

**SUBPART 211.1—SELECTING AND DEVELOPING REQUIREMENTS
DOCUMENTS**

(Revised May 5, 2011)

211.105 Items peculiar to one manufacturer.

Follow the publication requirements at PGI [211.105](#).

211.106 Purchase descriptions for service contracts.

Agencies shall require that purchase descriptions for service contracts and resulting requirements documents, such as statements of work or performance work statements, include language to provide a clear distinction between Government employees and contractor employees. Agencies shall be guided by the characteristics and descriptive elements of personal-services contracts at FAR 37.104. Service contracts shall require contractor employees to identify themselves as contractor personnel by introducing themselves or being introduced as contractor personnel and displaying distinguishing badges or other visible identification for meetings with Government personnel. In addition, contracts shall require contractor personnel to appropriately identify themselves as contractor employees in telephone conversations and in formal and informal written correspondence.

211.107 Solicitation provision.

(b) DoD uses the categorical method of reporting. Do not use the provision at FAR 52.211-7, Alternatives to Government-Unique Standards, in DoD solicitations.

SUBPART 216.5—INDEFINITE-DELIVERY CONTRACTS

(Revised May 5, 2011)

216.501 General.

(a)(i) For items with a shelf-life of less than six months, consider the use of indefinite-delivery type contracts with orders to be placed either—

(A) Directly by the users; or

(B) By central purchasing offices with deliveries direct to users.

(ii) Whenever an indefinite-delivery contract is issued, the issuing office must furnish all ordering offices sufficient information for the ordering office to complete its contract reporting responsibilities under 204.670-2. This data must be furnished to the ordering activity in sufficient time for the activity to prepare its report for the action within three working days of the order.

216.501-1 Definitions.

“Multiple award contract,” as used in this subpart, means--

(1) A multiple award task order contract entered into in accordance with FAR 16.504(c); or

(2) Any other indefinite-delivery, indefinite-quantity contract that an agency enters into with two or more sources under the same solicitation.

216.501-2 General.

(a) See [217.204](#)(e) for limitations on the period for task order or delivery order contracts awarded by DoD pursuant to 10 U.S.C. 2304a.

216.504 Indefinite-quantity contracts.

(c)(1)(ii)(D) *Limitation on single-award contracts.*

(1) The authority to make the determination authorized in FAR 16.504(c)(1)(ii)(D)(1)(iv) shall not be delegated below the level of the senior procurement executive.

(2) The head of the agency must notify the congressional defense committees within 30 days after any determination under this section and provide a copy of the determination and notification to the Deputy Director, Defense Procurement and Acquisition Policy (Contract Policy and International Contracting), OUSD(AT&L)/DPAP(CPIC), 3060 Defense Pentagon, Washington, DC 20301-3060. If the award concerns intelligence or intelligence-related activities of DoD, notification shall also be provided to the Select Committee on Intelligence of the Senate and Permanent Select Committee on Intelligence of the House of Representatives. (See sample notification at PGI [216.504](#)(c)(1)(ii)(D)(2).)

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(3) A copy of any determination made in accordance with FAR 16.504(c)(1)(ii)(D) shall be submitted to:

Deputy Director, Defense Procurement (Contract Policy and International Contracting), OUSD(AT&L)DPAP(CPIC),
3060 Defense Pentagon,
Washington, DC 20301-3060.

216.505 Ordering.

(1) Departments and agencies shall comply with the review, approval, and reporting requirements established in accordance with Subpart [217.78](#) when placing orders under non-DoD contracts in amounts exceeding the simplified acquisition threshold.

(2) Orders placed under indefinite-delivery contracts may be issued on DD Form 1155, Order for Supplies or Services.

216.505-70 Orders under multiple award contracts.

(a) This subsection--

(1) Implements Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107) for the acquisition of services, and establishes similar policy for the acquisition of supplies;

(2) Applies to orders for supplies or services exceeding \$150,000 placed under multiple award contracts;

(3) Also applies to orders placed by non-DoD agencies on behalf of DoD; and

(4) Does not apply to orders for architect-engineer services, which shall be placed in accordance with the procedures in FAR Subpart 36.6.

(b) Each order exceeding \$150,000 shall be placed on a competitive basis in accordance with paragraph (c) of this subsection, unless this requirement is waived on the basis of a justification that is prepared and approved in accordance with FAR 8.405-6 and includes a written determination that--

(1) A statute expressly authorizes or requires that the purchase be made from a specified source; or

(2) One of the circumstances described at FAR 16.505(b)(2)(i) through (iv) applies to the order. Follow the procedures at PGI [216.505-70](#) if FAR 16.505(b)(2)(ii) or (iii) is deemed to apply.

(c) An order exceeding \$150,000 is placed on a competitive basis only if the contracting officer--

(1) Provides a fair notice of the intent to make the purchase, including a description of the supplies to be delivered or the services to be performed and the basis

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upon which the contracting officer will make the selection, to all contractors offering the required supplies or services under the multiple award contract; and

(2) Affords all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered.

(d) When using the procedures in this subsection--

(1) The contracting officer should keep contractor submission requirements to a minimum;

(2) The contracting officer may use streamlined procedures, including oral presentations;

(3) The competition requirements in FAR Part 6 and the policies in FAR Subpart 15.3 do not apply to the ordering process, but the contracting officer shall consider price or cost under each order as one of the factors in the selection decision; and

(4) The contracting officer should consider past performance on earlier orders under the contract, including quality, timeliness, and cost control.

216.506 Solicitation provisions and contract clauses.

(a) Insert the clause at [252.216-7006](#), Ordering, in lieu of the clause at 52.216-18, Ordering, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

(d) If the contract is for the preparation of personal property for shipment or storage (see 247.271-4), substitute paragraph (f) at [252.247-7015](#), Requirements, for paragraph (f) of the clause at FAR 52.216-21, Requirements.

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Part 223—Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace

(Added May 5, 2011)

SUBPART 223.73—MINIMIZING THE USE OF MATERIALS CONTAINING HEXAVALENT CHROMIUM

223.7300 Definition.

“Legacy system,” as used in this subpart, means any program that has passed Milestone A in the defense acquisition management system, as defined in DoD Instruction 5000.02.

223.7301 Policy.

It is DoD policy to minimize hexavalent chromium (an anti-corrosive) in items acquired by DoD (deliverables and construction material), due to the serious human health and environmental risks related to its use. Executive Order 13423, section 3, paragraph (a) requires that the heads of agencies reduce or eliminate the acquisition and use of toxic or hazardous chemicals. Executive Order 13514 requires that the heads of agencies are responsible for “reducing and minimizing the quantity of toxic and hazardous chemicals and materials acquired, used, or disposed of.”

