift, donation, or other payment of \$1,000 or more made or offered or agreed to be made, directly or indirectly, whether in cash or in kind, and whether or not pursuant to a written contract, which is
 - (i) To or at the direction of any person, irrespective of nationality, whether or not employed by or affiliated with the Seller; and
 - (ii) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a foreign country or international organization.

2. The term "fee or commission" does not include
 - (i) A political contribution or a payment excluded by paragraph (a)3 below of this clause from the definition of political contribution;
 - (ii) A normal salary (excluding contingent compensation) established at an annual rate and paid to a regular employee of Seller, its supplier, or vendor;
 - (iii) General advertising or promotional expenses not directed to any particular sale or purchaser; or
 - (iv) Payments made, or offered or agreed to be made, solely for the purchase by Seller of specific goods or technical, operational, or advisory services, which payments are not disproportionate in amount to the value of the specific goods or services actually furnished.

3. Political contribution means any loan, gift, donation, or other payment of \$1,000 or more made, or offered or agreed to be made, directly or indirectly, whether in cash or in kind, which is
 - (i) To or for the benefit of, or at the direction of, any foreign candidate, committee, political party, political faction, or government or governmental subdivision, or any individual elected, appointed, or otherwise designated as an employee or officer thereof; and
 - (ii) For the solicitation or promotion or otherwise to secure the conclusion of a sale of defense articles or defense services to or for the use of the armed forces of a foreign country or international organization. Taxes, customs duties, license fees, and other charges required to be paid by applicable law or regulation are not regarded as political contributions.

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(b) Information to Be Furnished by Seller

1. Within fifteen calendar days after contract award, Seller shall fully disclose to Buyer all political contributions or fees or commissions paid by Seller with respect to Buyer's prime contract in a statement setting forth
 - (i) The amount of each political contribution paid, or offered or agreed to be paid, or the amount of each fee or commission paid, or offered or agreed to be paid;
 - (ii) The date or dates on which each reported amount was paid, or offered or agreed to be paid;
 - (iii) The recipient of each such amount paid or intended recipient if not yet paid;
 - (iv) The person who paid, or offered or agreed to pay, such amount;
 - (v) The aggregate amounts of political contributions and of fees or commissions, respectively, that shall have been reported;
 - (vi) With respect to each payment reported, state whether such payment was in cash or in kind. If in kind, the statement must include a description and valuation thereof. Where precise amounts are not available because a payment has not yet been made, an estimate of the amount offered or agreed to be paid must be provided; and
 - (vii) With respect to each recipient, state
 - (1) Its name;
 - (2) Its nationality;
 - (3) Its address and principal place of business;
 - (4) Its employer and title; and
 - (5) Its relationship, if any, to Seller and to any foreign purchaser or end user.
2. If Seller believes that furnishing information to Buyer in a requested statement would unreasonably risk injury to Seller's commercial interests, Seller may furnish in lieu of the statement an abbreviated statement disclosing only the aggregate amount of all political contributions and the aggregate amount of all fees or commissions that have been paid, or offered or agreed to be paid, by Seller with respect to the sale. Any abbreviated statement furnished to Buyer under this paragraph must be accompanied by a certification that the requested information has been reported by Seller directly to the U.S. Office of Defense Trade Controls. Seller must simultaneously report fully to the U.S. Office of Defense Trade Controls all information that Seller would otherwise have been required to report to Buyer under this section. Each such report must clearly identify the sale with respect to which the reported information pertains. The address of the U.S. Office of Defense Trade Controls is

Director
Office of Defense Trade Controls

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Bureau of Politico-Military Affairs
PM/DTC, SA-6, Room 200
Department of State
Washington, D.C. 20522-0602

3. Information to Be Obtained by Seller
 - (i) Before furnishing the above required information, Seller must obtain from each person, if any, to whom it has paid, or offered or agreed to pay, a fee or commission in respect of such sale, a timely statement containing a full disclosure by such a person of all political contributions paid, or offered or agreed to be paid, by it or on its behalf or at its direction, in respect of such sale. Such disclosure must include responses to all the information required to enable Seller to comply fully with the requirements of this clause.
 - (ii) In obtaining information under the above paragraph 3(i), Seller must also require each person to whom a fee or commission is paid, or offered or agreed to be paid, to furnish from time to time such reports of its political contributions as may be necessary to enable Seller to comply fully with the requirements of this clause.
 - (iii) Seller must include any political contributions paid, or offered or agreed to be paid, by or on behalf of or at the direction of, any person to whom it has paid, or offered or agreed to pay, a fee or commission in determining whether Seller is required to furnish the information specified herein.
4. Record Keeping. Seller must maintain a record of any information it was required to furnish or obtain under this clause and all records on which its reports are based for a period of not less than five years following the date of the report to which they pertain.
5. Confidential Business Information
 - (i) Any person who is required to furnish information under this part may identify any information furnished hereunder that the person considers to be confidential business information. No person, including any applicant or supplier, shall publish, divulge, disclose, or make known in any manner any information so identified by a vendor or other person unless authorized by law or regulation.
 - (ii) For purposes of this clause, "confidential business information" means commercial or financial information that by law is entitled to protection from disclosure. (See, for example, 5 USC 552(b)(3) and (4); 18 USC 1905; 22 USC 2778(e); Rule 26(c)(7), Federal Rules of Civil Procedure).