**DFARS Case 2020-D027**

**Ground and Flight Risk**

**Final Rule**

**PART 228—BONDS AND INSURANCE**

**\* \* \* \* \***

**SUBPART 228.3—INSURANCE**

**\* \* \* \* \***

**[228.370 Ground and flight risk.**

**228.370-1 Definitions.**

**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—**

**(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;**

**(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**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-688838890-427448089&term_occur=999&term_src=) **used only for the Government, except as provided in paragraphs (5) and (7) of this definition.**

**(2) An** [**aircraft**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-688838890-427448089&term_occur=999&term_src=) **owned by the Government and operated by any** [**person**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-991716523-365988909&term_occur=999&term_src=title:49:subtitle:VII:part:A:subpart:i:chapter:401:section:40102) **for purposes related to crew training, equipment development, or demonstration, except as provided in paragraph (7) of this definition.**

**(3) An** [**aircraft**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-688838890-427448089&term_occur=999&term_src=) **owned and operated by the government of a State, the District of Columbia, or a territory or possession of the** [**United States**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-2032517217-365988879&term_occur=999&term_src=) **or a political subdivision of one of these governments, except as provided in paragraph (7) of this definition.**

**(4) An** [**aircraft**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-688838890-427448089&term_occur=999&term_src=) **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**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-2032517217-365988879&term_occur=999&term_src=) **or a political subdivision of one of these governments, except as provided in paragraph (7) of this definition.**

**(5) An** [**aircraft**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-688838890-427448089&term_occur=999&term_src=) **owned or operated by the armed forces or chartered to provide transportation or** [**other commercial air service**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-1189179673-365988884&term_occur=999&term_src=title:49:subtitle:VII:part:A:subpart:i:chapter:401:section:40102) **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**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-1189179673-365988884&term_occur=999&term_src=title:49:subtitle:VII:part:A:subpart:i:chapter:401:section:40102)**” means an** [**aircraft**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-688838890-427448089&term_occur=999&term_src=) **operation that—**

**(i) Is within the** [**United States**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-2032517217-365988879&term_occur=999&term_src=) **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**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-950857379-365988972&term_occur=999&term_src=) **rules under title 14, Code of Federal Regulations.**

**(6) An unmanned** [**aircraft**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-688838890-427448089&term_occur=999&term_src=) **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**](https://www.law.cornell.edu/topn/disaster_relief_act_of_1974) **(**[**42 U.S.C. 5122**](https://www.law.cornell.edu/uscode/text/42/5122)**), except as provided in paragraph (7) of this definition.**

**(7) As described in 49 U.S.C. 40125(b), an** [**aircraft**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-688838890-427448089&term_occur=999&term_src=title:49:subtitle:VII:part:A:subpart:i:chapter:401:section:40125) **described in paragraph (1), (2), (3), or (4) of this definition does not qualify as a** [**public aircraft**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-19462893-365988884&term_occur=999&term_src=title:49:subtitle:VII:part:A:subpart:i:chapter:401:section:40125) **in situations where the** [**aircraft**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-688838890-427448089&term_occur=999&term_src=title:49:subtitle:VII:part:A:subpart:i:chapter:401:section:40125) **is used for** [**commercial purposes**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-12198101-367419229&term_occur=999&term_src=title:49:subtitle:VII:part:A:subpart:i:chapter:401:section:40125) **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.**

**228.370-2 General.**

**(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.**

**(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.**

**(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.**

**(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***](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.**

**(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.**

**(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.**

**(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.**

**(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:**

**(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.**

**(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—**

**(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.**

**228.370-3 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).]**

**228.37[1]~~0~~ Additional clauses.**

(a) Use the clause at [252.228-7000](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252228.htm#252.228-7000), Reimbursement for War-Hazard Losses, when—

(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)~~(1)~~ Use the clause at [252.228-7001](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252228.htm#252.228-7001), Ground and Flight Risk, in ~~all~~ solicitations and contracts**[—**

**(1) F]**~~f~~or 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);

(ii) That are awarded **[for purchase]** under FAR ~~P~~**[p]**art 12 procedures ~~and are for the development, production, modification, maintenance, repair, flight, or overhaul of aircraft; or otherwise involving the furnishing of aircraft~~;

(iii) For which a non-DoD customer (including ~~a foreign military sales~~ **[an FMS]** customer~~) has not agreed to assume the risk for loss or destruction of, or damages to, the aircraft; or~~ **[ per 225.7305) has decided to allow the use of commercial insurance or other self-insurance;]**

