

**219.7104 Developmental assistance costs eligible for reimbursement or credit.**

(a) Developmental assistance provided under an approved mentor-protege agreement is distinct from, and must not duplicate, any effort that is the normal and expected product of the award and administration of the mentor firm's subcontracts. The mentor firm must accumulate and charge costs associated with the latter in accordance with its approved accounting practices. Mentor firm costs that are eligible for reimbursement are set forth in appendix I.

(b) Before incurring any costs under the Program, mentor firms must establish the accounting treatment of developmental assistance costs eligible for reimbursement or credit. Advance agreements are encouraged. To be eligible for reimbursement under the Program, the mentor firm must incur the costs before October 1, 2018.

(c) If the mentor firm is suspended or debarred while performing under an approved mentor-protege agreement, the mentor firm may not be reimbursed or credited for developmental assistance costs incurred more than 30 days after the imposition of the suspension or debarment.

(d) Developmental assistance costs incurred by a mentor firm before October 1, 2018, that are eligible for crediting under the Program, may be credited toward subcontracting plan goals as set forth in appendix I.

[65 FR 6555, Feb. 10, 2000; 65 FR 30191, May 10, 2000, as amended at 67 FR 77937, Dec. 20, 2002; 70 FR 29645, May 24, 2005; 76 FR 71467, Nov. 18, 2011; 77 FR 11367, Feb. 24, 2012]

**219.7105 Reporting.**

Mentor and protege firms must report on the progress made under mentor-protege agreements as indicated in appendix I, section I-112.

[65 FR 6555, Feb. 10, 2000, as amended at 69 FR 74996, Dec. 15, 2004]

**219.7106 Performance reviews.**

The Defense Contract Management Agency will conduct annual performance reviews of all mentor-protege agreements as indicated in appendix I, section I-113. The determinations made

in these reviews should be a major factor in determinations of amounts of reimbursement, if any, that the mentor firm is eligible to receive in the remaining years of the Program participation term under the agreement.

[65 FR 50150, Aug. 17, 2000, as amended at 69 FR 74996, Dec. 15, 2004]

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AUTHORITY: 41 U.S.C. 1303 and CFR chapter 1.

SOURCE: 56 FR 36358, July 31, 1991, unless otherwise noted.

### 222.001 Definitions.

*Labor advisor*, as used in this part, means the departmental or agency headquarters labor advisor.

[56 FR 36358, July 31, 1991, as amended at 72 FR 20763, Apr. 26, 2007]

## Subpart 222.1—Basic Labor Policies

### 222.101 Labor relations.

#### 222.101-1 General.

Follow the procedures at PGI 222.101-1 for referral of labor relations matters to the appropriate authorities.

[71 FR 18670, Apr. 12, 2006]

#### 222.101-3 Reporting labor disputes.

Follow the procedures at PGI 222.101-3 for reporting labor disputes.

[71 FR 18670, Apr. 12, 2006]

#### 222.101-3-70 Impact of labor disputes on defense programs.

(a) Each department and agency shall determine the degree of impact of potential or actual labor disputes on its own programs and requirements. For guidance on determining the degree of impact, see PGI 222.101-3-70(a).

(b) Each contracting activity shall obtain and develop data reflecting the impact of a labor dispute on its requirements and programs. Upon determining that the impact of the labor dispute is significant, the head of the

contracting activity shall submit a report of findings and recommendations to the labor advisor in accordance with departmental procedures. This reporting requirement is assigned Report Control Symbol DD-AT&L(AR)1153 and must include the information specified at PGI 222.101-3-70(b).

[71 FR 18670, Apr. 12, 2006]

**222.101-4 Removal of items from contractors' facilities affected by work stoppages.**

(a) When a contractor is unable to deliver urgent and critical items because of a work stoppage at its facility, the contracting officer, before removing any items from the facility, shall—

(i) Before initiating any action, contact the labor advisor to obtain the opinion of the national office of the Federal Mediation and Conciliation Service or other mediation agency regarding the effect movement of the items would have on labor negotiations. Normally removals will not be made if they will adversely affect labor negotiations.

