

provides for relief from each liability. In the absence of approval, the subcontract shall contain provisions requiring the return of aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract.

(h) *Contractor's exclusion of insurance costs.* The Contractor warrants that the contract price does not and will not include, except as may be authorized in this clause, any charge or contingency reserve for insurance covering damage, loss, or destruction of aircraft while in the open, during operation, or in flight when the risk has been assumed by the Government, including the Contractor share of loss in this clause, even if the assumption may be terminated for aircraft in the open.

(i) *Procedures in the event of loss.* (1) In the event of damage, loss, or destruction of aircraft in the open, during operation, or in flight, the Contractor shall take all reasonable steps to protect the aircraft from further damage, to separate damaged and undamaged aircraft, and to put all aircraft in the best possible order. Except in cases covered by paragraph (f)(2) of this clause, the Contractor shall furnish to the Contracting Officer a statement of—

(i) The damaged, lost, or destroyed aircraft;

(ii) The time and origin of the damage, loss, or destruction;

(iii) All known interests in commingled property of which aircraft are a part; and

(iv) The insurance, if any, covering the interest in commingled property.

(2) The Contracting Officer will make an equitable adjustment for expenditures made by the Contractor in performing the obligations under this paragraph.

(j) *Loss prior to delivery.*

(1) If prior to delivery and acceptance by the Government, aircraft is damaged, lost, or destroyed and the Government assumed the risk, the Government shall either—

(i) Require that the aircraft be replaced or restored by the Contractor to the condition immediately prior to the damage, in which event the Contracting Officer will make an equitable adjustment in the contract price and the time for contract performance; or

(ii) Terminate this contract with respect to the aircraft. Notwithstanding the provisions in any other termination clause under this contract, in the event of termination, the Contractor shall be paid the contract price for the aircraft (or, if applicable, any work to be performed on the aircraft) less any amount the Contracting Officer determines—

(A) It would have cost the Contractor to complete the aircraft (or any work to be performed on the aircraft) together with anticipated profit on uncompleted work; and

(B) Would be the value of the damaged aircraft or any salvage retained by the Contractor.

(2) The Contracting Officer shall prescribe the manner of disposition of the damaged, lost, or destroyed aircraft, or any parts of the aircraft. If any additional costs of such disposition are incurred by the Contractor, a further equitable adjustment will be made in the amount due the Contractor. Failure of the parties to agree upon termination costs or an equitable adjustment with respect to any aircraft shall be considered a dispute under the Disputes clause of this contract.

(k) *Reimbursement from a third party.* In the event the Contractor is reimbursed or compensated by a third party for damage, loss, or destruction of aircraft and has also been compensated by the Government, the Contractor shall equitably reimburse the Government. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for damage, loss, or destruction. Upon the request of the Contracting Officer or authorized representative, the Contractor shall at Government expense furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment or subrogation) in obtaining recovery.

(l) *Government acceptance of liability.* To the extent the Government has accepted such liability under other provisions of this contract, the Contractor shall not be reimbursed for liability to third persons for loss or damage to property or for death or bodily injury caused by aircraft during flight unless the flight crew members previously have been approved for this flight in writing by the Government Flight Representative, who has been authorized in accordance with the combined regulation entitled "Contractor's Flight and Ground Operations".

(m) *Subcontracts.* The Contractor shall incorporate the requirements of this clause, including this paragraph (m), in all subcontracts.

(End of clause)

[75 FR 32645, June 8, 2010]

252.228-7002 [Reserved]

252.228-7003 Capture and detention.

As prescribed in 228.370(c), use the following clause:

CAPTURE AND DETENTION (DEC 1991)

(a) As used in this clause—

(1) *Captured person* means any employee of the Contractor who is—

(i) Assigned to duty outside the United States for the performance of this contract; and

(ii) Found to be missing from his or her place of employment under circumstances that make it appear probable that the absence is due to the action of the force of any power not allied with the United States in a common military effort; or

(iii) Known to have been taken prisoner, hostage, or otherwise detained by the force of such power, whether or not actually engaged in employment at the time of capture; provided, that at the time of capture or detention, the person was either—

(A) Engaged in activity directly arising out of and in the course of employment under this contract; or

(B) Captured in an area where required to be only in order to perform this contract.

(2) A *period of detention* begins with the day of capture and continues until the captured person is returned to the place of employment, the United States, or is able to be returned to the jurisdiction of the United States, or until the person's death is established or legally presumed to have occurred by evidence satisfactory to the Contracting Officer, whichever occurs first.

(3) *United States* comprises geographically the 50 states and the District of Columbia.

(4) *War Hazards Compensation Act* refers to the statute compiled in chapter 12 of title 42, U.S. Code (sections 1701-1717), as amended.

(b) If pursuant to an agreement entered into prior to capture, the Contractor is obligated to pay and has paid detention benefits to a captured person, or the person's dependents, the Government will reimburse the Contractor up to an amount equal to the lesser of—

(1) Total wage or salary being paid at the time of capture due from the Contractor to the captured person for the period of detention; or

(2) That amount which would have been payable if the detention had occurred under circumstances covered by the War Hazards Compensation Act.

(c) The period of detention shall not be considered as time spent in contract performance, and the Government shall not be obligated to make payment for that time except as provided in this clause.

(d) The obligation of the Government shall apply to the entire period of detention, except that it is subject to the availability of funds from which payment can be made. The rights and obligations of the parties under this clause shall survive prior expiration, completion, or termination of this contract.

(e) The Contractor shall not be reimbursed under this clause for payments made if the employees were entitled to compensation for capture and detention under the War Hazards Compensation Act, as amended.

(End of clause)

[56 FR 36479, July 31, 1991, as amended at 57 FR 42633, Sept. 15, 1992; 75 FR 32647, June 8, 2010]

252.228-7004 Bonds or other security.

As prescribed in 228.170, use the following provision:

BONDS OR OTHER SECURITY (DEC 1991)

(a) Offerors shall furnish a bid guarantee in the amount of \$ _____ with their bids. The offeror receiving notice of award shall furnish—

(1) A performance bond in the penal amount of \$ _____; and

(2) Payment in full of any sum due the Government.

(b) The Contractor shall furnish the performance bond to the Contracting Officer within _____ days after receipt of the notice of award. The Contracting Officer will not issue the notice to proceed until receipt of an acceptable performance bond and payment of any sum due the Government.

(c) Bonds supported by sureties whose names appear on the list contained in Treasury Department Circular 570 are acceptable. Performance bonds from individual sureties are acceptable if each person acting as a surety provides a SF 28, Affidavit of Individual Surety, and a pledge of assets acceptable to the Contracting Officer.

(End of provision)

252.228-7005 Accident reporting and investigation involving aircraft, missiles, and space launch vehicles.

As prescribed in 228.370(d), use the following clause:

ACCIDENT REPORTING AND INVESTIGATION INVOLVING AIRCRAFT, MISSILES, AND SPACE LAUNCH VEHICLES (DEC 1991)

(a) The Contractor shall report promptly to the Administrative Contracting Officer all pertinent facts relating to each accident involving an aircraft, missile, or space launch vehicle being manufactured, modified, repaired, or overhauled in connection with this contract.

(b) If the Government conducts an investigation of the accident, the Contractor will cooperate and assist the Government's personnel until the investigation is complete.

(c) The Contractor will include a clause in subcontracts under this contract to require subcontractor cooperation and assistance in accident investigations.