223.7302 Authorities.

(a) Executive Order 13423 of January 24, 2007, Strengthening Federal Environmental, Energy, and Transportation Management.

(b) Executive Order 13514 of October 5, 2009, Federal Leadership in Environmental, Energy, and Economic Performance.

223.7303 Prohibition.

(a) Except as provided in [223.7304](#) and [223.7305](#), no contract may include a specification or standard that results in a deliverable or construction material containing more than 0.1 percent hexavalent chromium by weight in any homogeneous material in the deliverable or construction material where proven substitutes are available that provide acceptable performance for the application.

(b) This prohibition is in addition to any imposed by the Clean Air Act regardless of the place of performance.

223.7304 Exceptions.

The prohibition in [223.7303](#) does not apply to—

(a) Legacy systems and their related parts, subsystems, and components that already contain hexavalent chromium. However, alternatives to hexavalent chromium shall be considered by the appropriate official during system modifications, follow-on procurements of legacy systems, or maintenance procedure updates; and

(b) Additional sustainment related contracts (e.g., parts, services) for a system in which use of hexavalent chromium was previously approved.

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223.7305 Authorization and approval.

(a) The prohibition in [223.7303](#) does not apply to critical defense applications if no substitute can meet performance requirements. The DoD policy of April 8, 2009, “Minimizing the Use of Hexavalent Chromium,” contains requirements for weighing hexavalent chromium versus substitutes. DoD Program Managers must consider the following factors—

- (1) Cost effectiveness of alternative materials or processes;
- (2) Technical feasibility of alternative materials or processes;
- (3) Environment, safety, and occupational health risks associated with the use of the hexavalent chromium or substitute materials in each specific application;
- (4) Achieving a DoD Manufacturing Readiness Level of at least eight for any qualified alternative;
- (5) Materiel availability of hexavalent chromium and the proposed alternatives over the projected life span of the system; and
- (6) Corrosion performance difference of alternative materials or processes as determined by agency corrosion subject matter experts.

(b) However, unless an exception in [223.7304](#) applies, the incorporation of hexavalent chromium in items acquired by DoD shall be specifically authorized at a level no lower than a general or flag officer or a member of the Senior Executive Service from the Program Executive Office or equivalent level, in coordination with the component Corrosion Control and Prevention Executive. Follow the procedures in PGI [223.7305](#).

223.7306 Contract clause.

Unless an exception in [223.7304](#) applies, or use has been authorized in accordance with [223.7305](#), use the clause at [252.223-7008](#), Prohibition of Hexavalent Chromium, in solicitations and contracts for supplies, maintenance and repair services, or construction.

SUBPART 237.1—SERVICE CONTRACTS—GENERAL
(Revised May 5, 2011)

237.101 Definitions.

As used in this subpart—

“Increased performance of security-guard functions,”

(1) In the case of an installation or facility where no security-guard functions were performed as of September 10, 2001, the entire scope or extent of the performance of security-guard functions at the installation or facility after such date; and

(2) In the case of an installation or facility where security-guard functions were performed within a lesser scope of requirements or to a lesser extent as of September 10, 2001, than after such date, the increment of the performance of security-guard functions at the installation or facility that exceeds such lesser scope of requirements or extent of performance.

“Senior mentors” means retired flag, general, or other military officers or retired senior civilian officials who provide expert experience-based mentoring, teaching, training, advice, and recommendations to senior military officers, staff, and students as they participate in war games, warfighting courses, operational planning, operational exercises, and decision-making exercises.

237.102 Policy.

(c) In addition to the prohibition on award of contracts for the performance of inherently governmental functions, contracting officers shall not award contracts for functions that are exempt from private sector performance. See [207.503\(e\)](#) for the associated documentation requirement.

(e) Program officials shall obtain assistance from contracting officials through the Peer Review process at [201.170](#).

237.102-70 Prohibition on contracting for firefighting or security-guard functions.

(a) Under 10 U.S.C. 2465, the DoD is prohibited from entering into contracts for the performance of firefighting or security-guard functions at any military installation or facility unless—

(1) The contract is to be carried out at a location outside the United States and its outlying areas at which members of the armed forces would have to be used for the performance of firefighting or security-guard functions at the expense of unit readiness;

(2) The contract will be carried out on a Government-owned but privately operated installation;

(3) The contract (or renewal of a contract) is for the performance of a function under contract on September 24, 1983; or

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(4) The contract—

(i) Is for the performance of firefighting functions;

(ii) Is for a period of 1 year or less; and

(iii) Covers only the performance of firefighting functions that, in the absence of the contract, would have to be performed by members of the armed forces who are not readily available to perform such functions by reason of a deployment.

(b) Under Section 2907 of Pub. L. 103-160, this prohibition does not apply to services at installations being closed (see Subpart 237.74).

(c) Under Section 1010 of Pub. L. 107-56, this prohibition does not apply to any contract that--

(1) Is entered into during the period of time that United States armed forces are engaged in Operation Enduring Freedom or during the period 180 days thereafter;

(2) Is for the performance of security functions at any military installation or facility in the United States;

(3) Is awarded to a proximately located local or State government, or a combination of such governments, whether or not any such government is obligated to provide such services to the general public without compensation; and

(4) Prescribes standards for the training and other qualifications of local government law enforcement personnel who perform security functions under the contract in accordance with criteria established by the Secretary of the department concerned.

(d)(1) Under Section 332 of Pub. L. 107-314, as amended by Section 333 of Pub. L. 109-364 and Section 343 of Pub. L. 110-181, this prohibition does not apply to any contract that is entered into for any increased performance of security-guard functions at a military installation or facility undertaken in response to the terrorist attacks on the United States on September 11, 2001, if--

(i) Without the contract, members of the Armed Forces are or would be used to perform the increased security-guard functions;

(ii) The agency has determined that--

(A) Recruiting and training standards for the personnel who are to perform the security-guard functions are comparable to the recruiting and training standards for DoD personnel who perform the same security-guard functions;

(B) Contractor personnel performing such functions will be effectively supervised, reviewed, and evaluated; and

(C) Performance of such functions will not result in a reduction in the security of the installation or facility;

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(iii) Contract performance will not extend beyond September 30, 2012; and

(iv) The total number of personnel employed to perform security-guard functions under all contracts entered into pursuant to this authority does not exceed the following limitations:

(A) For fiscal year 2007, the total number of such personnel employed under such contracts on October 1, 2006.

(B) For fiscal year 2008, the number equal to 90 percent of the total number of such personnel employed under such contracts on October 1, 2006.