(ii) Upon the recommendation of the labor advisor, provide a written request for removal of the material to the cognizant contract administration office. Include in the request the information specified at PGI 222.101-4(a)(ii).

(iii) With the assistance of the labor advisor or the commander of the contract administration office, attempt to have both the management and the labor representatives involved agree to shipment of the material by normal means.

(iv) If agreement for removal of the needed items cannot be reached following the procedures in paragraphs (a) (i) through (iii) of this subsection, the commander of the contract administration office, after obtaining approval from the labor advisor, may seek the concurrence of the parties to the dispute to permit movement of the material by military vehicles with military personnel. On receipt of such concurrences, the commander may proceed to make necessary arrangements to move the material.

(v) If agreement for removal of the needed items cannot be reached following any of the procedures in paragraphs (a) (i) through (iv) of this sub-

section, refer the matter to the labor advisor with the information required by 222.101-3-70(b). If the labor advisor is unsuccessful in obtaining concurrence of the parties for the movement of the material and further action to obtain the material is deemed necessary, refer the matter to the agency head. Upon review and verification that the items are urgently or critically needed and cannot be moved with the consent of the parties, the agency head, on a non-delegable basis, may order removal of the items from the facility.

[56 FR 36358, July 31, 1991, as amended at 71 FR 18670, Apr. 12, 2006]

**222.101-70 Acquisition of stevedoring services during labor disputes.**

(a) Use the following procedures only in the order listed when a labor dispute delays performance of a contract for stevedoring services which are urgently needed.

(1) Attempt to have management and labor voluntarily agree to exempt military supplies from the labor dispute by continuing the movement of such material.

(2) Divert vessels to alternate ports able to provide necessary stevedoring services.

(3) Consider contracting with reliable alternative sources of supply within the stevedoring industry.

(4) Utilize civil service stevedores to perform the work performed by contract stevedores.

(5) Utilize military personnel to handle the cargo which was being handled by contract stevedores prior to the labor dispute.

(b) Notify the labor advisor when a deviation from the procedures in paragraph (a) of this subsection is required.

**222.102 Federal and State labor requirements.**

**222.102-1 Policy.**

(1) Direct all inquiries from contractors or contractor employees regarding the applicability or interpretation of Occupational Safety and Health Act (OSHA) regulations to the Department of Labor.

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(2) Upon request, provide the address of the appropriate field office of the Occupational Safety and Health Administration of the Department of Labor.

(3) Do not initiate any application for the suspension or relaxation of labor requirements without prior coordination with the labor advisor. Any requests for variances or alternative means of compliance with OSHA requirements must be approved by the Occupational Safety and Health Administration of the Department of Labor.

[71 FR 18670, Apr. 12, 2006]

### 222.103 Overtime.

#### 222.103-4 Approvals.

(a) The department/agency approving official shall—

(i) Obtain the concurrence of other appropriate approving officials; and

(ii) Seek agreement as to the contracts under which overtime premiums will be approved when—

(A) Two or more contracting offices have current contracts at the same contractor facility; and

(B) The approval of overtime by one contracting office will affect the performance or cost of contracts of another office. In the absence of evidence to the contrary, a contracting officer may rely on a contractor's statement that approval of overtime premium pay for one contract will not affect performance or payments under any other contract.

## Subpart 222.3—Contract Work Hours and Safety Standards

### 222.302 Liquidated damages and overtime pay.

Upon receipt of notification of Contract Work Hours and Safety Standards violations, the contracting officer shall—

(1) Immediately withhold such funds as are available;

(2) Give the contractor written notification of the withholding and a statement of the basis for the liquidated damages assessment. The written notification shall also inform the contractor of its 60 days right to appeal the assessment, through the contracting officer, to the agency official

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responsible for acting on such appeals; and

(3) If funds available for withholding are insufficient to cover liquidated damages, ask the contractor to pay voluntarily such funds as are necessary to cover the total liquidated damage assessment.

(d)(i) The assessment shall become the final administrative determination of contractor liability for liquidated damages when—

(A) The contractor fails to appeal to the contracting agency within 60 days from the date of the withholding of funds;

(B) The department agency, following the contractor's appeals, issues a final order which affirms the assessment of liquidated damages or waives damages of \$500 or less; or

(C) The Secretary of Labor takes final action on a recommendation of the agency head to waive or adjust liquidated damages in excess of \$500.

(ii) Upon final administrative determination of the contractor's liability for liquidated damages, the contracting officer shall transmit withheld or collected funds determined to be owed the Government as liquidated damages to the servicing finance and accounting officer for crediting to the appropriate Government Treasury account. The contracting officer shall return any excess withheld funds to the contractor.

[56 FR 36358, July 31, 1991, as amended at 77 FR 35880, June 15, 2012]

## Subpart 222.4—Labor Standards for Contracts Involving Construction

### 222.402 Applicability.

#### 222.402-70 Installation support contracts.

(a) Apply both the Service Contract Labor Standards statute and the Construction Wage Rate Requirements statute to installation support contracts if—

(1) The contract is principally for services but also requires a substantial and segregable amount of construction, alteration, renovation, painting, or repair work; and

(2) The aggregate dollar value of such construction work exceeds or is expected to exceed \$2,000.

(b) *Service Contract Labor Standards statute coverage under the contract.* Contract installation support requirements, such as plant operation and installation services (i.e., custodial, snow removal, etc.) are subject to the Service Contract Labor Standards. Apply Service Contract Labor Standards clauses and minimum wage and fringe benefit requirements to all contract service calls or orders for such maintenance and support work.

(c) *Construction Wage Rate Requirements statute coverage under the contract.* Contract construction, alteration, renovation, painting, and repair requirements (i.e., roof shingling, building structural repair, paving repairs, etc.) are subject to the Construction Wage Rate Requirements statute. Apply Construction Wage Rate Requirements clauses and minimum wage requirements to all contract service calls or orders for construction, alteration, renovation, painting, or repairs to buildings or other works.

(d) *Repairs versus maintenance.* Some contract work may be characterized as either Construction Wage Rate Requirements painting/repairs or Service Contract Labor Standards maintenance. For example, replacing broken windows, spot painting, or minor patching of a wall could be covered by either the Construction Wage Rate Requirements or the Service Contract Labor Standards. In those instances where a contract service call or order requires construction trade skills (i.e., carpenter, plumber, painter, etc.), but it is unclear whether the work required is Service Contract Labor Standards maintenance or Construction Wage Rate Requirements painting/repairs, apply the following rules:

(1) Individual service calls or orders which will require a total of 32 or more work hours to perform shall be considered to be repair work subject to the Construction Wage Rate Requirements.

(2) Individual service calls or orders which will require less than 32 work hours to perform shall be considered to be maintenance subject to the Service Contract Labor Standards.

(3) Painting work of 200 square feet or more to be performed under an individual service call or order shall be considered to be subject to the Construction Wage Rate Requirements statute regardless of the total work hours required.

(e) The determination of labor standards application shall be made at the time the solicitation is prepared in those cases where requirements can be identified. Otherwise, the determination shall be made at the time the service call or order is placed against the contract. The service call or order shall identify the labor standards law and contract wage determination which will apply to the work required.

(f) Contracting officers may not avoid application of the Construction Wage Rate Requirements statute by splitting individual tasks between orders or contracts.

[56 FR 36358, July 31, 1991, as amended at 77 FR 35880, June 15, 2012]

**222.403 Statutory and regulatory requirements.**

**222.403-4 Department of Labor regulations.**

Direct all questions regarding Department of Labor regulations to the labor advisor.

**222.404 Construction Wage Rate Requirements statute wage determinations.**

Not later than April 1 of each year, each department and agency shall furnish the Administrator, Wage and Hour Division, with a general outline of its proposed construction program for the coming fiscal year. The Department of Labor uses this information to determine where general wage determination surveys will be conducted.

(1) Indicate by individual project of \$500,000 or more—

(i) The anticipated type of construction;

(ii) The estimated dollar value; and

(iii) The location in which the work is to be performed (city, town, village, county, or other civil subdivision of the state).

(2) The report format is contained in Department of Labor All Agency Memo 144, December 27, 1985.

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(3) The report control number is 1671-DOL-AN.

[56 FR 36358, July 31, 1991, as amended at 77 FR 35880, June 15, 2012]

### 222.404-2 General requirements.

(c)(5) Follow the procedures at PGI 222.404-2(c)(5) when seeking clarification of the proper application of construction wage rate schedules.

[72 FR 20764, Apr. 26, 2007]

## 222.406 Administration and enforcement.

### 222.406-1 Policy.

(a) *General.* The program shall also include—

(i) Training appropriate contract administration, labor relations, inspection, and other labor standards enforcement personnel in their responsibilities; and

(ii) Periodic review of field enforcement activities to ensure compliance with applicable regulations and instructions.

(b) *Preconstruction letters and conferences.* (1) Promptly after award of the contract, the contracting officer shall provide a preconstruction letter to the prime contractor. This letter should accomplish the following, as appropriate—

(A) Indicate that the labor standards requirements contained in the contract are based on the following statutes and regulations—

(1) Construction Wage Rate Requirements statute.

(2) Contract Work Hours and Safety Standards statute;

(3) Copeland (Anti-Kickback) Act;

(4) Parts 3 and 5 of the Secretary of Labor's Regulations (parts 3 and 5, subtitle A, title 29, CFR); and

(5) Executive Order 11246 (Equal Employment Opportunity);

(B) Call attention to the labor standards requirements in the contract which relate to—

(1) Employment of foremen, laborers, mechanics, and others;

(2) Wages and fringe benefits payments, payrolls, and statements;

(3) Differentiation between subcontractors and suppliers;

(4) Additional classifications;

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(5) Benefits to be realized by contractors and subcontractors in keeping complete work records;

(6) Penalties and sanctions for violations of the labor standards provisions; and

(7) The applicable provisions of FAR 22.403; and

(C) Ensure that the contractor sends a copy of the preconstruction letter to each subcontractor.

(2) Before construction begins, the contracting officer shall confer with the prime contractor and any subcontractor designated by the prime to emphasize their labor standards obligations under the contract when—

(A) The prime contractor has not performed previous Government contracts;

(B) The prime contractor experienced difficulty in complying with labor standards requirements on previous contracts; or

(C) It is necessary to determine whether the contractor and its subcontractors intend to pay any required fringe benefits in the manner specified in the wage determination or to elect a different method of payment. If the latter, inform the contractor of the requirements of FAR 22.406-2.

[56 FR 36358, July 31, 1991, as amended at 77 FR 35880, June 15, 2012]

### 222.406-6 Payrolls and statements.

(a) *Submission.* Contractors who do not use Department of Labor Form WH 347 or its equivalent must submit a DD Form 879, Statement of Compliance, with each payroll report.

### 222.406-8 Investigations.

(a) Before beginning an investigation, the investigator shall inform the contractor of the general scope of the investigation, and that the investigation will include examining pertinent records and interviewing employees. In conducting the investigation, follow the procedures at PGI 222.406-8(a).

(c) *Contractor notification.* (4)(A) Notify the contractor by certified mail of any finding that it is liable for liquidated damages under the Contract Work Hours and Safety Standards (CWHSS) statute. The notification shall inform the contractor that—

(1) It has 60 days after receipt of the notice to appeal the assessment of liquidated damages; and

(2) The appeal must demonstrate either that the alleged violations did not occur at all, occurred inadvertently notwithstanding the exercise of due care, or the assessment was computed improperly.

(B) If an appeal is received, the contracting officer shall process the appeal in accordance with department or agency regulations.

(d) *Contracting officer's report.* Forward a detailed enforcement report or summary report to the agency head in accordance with agency procedures. Include in the report, as a minimum, the information specified at PGI 222.406-8(d).

