

for whom the applicability of the Defense Base Act has been waived, the Contractor shall (1) provide, before commencing performance under this contract, at least that workers' compensation insurance or the equivalent as the laws of the country of which these employees are nationals may require and (2) continue to maintain it until performance is completed. The Contractor shall insert, in all subcontracts under this contract to which the Defense Base Act would apply but for the waiver, a clause similar to this paragraph (a) (including this sentence) imposing upon those subcontractors this requirement to provide such workers' compensation insurance coverage.

(b) This paragraph applies if the Contractor or any subcontractor under this contract employs any person who, but for a waiver granted by the Secretary of Labor, would be subject to the War Hazards Compensation Act (42 U.S.C. 1701 et seq.). On behalf of employees for whom the applicability of the Defense Base Act (and hence that of the War Hazards Compensation Act) has been waived, the Contractor shall, subject to reimbursement as provided elsewhere in this contract, afford the same protection as that provided in the War Hazards Compensation Act, except that the level of benefits shall conform to any law or international agreement controlling the benefits to which the employees may be entitled. In all other respects, the standards of the War Hazards Compensation Act shall apply; e.g., the definition of war-hazard risks (injury, death, capture, or detention as the result of a war hazard as defined in the Act), proof of loss, and exclusion of benefits otherwise covered by workers' compensation insurance or the equivalent. Unless the Contractor elects to assume directly the liability to subcontractor employees created by this clause, the Contractor shall insert, in all subcontracts under this contract to which the War Hazards Compensation Act would apply but for the waiver, a clause similar to this paragraph (b) (including this sentence) imposing upon those subcontractors this requirement to provide war-hazard benefits.

(End of clause)

**52.228-5 Insurance—Work on a Government Installation.**

As prescribed in 28.310, insert the following clause:

INSURANCE—WORK ON A GOVERNMENT  
INSTALLATION (JAN 1997)

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe or (2) until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

(End of clause)

[54 FR 34758, Aug. 21, 1989; 62 FR 239, Jan. 2, 1997]

**52.228-6 [Reserved]**

**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 subparagraph (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

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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)

[48 FR 42478, Sept. 19, 1983, as amended at 55 FR 52799, Dec. 21, 1990; 61 FR 2640, Jan. 26, 1996]

### 52.228-8 Liability and Insurance—Leased Motor Vehicles.

As prescribed in 28.312, insert the following clause:

#### LIABILITY AND INSURANCE—LEASED MOTOR VEHICLES (MAY 1999)

(a) The Government shall be responsible for loss of or damage to—

(1) Leased vehicles, except for (i) normal wear and tear and (ii) loss or damage caused by the negligence of the Contractor, its agents, or employees; and

(2) Property of third persons, or the injury or death of third persons, if the Government is liable for such loss, damage, injury, or death under the Federal Tort Claims Act (28 U.S.C. 2671-2680).

(b) The Contractor shall be liable for, and shall indemnify and hold harmless the Government against, all actions or claims for loss of or damage to property or the injury or death of persons, resulting from the fault, negligence, or wrongful act or omission of the Contractor, its agents, or employees.

(c) The Contractor shall provide and maintain insurance covering its liabilities under paragraph (b) of this clause, in amounts of at least \$200,000 per person and \$500,000 per occurrence for death or bodily injury and \$20,000 per occurrence for property damage or loss.

(d) Before commencing work under this contract, the Contractor shall notify the