

(3) Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues;

(4) Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:

(i) The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the work being performed under the contract, the employee's duties, the efficient use of Contractor resources, and the risks to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.

(ii) In addition, the Contractor may establish a program for employee drug testing—

(A) When there is a reasonable suspicion that an employee uses illegal drugs; or

(B) When an employee has been involved in an accident or unsafe practice;

(C) As part of or as a follow-up to counseling or rehabilitation for illegal drug use;

(D) As part of a voluntary employee drug testing program.

(iii) The Contractor may establish a program to test applicants for employment for illegal drug use.

(iv) For the purpose of administering this clause, testing for illegal drugs may be limited to those substances for which testing is prescribed by section 2.1 of subpart B of the "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11980 (April 11 1988)), issued by the Department of Health and Human Services.

(d) Contractors shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractors shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such times as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.

(e) The provisions of this clause pertaining to drug testing program shall not apply to the extent they are inconsistent with state or local law, or with an existing collective bargaining agreement; provided that with respect to the latter, the Contractor agrees that those issues that are in conflict will be a subject of negotiation at the next collective bargaining session.

(End of clause)

[57 FR 32737, July 23, 1992, as amended at 70 FR 73151, Dec. 9, 2005]

252.223-7005 [Reserved]

252.223-7006 Prohibition on storage and disposal of toxic and hazardous materials.

As prescribed in 223.7103(a), use the following clause:

PROHIBITION ON STORAGE AND DISPOSAL OF TOXIC AND HAZARDOUS MATERIALS (APR 1993)

(a) *Definitions.* As used in this clause—

(1) *Storage* means a non-transitory, semi-permanent or permanent holding, placement, or leaving of material. It does not include a temporary accumulation of a limited quantity of a material used in or a waste generated or resulting from authorized activities, such as servicing, maintenance, or repair of Department of Defense (DoD) items, equipment, or facilities.

(2) *Toxic or hazardous materials* means:

(i) Materials referred to in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 (42 U.S.C. 9601(14)) and materials designated under section 102 of CERCLA (42 U.S.C. 9602) (40 CFR part 302);

(ii) Materials that are of an explosive, flammable, or pyrotechnic nature; or

(iii) Materials otherwise identified by the Secretary of Defense as specified in DoD regulations.

(b) In accordance with 10 U.S.C. 2692, the Contractor is prohibited from storing or disposing of non-DoD-owned toxic or hazardous materials on a DoD installation, except to the extent authorized by a statutory exception to 10 U.S.C. 2692 or as authorized by the Secretary of Defense or his designee.

Alternate I (NOV 1995). As prescribed in 223.7103(b), add the following paragraphs (c) and (d) to the basic clause:

(c) With respect to treatment or disposal authorized pursuant to 10 U.S.C. 2692(b)(9), and notwithstanding any other provision of the contract, the Contractor assumes all financial and environmental responsibility and liability resulting from any treatment or disposal of non-DoD-owned toxic or hazardous materials on a military installation. The Contractor shall indemnify, defend, and hold the Government harmless for all costs, liability, or penalties resulting from the Contractor's treatment or disposal of non-DoD-owned toxic or hazardous materials on a military installation.

(d) The Contractor shall include this clause, including this paragraph (d), in each subcontract which requires, may require, or permits a subcontractor to treat or dispose

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of non-DoD-owned toxic or hazardous materials as defined in this clause.

[58 FR 28472, May 13, 1993, as amended at 60 FR 13076, Mar. 10, 1995; 60 FR 61601, Nov. 30, 1995]

252.223-7007 Safeguarding sensitive conventional arms, ammunition, and explosives.

As prescribed in 223.7203, use the following clause:

SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES (SEP 1999)

(a) *Definition.* "Arms, ammunition, and explosives (AA&E)," as used in this clause, means those items within the scope (chapter 1, paragraph B) of DoD 5100.76-M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

(b) The requirements of DoD 5100.76-M apply to the following items of AA&E being developed, produced, manufactured, or purchased for the Government, or provided to the Contractor as Government-furnished property under this contract:

Nomenclature	National stock number	Sensitivity category

(c) The Contractor shall comply with the requirements of DoD 5100.76-M, as specified in the statement of work. The edition of DoD 5100.76-M in effect on the date of issuance of the solicitation for this contract shall apply.

(d) The Contractor shall allow representatives of the Defense Security Service (DSS), and representatives of other appropriate offices of the Government, access at all reasonable times into its facilities and those of its subcontractors, for the purpose of performing surveys, inspections, and investigations necessary to review compliance with the physical security standards applicable to this contract.

(e) The Contractor shall notify the cognizant DSS field office of any subcontract involving AA&E within 10 days after award of the subcontract.

(f) The Contractor shall ensure that the requirements of this clause are included in all subcontracts, at every tier—

(1) For the development, production, manufacture, or purchase of AA&E; or

(2) When AA&E will be provided to the subcontractor as Government-furnished property.

(g) Nothing in this clause shall relieve the Contractor of its responsibility for complying with applicable Federal, state, and local laws, ordinances, codes, and regulations (including requirements for obtaining

licenses and permits) in connection with the performance of this contract.

(End of clause)

[61 FR 7750, Feb. 29, 1996, as amended at 64 FR 51077, Sept. 21, 1999]

252.223-7008 Prohibition of Hexavalent Chromium.

As prescribed in 223.7306, use the following clause:

PROHIBITION OF HEXAVALENT CHROMIUM (MAY 2011)

(a) *Definitions.* As used in this clause—

Homogeneous material means a material that cannot be mechanically disjointed into different materials and is of uniform composition throughout.

(1) Examples of homogeneous materials include individual types of plastics, ceramics, glass, metals, alloys, paper, board, resins, and surface coatings.

(2) Homogeneous material does not include conversion coatings that chemically modify the substrate. *Mechanically disjointed* means that the materials can, in principle, be separated by mechanical actions such as unscrewing, cutting, crushing, grinding, and abrasive processes.

(b) *Prohibition.* (1) Unless otherwise specified by the Contracting Officer, the Contractor shall not provide any deliverable or construction material under this contract that—

(i) Contains hexavalent chromium in a concentration greater than 0.1 percent by weight in any homogenous material; or

(ii) Requires the removal or reapplication of hexavalent chromium materials during subsequent sustainment phases of the deliverable or construction material.

(2) This prohibition does not apply to hexavalent chromium produced as a by-product of manufacturing processes.

(c) If authorization for incorporation of hexavalent chromium in a deliverable or construction material is required, the Contractor shall submit a request to the Contracting Officer.

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in all subcontracts for supplies, maintenance and repair services, or construction materials.

(End of clause)

[76 FR 25576, May 5, 2011]

252.225-7000 Buy American Act—Balance of Payments Program Certificate.

As prescribed in 225.1101(1)(i), use the following provision: