Part 223 - ENVIRONMENT, SUSTAINABLE ACQUISITION, AND MATERIAL SAFETY

Subpart 223.1 - SUSTAINABLE PRODUCTS AND SERVICES

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Parent topic: Defense Federal Acquisition Regulation

Subpart 223.1 - SUSTAINABLE PRODUCTS AND SERVICES

223.107 Reserved.

223.107-1 Products containing recovered materials.

(e) Procedures. Follow the procedures at PGI 223.107-1(e).

223.107-4 Products that contain, use, or are manufactured with ozone-depleting substances or products that contain or use high global warming potential hydrofluorocarbons.

No DoD contract may include a specification or standard that requires the use of a class I ozone-depleting substance or that can be met only through the use of such a substance unless the inclusion of the specification or standard is specifically authorized at a level no lower than a general or flag officer or a member of the Senior Executive Service of the requiring activity in accordance with section 326, Public Law 102-484 (10 U.S.C. 3201 note prec.). This restriction is in addition to any imposed by the Clean Air Act and applies after June 1, 1993, to all DoD contracts, regardless of place of performance.

Subpart 223.2 - ENERGY AND WATER EFFICIENCY AND RENEWABLE ENERGY

NO DFARS TEXT

Subpart 223.3 - HAZARDOUS MATERIAL IDENTIFICATION, MATERIAL SAFETY DATA, AND NOTICE OF RADIOACTIVE MATERIALS

223.302 Hazardous material identification and notice of material safety data.

(e) The contracting officer shall also provide hazard warning labels, that are received from apparent successful offerors, to the cognizant safety officer.

223.304 Contract clause.

Use the clause at 252.223-7001 , Hazard Warning Labels, in solicitations and contracts which require submission of hazardous material data sheets (see FAR 23.302(c)).

223.370 Safety precautions for ammunition and explosives.

223.370-1 Scope.

(a) This section applies to all acquisitions involving the use of ammunition and explosives, including acquisitions for—

(1) Development;

(2) Testing;

(3) Research;

(4) Manufacturing;

(5) Handling or loading;

(6) Assembling;

(7) Packaging;

(8) Storage;

(9) Transportation;

(10) Renovation;

(11) Demilitarization;

(12) Modification;

(13) Repair;

(14) Disposal;

(15) Inspection; or

(16) Any other use, including acquisitions requiring the use or the incorporation of materials listed in paragraph (b) of this subsection for initiation, propulsion, or detonation as an integral or component part of an explosive, an ammunition, or explosive end item or weapon system.

(b) This section does not apply to acquisitions solely for—

(1) Inert components containing no explosives, propellants, or pyrotechnics;

(2) Flammable liquids;

(3) Acids;

(4) Oxidizers;

(5) Powdered metals; or

(6) Other materials having fire or explosive characteristics.

223.370-2 Definition.

“Ammunition and explosives,” as used in this section, is defined in the clause at 252.223-7002 , Safety Precautions for Ammunition and Explosives.

223.370-3 Policy.

(a) DoD policy is to ensure that its contractors take reasonable precautions in handling ammunition and explosives so as to minimize the potential for mishaps.

(b) This policy is implemented by DoD Manual 4145.26, DoD Contractors’ Safety Manual for Ammunition and Explosives, which is incorporated into contracts under which ammunition and explosives are handled. The manual contains mandatory safety requirements for contractors. When work is to be performed on a Government-owned installation, the contracting officer may use the ammunition and explosives regulation of the DoD component or installation as a substitute for, or supplement to, DoD Manual 4145.26, as long as the contract cites the ammunition and explosives regulation of the DoD component or installation .

223.370-4 Procedures.

Follow the procedures at PGI 223.370 - 4.

223.370-5 Contract clauses.

Use the clauses at 252.223-7002 , Safety Precautions for Ammunition and Explosives, and 252.223-7003 , Change in Place of Performance—Ammunition and Explosives, in all solicitations and contracts for acquisition to which this section applies.

Subpart 223.4 - Reserved

Subpart 223.5 - GREENHOUSE GAS EMISSIONS

223.501 Policy.

223.501-70 Disclosure of greenhouse gas emissions.

(a) Scope. This section implements section 318 of the National Defense Authorization Act for Fiscal Year 2024 (Pub. L. 118-31).

(b) Definitions. As used in this section—

“Greenhouse gas” means carbon dioxide, methane, nitrous oxide, nitrogen trifluoride,

hydrofluorocarbons, perfluorocarbons, or sulfur hexafluoride.

“Greenhouse gas inventory” means, with respect to an entity or individual, a quantified list of the annual greenhouse gas emissions of the entity or individual.

(c) Prohibition.