(C) For fiscal year 2009, the number equal to 80 percent of the total number of such personnel employed under such contracts on October 1, 2006.

(D) For fiscal year 2010, the number equal to 70 percent of the total number of such personnel employed under such contracts on October 1, 2006.

(E) For fiscal year 2011, the number equal to 60 percent of the total number of such personnel employed under such contracts on October 1, 2006.

(F) For fiscal year 2012, the number equal to 50 percent of the total number of such personnel employed under such contracts on October 1, 2006.

(2) Follow the procedures at PGI [237.102-70\(d\)](#) to ensure that the personnel limitations specified in paragraph (d)(1)(iv) of this subsection are not exceeded.

237.102-71 Limitation on service contracts for military flight simulators.

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

(1) “Military flight simulator” means any system to simulate the form, fit, and function of a military aircraft that has no commonly available commercial variant.

(2) “Service contract” means any contract entered into by DoD, the principal purpose of which is to furnish services in the United States through the use of service employees as defined in 41 U.S.C. 357(b).

(b) Under Section 832 of Pub. L. 109-364, as amended by Section 883(b) of Pub. L. 110-181, DoD is prohibited from entering into a service contract to acquire a military flight simulator. However, the Secretary of Defense may waive this prohibition with respect to a contract, if the Secretary—

(1) Determines that a waiver is in the national interest; and

(2) Provides an economic analysis to the congressional defense committees at least 30 days before the waiver takes effect. This economic analysis shall include, at a minimum—

(i) A clear explanation of the need for the contract; and

(ii) An examination of at least two alternatives for fulfilling the

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requirements that the contract is meant to fulfill, including the following with respect to each alternative:

- (A) A rationale for including the alternative.
- (B) A cost estimate of the alternative and an analysis of the quality of each cost estimate.
- (C) A discussion of the benefits to be realized from the alternative.
- (D) A best value determination of each alternative and a detailed explanation of the life-cycle cost calculations used in the determination.

(c) When reviewing requirements or participating in acquisition planning that would result in a military department or defense agency acquiring a military flight simulator, the contracting officer shall notify the program officials of the prohibition in paragraph (b) of this subsection. If the program officials decide to request a waiver from the Secretary of Defense under paragraph (b) of this subsection, the contracting officer shall follow the procedures at PGI [237.102-71](#).

237.102-72 Contracts for management services.

In accordance with Section 802 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), DoD may award a contract for the acquisition of services the primary purpose of which is to perform acquisition support functions with respect to the development or production of a major system, only if—

- (a) The contract prohibits the contractor from performing inherently governmental functions;
- (b) The DoD organization responsible for the development or production of the major system ensures that Federal employees are responsible for determining—
 - (1) Courses of action to be taken in the best interest of the Government; and
 - (2) Best technical performance for the warfighter; and
- (c) The contract requires that the prime contractor for the contract may not advise or recommend the award of a contract or subcontract for the development or production of the major system to an entity owned in whole or in part by the prime contractor.

237.102-73 Prohibition on contracts for services of senior mentors.

DoD is prohibited from entering into contracts for the services of senior mentors. *See* PGI [237.102-73](#) for references to DoD policy and implementation guidance.

237.102-74 Taxonomy for the acquisition of services.

See PGI [237.102-74](#) for OUSD(AT&L) DPAP memorandum, “Taxonomy for the Acquisition of Services,” dated November 23, 2010.

237.104 Personal services contracts.

(b)(i) Authorization to acquire the personal services of experts and consultants is included in 10 U.S.C. 129b. Personal service contracts for expert and consultant

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services must also be authorized by a determination and findings (D&F) in accordance with department/agency regulations.

(A) Generally, the D&F should authorize one contract at a time; however, an authorizing official may issue a blanket D&F for classes of contracts.

(B) Prepare each D&F in accordance with FAR 1.7 and include a determination that—

- (1) The duties are of a temporary or intermittent nature;
- (2) Acquisition of the services is advantageous to the national defense;
- (3) DoD personnel with necessary skills are not available;
- (4) Excepted appointment cannot be obtained;
- (5) A nonpersonal services contract is not practicable;
- (6) Statutory authority, 5 U.S.C. 3109 and other legislation, apply; and
- (7) Any other determination required by statutes has been made.

(ii) Personal services contracts for health care are authorized by 10 U.S.C. 1091.

(A) This authority may be used to acquire—

(1) Direct health care services provided in medical treatment facilities;

(2) Health care services at locations outside of medical treatment facilities (such as the provision of medical screening examinations at military entrance processing stations); and

(3) Services of clinical counselors, family advocacy program staff, and victim's services representatives to members of the Armed Forces and covered beneficiaries who require such services, provided in medical treatment facilities or elsewhere. Persons with whom a personal services contract may be entered into under this authority include clinical social workers, psychologists, psychiatrists, and other comparable professionals who have advanced degrees in counseling or related academic disciplines and who meet all requirements for State licensure and board certification requirements, if any, within their fields of specialization.

(B) Sources for personal services contracts with individuals under the authority of 10 U.S.C. 1091 shall be selected through the procedures in this section. These procedures do not apply to contracts awarded to business entities other than individuals. Selections made using the procedures in this section are exempt by statute from FAR Part 6 competition requirements (see [206.001\(b\)](#)).

(C) Approval requirements for—

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(1) Direct health care personal services contracts (see paragraphs (b)(ii)(A)(1) and (2) of this section) and a pay cap are in DoDI 6025.5, Personal Services Contracts for Health Care Providers.

(i) A request to enter into a personal services contract for direct health care services must be approved by the commander of the medical/dental treatment facility where the services will be performed.

(ii) A request to enter into a personal services contract for a location outside of a medical treatment facility must be approved by the chief of the medical facility who is responsible for the area in which the services will be performed.

(2) Services of clinical counselors, family advocacy program staff, and victim's services representatives (see paragraph (b)(ii)(A)(3) of this section), shall be in accordance with agency procedures.

(D) The contracting officer must ensure that the requiring activity provides a copy of the approval with the purchase request.

(E) The contracting officer must provide adequate advance notice of contracting opportunities to individuals residing in the area of the facility. The notice must include the qualification criteria against which individuals responding will be evaluated. The contracting officer shall solicit applicants through at least one local publication which serves the area of the facility. Acquisitions under this section for personal service contracts are exempt from the posting and synopsis requirements of FAR Part 5.

(F) The contracting officer shall provide the qualifications of individuals responding to the notice to the commander of the facility for evaluation and ranking in accordance with agency procedures. Individuals must be considered solely on the basis of the professional qualifications established for the particular personal services being acquired and the Government's estimate of reasonable rates, fees, or other costs. The commander of the facility shall provide the contracting officer with rationale for the ranking of individuals, consistent with the required qualifications.