(iv) For commercial derivative aircraft **[with an]** ~~that are to be maintained to Federal Aviation Administration (~~FAA~~)~~ **[certificate of ]**airworthiness **[maintained to FAA standards.]** ~~when the work will be performed at a licensed FAA repair station.~~**[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;**

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

**(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**

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

~~(2) The clause at~~ [~~252.228-7001~~](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252228.htm#252.228-7001) ~~may be modified only as follows:~~

~~(i) Include a modified definition of “aircraft” if the contract covers other than conventional types of winged aircraft, i.e., helicopters, vertical take-off or landing aircraft, lighter-than-air airships, unmanned aerial vehicles, or other nonconventional aircraft. The modified definition should describe a stage of manufacture comparable to the standard definition.~~

~~(ii) Modify “in the open” to include “hush houses,” test hangars and comparable structures, and other designated areas.~~

~~(iii) Expressly define the “contractor's premises” where the aircraft will be located during and for contract performance. These locations may include contract premises which are owned or leased by the contractor or subcontractor, or premises where the contractor or subcontractor is a permittee or licensee or has a right to use, including Government airfields.~~

~~(iv) Revise paragraph (e)(3) of the clause to provide Government assumption of risk for transportation by conveyance on streets or highways when transportation is—~~

~~(A) Limited to the vicinity of contractor premises; and~~

~~(B) Incidental to work performed under the contract.~~

~~(3) Follow the procedures at~~ [~~PGI 228.370~~](https://www.acq.osd.mil/dpap/dars/pgi/pgi_htm/PGI228_3.htm#228.370)~~(b) when using the clause at~~ [~~252.228-7001.~~](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252228.htm#252.228-7001)

(c) The clause at [252.228-7003](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252228.htm#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.*).

(d) Use the clause at [252.228-7005](https://www.acquisition.gov/dfars/part-252-clauses#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.

(e) Use the clause at [252.228-7006](https://www.acq.osd.mil/dpap/dars/dfars/html/current/252228.htm#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.

**[(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.]**

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**PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

**\* \* \* \* \***

**SUBPART 242.3—CONTRACT ADMINISTRATION OFFICE FUNCTIONS**

**\* \* \* \* \***

**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).]**

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**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

**\* \* \* \* \***

**SUBPART 252.2—TEXT OF PROVISIONS AND CLAUSES**

**\* \* \* \* \***

**252.228-7000 Reimbursement for [W]~~w~~ar-[H]~~h~~azard [L]~~l~~osses.**

As prescribed in 228.37**[1]**~~0~~(a), use the following clause:

\* \* \* \* \*

**252.228-7001 Ground and [F]~~f~~light [R]~~r~~isk.**

As prescribed in [228.37**[1]**~~0~~](https://www.acq.osd.mil/dpap/dars/dfars/html/current/228_3.htm#228.370)(b), use the following clause:

GROUND AND FLIGHT RISK (~~JUN 2010~~**[MAR 2023]**)

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

**[“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.]**

~~(1) “Aircraft,” unless otherwise provided in the contract Schedule, means—~~

~~(i) Aircraft to be delivered to the Government under this contract (either before or after Government acceptance), including complete aircraft and aircraft in the process of being manufactured, disassembled, or reassembled; provided that an engine, portion of a wing or a wing is attached to a fuselage of the aircraft;~~

~~(ii) Aircraft, whether in a state of disassembly or reassembly, furnished by the Government to the Contractor under this contract, including all Government property installed, in the process of installation, or temporarily removed; provided that the aircraft and property are not covered by a separate bailment agreement.~~

~~(iii) Aircraft furnished by the Contractor under this contract (either before or after Government acceptance); or~~

~~(iv) Conventional winged aircraft, as well as helicopters, vertical take-off or landing aircraft, lighter-than-air airships, unmanned aerial vehicles, or other non-conventional aircraft specified in this contract.~~

~~(2)~~ “Contractor’s managerial personnel” means the Contractor’s directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(~~i~~**[1]**) All, or substantially all, of the Contractor’s business;

(~~ii~~**[2]**) All, or substantially all, of the Contractor’s operation at any one plant or separate location; or

(~~iii~~**[3]**) A separate and complete major industrial operation.

~~(3)~~ “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.