(1) Contracting officers must not require, as a condition of contract award, nontraditional defense contractors to disclose a greenhouse gas inventory or any other report on greenhouse gas emissions, unless an exception is made or a waiver is granted in accordance with paragraph (d) or (e) of this section, respectively.

(2) Contracting officers must not consider, as a condition of contract award to nontraditional defense contractors, greenhouse gas emission information that may otherwise be provided in annual representations and certifications in response to the following provisions:

(i) FAR 52.204-7, System for Award Management.

(ii) FAR 52.204-8, Annual Representations and Certifications, paragraph (c)(1)(xix), Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation.

(iii) FAR 52.212-3, Offeror Representations and Certifications—Commercial Products and Commercial Services, paragraph (t), Public Disclosure of Greenhouse Gas Emissions and Reduction Goals.

(iv) FAR 52.223-22, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation.

(d) Exception. The prohibition at paragraph (c) of this section will not apply if a contracting official at least one level above the contracting officer determines that such disclosure is necessary to verify a voluntary disclosure of a greenhouse gas inventory or other report.

(e) Waiver. The head of the contracting activity may issue, on a contract-by-contract basis, a waiver to the prohibition at paragraph (c) of this section, provided that the information relating to greenhouse gas emissions is directly related to the performance of the contract. In issuing such a waiver, the head of the contracting activity must ensure that any such required information is clearly delineated in the contract.

Subpart 223.7 - CONTRACTING FOR ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES

NO DFARS TEXT

Subpart 223.70 - RESERVED

Subpart 223.71 - STORAGE, TREATMENT, AND DISPOSAL OF TOXIC OR HAZARDOUS MATERIALS

223.7101 Definitions.

As used in this subpart, the terms “storage” and “toxic or hazardous materials” are defined in the clause at 252.223-7006 , Prohibition on Storage, Treatment, and Disposal of Toxic or Hazardous Materials.

223.7102 Policy.

(a) 10 U.S.C. 2692 prohibits storage, treatment, or disposal on DoD installations of toxic or hazardous materials that are not owned either by DoD or by a member of the armed forces (or a dependent of the member) assigned to or provided military housing on the installation, unless an exception in 223.7104 applies.

(b) When storage of toxic or hazardous materials is authorized based on an imminent danger, the storage provided shall be temporary and shall cease once the imminent danger no longer exists. In all other cases of storage or disposal, the storage or disposal shall be terminated as determined by the Secretary of Defense.

223.7103 Procedures.

(a)(1) Storage, treatment, or disposal of toxic or hazardous materials not owned by DoD on a DoD installation is prohibited unless—

(i) One or more of the exceptions set forth in 223.7104 (a) is met including requisite approvals; or

(ii) Secretary of Defense authorization is obtained under the conditions set forth in 223.7104 (b).

(2) When storage, treatment, or disposal of toxic or hazardous materials not owned by DoD is authorized in accordance with this subpart, the contract shall specify the types and quantities of toxic or hazardous materials that may be temporarily stored, treated, or disposed of in connection with the contract or as a result of the authorized use of a DoD facility or space launch facility. All solicitations and contracts shall specify the conditions under which storage, treatment, or disposal is authorized.

(b) If the contracting officer is uncertain as to whether particular activities are prohibited or fall under one of the exceptions in 223.7104 , the contracting officer should seek advice from the cognizant office of counsel.

223.7104 Exceptions.

(a) The prohibition of 10 U.S.C. 2692 does not apply to any of the following:

(1) The storage, treatment, or disposal of materials that will be or have been used in connection with

an activity of DoD or in connection with a service to be performed on a DoD installation for the benefit of DoD.

(2) The storage of strategic and critical materials in the National Defense Stockpile under an agreement for such storage with the Administrator of General Services Administration.

(3) The temporary storage or disposal of explosives in order to protect the public or to assist agencies responsible for Federal, State, or local law enforcement in storing or disposing of explosives when no alternative solution is available, if such storage or disposal is made in accordance with an agreement between the Secretary of Defense and the head of the Federal, State, or local agency concerned.

(4) The temporary storage or disposal of explosives in order to provide emergency lifesaving assistance to civil authorities.

(5) The disposal of excess explosives produced under a DoD contract, if the head of the military department concerned determines, in each case, that an alternative feasible means of disposal is not available to the contractor, taking into consideration public safety, available resources of the contractor, and national defense production requirements.

(6) The temporary storage of nuclear materials or nonnuclear classified materials in accordance with an agreement with the Secretary of Energy.

(7) The storage of materials that constitute military resources intended to be used during peacetime civil emergencies in accordance with applicable DoD regulations.

(8) The temporary storage of materials of other Federal agencies in order to provide assistance and refuge for commercial carriers of such material during a transportation emergency.

