

For Training Only!!!

This is a *crosswalk* to help those familiar with the 2010 GFRC to understand the significant changes in the 2023 GFRC. There are some clarifications/interpretations; however, *they are generic*, and if a question or *conflict of applicability of the interpretation to your contract*, contact your local legal counsel.

PART 228—BONDS AND INSURANCE

[228.370](#)

Ground and flight risk.

[228.370-1](#)

Definitions. [NEW – old 228.370 moved to 228.371]

As used in this section—

Aircraft means, unless otherwise provided in the contract Schedule, any item, other than a rocket or missile, intended for flight (*e.g.*, fixed-winged aircraft, blended wing/lifting bodies, helicopters, vertical take-off or landing aircraft, lighter-than-air airships, and unmanned aerial vehicles), including emerging technologies that would commonly be considered aircraft. New production articles become aircraft at a stage of manufacture or production when a wing, portion of a wing, or engine is attached to a fuselage. Blended wing/lifting bodies become aircraft at a stage of manufacture or production when the center portion and a lifting surface become attached.

Civil aircraft means an aircraft other than a public aircraft or state aircraft.

Contractor managerial personnel means the contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

- (1) All, or substantially all, of the contractor's business;
- (2) All, or substantially all, of the contractor's operation at any one plant or separate location; or
- (3) A separate and complete major industrial operation.

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— [Replaces the term 'in-the-open']

(1) Aircraft furnished by the Government to the contractor under a contract while in the contractor's possession, care, custody, or control regardless of their location or state of disassembly or reassembly;

(2) **Items removed** from a Government-furnished aircraft that are—

(i) **Intended for reinstallation** on that particular aircraft, which **retain their status** as covered aircraft while awaiting installation; and

(ii) **Not intended for reinstallation** on that particular aircraft, which **lose their status** as covered aircraft once removal is complete;

[NOTE- I think (i) & (ii) may cause confusion with the “, which” the editors added. However, a legal opinion that it does not change the clear intent that the parts awaiting reinstallation retain status as covered aircraft and parts not designated for reinstallation lose their status is on file.]

(3) New production aircraft when wholly outside of buildings on the contractor's premises or other places described in the contract Schedule (*e.g.*, hush houses, run stations, and paint facilities); and

(4) 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.

Crewmember means, unless otherwise provided in the contract Schedule, personnel required in the flight manual, assigned for the purpose of conducting any flight on behalf of the contractor. It also includes any operator of an unmanned aerial vehicle.

Flight means any flight approved in writing by the Government flight representative, to include taxi test made in the performance of the contract, or flight for the purpose of safeguarding the aircraft. All aircraft off the contractor's premises shall be considered to be in flight when on the ground or water for reasonable periods of time following emergency landings, landings made in performance of the contract, or landings approved in writing by the contracting officer.

Public aircraft means an aircraft that meets the definition in [49 U.S.C. 40102\(a\)\(41\)](#) and the qualifications in [49 U.S.C. 40125](#). Specifically, a public aircraft means any of the following:

(1) An aircraft used only for the Government, except as provided in paragraphs (5) and (7) of this definition.

(2) An aircraft owned by the Government and operated by any person for purposes related to crew training, equipment development, or demonstration, except as provided in paragraph (7) of this definition.

(3) An aircraft owned and operated by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in paragraph (7) of this definition.

(4) An aircraft exclusively leased for at least 90 continuous days by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in paragraph (7) of this definition.

(5) An aircraft owned or operated by the armed forces or chartered to provide transportation or other commercial air service to the armed forces under the conditions specified by [49 U.S.C. 40125\(c\)](#). In the preceding sentence, the term “other commercial air service” means an aircraft operation that—

(i) Is within the United States territorial airspace;

(ii) The Administrator of the Federal Aviation Administration determines is available for compensation or hire to the public; and

(iii) Must comply with all applicable civil aircraft rules under [title 14, Code of Federal Regulations](#).

(6) An unmanned aircraft that is owned and operated by, or exclusively leased for at least 90 continuous days by, an Indian Tribal government, as defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act ([42 U.S.C. 5122](#)), except as provided in paragraph (7) of this definition.

(7) As described in [49 U.S.C. 40125\(b\)](#), an aircraft described in paragraph (1), (2), (3), or (4) of this definition does not qualify as a public aircraft in situations where the aircraft is used for commercial purposes or to carry an individual other than a crewmember or a qualified non-crewmember.

Public aircraft operation means operation of an aircraft that meets the legal definition of public aircraft established in [49 U.S.C. 40102\(a\)\(41\)](#) and the legal qualifications for public aircraft status outlined in [49 U.S.C. 40125](#).

State aircraft means an aircraft operated by the Government for sovereign, noncommercial purposes such as military, customs, and police services. Military aircraft are afforded status as state aircraft. In very rare circumstances, DoD-contracted aircraft may be designated, in writing, by a responsible Government official pursuant to DoD Directive 4500.54E, DoD Foreign Clearance Program, to be operated in state aircraft status, and States may choose to treat them as deemed state aircraft when they are operating under a Government contract.

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. **[See PGI for additional information]**

228.370-2

General. **[NEW – basically gives the KO guidance. Much of this is repeated within the clause itself]**

(a) *Assignment of a Government flight representative.* See PGI 228.370-2(a) for procedures on assigning a Government flight representative (GFR) when using the clauses at 252.228-7001 and 252.228-7007. **[Clarifies process for KO]**

(b) *Preaward survey.* Before awarding any contract using the clause at 252.228-7001, Ground and Flight Risk, the contracting officer should obtain a preaward survey of the offeror's proposed aircraft flight and ground operations facility. If the offeror proposed subcontracting any aircraft work, the preaward survey should include a review of the subcontractor's facility. For acquisitions falling under the exceptions at 228.371(b)(1)(iii), (iv), and (vi), the contracting officer shall review the documentation the offeror submitted with the proposal in response to the DD Form 1423, Contract Data Requirements List, to ensure the offeror's commercial insurance provides the appropriate coverage required by the clause at 252.228-7001. **[unable to get a shall – but at least mentions the desire for preawards]**

(c) *Foreign military sales.* The exception for foreign military sales (FMS) contracts at 228.371(b)(1)(iii) **only applies to FMS cases where the FMS customer has explicitly refused** assumption of risk of loss. If the FMS customer has accepted the standard Letter of Offer and Acceptance Standard Terms and Conditions, as described in DoD 5105.38-M, Security Assistance Management Manual, they have assumed risk of loss. **[clarifies exception]**

(d) *Commercial derivative aircraft.* The exception at 228.371(b)(1)(iv) for commercial derivative aircraft **only applies if the contractor is a licensed and certified Federal Aviation Administration (FAA) repair station for the specific model of aircraft under contract, when work is being performed pursuant to the FAA license under 14 CFR part 145.** The FAA's repair station search tool is available at <https://av-info.faa.gov/repairstation.asp>. All aircraft flying public aircraft operations operate under airworthiness certificates maintained by the military services. The FAA airworthiness certificate in the exception in this paragraph (d) underlies the military service certificate. **[Greatly clarifies when this exception is used, removed question of FAA airworthiness]**

(e) *Insurance.* The clause at 252.228-7001, Ground and Flight Risk, **is intended to reduce acquisition costs** by eliminating the costs of commercial insurance premiums. This clause **also is intended to encourage the contractor to perform safe and effective operations** through inclusion of a contractor's share of loss (*i.e.*, a deductible). Additionally, the clause requires compliance with the combined regulation/instruction entitled “Contractor's Flight and Ground Operations” (Air Force Instruction 10-220, Army Regulation 95-20, Naval Air Systems Command (NAVAIR) Instruction 3710.1 (Series), Coast Guard Instruction M13020.3 (Series), and Defense Contract Management Agency Instruction 8210-1 (Series)), which **provides procedures to mitigate the risk of loss to the Government.** For this reason, paragraph (e)(4)(ii) of the clause at 252.228-7001 specifies that insurance premium costs are unallowable. In addition, paragraph (d)(4) of the clause provides that the Government's assumption of risk does not apply where the loss or damage is covered by available insurance. **[clarifies intent of GFRC]**

(f) *Damage to Government aircraft.* (1) Whenever damage to Government aircraft is reported, each incident should be evaluated on its own merits. When the cost of repair exceeds the contractor's share of loss provisions, the contracting officer shall make a liability determination in accordance with paragraph (g) of this section.

(2) Contracting officers should consult with the requiring activity and the assigned contract administration office on replacement, repair, or beyond economic repair decisions.

(3) See PGI 228.370-2(f) for an example of accident or mishap damage versus workmanship-error damage. [Note – workmanship error IS still damage]

(g) *Contracting officer determination of liability.* (1) When making a liability determination, the contracting officer should seek input from the GFR and legal counsel, as needed.

(2) The Government's assumption of risk shall not extend to damage, loss, or destruction of covered aircraft that—

(i) Is the result of willful misconduct or lack of good faith on the part of the contractor's managerial personnel, including the contractor's oversight of subcontractors;

(ii) Is sustained during flight if either the flight or the crewmembers have not been approved in advance and in writing by the GFR, who has been authorized in accordance with the combined regulation/instruction entitled “Contractor's Flight and Ground Operations”;

(iii) Occurs in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, unless the transportation is limited to the vicinity of the contractor's premises, and incidental to work performed under the contract as described in the Schedule;

(iv) Is covered by insurance;

(v) Occurs after the contracting officer has, in writing, revoked the Government's assumption of risk; or

(vi) Is sustained due to workmanship errors.

(h) *Notice of revocation of the Government's assumption of risk.* The liability provisions of the clause at FAR 52.245-1, Government Property, do not apply to the aircraft impacted by a notice of revocation. [clarifies for the KO that it does not simply ‘revert to’ Property clause]

(1) *Preliminary notice of revocation.* (i) When finding that contractor managerial personnel have failed to comply with the combined regulation/instruction, as required by paragraph (b) of the clause at 252.228-7001, including finding the covered aircraft are exposed to unreasonable conditions, the contracting officer shall issue a preliminary notice of revocation of the Government's assumption of risk to the contractor and shall require the contractor to comply with contract requirements. Factors for the contracting officer to consider in determining

exposure to unreasonable conditions **include, but are not limited to**, the following: **[clarifies the ambiguous term ‘unreasonable conditions’]**

(A) **Lack of adequate hangar fire suppression or firefighting vehicles;**

(B) **Failure to provide adequate procedures to the GFR;** or

(C) **Systemic failure to comply** with approved procedures.

(ii) The preliminary notice of revocation **will state the timeframe** for the contractor to correct the noncompliance or conditions. **[No 15-day Letter]**

(2) *Notice of revocation.* If the contractor fails to correct the cited noncompliance or conditions within the specified timeframe, the contracting officer shall issue to the contractor a notice of revocation of the Government's assumption of risk for any covered aircraft.

(i) Thereafter the **contractor assumes the entire risk** for damage, loss, or destruction of the **previously covered aircraft.**

(ii) **Any costs** incurred by the contractor, including the costs of the contractor's self-insurance, insurance premiums paid to insure the contractor's assumption of risk, deductibles associated with such purchased insurance, etc., to mitigate its risk **are unallowable costs.**

(iii) The notice of revocation **does not relieve the contractor of its obligation to comply** with all other provisions of the clause at 252.228-7001, **including the combined regulation/instruction** entitled “Contractor's Flight and Ground Operations.”

(iv) Within 3 days of receipt of the contractor's notice of correction, the contracting officer shall notify the contractor whether the Government will resume risk of loss. The contracting officer shall determine that the noncompliance or cited conditions have been corrected prior to resuming assumption of risk.

(v) Any disputes regarding the contracting officer's notice of revocation shall be subject to FAR clause 52.233-1, Disputes.

(i) *Procedures in the event of damage, loss, or destruction of covered aircraft.* (1) In the event of damage, loss, or destruction of covered aircraft, except in cases covered by paragraph (j)(2) of this section, the contracting officer shall evaluate the contractor's statement of— **[simply tells KO what to do...repeated in clause]**

(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) If a new production aircraft is damaged, lost, or destroyed before it has become a covered aircraft, the Government bears no responsibility for risk of loss.

(3) If a new production aircraft is damaged, lost, or destroyed after it has become a covered aircraft, the contracting officer shall provide written direction to the contractor to take action in accordance with the contracting officer's written direction that the aircraft shall be—

(i) Replaced;

(ii) Repaired to the condition immediately prior to the damage; or

(iii) Considered beyond economic repair. The contracting officer shall decide whether further actions are required under the contract.

(4) If a covered aircraft that has been furnished by the Government to the contractor is damaged, lost, or destroyed while covered, the contracting officer shall provide written direction to the contractor that the aircraft shall be—

(i) Repaired; or

(ii) Considered beyond economic repair. The contracting officer shall decide further actions required under the contract.

(5) The contracting officer shall make an equitable adjustment for expenditures made in performing the obligations under paragraph (h) of the clause at 252.228-7001.

(j) *Contracting officer determination of the contractor's share of loss.* (1) The contractor's share of loss or damage to covered aircraft, except for loss or damage caused by negligence of Government personnel, is the least of—

(i) \$200,000;

(ii) 20 percent of the price or estimated acquisition cost of affected aircraft; or

(iii) 20 percent of the price or estimated cost of the contract, task order, or delivery order.

(2) If the Government requires covered aircraft to be replaced or repaired by the contractor, any resulting equitable adjustment shall not include reimbursement of the contractor's share of loss.

(3) In the event the Government does not decide to replace or repair the covered aircraft, the clause at 252.228-7001 requires the contractor to credit the contract price or pay the Government, as directed by the contracting officer, the least of—

(i) \$200,000;

(ii) 20 percent of the price or estimated acquisition cost of affected aircraft; or

(iii) 20 percent of the price or estimated cost of the contract, task order, or delivery order.

(4) The costs incurred by the contractor for its share of the loss and for insuring against that loss are unallowable costs, including but not limited to—

(i) The contractor's share of loss under the Government's self-insurance;

(ii) The costs of the contractor's self-insurance;

(iii) The deductible for any contractor-purchased insurance;

(iv) Insurance premiums paid for contractor-purchased insurance; and

(v) Costs associated with determining, litigating, and defending against the contractor's liability.

(k) *Reimbursement from a third party.* If the contracting officer finds or has reason to believe that the contractor has been reimbursed or otherwise compensated by a third party for damage, loss, or destruction of covered aircraft and has also been compensated by the Government, then the contracting officer shall demand an equitable reimbursement. If the contracting officer requests that the contractor provide reasonable assistance in obtaining recovery, such effort shall be an allowable expense of the contractor.

PGI 228.370 Ground and flight risk.

PGI 228.370-2 General. [NEW]

(a) Assignment of a Government flight representative. DFARS 252.228-7001, Ground and Flight Risk, requires the assignment of a Government flight representative (GFR) to administer the requirements of the combined instruction Contractor's Flight and Ground Operations, (DCMA INST 8210.1, AFI 10-220, AR 95-20, NAVAIRINST 3710.1 (Series), and COMDTINST M13020.3). At the time the solicitation is issued, contracting officers shall contact DCMA Aircraft Operations (AO) and the appropriate military service to obtain technical advice and allow adequate lead time for assigning a GFR. Make requests for assignment of a GFR to—**[No Change from old PGI]**

HQ DCMA: DCMA-AO
8000 Jefferson Davis Highway
Building 4A
Richmond, VA 23297
804-279-6322

Email: AOInbox@dcma.mil (include "Ground and Flight Risk Clause" on the subject line)

Army: HQ, Army Materiel Command
ATTN: AMCOL-CA
4400 Martin Road
Redstone Arsenal, AL 35898
256-450-7021

Navy: Commander, Naval Air Systems Command (AIR-09F)
22541 Millstone Road, Unit 10
Patuxent River, MD 20670-1601
301- 342-7233

Air Force: HQ AFMC/A3V
508 W. Choctawhatchee
Eglin AFB, FL 32542-5713
850- 882-7890
Workflow: afmc.a3v@us.af.mil

Coast Guard: Commanding Officer
Aviation Logistics Center
U.S. Coast Guard
1664 Weeksville Road, Building 63
Elizabeth City, NC 27909-6725

(c) Foreign military sales. The Government self-insures through the use of the clause at 252.228-7001, which requires risk-mitigation procedures in lieu of private-sector, commercially-available hull insurance to cover the physical aircraft from damage or destruction, similar to the comprehensive portion of automobile insurance. It does not address personnel liability. For contracts falling under the exceptions at DFARS 228.371(b)(1)(iii), (iv), and (vi), review the commercial insurance policy to determine what coverage exists on the contract aircraft. Commercial hull insurance policies may contain various coverage exclusions, particularly for Government-furnished aircraft, which may mean the Government is at risk without the risk management safeguards provided through the Combined Instruction. **[NEW guidance to ensure program office is aware of insurance status without GFRC]**

(f) Damage to Government aircraft. Whenever damage to Government aircraft is reported, particularly when the cost of repair exceeds the contractor's share of loss provisions, the contracting officer shall make a proper liability determination. For most situations, determining whether an incident is an accident or mishap or a workmanship error can be made based on intent of the employee(s) involved. Although each incident involving damage should be evaluated on its own merits, use the following general rules and examples when determining if an incident constitutes an accident or mishap (damage normally covered under the clause at 252.228-7001) or a workmanship error (damage not normally covered under the clause at 252.228-7001). **[NEW]**

(1) An accident or mishap is the result of a task, operation, or action that was not originally planned or intended. For example, a mechanic was pushing a stand next to the aircraft and scratches the inlet coating. The intent of the task was to move the stand, not to scratch the

coating. This would be considered accident or mishap damage to the aircraft, and a contractor should expect to be reimbursed under the clause at 252.228-7001 (minus the appropriate contractor share of loss). **[NEW]**

(2)(i) 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. For example, a mechanic was scraping coating off an inlet and removed too much material. The intent of the task was to scrape the inlet coating, but too much was removed. This would not be considered aircraft damage reimbursed under the clause at 252.228-7001. **[NEW – reason this is only for ‘skill-based tasks’ is that there is an expected level of competence from the contractor artisan for which the contractor is responsible.]**

(ii) Missing a step in a procedure or checklist item is not considered a skill-based error and therefore is not considered workmanship error damage. **[NEW- yes, missing a step is a mistake/error but it is not considered skill-based but rather simple human error]**

Back to DFARS 228.370

[228.370-3](#) **[NEW – clarifies COCO situations]**

Aircraft not owned by or to be delivered to the Government.

(a) When a contract involves aircraft not owned by or to be delivered to the Government, the contracting officer may use the clause at 252.228-7001 only if the contracting officer determines that it is in the best interest of the Government.

(b) Potential factors for the contracting officer to consider when deciding which course of action is in the best interest of the Government include, but are not limited to, whether—

(1) The cost of hull insurance exceeds the replacement cost of the aircraft;

(2) Insurance is not available (e.g., high-risk experimental flights and operations of aircraft in a war zone); or

(3) Ground or flight activities that involve contractor-owned and contractor-operated aircraft may pose risk to Government aircraft (e.g., due to close proximity in flight).

New rule amends newly re-designated section 228.371 by revising paragraph (b) and adding paragraph (f) to read as follows:

228.371

Additional clauses.

(a) Use the clause at 252.228-7000, Reimbursement for War-Hazard Losses, when—**[No change]**

(1) The clause at FAR 52.228-4, Worker's Compensation and War-Hazard Insurance Overseas, is used; and

(2) The head of the contracting activity decides not to allow the contractor to buy insurance for war-hazard losses.

(b) **Use the clause** at 252.228-7001, Ground and Flight Risk, in solicitations and contracts—

(1) For the acquisition, development, production, modification, maintenance, repair, flight, or overhaul of aircraft **owned by or to be delivered to** the Government, except those solicitations and contracts—

(i) That are strictly for activities incidental to the normal operations of the aircraft (*e.g.*, refueling operations, minor non-structural actions not requiring towing such as replacing aircraft tires due to wear and tear); **[No change]**

(ii) That are **awarded for purchase** under FAR part 12 procedures; **[simplified – note it is specific for purchasing – not modifying existing aircraft]**

(iii) For which a non-DoD customer (including an FMS customer per 225.7305) **has decided to allow the use of commercial insurance or other self-insurance**; **[removed the double negative, intent clarified back in 228.370-2]**

(iv) For commercial derivative aircraft with an FAA certificate of airworthiness **maintained to FAA standards**. Performance under the exception in this paragraph (b)(1)(iv) must be at a licensed and certified FAA repair station **rated for the type of aircraft and work to be maintained**. This **exception does not apply to contracts requiring flights** with contractor crewmembers; **[re-written to clarify and further information in 228.370-2. Note that you can't use this exception if contractor crewmembers are involved.]**

(v) Under which the aircraft are to be dismantled and removed from the inventory; or **[NEW]**

(vi) Under which the aircraft are classified as **Group 1 or 2 unmanned aircraft systems** per DoD Instruction (DoDI) 6055.07, Mishap Notification, Investigation, Reporting, and Record Keeping, **and the purchase price of the air vehicle, including installed Government-furnished equipment, is below the cost threshold for a Class C mishap per DoDI 6055.07; or [NEW]**

(2) Involving **aircraft not owned by or to be delivered to the Government**, only if the **contracting officer decides that it is in the best interest** of the Government. See 228.371-3.

(c) The clause at 252.228-7003, Capture and Detention, may be used when contractor employees are subject to capture and detention and may not be covered by the War Hazards Compensation Act (42 U.S.C. 1701 et seq.). **[No change]**

(d) Use the clause at 252.228-7005, Mishap Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles, in solicitations and contracts that involve the manufacture, modification, overhaul, or repair of aircraft, missiles, and space launch vehicles. **[No change]**

(e) Use the clause at 252.228-7006 , Compliance with Spanish Laws and Insurance, in solicitations and contracts for services or construction to be performed in Spain, unless the Contractor is a Spanish concern. **[No change]**

(f) Use the clause at 252.228-7007, Public Aircraft and State Aircraft Operations—Liability, in solicitations and contracts **that do not include the clause at 252.228-7001 but involve public aircraft operations or state aircraft operations.** **[NEW]**

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

5. Amend section 242.302 by adding paragraph (a)(56) to read as follows:

242.302

Contract administration functions.

(a) * * *

(56) Within DoD, maintaining **surveillance** of aircraft flight and ground operations **is accomplished by** incorporating into the contract, task order, or delivery order the requirements of the applicable version of the combined regulation/instruction entitled “Contractor's Flight and Ground Operations” (Air Force Instruction 10-220, Army Regulation 95-20, Naval Air Systems Command (NAVAIR) Instruction 3710.1 (Series), Coast Guard Instruction M13020.3 (Series), and Defense Contract Management Agency Instruction 8210-1 (Series)). See PGI 242.302(a)(56). **[Added clarification of intent of FAR 42.302(a)(56) to include oversight of both flight and ground operations through the combined instruction]**

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Amend section 252.228-7000—

- a. By revising the section heading; and
- b. In the introductory text by removing “228.370(a)” and adding “228.371(a)” in its place.

The revision reads as follows:

252.228-7000

Reimbursement for War-Hazard Losses.

* * * * *

7. Revise section 252.228-7001 to read as follows:

252.228-7001

Ground and Flight Risk.