(G) Upon receipt from the facility of the ranked listing of applicants, the contracting officer shall either—

(1) Enter into negotiations with the highest ranked applicant. If a mutually satisfactory contract cannot be negotiated, the contracting officer shall terminate negotiations with the highest ranked applicant and enter into negotiations with the next highest.

(2) Enter into negotiations with all qualified applicants and select on the basis of qualifications and rates, fees, or other costs.

(H) In the event only one individual responds to an advertised requirement, the contracting officer is authorized to negotiate the contract award. In this case, the individual must still meet the minimum qualifications of the requirement and the contracting officer must be able to make a determination that the price is fair and reasonable.

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(I) If a fair and reasonable price cannot be obtained from a qualified individual, the requirement should be canceled and acquired using procedures other than those set forth in this section.

(iii)(A) In accordance with 10 U.S.C. 129b(d), an agency may enter into a personal services contract if—

(1) The personal services—

(i) Are to be provided by individuals outside the United States, regardless of their nationality;

(ii) Directly support the mission of a defense intelligence component or counter-intelligence organization of DoD; or

(iii) Directly support the mission of the special operations command of DoD; and

(2) The head of the contracting activity provides written approval for the proposed contract. The approval shall include a determination that addresses the following:

(i) The services to be procured are urgent or unique;

(ii) It would not be practical to obtain such services by other means; and

(iii) For acquisition of services in accordance with paragraph (b)(iii)(A)(1)(i) of this section, the services to be acquired are necessary and appropriate for supporting DoD activities and programs outside the United States.

(B) The contracting officer shall ensure that the applicable requirements of paragraph (b)(iii)(A)(2) of this section have been satisfied and shall include the approval documentation in the contract file.

(iv) The requirements of 5 U.S.C. 3109, Employment of Experts and Consultants; Temporary or Intermittent, do not apply to contracts entered into in accordance with paragraph (b)(iii) of this section.

(d) See [237.503\(c\)](#) for requirements for certification and approval of requirements for services to prevent contracts from being awarded or administered in a manner that constitutes an unauthorized personal services contract.

(f)(i) Payment to each expert or consultant for personal services under 5 U.S.C. 3109 shall not exceed the highest rate fixed by the Classification Act Schedules for grade GS-15 (see 5 CFR 304.105(a)).

(ii) The contract may provide for the same per diem and travel expenses authorized for a Government employee, including actual transportation and per diem in lieu of subsistence for travel between home or place of business and official duty station.

(iii) Coordinate with the civilian personnel office on benefits, taxes, personnel ceilings, and maintenance of records.

237.106 Funding and term of service contracts.

(1) Personal service contracts for expert or consultant services shall not exceed 1 year. The nature of the duties must be—

- (i) Temporary (not more than 1 year); or
- (ii) Intermittent (not cumulatively more than 130 days in 1 year).

(2) The contracting officer may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed 1 year (10 U.S.C. 2410a).

237.109 Services of quasi-military armed forces.

See [237.102-70](#) for prohibition on contracting for firefighting or security-guard functions.

237.170 Approval of contracts and task orders for services.

237.170-1 Scope.

This section—

- (a) Implements 10 U.S.C. 2330; and
- (b) Applies to services acquired for DoD, regardless of whether the services are acquired through--
 - (1) A DoD contract or task order; or
 - (2) A contract or task order awarded by an agency other than DoD.

237.170-2 Approval requirements.

(a) *Acquisition of services through a contract or task order that is not performance based.*

(1) For acquisitions at or below \$85.5 million, obtain the approval of the official designated by the department or agency.

(2) For acquisitions exceeding \$85.5 million, obtain the approval of the senior procurement executive.

(b) *Acquisition of services through use of a contract or task order issued by a non-DoD agency.* Comply with the review, approval, and reporting requirements established in accordance with Subpart [217.78](#) when acquiring services through use of a contract or task order issued by a non-DoD agency.

237.171 Training for contractor personnel interacting with detainees.

237.171-1 Scope.

This section prescribes policies to prevent the abuse of detainees, as required by Section 1092 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375).

237.171-2 Definition.

“Combatant commander,” “detainee,” and “personnel interacting with detainees,” as used in this section, are defined in the clause at [252.237-7019](#), Training for Contractor Personnel Interacting with Detainees.

237.171-3 Policy.

(a) Each DoD contract in which contractor personnel, in the course of their duties, interact with detainees shall include a requirement that such contractor personnel—

(1) Receive Government-provided training regarding the international obligations and laws of the United States applicable to the detention of personnel, including the Geneva Conventions; and

(2) Provide a copy of the training receipt document to the contractor.

(b) The combatant commander responsible for the area where the detention or interrogation facility is located will arrange for the training and a training receipt document to be provided to contractor personnel. For information on combatant commander geographic areas of responsibility and point of contact information for each command, see PGI [237.171-3\(b\)](#).

237.171-4 Contract clause.

Use the clause at [252.237-7019](#), Training for Contractor Personnel Interacting with Detainees, in solicitations and contracts for the acquisition of services if—

(a) The clause at [252.225-7040](#), Contractor Personnel Supporting a Force Deployed Outside the United States, is included in the solicitation or contract; or

(b) The services will be performed at a facility holding detainees, and contractor personnel in the course of their duties may be expected to interact with the detainees.

237.172 Service contracts surveillance.

Ensure that quality assurance surveillance plans are prepared in conjunction with the preparation of the statement of work or statement of objectives for solicitations and contracts for services. These plans should be tailored to address the performance risks inherent in the specific contract type and the work effort addressed by the contract. (See FAR Subpart 46.4.) Retain quality assurance surveillance plans in the official contract file. See <https://sam.dau.mil>, Step Four – Requirements Definition, for examples of quality assurance surveillance plans.

237.173 Prohibition on interrogation of detainees by contractor personnel.

237.173-1 Scope.

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This section prescribes policies that prohibit interrogation of detainees by contractor personnel, as required by section 1038 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84).

237.173-2 Definitions. As used in this subpart—

“Detainee” means any person captured, detained, held, or otherwise under the effective control of DoD personnel (military or civilian) in connection with hostilities. This includes, but is not limited to, enemy prisoners of war, civilian internees, and retained personnel. This does not include DoD personnel or DoD contractor personnel being held for law enforcement purposes.

“Interrogation of detainees” means a systematic process of formally and officially questioning a detainee for the purpose of obtaining reliable information to satisfy foreign intelligence collection requirements.

237.173-3 Policy.

(a) No detainee may be interrogated by contractor personnel.