[56 FR 36358, July 31, 1991, as amended at 71 FR 18670, Apr. 12, 2006; 77 FR 35880, June 15, 2012]

**222.406-9 Withholding from or suspension of contract payments.**

(a) *Withholding from contract payments.* The contracting officer shall contact the labor advisor for assistance when payments due a contractor are not available to satisfy that contractor's liability for Construction Wage Rate Requirements or CWHSS statute wage underpayments or liquidated damages.

(c) *Disposition of contract payments withheld or suspended—(3) Limitation on forwarding or returning funds.* When disposition of withheld funds remains the final action necessary to close out a contract, the Department of Labor has given blanket approval to forward withheld funds to the Comptroller General pending completion of an investigation or other administrative proceedings.

(4) *Liquidated damages.* (A) The agency head may adjust liquidated damages of \$500 or less when the amount assessed is incorrect or waive the assessment when the violations—

(1) Were nonwillful or inadvertent; and

(2) Occurred notwithstanding the exercise of due care by the contractor, its subcontractor, or their agents.

(B) The agency head may recommend to the Administrator, Wage and Hour Division, that the liquidated damages

over \$500 be adjusted because the amount assessed is incorrect. The agency head may also recommend the assessment be waived when the violations—

(1) Were nonwillful or inadvertent; and

(2) Occurred notwithstanding the exercise of due care by the contractor, the subcontractor, or their agents.

[56 FR 36358, July 31, 1991, as amended at 77 FR 35880, June 15, 2012]

**222.406-10 Disposition of disputes concerning construction contract labor standards enforcement.**

(d) Forward the contracting officer's findings and the contractor's statement through the labor advisor.

**222.406-13 Semiannual enforcement reports.**

Forward these reports through the head of the contracting activity to the labor advisor within 15 days following the end of the reporting period. These reports shall not include information from investigations conducted by the Department of Labor. These reports shall contain the following information, as applicable, for construction work subject to the Construction Wage Rate Requirements statute and the CWSS statute—

- (1) Period covered;
- (2) Number of prime contracts awarded;
- (3) Total dollar amount of prime contracts awarded;
- (4) Number of contractors/subcontractors against whom complaints were received;
- (5) Number of investigations conducted;
- (6) Number of contractors/subcontractors found in violation;
- (7) Amount of wage restitution found due under—
  - (i) Construction Wage Rate Requirements statute; and
  - (ii) CWSS statute;
- (8) Number of employees due wage restitution under—
  - (i) Construction Wage Rate Requirements statute; and
  - (ii) CWHSS statute;
- (9) Amount of liquidated damages assessed under the CWSS statute—
  - (i) Total amount; and

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- (ii) Number of contracts involved;
- (10) Number of employees and amount paid/withheld under—
  - (i) Construction Wage Rate Requirements statute;
  - (ii) CWSS statute;
  - (iii) Copeland Act; and
  - (11) Preconstruction activities—
    - (i) Number of compliance checks performed
    - (ii) Preconstruction letters sent.

[56 FR 36358, July 31, 1991, as amended at 77 FR 35880, June 15, 2012]

**Subpart 222.6—Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000**

**222.604 Exemptions.**

**222.604-2 Regulatory exemptions.**

(b) Submit all applications for such exemptions through contracting channels to the labor advisor.

[56 FR 36358, July 31, 1991, as amended at 65 FR 14398, Mar. 16, 2000]

**Subpart 222.8—Equal Employment Opportunity**

**222.806 Inquiries.**

(b) Refer inquiries through the labor advisor.

**222.807 Exemptions.**

(c) Follow the procedures at PGI 222.807(c) when submitting a request for an exemption.

[71 FR 18670, Apr. 12, 2006]

**Subpart 222.10—Service Contract Labor Standards**

**222.1003 Applicability.**

**222.1003-1 General.**

For contracts having a substantial amount of construction, alteration, renovation, painting, or repair work, see 222.402-70.