As prescribed in 228.371(b), use the following clause: **[Updated to 228.371]**

Ground and Flight Risk (Mar 2023)

(a) *Definitions.* As used in this clause— **[these match 228.370-1, NOTE- ‘operation’ was removed as was ‘in-the-open’]**

Aircraft means, **unless otherwise provided in the contract Schedule**, any item, other than a rocket or missile, intended for flight (*e.g.*, fixed-winged aircraft, blended wing/lifting bodies, helicopters, vertical take-off or landing aircraft, lighter-than-air airships, and unmanned aerial vehicles), including emerging technologies that would commonly be considered aircraft. New production articles become aircraft at a stage of manufacture or production when a wing, portion of a wing, or engine is attached to a fuselage. Blended wing/lifting bodies become aircraft at a stage of manufacture or production when the center portion and a lifting surface become attached. **[re-written – old (a)(1)(i)]**

Contractor's managerial personnel means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of— **[No Change]**

- (1) All, or substantially all, of the Contractor's business;
- (2) All, or substantially all, of the Contractor's operation at any one plant or separate location; or
- (3) A separate and complete major industrial operation.

Contractor's premises means those premises, including subcontractors' premises, **designated in the Schedule or in writing by the Contracting Officer**, and any other place the aircraft is moved for safeguarding. **[No Change]**

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— **[New – read carefully as it is a combination of the old definition of aircraft (a)(1)(ii)-(iv) & the old definition of ‘in-the-open’ (a)(6)]**

(1) 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;

(2) Items removed from a Government furnished aircraft that are—

(i) **Intended for reinstallation** on that particular aircraft, which **retain** their status as covered aircraft while awaiting installation; and

(ii) **Not intended for reinstallation** on that particular aircraft, which **lose** their status as covered aircraft once removal is complete;

(3) 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 **[first sentence of old (a)(6)]**

(4) 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]**

Crewmember means, unless otherwise provided in the Schedule, personnel required in the flight manual, assigned for the purpose of conducting any flight on behalf of the Contractor. It also includes any operator of an unmanned aerial vehicle. **[Revised – changed from ‘Flight Crew Member’ to ‘Crewmember’ to match the 8210-1]**

Flight means any flight approved in writing by the Government flight representative, to include taxi test made in the performance of this contract, or flight for the purpose of safeguarding the aircraft. All aircraft off the Contractor's premises shall be considered to be in flight when on the ground or water for reasonable periods of time following emergency landings, landings made in performance of the contract, or landings approved in writing by the contracting officer. **[Revised and simplified by keeping (a)(4) and (a)(4)(v) and removing (a)(4)(i)-(iv)]**

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. **[NEW-finally codified see PGI for examples]**

(b) *Combined regulation/instruction.* The Contractor shall be bound by the operating procedures contained in the combined regulation/instruction entitled “Contractor's Flight and Ground Operations” (Air Force Instruction 10-220, Army Regulation 95-20, NAVAIR Instruction 3710.1 (Series), Coast Guard Instruction M13020.3 (Series), and Defense Contract Management Agency Instruction 8210-1 (Series)) in effect on the date of contract award. 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. [Note the added sentence]

(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: [Revised from old (c) & (d)]

(1) The Contractor's liability to the Government for damage, loss, or destruction of covered aircraft is limited to the Contractor's share of loss as defined at paragraph (h) of this clause, except when one of the exclusions at paragraph (d) applies. [part of old (c)]

(2) The liability provisions of this clause take precedence over the liability provisions of Federal Acquisition Regulation (FAR) clause 52.245-1, Government Property, with respect to covered aircraft. [old (d)(3)(iv)]

(3) The Contractor is not liable for loss, damage, or destruction of covered aircraft as the result of normal wear and tear, or intentional damage or destruction as required in the Schedule. [clarified with elements from old (c) & (e)(5)]

(4) Conditions for Government assumption of risk in flight are as follows: [Revised with bits from old (c) & (d)]

(i) The Contractor's crewmembers are approved in writing by the Government flight representative (GFR).

(ii) The flight is approved in writing by the GFR.

(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— [Old (e)]

(1) Is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, including the Contractor's oversight of subcontractors; [simplified old (e)(1)]

(2) Is sustained during flight if either the flight or the crewmembers have not been approved in advance and in writing by the GFR, who has been authorized in accordance with the combined regulation/instruction entitled “Contractor's Flight and Ground Operations”; [No Change – old (e)(2)]

(3) Occurs in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, unless the transportation is limited to the vicinity of the Contractor's premises, and

incidental to work performed under the contract as described in the Schedule; **[old (e)(3) with elements from old 228.370 added and reference to GFP removed]**

(4) Is covered by insurance; **[old (e)(4) – No Change; clarification to KO added in 228.370-2]**

(5) Occurs after the Contracting Officer has, in writing, revoked the Government's assumption of risk in accordance with paragraph (e)(3) of this clause; or **[NEW – replaces old (e)(5)]**

