52.228-7 Insurance-Liability to Third Persons.

As prescribed in 28.311-1 , insert the following clause:

Insurance-Liability to Third Persons (Mar 1996)

(a)

(1) Except as provided in paragraph (a)(2) of this clause, the Contractor *shall* provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) *insurance*, and such other *insurance* as the *Contracting Officer may* require under this contract.

(2) The Contractor *may*, with the approval of the *Contracting Officer*, maintain a *self-insurance* program, provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(3) All *insurance* required by this paragraph *shall* be in a form and amount and for those periods as the *Contracting Officer may* require or approve and with insurers approved by the *Contracting Officer*.

(b) The Contractor agrees to submit for the *Contracting Officer*'s approval, to the extent and in the manner required by the *Contracting Officer*, any other *insurance* that is maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement.

(c) The Contractor *shall* be reimbursed-

(1) For that portion-

(i) Of the reasonable cost of *insurance* allocable to this contract; and

(ii) Required or approved under this clause; and

(2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by *insurance* or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this contract. These liabilities *must* arise out of the performance of this contract, whether or not caused by the negligence of the Contractor or of the Contractor's agents, servants, or employees, and *must* be represented by final judgments or settlements approved *in writing* by the Government. These liabilities are for-

(i) Loss of or damage to property (other than property owned, occupied, or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor); or

(ii) Death or bodily injury.

(d) The Government's liability under paragraph (c) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this contract *shall* be construed as

implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(e) The Contractor *shall* not be reimbursed for liabilities (and expenses incidental to such liabilities)-

(1) For which the Contractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the contract;

(2) For which the Contractor has failed to insure or to maintain *insurance* as required by the *Contracting Officer*; or

(3) That result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of-

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this contract.

(f) The provisions of paragraph (e) of this clause *shall* not restrict the right of the Contractor to be reimbursed for the cost of *insurance* maintained by the Contractor in connection with the performance of this contract, other than *insurance* required in accordance with this clause; *provided*, that such cost is allowable under the Allowable Cost and Payment clause of this contract.

(g) If any suit or action is filed or any *claim* is made against the Contractor, the cost and expense of which *may* be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor *shall*-

(1) Immediately notify the *Contracting Officer* and promptly furnish copies of all pertinent papers received;

(2) Authorize Government representatives to collaborate with counsel for the *insurance* carrier in settling or defending the *claim* when the amount of the liability claimed exceeds the amount of coverage; and

(3) Authorize Government representatives to settle or defend the *claim* and to represent the Contractor in or to take charge of any litigation, if required by the Government, when the liability is not insured or covered by bond. The Contractor *may*, at its own expense, be associated with the Government representatives in any such *claim* or litigation.

(End of clause)

Parent topic: 52.228 [Reserved]