



# DCMA

DEFENSE CONTRACT MANAGEMENT AGENCY

## 2023 GFRC Training

Presented By:

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- Big Picture
- Cover changes to DFARS 228.370 and associated PGI
- Cover changes to DFARS 252.228-7001
- Introduce new clause at DFARS 252.228-7007



- The Ground and Flight Risk clause (GFRC) updated with intent to fix-
  - Outdated Language
  - Eliminate the assumption of risk flowdown to subcontractor operations confusion
  - Re-order the sections to a more logical flow
  - Added a new clause for COCO PAO – DFARS 252.228-7007
- The bulk of the changes occur with DFARS 228.370 & 228.371 *(new)*
  - The original 228.370 is now 228.371
  - The new 228.370 now has 2 parts
  - Added new exceptions in 228.371
  - Major shift in how these clauses are written
    - Instructions to Contracting Officers (KO) are now in 228.370
    - Created need to repeat a significant amount of information found in the GFRC
    - Associated Procedures, Guidance, and Information (PGI) updated

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## DFARS 228.370

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## Definitions

- Adds definitions used in 228.370 from both 252.228-7001 and 252.228-7007 – covered in more detail within the clauses
  - Aircraft
  - Civil Aircraft
  - Covered Aircraft (*old 'In-the-Open'*)
  - Crewmember, new term as it replaces flight crew to align with 8210-1
  - Flight, simplified
  - Public Aircraft
  - Public Aircraft Operation
  - State Aircraft
  - Workmanship Error (*new*)



## General

- This new section pulls a large quantity of information intended for KOs from within the clauses
- FAR 52 & DFARS 252 provide the requirements the contractor is expected to comply with in the performance of the contract. FAR Part 228.370-2 provides:
  - (a) Direction to KO to see PGI for how to assign a GFR
  - (b) Preaward Survey – Encourages the KO to request a preaward and to review the contractor's insurance for adequacy if GFRC is not on contract



- (c) Adds additional explanation about FMS exceptions in DFARS 228.371
- (d) Commercial Derivative Aircraft – clarifies the Part 145 exception intent
- (e) Insurance – clarifies the intent of the GFRC and why insurance costs are unallowable
- (f) Damage to Government Aircraft – clearly states the KO responsibility to make liability determinations
- (g) KO Determination of Liability – repeats the GFRC exclusions for the KO
- (h) Notice of Revocation – procedure for KO to revoke the Government's assumption of risk



- (i) Procedures in event of damage – restated from the clause
- (j) KO Determination of Contractor’s Share of Loss – the least of:
  - \$200,000, *or*
  - 20% of the acquisition cost of affected aircraft, *or*
  - 20% of the cost of the contract, task order, or delivery order
- (k) Reimbursement from a Third Party – no change, just repeated from clause





## General

- (a) Provides KO with process to request assignment of a GFR/G-GFR
- (c) FMS – provides KO with additional information about insurance without the GFRC
- (f) Damage to Government Aircraft – expands on difference between
  - Accident/Mishap Damage – covered
  - Workmanship Error Damage – not covered



## Aircraft *not owned by or to be delivered* to the Government

- (a) Directs KO to only use the GFRC if *determined* to be in the *best interest* of the Government
- (b) Provides a list (not limited to) of factors to consider-
  - Cost of hull insurance exceeds cost of aircraft
  - Insurance is not available (War zone, high-risk experimental, etc.)
  - Ground or Flight operations of *COCO aircraft* may place *Government aircraft* at risk



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**DFARS 228.371**

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## Additional Clauses *(old 228.370)*

- (a) No change from 2019 DFARS



- (b) Directs usage of the GFRC for-
  - (1) For...aircraft owned by or to be delivered to the Government, except *(new focus)*
    - (i) No Change, incidental operations only (e.g., FBO)
    - (ii) Simplified but restricted to purchasing aircraft, not services (e.g., modification)
    - (iii) Simplified and removed double negative
    - (iv) Added that this *exception cannot be used* if flights involve contractor crewmembers
    - (v) Aircraft are dismantled and removed from inventory *(new)*
    - (vi) Group 1 or 2 UAS...*if*...cost is *less than* Class C threshold (\$60,000) *(new)*
  - (2) Involving aircraft *not owned by or to be delivered to* the Government...*only if the KO Determines* it is in the best interest of the Government *(new)*



## Additional Clauses *(old 228.370)*

- (c) No Change from 2019 DFARS
- (d) No Change from 2019 DFARS
- (e) No Change from 2019 DFARS
- (f) Use clause at *252.228-7007*, Public Aircraft and State Aircraft Operations – Liability, in solicitations and contracts that- *(new)*
  - Do *not include* 252.228-7001
  - *But involve* public aircraft operations or state aircraft operations



Before moving on...a line was added to DFARS 242.302(a)

- FAR 42.302(a)(56) states “maintain *surveillance* of *flight* operations”
- DFARS 242.302(a) was silent on (56), but now clarifies that with the DoD, maintaining surveillance of *flight and ground* operations is accomplished through the *Combined Instruction*





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## DFARS 252.228-7001

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## Background on re-write-

- The clause at DFARS 252.228-7001, Ground and Flight Risk (GFRC), has been patch-worked with updates since the 1950's
- Prior to 2010, there were two clauses that led to confusion, 252.228-7001 & 252.228-7002, Aircraft Flight Risk
- In 2010, the -7002 was incorporated into the GFRC, but without major update to language or flow



## Background on re-write-

- Since release in June 2010, the acquisition of UASs and contracted contractor-owned, contractor-operated (COCO) aircraft services has exploded causing some conflicts-
  - Most of the conflicts were in the prescribing clause DFARS 228.370
    - Did not clearly state whether or not to use the GFRC on aircraft that the Government did not own
    - Did not address contracts to de-militarize aircraft to remove from the inventory
  - Directions to KOs were only included in the GFRC itself unlike all other FAR/DFARS
- No mechanism existed to have a KO place the Combined Instruction on a contract without the GFRC



## (a) Definitions – ‘operations’ was removed

- Aircraft – simplified to defining what an aircraft is...other paragraphs incorporated into ‘covered aircraft’
- Contractor’s Managerial Personnel – No Change
- Contractor’s Premises – No Change
- Covered Aircraft – replaces ‘in-the-open’
- Crewmember – replaces ‘flight crew member’, simplified
- Flight – simplified, removed specifics for land-based, seaplanes, helicopters
- Workmanship Error – New definition



- *Covered aircraft* means an aircraft **owned by or to be delivered to** the Government and, when determined by the contracting officer and specifically identified as such in the contract Schedule, **may include contractor-furnished aircraft that are not intended for induction into the DoD inventory**, including
  - Aircraft furnished by the Government to the Contractor under this contract while in the Contractor's possession, care, custody, **or** control regardless of their location or state of disassembly or reassembly
  - Items removed from a Government furnished aircraft that are—
    - **Intended** for reinstallation on that particular aircraft, which **retain** their status as covered aircraft while awaiting installation; and
    - **Not intended** for reinstallation on that particular aircraft, which **lose** their status as covered aircraft once removal is complete;



- *Covered aircraft (con't)*

- New production aircraft *when wholly outside of buildings* on the Contractor's premises *or other places described* in the Schedule (e.g., hush houses, run stations, and paint facilities); and
- Commercial aircraft, to include commercially available off-the-shelf aircraft, become covered aircraft *when the commercial aircraft arrives at the Contractor's place of performance for modification* under the terms of the contract. *(new)*



*Workmanship error* means damage to the aircraft that is the result of an *incorrectly performed skill-based* task, operation, or action that was originally planned or intended.

- PGI provides KOs (and GFRs) general rules to follow to determine if the incident was an accident/mishap or workmanship error
  - An accident or mishap is the result of a task, operation, or action that was *not originally planned or intended*.
  - A workmanship error consists of damage that is the result of an *incorrectly performed skill-based task*, operation, or action that was *originally planned or intended*, but the end result was not within allowable limits.
  - *Missing a step* in a procedure or checklist item *is not considered* a skill-based error and therefore is not considered workmanship error damage.





The GFRC was re-organized to a more logical flow with many paragraphs simply moved around

- (b) Combined Instruction
- (c) Government as self-insurer
- (d) Exclusions from the Government's assumption of risk
- (e) Revoking the Government's assumption of risk
- (f) Contractor's exclusion of insurance costs
- (g) Procedures in event of loss
- (h) Contractor's share of loss
- (i) Reimbursement from a third party
- (j) Liability to third parties
- (k) Subcontracts



Conditions of the insurance



How to remove coverage



Cost savings aspect



How the insurance is 'activated and paid'



Requirements flowdown



*(b) Combined regulation/instruction* – only change was adding one sentence to the end

- Compliance with the combined regulation/instruction is required from the *time of contract award* throughout the period of performance of the contract, *regardless of* the Government's assumption of risk under the contract.