(b) Contractor personnel with proper training and security clearances may be used as linguists, interpreters, report writers, information technology technicians, and other employees filling ancillary positions, including as trainers of and advisors to interrogators, in interrogations of detainees if—

(1) Such personnel are subject to the same laws, rules, procedures, and policies (including DoD Instruction 1100.22, Policy and Procedures for Determining Workforce Mix, (<http://www.dtic.mil/whs/directives/corres/pdf/110022p.pdf>); DoD Directive 2310.01E, The Department of Defense Detainee Program (<http://www.dtic.mil/whs/directives/corres/pdf/231001p.pdf>); and DoD Directive 3115.09, DoD Intelligence Interrogations, Detainee Debriefings, and Tactical Questioning, (<http://www.dtic.mil/whs/directives/corres/pdf/311509p.pdf>)); pertaining to detainee operations and interrogations as those that apply to Government personnel in such positions in such interrogations; and

(2) Appropriately qualified and trained DoD personnel (military or civilian) are available to oversee the contractor’s performance and to ensure that contractor personnel do not perform activities that are prohibited under this section.

237.173-4 Waiver.

The Secretary of Defense may waive the prohibition in [237.173-3\(a\)](#) for a period of 60 days, if the Secretary determines such a waiver is vital to the national security interests of the United States. The Secretary may renew a waiver issued pursuant to this paragraph for an additional 30-day period, if the Secretary determines that such a renewal is vital to the national security interests of the United States. Not later than five days after issuance of the waiver, the Secretary shall submit written notification to Congress. See specific waiver procedures at DoDI 1100.22.

237.173-5 Contract clause.

Insert the clause at [252.237-7010](#), Prohibition on Interrogation of Detainees by Contractor Personnel, in solicitations and contracts for the provision of services.

SUBPART 237.5—MANAGEMENT OVERSIGHT OF SERVICE CONTRACTS

(Revised May 5, 2011)

237.503 Agency-head responsibilities.

(c) The agency head or designee shall employ procedures to ensure that requirements for service contracts are vetted and approved as a safeguard to prevent contracts from being awarded or administered in a manner that constitutes an unauthorized personal services contract. Contracting officers shall follow the procedures at PGI [237.503](#), include substantially similar certifications in conjunction with service contract requirements, and place the certification in the contract file. The program manager or other official responsible for the requirement, at a level specified by the agency, should execute the certification. In addition, contracting officers and program managers should remain aware of the descriptive elements at FAR 37.104(d) to ensure that a service contract does not inadvertently become administered as a personal-services contract.

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(Revised May 5, 2011)

252.216-7000 Economic Price Adjustment—Basic Steel, Aluminum, Brass, Bronze, or Copper Mill Products.

As prescribed in [216.203-4-70\(a\)](#), use the following clause:

ECONOMIC PRICE ADJUSTMENT--BASIC STEEL, ALUMINUM, BRASS, BRONZE, OR COPPER MILL PRODUCTS (JUL 1997)

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

“Established price” means a price which is an established catalog or market price for a commercial item sold in substantial quantities to the general public.

“Unit price” excludes any part of the price which reflects requirements for preservation, packaging, and packing beyond standard commercial practice.

(b) The Contractor warrants that the unit price stated for (Identify the item) is not in excess of the Contractor's established price in effect on the date set for opening of bids (or the contract date if this is a negotiated contract) for like quantities of the same item. This price is the net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or schedule price.

(c) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any established price.

(1) Each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased.

(2) This decrease shall apply to items delivered on or after the effective date of the decrease in the Contractor's established price.

(3) This contract shall be modified accordingly.

(d) If the Contractor's established price is increased after the date set for opening of bids (or the contract date if this is a negotiated contract), upon the Contractor's written request to the Contracting Officer, the corresponding contract unit price shall be increased by the same percentage that the established price is increased, and this contract shall be modified accordingly, provided—

(1) The aggregate of the increases in any contract unit price under this contract shall not exceed 10 percent of the original contract unit price;

(2) The increased contract unit price shall be effective on the effective date of the increase in the applicable established price if the Contractor's written request is received by the Contracting Officer within ten days of the change. If it is not, the effective date of the increased unit price shall be the date of receipt of the request by the Contracting Officer; and

(3) The increased contract unit price shall not apply to quantities scheduled for delivery before the effective date of the increased contract unit price unless the

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Contractor's failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause of this contract.

(4) The Contracting Officer shall not execute a modification incorporating an increase in a contract unit price under this clause until the increase is verified.

(e) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any portion of the contract affected by the requested increase and not delivered at the time of such cancellation, except as follows—

(1) The Contractor may, after that time, deliver any items that were completed or in the process of manufacture at the time of receipt of the cancellation notice, provided the Contractor notifies the Contracting Officer of such items within 10 days after the Contractor receives the cancellation notice.

(2) The Government shall pay for those items at the contract unit price increased to the extent provided by paragraph (d) of this clause.

(3) Any standard steel supply item shall be deemed to be in the process of manufacture when the steel for that item is in the state of processing after the beginning of the furnace melt.

(f) Pending any cancellation of this contract under paragraph (e) of this clause, or if there is no cancellation, the Contractor shall continue deliveries according to the delivery schedule of the contract. The Contractor shall be paid for those deliveries at the contract unit price increased to the extent provided by paragraph (d) of this clause.

(End of clause)

252.216-7001 Economic Price Adjustment—Nonstandard Steel Items.

As prescribed in [216.203-4-70\(b\)](#), use the following clause:

ECONOMIC PRICE ADJUSTMENT--NONSTANDARD STEEL ITEMS (JUL 1997)

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

“Base labor index” means the average of the labor indices for the three months which consist of the month of bid opening (or offer submission) and the months immediately preceding and following that month.

“Base steel index” means the Contractor's established price (see Note 6) including all applicable extras of \$ _____ per _____ (see Note 1) for _____ (see Note 2) on the date set for bid opening (or the date of submission of the offer).

“Current labor index” means the average of the labor indices for the month in which delivery of supplies is required to be made and the month preceding.

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“Current steel index” means the Contractor's established price (see Note 6) for that item, including all applicable extras in effect ___ days (see Note 3) prior to the first day of the month in which delivery is required.

“Established price” is—

(1) A price which is an established catalog or market price of a commercial item sold in substantial quantities to the general public; and

(2) The net price after applying any applicable standard trade discounts offered by the Contractor from its catalog, list, or schedule price. (But see Note 6.)

“Labor index” means the average straight time hourly earnings of the Contractor's employees in the _____ shop of the Contractor's _____ plant (see Note 4) for any particular month.