**[“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—**

**(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**

**(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 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.]**

~~(4) “Flight” means any flight demonstration, flight test, taxi test, or other flight made in the performance of this contract, or for the purpose of safeguarding the aircraft, or previously approved in writing by the Contracting Officer.~~

~~(i) For land based aircraft, “flight” begins with the taxi roll from a flight line on the Contractor's premises and continues until the aircraft has completed the taxi roll in returning to a flight line on the Contractor's premises;~~

~~(ii) For seaplanes, “flight” begins with the launching from a ramp on the Contractor's premises and continues until the aircraft has completed its landing run and is beached at a ramp on the Contractor's premises;~~

~~(iii) For helicopters, “flight” begins upon engagement of the rotors for the purpose of take-off from the Contractor's premises and continues until the aircraft has returned to the ground on the Contractor's premises and the rotors are disengaged.~~

~~(iv) For vertical take-off or landing aircraft, “flight” begins upon disengagement from any launching platform or device on the Contractor's premises and continues until the aircraft has been engaged to any launching platform or device on the Contractor's premises.~~

~~(v) 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 this contract, or landings approved in writing by the Contracting Officer.~~

~~(5) “Flight crew member” means the pilot, the co-pilot, and, unless otherwise provided in the Schedule, the flight engineer, navigator, and bombardier-navigator when assigned to their respective crew positions for the purpose of conducting any flight on behalf of the Contractor. It also includes any pilot or operator of an unmanned aerial vehicle. If required, a defense systems operator may also be assigned as a flight crew member.~~

**[“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.]**

~~(6) “In the open” means located wholly outside of buildings on the Contractor's premises or other places described in the Schedule as being “in the open.” Government furnished aircraft shall be considered to be located “in the open” at all times while in the Contractor's possession, care, custody, or control.~~

~~(7) “Operation” means operations and tests of the aircraft and its installed equipment, accessories, and power plants, while the aircraft is in the open or in motion. The term does not apply to aircraft on any production line or in flight.~~

**[“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.]**

(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.]**

(c) *Government as self-insurer.* ~~Subject to the conditions in paragraph (d) of this clause, the Government self-insures and assumes the risk of damage to, or loss or destruction of aircraft “in the open,” during “operation,” and in “flight,” except as may be specifically provided in the Schedule as an exception to this clause. The Contractor shall not be liable to the Government for such damage, loss, or destruction beyond the Contractor’s share of loss amount under the Government’s self-insurance.~~ **[The Government self-insures and assumes the risk of damage to, or loss or destruction of, covered aircraft subject to the following conditions:**

**(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.**

**(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.**

**(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.**

**(4) Conditions for Government assumption of risk in flight are as follows:**

**(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)~~ *~~Conditions for Government’s self-insurance.~~* ~~The Government's assumption of risk for aircraft in the open shall continue unless the Contracting Officer finds that the Contractor has failed to comply with paragraph (b) of this clause, or that the aircraft is in the open under unreasonable conditions, and the Contractor fails to take prompt corrective action.~~

~~(1) The Contracting Officer, when finding that the Contractor has failed to comply with paragraph (b) of this clause or that the aircraft is in the open under unreasonable conditions, shall notify the Contractor in writing and shall require the Contractor to make corrections within a reasonable time.~~

~~(2) Upon receipt of the notice, the Contractor shall promptly correct the cited conditions, regardless of whether there is agreement that the conditions are unreasonable.~~

~~(i) If the Contracting Officer later determines that the cited conditions were not unreasonable, an equitable adjustment shall be made in the contract price for any additional costs incurred in correcting the conditions.~~

~~(ii) Any dispute as to the unreasonableness of the conditions or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.~~

~~(3) If the Contracting Officer finds that the Contractor failed to act promptly to correct the cited conditions or failed to correct the conditions within a reasonable time, the Contracting Officer may terminate the Government's assumption of risk for any aircraft in the open under the cited conditions. The termination will be effective at 12:01 a.m. on the fifteenth day following the day the written notice is received by the Contractor.~~

~~(i) If the Contracting Officer later determines that the Contractor acted promptly to correct the cited conditions or that the time taken by the Contractor was not unreasonable, an equitable adjustment shall be made in the contract price for any additional costs incurred as a result of termination of the Government's assumption of risk.~~

~~(ii) Any dispute as to the timeliness of the Contractor's action or the equitable adjustment shall be considered a dispute under the Disputes clause of this contract.~~

~~(4) If the Government terminates its assumption of risk pursuant to the terms of this clause—~~

~~(i) The Contractor shall thereafter assume the entire risk for damage, loss, or destruction of, the affected 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 assumption of risk are unallowable costs; and~~

~~(iii) The liability provisions of the Government Property clause of this contract are not applicable to the affected aircraft.~~

~~(5) The Contractor shall promptly notify the Contracting Officer when unreasonable conditions have been corrected.~~