(6) Is sustained due to workmanship errors. **[Greatly revised and simplified based on the definition. See PGI for additional guidance]**

(e) Revoking the Government's assumption of risk. [mostly old (d) & subs]

(1) The Contracting Officer, when finding that the Contractor's managerial personnel have failed to comply with paragraph (b) of this clause, will issue a **preliminary notice of revocation** requiring the Contractor to comply with contract requirements within **a timeframe specified** by the Contracting Officer. In determining exposure to unreasonable conditions, the Contracting Officer will consider factors **including, but not limited to**, the following: lack of adequate hangar fire suppression or firefighting vehicles, failure to provide adequate procedures to the GFR, or systemic failure to comply with approved procedures. **[No 15-day Letter, provides examples of 'unreasonable conditions']**

(2) Upon receipt of the preliminary notice of revocation, the Contractor **shall promptly correct** the noncompliance or cited conditions, **regardless of whether there is agreement** that the conditions are unreasonable. **[old (d)(2)]**

(3) If the Contracting Officer finds that the **Contractor failed to correct** the cited noncompliance or conditions within the specified timeframe, the Contracting Officer will issue a **notice of revocation** of the Government's assumption of risk for any covered aircraft. **[NEW – makes a 2-step process]**

(4) If the Contracting Officer issues a notice of revocation pursuant to the terms of this clause—**[Old (d)(4)]**

(i) The Contractor shall thereafter assume the entire risk for damage, loss, or destruction of the previously covered aircraft; **[Old (d)(4)(i)]**

(ii) **Any costs incurred by** the Contractor (including the costs of the Contractor's self-insurance, insurance premiums paid to insure the Contractor's assumption of risk, deductibles associated with such purchased insurance, etc.) to mitigate its risk **are unallowable costs**; and **[Old (d)(4)(ii)]**

(iii) The liability provisions of the clause at FAR 52.245-1, Government Property, **are not applicable** to the aircraft impacted by the notice of revocation. **[Old (d)(4)(iii)]**

(5) The Contractor shall promptly notify the Contracting Officer when the noncompliance or cited conditions have been corrected. Within 3 days of receipt of the Contractor's notice of correction, the Contracting Officer will notify the Contractor whether the Government will

resume risk of loss. The Contracting Officer will determine that the noncompliance or cited conditions have been corrected **prior to resuming assumption of risk.** [(5)-(7) is just a restructure of the old (d)(5)(i)&(ii)]

(6) The notice of revocation **does not relieve the Contractor** of its obligation to comply with all other provisions of this clause, including the combined regulation/instruction entitled “Contractor's Flight and Ground Operations.”

(7) Any disputes regarding the Contracting Officer's notice of revocation shall be subject to FAR clause 52.233-1, Disputes.

(f) *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 (including the Contractor's share of loss) covering damage, loss, or destruction of covered aircraft when the risk has been assumed by the Government, even if the assumption may be terminated for covered aircraft. **[old (h)]**

(g) *Procedures in the event of damage, loss, or destruction.* **[Old (i) – note old (g) has been removed]**

(1) In the event of damage, loss, or destruction of covered aircraft, 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 (h)(2) of this clause, the Contractor shall furnish to the Contracting Officer a statement of— **[No Change]**

(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) If a new production aircraft is damaged, lost, or destroyed before it has become a covered aircraft, the Government bears no responsibility for risk of loss.

(3) If a **new production aircraft** is damaged, lost, or destroyed after it has become a covered aircraft, the Contractor shall take action in accordance with the Contracting Officer's written direction that the aircraft shall be—**[Revised from old (j)]**

(i) Replaced;

(ii) Repaired to the condition immediately prior to the damage; or

(iii) Considered beyond economic repair. The Contracting Officer will decide whether further actions are required under the contract.

(4) If a covered aircraft **that has been furnished by the Government** to the Contractor is damaged, lost, or destroyed while covered, the Contractor shall take action in accordance with the Contracting Officer's written direction that the aircraft shall be—

(i) Repaired; or

(ii) Considered beyond economic repair. The Contracting Officer will decide further actions required under the contract.

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

(h) *Contractor's share of loss.*

(1) The Contractor's share of loss or damage to covered aircraft, except for loss or damage caused by negligence of Government personnel, is the least of—**[Revised from old (f) – adds another 'or' option]**

(i) **\$200,000**;

(ii) **20 percent** of the price or estimated acquisition **cost of affected aircraft**; or

(iii) **20 percent** of the price or estimated **cost of the contract, task order, or delivery order**.

(2) If the Government requires covered aircraft be replaced or repaired by the Contractor, any resulting equitable adjustment shall not include reimbursement of the Contractor's share of loss.