“Month” means calendar month. However, if the Contractor's accounting period does not coincide with the calendar month, then that accounting period shall be used in lieu of “month.”

(b) Each contract unit price shall be subject to revision, under the terms of this clause, to reflect changes in the cost of labor and steel. For purpose of this price revision, the proportion of the contract unit price attributable to costs of labor not otherwise included in the price of the steel item identified under the “base steel index” definition in paragraph (a) shall be _____ percent, and the proportion of the contract unit price attributable to the cost of steel shall be _____ percent. (See Note 5.)

(c)(1) Unless otherwise specified in this contract, the labor index shall be computed by dividing the total straight time earnings of the Contractor's employees in the shop identified in paragraph (a) for any given month by the total number of straight time hours worked by those employees in that month.

(2) Any revision in a contract unit price to reflect changes in the cost of labor shall be computed solely by reference to the “base labor index” and the “current labor index.”

(d) Any revision in a contract unit price to reflect changes in the cost of steel shall be computed solely by reference to the “base steel index” and the “current steel index.”

(e)(1) Each contract unit price shall be revised for each month in which delivery of supplies is required to be made.

(2) The revised contract unit price shall apply to the deliveries of those quantities required to be made in that month regardless of when actual delivery is made.

(3) Each revised contract unit price shall be computed by adding—

(i) The adjusted cost of labor (obtained by multiplying _____ percent of the contract unit price by a fraction, of which the numerator shall be the current labor index and the denominator shall be the base labor index);

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(ii) The adjusted cost of steel (obtained by multiplying ____ percent of the contract unit price by a fraction, of which the numerator shall be the current steel index and the denominator shall be the base steel index); and

(iii) The amount equal to ____ percent of the original contract unit price (representing that portion of the unit price which relates neither to the cost of labor nor the cost of steel, and which is therefore not subject to revision (see Note 5)).

(4) The aggregate of the increases in any contract unit price under this contract shall not exceed ten percent of the original contract unit price.

(5) Computations shall be made to the nearest one-hundredth of one cent.

(f)(1) Pending any revisions of the contract unit prices, the Contractor shall be paid the contract unit price for deliveries made.

(2) Within 30 days after final delivery (or such other period as may be authorized by the Contracting Officer), the Contractor shall furnish a statement identifying the correctness of—

(i) The average straight time hourly earnings of the Contractor's employees in the shop identified in paragraph (a) that are relevant to the computations of the “base labor index” and the “current labor index;” and

(ii) The Contractor's established prices (see Note 6), including all applicable extras for like quantities of the item that are relevant to the computation of the “base steel index” and the “current steel index.”

(3) Upon request of the Contracting Officer, the Contractor shall make available all records used in the computation of the labor indices.

(4) Upon receipt of the statement, the Contracting Officer will compute the revised contract unit prices and modify the contract accordingly. No modification to this contract will be made pursuant to this clause until the Contracting Officer has verified the revised established price (see Note 6).

(g)(1) In the event any item of this contract is subject to a total or partial termination for convenience, the month in which the Contractor receives notice of the termination, if prior to the month in which delivery is required, shall be considered the month in which delivery of the terminated item is required for the purposes of determining the current labor and steel indices under paragraphs (c) and (d).

(2) For any item which is not terminated for convenience, the month in which delivery is required under the contract shall continue to apply for determining those indices with respect to the quantity of the non-terminated item.

(3) If this contract is terminated for default, any price revision shall be limited to the quantity of the item which has been delivered by the Contractor and accepted by the Government prior to receipt by the Contractor of the notice of termination.

(h) If the Contractor's failure to make delivery of any required quantity arises out of causes beyond the control and without the fault or negligence of the Contractor, within

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the meaning of the clause of this contract entitled “Default,” the quantity not delivered shall be delivered as promptly as possible after the cessation of the cause of the failure, and the delivery schedule set forth in this contract shall be amended accordingly.

NOTES:

- 1 Offeror insert the unit price and unit measure of the standard steel mill item to be used in the manufacture of the contract item.
- 2 Offeror identify the standard steel mill item to be used in the manufacture of the contract item.
- 3 Offeror insert best estimate of the number of days required for processing the standard steel mill item in the shop identified under the “labor index” definition.
- 4 Offeror identify the shop and plant in which the standard steel mill item identified under the “base steel index” definition will be finally fabricated or processed into the contract item.
- 5 Offeror insert the same percentage figures for the corresponding blanks in paragraphs (b), (e)(3)(i), and (e)(3)(ii). In paragraph (e)(3)(iii), insert the percentage representing the difference between the sum of the percentages inserted in paragraph (b) and 100 percent.
- 6 In negotiated acquisitions of nonstandard steel items, when there is no “established price” or when it is not desirable to use this price, this paragraph may refer to another appropriate price basis, e.g., an established interplant price.

(End of clause)

252.216-7002 Alternate A, Time-and-Materials/Labor-Hour Proposal Requirements – Non-Commercial Item Acquisition with Adequate Price Competition.

As prescribed in [216.601](#)(e), substitute the following paragraph (c) for paragraph (c) of the provision at FAR 52.216-29:

ALTERNATE A, TIME-AND-MATERIALS/LABOR-HOUR PROPOSAL REQUIREMENTS – NON-COMMERCIAL ITEM ACQUISITION WITH ADEQUATE PRICE COMPETITION (FEB 2007)

(c) The offeror must establish fixed hourly rates using separate rates for each category of labor to be performed by each subcontractor and for each category of labor to be performed by the offeror, and for each category of labor to be transferred between divisions, subsidiaries, or affiliates of the offeror under a common control.

252.216-7003 Economic Price Adjustment—Wage Rates or Material Prices Controlled by a Foreign Government.

As prescribed in [216.203-4-70](#)(c), use the following clause:

ECONOMIC PRICE ADJUSTMENT--WAGE RATES OR MATERIAL PRICES CONTROLLED BY A FOREIGN GOVERNMENT (JUN 1997)

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(a) The Contractor represents that the prices set forth in this contract—

(1) Are based on the wage rate(s) or material price(s) established and controlled by the Government of _____ (*Offeror insert name of host country*); and

(2) Do not include contingency allowances to pay for possible increases in wage rates or material prices.

(b) If wage rates or material prices are revised by the government named in paragraph (a) of this clause, the Contracting Officer shall make an equitable adjustment in the contract price and shall modify the contract to the extent that the Contractor's actual costs of performing this contract are increased or decreased, as a direct result of the revision, subject to the following:

(1) For increases in established wage rates or material prices, the increase in contract unit price(s) shall be effective on the same date that the government named in paragraph (a) of this clause increased the applicable wage rate(s) or material price(s), but only if the Contracting Officer receives the Contractor's written request for contract adjustment within 10 days of the change. If the Contractor's request is received later, the effective date shall be the date that the Contracting Officer received the Contractor's request.