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**222.1008 Procedures for obtaining wage determinations.**

**222.1008-1 Obtaining wage determinations.**

Follow the procedures at PGI 222.1008-1 regarding use of the Service Contract Act Directory of Occupations when preparing the e98.

[72 FR 20764, Apr. 26, 2007]

**Subpart 222.13—Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans**

SOURCE: 71 FR 18670, Apr. 12, 2006, unless otherwise noted.

**222.1305 Waivers.**

(c) Follow the procedures at PGI 222.1305(c) for submission of waiver requests.

**222.1308 Complaint procedures.**

The contracting officer shall—

(1) Forward each complaint received as indicated in FAR 22.1308; and

(2) Notify the complainant of the referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

**222.1310 Solicitation provision and contract clauses.**

(a)(1) Use of the clause at FAR 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, with its paragraph (c), Listing Openings, also satisfies the requirement of 10 U.S.C. 2410k.

**Subpart 222.14—Employment of Workers with Disabilities**

**222.1403 Waivers.**

(c) The contracting officer shall submit a waiver request through contracting channels to the labor advisor. If the request is justified, the labor advisor will endorse the request and forward it for action to—

(i) The agency head for waivers under FAR 22.1403(a). For the defense agencies, waivers must be approved by the Under Secretary of Defense for Acquisition.

(ii) The Secretary of Defense, without the power of redelegation, for waivers under FAR 22.1403(b).

**222.1406 Complaint procedures.**

The contracting officer shall notify the complainant of such referral. The contractor in question shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

[71 FR 18671, Apr. 12, 2006]

**Subpart 222.17—Combating Trafficking in Persons**

SOURCE: 71 FR 62563, Oct. 26, 2006, unless otherwise noted.

**222.1703 Policy.**

See PGI 222.1703 for additional information regarding DoD policy for combating trafficking in persons outside the United States.

[73 FR 4115, Jan. 24, 2008]

**222.1704 Violations and remedies.**

Follow the procedures at PGI 222.1704 for notifying the Combatant Commander if a violation occurs.

[73 FR 4115, Jan. 24, 2008]

**Subpart 222.70—Restrictions on the Employment of Personnel for Work on Construction and Service Contracts in Noncontiguous States**

SOURCE: 65 FR 14403, Mar. 16, 2000, unless otherwise noted.

**222.7000 Scope of subpart.**

(a) This subpart implements Section 8071 of the Fiscal Year 2000 Defense Appropriations Act, Public Law 106-79, and similar sections in subsequent Defense Appropriations Acts.

(b) This subpart applies only—

(1) To construction and service contracts to be performed in whole or in part within a noncontiguous State; and

(2) When the unemployment rate in the noncontiguous State is in excess of the national average rate of unemployment as determined by the Secretary of Labor.

**222.7001 Definition.**

“Noncontiguous State,” as used in this subpart, means Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Island.

[65 FR 50151, Aug. 17, 2000]

**222.7002 General.**

A contractor awarded a contract subject to this subpart must employ, for the purpose of performing that portion of the contract work within the noncontiguous State, individuals who are residents of that noncontiguous State and who, in the case of any craft or trade, possess or would be able to acquire promptly the necessary skills to perform this contract.

**222.7003 Waivers.**

The head of the agency may waive the requirements of 222.7002 on a case-by-case basis in the interest of national security.

[65 FR 50151, Aug. 17, 2000]

**222.7004 Contract clause.**

Use the clause at 252.222-7000, Restrictions on Employment of Personnel, in all solicitations and contracts subject to this subpart. Insert the name of the appropriate noncontiguous State in paragraph (a) of the clause.

**Subpart 222.71—Right of First Refusal of Employment**

SOURCE: 57 FR 52593, Nov. 4, 1992, unless otherwise noted.

## 222.7101

### 222.7101 Policy.

(a) DoD policy is to minimize the adverse impact on civil service employees affected by the closure of military installations. One means of implementing this policy is to give employees adversely affected by closure of a military installation the right of first refusal for jobs created by award of contracts arising from the closure effort that the employee is qualified to fill.