~~(i) If, upon receipt of the Contractor’s notice of the correction of the unreasonable conditions, the Government elects to again assume the risk of loss and relieve the Contractor of its liability for damage, loss, or destruction of the aircraft, the Contracting Officer will notify the Contractor of the Contracting Officer’s decision to resume the Government’s risk of loss. The Contractor shall be entitled to an equitable adjustment in the contract price for any insurance costs extending from the end of the third working day after Government’s receipt of the Contractor’s notice of correction until the Contractor is notified that the Government will resume the risk of loss.~~

~~(ii) If the Government does not again assume the risk of loss and the unreasonable conditions have been corrected, the Contractor shall be entitled to an equitable adjustment for insurance costs, if any, extending after the third working day after the Government’s receipt of the Contractor’s notice of correction.~~

~~(6) The Government’s termination of its assumption of risk of loss 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.”~~

(~~e~~**[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) ~~Results from failure of the Contractor, due to willful misconduct or lack of good faith of any of the Contractor's managerial personnel, to maintain and administer a program for the protection and preservation of aircraft in the open and during operation in accordance with sound industrial practice, including oversight of a subcontractor’s program.~~ **[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;]**

(2) Is sustained during flight if either the flight or the ~~flight crew members~~ **[crewmembers]** have not been approved in advance ~~of~~ ~~any flight~~ **[and ]**in writing by the ~~Government Flight Representative~~**[GFR]**, who has been authorized in accordance with the combined regulation/instruction entitled “Contractor’s Flight and Ground Operations”;

(3) Occurs in the course of transportation by rail, or by conveyance on public streets, highways, or waterways, ~~except for Government-furnished property~~ **[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]**;

(4) Is covered by insurance;

(5) ~~Consists of wear and tear; deterioration (including rust and corrosion); freezing; or mechanical, structural, or electrical breakdown or failure, unless these are the result of other loss, damage or destruction covered by this clause. (This exclusion does not apply to Government-furnished property if damage consists of reasonable wear and tear or deterioration, or results from inherent vice,~~ *~~e.g.~~*~~, a known condition or design defect, in the property)~~ **[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

(6) Is sustained ~~while the aircraft is being worked on and is a direct result of the work unless such damage, loss, or destruction would be covered by insurance which would have been maintained by the Contractor, but for the Government’s assumption of risk.~~**[due to workmanship errors.]**

(~~f~~**[e])** *~~Contractor’s share of loss and Contractor’s deductible under the Government’s self-insurance~~***[*****Revoking the Government’s assumption of risk*].**

~~(1) The Contractor assumes the risk of loss and shall be responsible for the Contractor’s share of loss under the Government’s self-insurance. That share is the lesser of—~~

~~(i) The first $100,000 of loss or damage to aircraft in the open, during operation, or in flight resulting from each separate event, except for reasonable wear and tear and to the extent the loss or damage is caused by negligence of Government personnel; or~~

~~(ii) Twenty percent of the price or estimated cost of this contract.~~

~~(2) If the Government elects to require that the aircraft be replaced or restored by the Contractor to its condition immediately prior to the damage, the equitable adjustment in the price authorized by paragraph (j) of this clause shall not include the dollar amount of the risk assumed by the Contractor.~~

~~(3) In the event the Government does not elect repair or replacement, the Contractor agrees to credit the contract price or pay the Government, as directed by the Contracting Officer, the lesser of—~~

~~(i) $100,000;~~

~~(ii) Twenty percent of the price or estimated cost of this contract; or~~

~~(iii) The amount of the loss.~~

~~(4) For task order and delivery order contracts, the Contractor’s share of the loss shall be the lesser of $100,000 or twenty percent of the combined total price or total estimated cost of those orders issued to date to which the clause applies.~~

~~(5) 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.~~

**[(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.**

**(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.**

**(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.**

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

**(i) The Contractor shall thereafter assume 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; and**

**(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.**

**(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.**

**(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.]**

~~(g)~~ *~~Subcontractor possession or control.~~* ~~The Contractor shall not be relieved from liability for damage, loss, or destruction of aircraft while such aircraft is in the possession or control of its subcontractors, except to the extent that the subcontract, with the written approval of the Contracting Officer, provides for relief from each liability. In the absence of approval, the subcontract shall contain provisions requiring the return of aircraft in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of this contract.~~

(~~h~~**[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 ~~while in the open, during operation, or in flight~~ when the risk has been assumed by the Government, ~~including the Contractor’s share of loss in this clause,~~ even if the assumption may be terminated for **[covered]** aircraft ~~in the open~~.