(2) For decreases in established wage rates or material prices, the decrease in contract unit price(s) shall be effective on the same date that the government named in paragraph (a) of this clause decreased the applicable wage rate(s) or material price(s). The decrease in contract unit price(s) shall apply to all items delivered on and after the effective date of the government's rate or price decrease.

(c) No modification changing the contract unit price(s) shall be executed until the Contracting Officer has verified the applicable change in the rates or prices set by the government named in paragraph (a) of this clause. The Contractor shall make available its books and records that support a requested change in contract price.

(d) Failure to agree to any adjustment shall be a dispute under the Disputes clause of this contract.

(End of clause)

252.216-7004 Award Fee Reduction or Denial for Jeopardizing the Health or Safety of Government Personnel.

As prescribed in [216.406](#), use the following clause:

AWARD FEE REDUCTION OR DENIAL FOR JEOPARDIZING THE HEALTH OR SAFETY OF GOVERNMENT PERSONNEL (NOV 2010)

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

“Covered incident”–

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(1) Means any incident in which the Contractor, through a criminal, civil, or administrative proceeding that results in a disposition listed in paragraph (2) of this definition –

(i) Has been determined in the performance of this contract to have caused serious bodily injury or death of any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel; or

(ii) Has been determined to be liable for actions of a subcontractor of the Contractor that caused serious bodily injury or death of any civilian or military personnel of the Government through gross negligence or with reckless disregard for the safety of such personnel.

(2) Includes those incidents that have resulted in any of the following dispositions:

(i) In a criminal proceeding, a conviction.

(ii) In a civil proceeding, a finding of fault or liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damage of \$5,000 or more.

(iii) In an administrative proceeding, a finding of fault and liability that results in –

(A) The payment of a monetary fine or penalty of \$5,000 or more; or

(B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.

(iv) In a criminal, civil or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the Contractor if the proceeding could have led to any of the outcomes specified in subparagraphs (a)(2)(i), (a)(2)(ii), or (a)(2)(iii).

“Serious bodily injury” means a grievous physical harm that results in a permanent disability.

(b) If, in the performance of this contract, the Contractor’s or its subcontractor’s actions cause serious bodily injury or death of civilian or military Government personnel, the Government may reduce or deny the award fee for the relevant award fee period in which the covered incident occurred, including the recovery of all or part of any award fees paid for any previous period during which the covered incident occurred.

(End of clause)

252.216-7005 Award Fee.

As prescribed in [216.406\(e\)\(2\)](#), insert the following clause:

AWARD FEE (FEB 2011)

The Contractor may earn award fee from a minimum of zero dollars to the maximum amount stated in the award-fee plan in this contract. In no event will award fee be paid

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to the Contractor for any evaluation period in which the Government rates the Contractor's overall cost, schedule, and technical performance below satisfactory. The Contracting Officer may unilaterally revise the award-fee plan prior to the beginning of any rating period in order to redirect contractor emphasis.

(End of clause)

252.216-7006 Ordering.

As prescribed in [216.506\(a\)](#), use the following clause:

ORDERING (MAY 2011)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the contract schedule. Such orders may be issued from _____ through _____ *[insert dates]*.

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c)(1) If issued electronically, the order is considered "issued" when a copy has been posted to the Electronic Document Access system, and notice has been sent to the Contractor.

(2) If mailed or transmitted by facsimile, a delivery order or task order is considered "issued" when the Government deposits the order in the mail or transmits by facsimile. Mailing includes transmittal by U.S. mail or private delivery services.

(3) Orders may be issued orally only if authorized in the schedule.

(End of Clause)

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(Revised May 5, 2011)

252.223-7000 Reserved.

252.223-7001 Hazard Warning Labels.

As prescribed in [223.303](#), use the following clause:

HAZARD WARNING LABELS (DEC 1991)

(a) “Hazardous material,” as used in this clause, is defined in the Hazardous Material Identification and Material Safety Data clause of this contract.

(b) The Contractor shall label the item package (unit container) of any hazardous material to be delivered under this contract in accordance with the Hazard Communication Standard (29 CFR 1910.1200 et seq). The Standard requires that the hazard warning label conform to the requirements of the standard unless the material is otherwise subject to the labelling requirements of one of the following statutes:

- (1) Federal Insecticide, Fungicide and Rodenticide Act;
- (2) Federal Food, Drug and Cosmetics Act;
- (3) Consumer Product Safety Act;
- (4) Federal Hazardous Substances Act; or
- (5) Federal Alcohol Administration Act.

(c) The Offeror shall list which hazardous material listed in the Hazardous Material Identification and Material Safety Data clause of this contract will be labelled in accordance with one of the Acts in paragraphs (b)(1) through (5) of this clause instead of the Hazard Communication Standard. Any hazardous material not listed will be interpreted to mean that a label is required in accordance with the Hazard Communication Standard.

MATERIAL (If None, Insert “None.”)	ACT
_____	_____
_____	_____

(d) The apparently successful Offeror agrees to submit, before award, a copy of the hazard warning label for all hazardous materials not listed in paragraph (c) of this clause. The Offeror shall submit the label with the Material Safety Data Sheet being furnished under the Hazardous Material Identification and Material Safety Data clause of this contract.

(e) The Contractor shall also comply with MIL-STD-129, Marking for Shipment and Storage (including revisions adopted during the term of this contract).

(End of clause)

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252.223-7002 Safety Precautions for Ammunition and Explosives.

As prescribed in [223.370-5](#), use the following clause:

SAFETY PRECAUTIONS FOR AMMUNITION AND EXPLOSIVES (MAY 1994)

(a) *Definition.* “Ammunition and explosives,” as used in this clause—

(1) Means liquid and solid propellants and explosives, pyrotechnics, incendiaries and smokes in the following forms:

- (i) Bulk,
- (ii) Ammunition;
- (iii) Rockets;
- (iv) Missiles;
- (v) Warheads;
- (vi) Devices; and
- (vii) Components of (i) through (vi), except for wholly inert items.

(2) This definition does not include the following, unless the Contractor is using or incorporating these materials for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition or explosive end item, or of a weapon system—

- (i) Inert components containing no explosives, propellants, or pyrotechnics;
- (ii) Flammable liquids;
- (iii) Acids;
- (iv) Oxidizers;
- (v) Powdered metals; or
- (vi) Other materials having fire or explosive characteristics.