(b) Closure efforts include the acquisitions for preparing the installation for closure (such as environmental restoration and utilities modification) and maintaining the property after closure (such as security and fire prevention services).

### 222.7102 Contract clause.

Use the clause at 252.222-7001, Right of First Refusal of Employment—Closure of Military Installations, in all solicitations and contracts arising from the closure of the military installation where the contract will be performed.

## Subpart 222.72—Compliance with Labor Laws of Foreign Governments

### 222.7201 Contract clauses.

(a) Use the clause at 252.222-7002, Compliance with Local Labor Laws (Overseas), in solicitations and contracts for services or construction to be performed outside the United States and its outlying areas.

(b) Use the clause at 252.222-7003, Permit from Italian Inspectorate of Labor, in solicitations and contracts for porter, janitorial, or ordinary facility and equipment maintenance services to be performed in Italy.

(c) Use the clause at 252.222-7004, Compliance with Spanish Social Security Laws and Regulations, in solicitations and contracts for services or construction to be performed in Spain.

[62 FR 34122, June 24, 1997, as amended at 70 FR 35545, June 21, 2005]

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## Subpart 222.73—Limitations Applicable to Contracts Performed on Guam

SOURCE: 64 FR 52672, Sept. 30, 1999, unless otherwise noted.

### 222.7300 Scope of subpart.

This subpart—

(a) Implements Section 390 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85); and

(b) Applies to contracts for base operations support on Guam that—

(1) Are awarded as a result of a competition conducted under OMB Circular A-76; and

(2) Are entered into or modified on or after November 18, 1997.

[72 FR 20764, Apr. 26, 2007]

### 222.7301 Prohibition on use of non-immigrant aliens.

(a) Any alien who is issued a visa or otherwise provided nonimmigrant status under Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)) is prohibited from performing work under a contract for base operations support on Guam.

(b) Lawfully admitted citizens of the freely associated states of the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau are not subject to the prohibition in paragraph (a) of this section.

[64 FR 52672, Sept. 30, 1999, as amended at 72 FR 20764, Apr. 26, 2007]

### 222.7302 Contract clause.

Use the clause at 252.222-7005, Prohibition on Use of Nonimmigrant Aliens—Guam, in solicitations and contracts subject to this subpart.

[72 FR 20764, Apr. 26, 2007]

## Subpart 222.74—Restrictions on the Use of Mandatory Arbitration Agreements

SOURCE: 75 FR 27947, May 19, 2010, unless otherwise noted.

### 222.7400 Scope of subpart.

This subpart implements section 8116 of the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111-118) and

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similar sections in subsequent DoD appropriations acts.

[76 FR 38048, June 29, 2011]

### 222.7401 Definition.

*Covered subcontractor*, as used in this subpart, is defined in the clause at 252.222-7006, Restrictions on the Use of Mandatory Arbitration Agreements.

[75 FR 76297, Dec. 8, 2010]

### 222.7402 Policy.

(a) Departments and agencies are prohibited from using funds appropriated or otherwise made available by the Fiscal Year 2010 Defense Appropriations Act (Pub. L. 111-118) or subsequent DoD appropriations acts for any contract (including task or delivery orders and bilateral modifications adding new work) in excess of \$1 million, unless the contractor agrees not to—

(1) Enter into any agreement with any of its employees or independent contractors that requires, as a condition of employment, that the employee or independent contractor agree to resolve through arbitration—

(i) Any claim under title VII of the Civil Rights Act of 1964; or

(ii) Any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention; or

(2) Take any action to enforce any provision of an existing agreement with an employee or independent contractor that mandates that the employee or independent contractor resolve through arbitration—

(i) Any claim under title VII of the Civil Rights Act of 1964; or

(ii) Any tort related to or arising out of sexual assault or harassment, including assault and battery, intentional infliction of emotional distress, false imprisonment, or negligent hiring, supervision, or retention.