(c) *Government as self-insurer.* The Government self-insures and assumes the risk of damage to, or loss or destruction of, covered aircraft subject to the following conditions:

- Combines and clarifies old (c) & (d)
- Clearer statement on GFRC vs Property Clause
- Moves 'normal wear & tear' from exclusions



(d) *Exclusions from the Government's assumption of risk.* The Government's assumption of risk under this clause shall not extend to damage, loss, or destruction of covered aircraft which-

- (1) Willful misconduct simplified
- (2) No change to unapproved flights/crewmembers
- (3) Transportation – removed confusing ‘government property’ and added the old 228.370 exception
- (4) Covered by insurance – no change
- (5) Replaced with occurrence after the KO has revoked the Government's assumption of risk
- (6) Simplified to ‘sustained due to workmanship errors’



(e) *Revoking the Government's assumption of risk* – Mostly structured from the old (d) with some important tweaks

- Replaces the '15-day Letter' with a 2-step process
  - Issuance of a preliminary notice of revocation (timeframe specified)
  - If not corrected, issuance of the official notice of revocation (immediate impact)
- Provides more guidance on factors for KO to consider, ties to 228.370-2
- Adds direction for addressing disputes

(f) *Contractor's exclusion of insurance costs* – No change to old (h)



*(g) Procedures in the event of damage, loss, or destruction*

- Basically the old (i)
- Clarified process for new production vs Government-furnished

*(h) Contractor's share of loss – Revised with additional situation in the least of –*

- *\$200,000*; or
- *20%* of acquisition cost of the *affected aircraft*; or
- *20%* of cost of the *contract, task order, or delivery order*



*(i) Reimbursement from a third party* – No change from old (k)

*(j) Liability to third parties* – Revised and retitled

*(k) Subcontracts*

- Expanded old (m)
- Incorporate requirements in subcontracts to include-
  - Commercial Products
  - Commercial Services
- *Except-*
  - Do not include paragraph (f) – which is the exclusion of insurance costs, meaning subcontractors are allowed to charge the prime for costs
  - Shall not include in subcontracts for FAA Part 145 licensed repair stations performing work pursuant to FAA





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**DFARS 252.228-7007**

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## Background on why a new clause-

- Under the 2010 GFRC, there was no distinction between Government-owned & contractor-owned aircraft
- If the GFRC is not included for contracts where we do not own (or will not own) the aircraft, there is *no mechanism to direct the KOs* to place the Combined Instruction on the contract – usually through the statement of work
- To solve this, direction for the KOs was added in DFARS 228-371 to use the clause at DFARS 252.228-7007 for those contracts that involve public or state aircraft operations with aircraft not owned by or to be delivered to the Government



# Public Aircraft and State Aircraft Operations – Liability

## (a) Definitions

- Civil Aircraft
- Public Aircraft – as defined in Title 49 U.S.C. sections 40102 & 40125
- Public Aircraft Operations
- State Aircraft

## (b) Combined Instruction – almost the same as the GFRC

- Upon award, for contract performance to be *conducted as a public aircraft operation*, the Contractor shall be bound by the operating procedures contained in the combined regulation/instruction entitled “Contractor's Flight and Ground Operations”



*(c) Contractor liability for operations for contract performance conducted as public aircraft operations or state aircraft operations.*

- (1) The *Contractor assumes* responsibility *for all damage or injury* to persons or property, including the Contractor's employees and property, *and Government personnel and property*, occasioned through the use, maintenance, and operation of the Contractor's aircraft or other equipment by, or the action of, the Contractor or the Contractor's employees and agents.
- (2) The Contractor, *at the Contractor's expense*, shall maintain adequate public liability and property damage insurance, including hull insurance for the Contractor's aircraft, during the duration of this contract, insuring the Contractor against all claims for injury or damage.



*(c) Contractor liability for operations for contract performance conducted as public aircraft operations or state aircraft operations.*

- (3) The Contractor shall maintain workers' compensation and other legally required insurance with respect to the Contractor's own employees and agents.
- (4) The Government *will in no event be liable or responsible for damage or injury to any person or property* occasioned through the use, maintenance, or operation of any aircraft or other equipment by, or the action of, the Contractor or the Contractor's employees and agents in performing under this contract, and the *Government shall be indemnified and saved harmless against claims* for damage or injury in such cases.



- Unlike DCMA 8210-1, contractors will not ‘upgrade’ to the new GFRC
- There will be a long period of time where CMO’s will have a mix of 2010 & 2023 GFRC contracts
  - From a requirements perspective, no change...still required to adhere to the 8210-1
  - From a damage perspective, significant changes...so it is important to know the contract to which the aircraft belongs
- Removing Government’s Assumption of Risk
  - If only for one contract, follow appropriate GFRC process (unusual case)
  - If for all contracts at facility, recommend following the 2023 GFRC process tweaked with
    - Ensuring the Preliminary Notice of Revocation specified time-frame is 15 days to match the 2010 15-day Letter process
    - Including a statement in the Preliminary Notice that this doubles as the 15-Day Letter for those contracts under the 2010 GFRC