(b) *Safety requirements.*

(1) The Contractor shall comply with the requirements of the DoD Contractors' Safety Manual for Ammunition and Explosives, DoD 4145.26-M, hereafter referred to as “the manual,” in effect on the date of the solicitation for this contract. The Contractor shall also comply with any other additional requirements included in the schedule of this contract.

(2) The Contractor shall allow the Government access to the Contractor's facilities, personnel, and safety program documentation. The Contractor shall allow

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authorized Government representatives to evaluate safety programs, implementation, and facilities.

(c) *Noncompliance with the manual.*

(1) If the Contracting Officer notifies the Contractor of any noncompliance with the manual or schedule provisions, the Contractor shall take immediate steps to correct the noncompliance. The Contractor is not entitled to reimbursement of costs incurred to correct noncompliances unless such reimbursement is specified elsewhere in the contract.

(2) The Contractor has 30 days from the date of notification by the Contracting Officer to correct the noncompliance and inform the Contracting Officer of the actions taken. The Contracting Officer may direct a different time period for the correction of noncompliances.

(3) If the Contractor refuses or fails to correct noncompliances within the time period specified by the Contracting Officer, the Government has the right to direct the Contractor to cease performance on all or part of this contract. The Contractor shall not resume performance until the Contracting Officer is satisfied that the corrective action was effective and the Contracting Officer so informs the Contractor.

(4) The Contracting Officer may remove Government personnel at any time the Contractor is in noncompliance with any safety requirement of this clause.

(5) If the direction to cease work or the removal of Government personnel results in increased costs to the Contractor, the Contractor shall not be entitled to an adjustment in the contract price or a change in the delivery or performance schedule unless the Contracting Officer later determines that the Contractor had in fact complied with the manual or schedule provisions. If the Contractor is entitled to an equitable adjustment, it shall be made in accordance with the Changes clause of this contract.

(d) *Mishaps.* If a mishap involving ammunition or explosives occurs, the Contractor shall—

- (1) Notify the Contracting Officer immediately;
- (2) Conduct an investigation in accordance with other provisions of this contract or as required by the Contracting Officer; and
- (3) Submit a written report to the Contracting Officer.

(e) *Contractor responsibility for safety.*

(1) Nothing in this clause, nor any Government action or failure to act in surveillance of this contract, shall relieve the Contractor of its responsibility for the safety of—

- (i) The Contractor's personnel and property;

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(ii) The Government's personnel and property; or

(iii) The general public.

(2) 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 those requiring the obtaining of licenses and permits) in connection with the performance of this contract.

(f) *Contractor responsibility for contract performance.*

(1) Neither the number or frequency of inspections performed by the Government, nor the degree of surveillance exercised by the Government, relieve the Contractor of its responsibility for contract performance.

(2) If the Government acts or fails to act in surveillance or enforcement of the safety requirements of this contract, this does not impose or add to any liability of the Government.

(g) *Subcontractors.*

(1) The Contractor shall insert this clause, including this paragraph (g), in every subcontract that involves ammunition or explosives.

(i) The clause shall include a provision allowing authorized Government safety representatives to evaluate subcontractor safety programs, implementation, and facilities as the Government determines necessary.

(ii) **NOTE:** The Government Contracting Officer or authorized representative shall notify the prime Contractor of all findings concerning subcontractor safety and compliance with the manual. The Contracting Officer or authorized representative may furnish copies to the subcontractor. The Contractor in turn shall communicate directly with the subcontractor, substituting its name for references to “the Government”. The Contractor and higher tier subcontractors shall also include provisions to allow direction to cease performance of the subcontract if a serious uncorrected or recurring safety deficiency potentially causes an imminent hazard to DoD personnel, property, or contract performance.

(2) The Contractor agrees to ensure that the subcontractor complies with all contract safety requirements. The Contractor will determine the best method for verifying the adequacy of the subcontractor's compliance.

(3) The Contractor shall ensure that the subcontractor understands and agrees to the Government's right to access to the subcontractor's facilities, personnel, and safety program documentation to perform safety surveys. The Government performs these safety surveys of subcontractor facilities solely to prevent the occurrence of any mishap which would endanger the safety of DoD personnel or otherwise adversely impact upon the Government's contractual interests.

(4) The Contractor shall notify the Contracting Officer or authorized representative before issuing any subcontract when it involves ammunition or explosives. If the proposed subcontract represents a change in the place of performance,

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the Contractor shall request approval for such change in accordance with the clause of this contract entitled “Change in Place of Performance--Ammunition and Explosives”.

(End of clause)

252.223-7003 Change in Place of Performance—Ammunition and Explosives.

As prescribed in [223.370-5](#), use the following clause:

CHANGE IN PLACE OF PERFORMANCE—AMMUNITION AND EXPLOSIVES (DEC 1991)

(a) The Offeror shall identify, in the “Place of Performance” provision of this solicitation, the place of performance of all ammunition and explosives work covered by the Safety Precautions for Ammunition and Explosives clause of this solicitation. Failure to furnish this information with the offer may result in rejection of the offer.

(b) The Offeror agrees not to change the place of performance of any portion of the offer covered by the Safety Precautions for Ammunition and Explosives clause contained in this solicitation after the date set for receipt of offers without the written approval of the Contracting Officer. The Contracting Officer shall grant approval only if there is enough time for the Government to perform the necessary safety reviews on the new proposed place of performance.

(c) If a contract results from this offer, the Contractor agrees not to change any place of performance previously cited without the advance written approval of the Contracting Officer.

(End of clause)

252.223-7004 Drug-Free Work Force.

As prescribed in [223.570-2](#), use the following clause:

DRUG-FREE WORK FORCE (SEP 1988)

(a) *Definitions.*

(1) “Employee in a sensitive position,” as used in this clause, means an employee who has been granted access to classified information; or employees in other positions that the Contractor determines involve national security, health or safety, or functions other than the foregoing requiring a high degree of trust and confidence.

(2) “Illegal drugs,” as used in this clause, means controlled substances included in Schedules I and II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under Chapter 13 of that Title. The term “illegal drugs” does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

(b) The Contractor agrees to institute and maintain a program for achieving the objective of a drug-free work force. While this clause defines criteria for such a program, contractors are encouraged to implement alternative approaches comparable to the criteria in paragraph (c) that are designed to achieve the objectives of this clause.

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(c) Contractor programs shall include the following, or appropriate alternatives:

(1) Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources;

(2) Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees;

(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 time as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.

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(e) The provisions of this clause pertaining to drug testing programs 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)

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

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

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

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regulations (including requirements for obtaining licenses and permits) in connection with the performance of this contract.

(End of clause)

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.

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(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)