(3) In the event the Government **does not decide to replace or repair**, the Contractor agrees to **credit the contract price or pay the Government**, as directed by the Contracting Officer, the least of—

(i) **\$200,000**;

(ii) **20 percent** of the price or estimated acquisition **cost of affected aircraft**; or

(iii) **20 percent** of the price or estimated **cost of the contract, task order, or delivery order**.

(4) The costs incurred by the Contractor for its share of the loss and for insuring against that loss are unallowable costs, **including but not limited to**—**[No Change from old (f)(5)]**

(i) The Contractor's share of loss under the Government's self-insurance;

(ii) The costs of the Contractor's self-insurance;

(iii) The deductible for any Contractor-purchased insurance;

(iv) Insurance premiums paid for Contractor-purchased insurance; and

(v) Costs associated with determining, litigating, and defending against the Contractor's liability.

(i) *Reimbursement from a third party.* In the event the Contractor is reimbursed or compensated by a third party for damage, loss, or destruction of covered 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. **[old (k) – No Change]**

(j) *Liability to third parties.* Unless the flight and crewmembers have been approved in writing by the GFR, the Contractor shall not be reimbursed for liability to third parties for loss or damage to property or for death or bodily injury caused by covered aircraft during flight, even if the Government has accepted such liability under any other provisions of the contract. **[revised & retitled old (l)]**

(k) *Subcontracts.* The Contractor shall incorporate the requirements of this clause, including this paragraph (k), in subcontracts to include subcontracts for commercial products and commercial services, except— **[Expanded – old (m)]**

(1) The Contractor shall not include paragraph (f) of this clause in subcontracts for commercial products or commercial services; and **[exclusion of insurance costs]**

(2) The Contractor shall not incorporate the requirements of this clause in subcontracts with Federal Aviation Administration (FAA) part 145 repair stations performing work pursuant to their FAA license. **[NEW]**

(End of clause)

[252.228-7007](#)

Public Aircraft and State Aircraft Operations—Liability. **[All new clause]**

As prescribed in 228.371(f), use the following clause:

Public Aircraft and State Aircraft Operations—Liability (Mar 2023)

(a) *Definitions.* As used in this clause—

Civil aircraft means an aircraft other than a public aircraft or state aircraft.

Public aircraft means an aircraft that meets the definition in [49 U.S.C. 40102\(a\)\(41\)](#) and the qualifications in [49 U.S.C. 40125](#). Specifically, a public aircraft means any of the following:

(1) An aircraft used only for the Government, except as provided in paragraphs (5) and (7) of this definition.

(2) An aircraft owned by the Government and operated by any person for purposes related to crew training, equipment development, or demonstration, except as provided in paragraph (7) of this definition.

(3) An aircraft owned and operated by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in paragraph (7) of this definition.

(4) An aircraft exclusively leased for at least 90 continuous days by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in paragraph (7) of this definition.

(5) An aircraft owned or operated by the armed forces or chartered to provide transportation or other commercial air service to the armed forces under the conditions specified by [49 U.S.C. 40125\(c\)](#). In the preceding sentence, the term “other commercial air service” means an aircraft operation that—

(i) Is within the United States territorial airspace;

(ii) The Administrator of the Federal Aviation Administration determines is available for compensation or hire to the public; and

(iii) Must comply with all applicable civil aircraft rules under [title 14, Code of Federal Regulations](#).

(6) An unmanned aircraft that is owned and operated, or exclusively leased for at least 90 continuous days, by an Indian Tribal government, as defined in section 102 of the Robert T.

Stafford Disaster Relief and Emergency Assistance Act ([42 U.S.C. 5122](#)), except as provided in paragraph (7) of this definition.

(7) As described in [49 U.S.C. 40125\(b\)](#), an aircraft described in paragraph (1), (2), (3), or (4) of this definition does not qualify as a public aircraft when the aircraft is used for commercial purposes or to carry an individual other than a crewmember or a qualified non-crewmember.

Public aircraft operation means operation of an aircraft that meets the legal definition of public aircraft established in [49 U.S.C. 40102\(a\)\(41\)](#) and the legal qualifications for public aircraft status outlined in [49 U.S.C. 40125](#).

State aircraft means an aircraft operated by the Government for sovereign, noncommercial purposes such as military, customs, and police services. Military aircraft are afforded status as state aircraft. In very rare circumstances, DoD-contracted aircraft may be designated, in writing, by a responsible Government official pursuant to DoD Directive 4500.54E, DoD Foreign Clearance Program, to be operated in state aircraft status, and **such status cannot be deemed without a written designation** by an authorized Government official.

(b) *Combined regulation/instruction*. 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" (Air Force Instruction 10-220, Army Regulation 95-20, NAVAIR Instruction 3710.1 (Series), Coast Guard Instruction M13020.3 (Series), and Defense Contract Management Agency Instruction 8210-1 (Series)) in effect on the date of contract award. **[Very similar to GFRC – places Combined Instruction on Contract]**

(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.

(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.

(End of clause)