(~~i~~**[g]**) *Procedures in the event of****[ damage,]*** *loss****[, or destruction].***

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

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

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

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

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

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

~~(j)~~**[(2)]** *~~Loss prior to delivery.~~* ~~(1) If prior to delivery and acceptance by the Government, aircraft is damaged, lost, or destroyed and the Government assumed the risk, the Government shall either—~~ **[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—**

**(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).]**

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

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

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

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

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

**[(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—**

**(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—**

**(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~~**[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.

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

**[(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.]**

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

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

**(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.]**

(End of clause)

\* \* \* \* \*

**252.228-7003 Capture and [D]~~d~~etention.**

As prescribed in 228.37**[1]**~~0~~(c), use the following clause:

**\* \* \* \* \***

**252.228-7005 Mishap [R]~~r~~eporting and [I]~~i~~nvestigation [I]~~i~~nvolving [A]~~a~~ircraft, [M]~~m~~issiles, and [S]~~s~~pace [L]~~l~~aunch [V]~~v~~ehicles.**

As prescribed in 228.37**[1]**~~0~~(d), use the following clause:

\* \* \* \* \*

**252.228-7006 Compliance with Spanish [L]~~l~~aws and [I]~~i~~nsurance.**

As prescribed in 228.37**[1]**~~0~~(e), use the following clause:

\* \* \* \* \*

**[****252.228-7007 Public Aircraft and State Aircraft Operations—Liability.**

**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**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-688838890-427448089&term_occur=999&term_src=) **other than a** [**public aircraft or state aircraft**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-19462893-365988884&term_occur=999&term_src=title:49:subtitle:VII:part:A:subpart:i:chapter:401:section:40102)**.**

**“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**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-688838890-427448089&term_occur=999&term_src=) **used only for the Government, except as provided in paragraphs (5) and (7) of this definition.**

**(2) An** [**aircraft**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-688838890-427448089&term_occur=999&term_src=) **owned by the Government and operated by any** [**person**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-991716523-365988909&term_occur=999&term_src=title:49:subtitle:VII:part:A:subpart:i:chapter:401:section:40102) **for purposes related to crew training, equipment development, or demonstration, except as provided in paragraph (7) of this definition.**

**(3) An** [**aircraft**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-688838890-427448089&term_occur=999&term_src=) **owned and operated by the government of a State, the District of Columbia, or a territory or possession of the** [**United States**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-2032517217-365988879&term_occur=999&term_src=) **or a political subdivision of one of these governments, except as provided in paragraph (7) of this definition.**

**(4) An** [**aircraft**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-688838890-427448089&term_occur=999&term_src=) **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**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-2032517217-365988879&term_occur=999&term_src=) **or a political subdivision of one of these governments, except as provided in paragraph (7) of this definition.**

**(5) An** [**aircraft**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-688838890-427448089&term_occur=999&term_src=) **owned or operated by the armed forces or chartered to provide transportation or** [**other commercial air service**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-1189179673-365988884&term_occur=999&term_src=title:49:subtitle:VII:part:A:subpart:i:chapter:401:section:40102) **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**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-1189179673-365988884&term_occur=999&term_src=title:49:subtitle:VII:part:A:subpart:i:chapter:401:section:40102)**” means an** [**aircraft**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-688838890-427448089&term_occur=999&term_src=) **operation that—**

**(i) Is within the** [**United States**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-2032517217-365988879&term_occur=999&term_src=) **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**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-950857379-365988972&term_occur=999&term_src=) **rules under title 14, Code of Federal Regulations.**

**(6) An unmanned** [**aircraft**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-688838890-427448089&term_occur=999&term_src=) **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**](https://www.law.cornell.edu/topn/disaster_relief_act_of_1974) **(**[**42 U.S.C. 5122**](https://www.law.cornell.edu/uscode/text/42/5122)**), except as provided in paragraph (7) of this definition.**

**(7) As described in 49 U.S.C. 40125(b), an** [**aircraft**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-688838890-427448089&term_occur=999&term_src=title:49:subtitle:VII:part:A:subpart:i:chapter:401:section:40125) **described in paragraph (1), (2), (3), or (4) of this definition does not qualify as a** [**public aircraft**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-19462893-365988884&term_occur=999&term_src=title:49:subtitle:VII:part:A:subpart:i:chapter:401:section:40125) **when the** [**aircraft**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-688838890-427448089&term_occur=999&term_src=title:49:subtitle:VII:part:A:subpart:i:chapter:401:section:40125) **is used for** [**commercial purposes**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-12198101-367419229&term_occur=999&term_src=title:49:subtitle:VII:part:A:subpart:i:chapter:401:section:40125) **or to carry an individual other than a crewmember or a** [**qualified non-crewmember.**](https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=49-USC-247958977-367419227&term_occur=999&term_src=title:49:subtitle:VII:part:A:subpart:i:chapter:401:section:40125)

**“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.**

**(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)]**