(b) No funds appropriated or otherwise made available by the Fiscal Year 2010 Defense Appropriations Act (Pub. L. 111-118) or subsequent DoD appropriations acts may be expended unless the contractor certifies that it requires each covered subcontractor to agree not to enter into, and not to take any

action to enforce, any provision of any agreement, as described in paragraph (a) of this section, with respect to any employee or independent contractor performing work related to such subcontract.

[75 FR 27947, May 19, 2010. Redesignated at 75 FR 76297, Dec. 8, 2010; 76 FR 38048, June 29, 2011]

### 222.7403 Applicability.

This requirement does not apply to the acquisition of commercial items (including commercially available off-the-shelf items).

[75 FR 76297, Dec. 8, 2010]

### 222.7404 Waiver.

(a) The Secretary of Defense may waive, in accordance with paragraphs (b) through (d) of this section, the applicability of paragraphs (a) or (b) of 222.7402 to a particular contract or subcontract, if the Secretary or the Deputy Secretary personally determines that the waiver is necessary to avoid harm to national security interests of the United States, and that the term of the contract or subcontract is not longer than necessary to avoid such harm.

(b) The waiver determination shall set forth the grounds for the waiver with specificity, stating any alternatives considered, and explain why each of the alternatives would not avoid harm to national security interests.

(c) The contracting officer shall submit requests for waivers in accordance with agency procedures and PGI 222.7404(c).

(d) The Secretary of Defense will transmit the determination to Congress and simultaneously publish it in the FEDERAL REGISTER, not less than 15 business days before the contract or subcontract addressed in the determination may be awarded.

[75 FR 76297, Dec. 8, 2010, as amended at 78 FR 36113, June 17, 2013]

### 222.7405 Contract clause.

Use the clause at 252.222-7006, Restrictions on the Use of Mandatory Arbitration Agreements, in all solicitations and contracts (including task or

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delivery orders and bilateral modifications adding new work) valued in excess of \$1 million utilizing funds appropriated or otherwise made available by the Defense Appropriations Act for Fiscal Year 2010 (Pub. L. 111–118) or subsequent DoD appropriations acts, except in contracts for the acquisition of commercial items, including commercially available off-the-shelf items.

[76 FR 38048, June 29, 2011]

**PART 223—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

**Subpart 223.3—Hazardous Material Identification and Material Safety Data**

- Sec.
- 223.302 Policy.
- 223.303 Contract clause.
- 223.370 Safety precautions for ammunition and explosives.
- 223.370–1 Scope.
- 223.370–2 Definition.
- 223.370–3 Policy.
- 223.370–4 Procedures.
- 223.370–5 Contract clauses.

**Subpart 223.4—Use of Recovered Materials**

- 223.405 Procedures.

**Subpart 223.5—Drug-Free Workplace**

- 223.570 Drug-free work force.
- 223.570–1 Policy.
- 223.570–2 Contract clause.

**Subpart 223.8—Ozone-Depleting Substances**

- 223.803 Policy.

**Subpart 223.70 [Reserved]**

**Subpart 223.71—Storage, Treatment, and Disposal of Toxic or Hazardous Materials**

- 223.7101 Definitions.
- 223.7102 Policy.
- 223.7103 Procedures.
- 223.7104 Exceptions.
- 223.7105 Reimbursement.
- 223.7106 Contract clause.

**Subpart 223.72—Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives**

- 223.7200 Definition.

- 223.7201 Policy.
- 223.7202 Preaward responsibilities.
- 223.7203 Contract clause.

**Subpart 223.73—Minimizing the Use of Materials Containing Hexavalent Chromium**

- 223.7300 Definition.
- 223.7301 Policy.
- 223.7302 Authorities.
- 223.7303 Prohibition.
- 223.7304 Exceptions.
- 223.7305 Authorization and approval.
- 223.7306 Contract clause.

AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1.

SOURCE: 56 FR 36365, July 31, 1991, unless otherwise noted.

**Subpart 223.3—Hazardous Material Identification and Material Safety Data**

**223.302 Policy.**

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

[70 FR 73150, Dec. 9, 2005]

**223.303 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)).

[56 FR 67215, Dec. 30, 1991]

**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;