(9) The storage of any material that is not owned by DoD, if the Secretary of the military department concerned determines that the material is required or generated in connection with the authorized and compatible use of a facility of DoD, including the use of such a facility for testing material or training personnel.

(10) The treatment and disposal of any toxic or hazardous materials not owned by DoD, if the Secretary of the military department concerned determines that the material is required or generated in connection with the authorized and compatible use of a facility of that military department and the Secretary enters into a contract or agreement with the prospective user that—

(i) Is consistent with the best interest of national defense and environmental security; and

(ii) Provides for the prospective user’s continued financial and environmental responsibility and liability with regard to the material.

(11) The storage of any material that is not owned by DoD if the Secretary of the military department concerned determines that the material is required or generated in connection with the use of a space launch facility located on a DoD installation or on other land controlled by the United States.

(b) The Secretary of Defense may grant an exception to the prohibition in 10 U.S.C. 2692 when essential to protect the health and safety of the public from imminent danger if the Secretary otherwise determines the exception is essential and if the storage or disposal authorized does not compete with private enterprise.

223.7105 Reimbursement.

The Secretary of Defense may assess a charge for any storage or disposal provided under this subpart. If a charge is to be assessed, then such assessment shall be identified in the contract with payment to the Government on a reimbursable cost basis.

223.7106 Contract clause.

Use the basic or the alternate of the clause at 252.223-7006, Prohibition on Storage, Treatment, and Disposal of Toxic or Hazardous Materials, in all solicitations and contracts which require, may require, or permit contractor access to a DoD installation.

(a) Use the basic clause, unless a determination is made under 223.7104 (a)(10).

(b) Use the alternate I clause when the Secretary of the military department issues a determination under the exception at 223.7104 (a)(10).

Subpart 223.72 - SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES

223.7200 Definition.

As used in this subpart—

“Arms, ammunition, and explosives (AA&E),” means those items within the scope) of DoD Manual 5100.76, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

223.7201 Policy.

(a) The requirements of DoD Manual 5100.76, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives, shall be applied to contracts when—

(1) AA&E will be provided to the contractor or subcontractor as Government-furnished property; or

(2) The principal development, production, manufacture, or purchase of AA&E is for DoD use.

(b) The requirements of DoD Manual 5100.76 need not be applied to contracts when—

(1) The AA&E to be acquired under the contract is a commercial product within the meaning of FAR 2.101; or

(2) The contract will be performed in a Government-owned contractor-operated ammunition production facility. However, if subcontracts issued under such a contract will meet the criteria of paragraph (a) of this section, the requirements of DoD Manual 5100.76 shall apply.

223.7202 Preaward responsibilities.

When an acquisition involves AA&E, technical or requirements personnel shall specify in the purchase request—

(a) That AA&E is involved; and

(b) Which physical security requirements of DoD Manual 5100.76 apply.

223.7203 Contract clause.

Use the clause at 252.223–7007, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives, in all solicitations and contracts to which DoD Manual 5100.76 applies, in accordance with the policy at 223.7201 Policy. . Complete paragraph (b) of the clause based on information provided by cognizant technical or requirements personnel.

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.

In accordance with the DoD policy memorandum of April 8, 2009, Minimizing the Use of Hexavalent Chromium, 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.

223.7302 Reserved.

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.

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, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that are for supplies, maintenance and repair services, or construction.

Subpart 223.74 - PROHIBITION ON PROCUREMENT OF CERTAIN ITEMS CONTAINING PERFLUOROALKYL OR POLYFLUOROALKYL SUBSTANCES

223.7400 Scope of subpart.

This subpart implements section 322(b), (c), and (d) of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92).

223.7401 Definition.

As used in this subpart—

“Ocean-going vessel” means a vessel over 59 feet in length owned or operated by DoD or the U.S. Coast Guard, other than vessels that are chartered by the Armed Forces on a time or voyage basis.

223.7402 Prohibition.

Do not procure any fire-fighting agent that contains in excess of one part per billion perfluoroalkyl substances or polyfluoroalkyl substances. Procurements of fire-fighting agent for use solely onboard ocean-going vessels are exempt from this prohibition.

223.7403 Procedures.

Contracting officers shall not issue a solicitation for any fire-fighting agent that contains perfluoroalkyl or polyfluoroalkyl substances in excess of one part per billion, unless the requiring activity provides documentation of the exemption at 223.7402 Prohibition.. The contracting officer shall maintain the documentation in the contract file.

223.7404 Contract clause.

Use the clause at 252.223-7009, Prohibition of Procurement of Fluorinated Fire-Fighting Agent for Use on Military Installations, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, relating to fire-fighting on military installations.