

The revision reads as follows:

252.228-7003 Capture and Detention.

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- 9. Amend section 252.228-7005—
- a. By revising the section heading; and
- b. In the introductory text by removing “228.370(d)” and adding “228.371(d)” in its place.

The revision reads as follows:

252.228-7005 Mishap Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles.

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- 10. Amend section 252.228-7006—
- a. By revising the section heading; and
- b. In the introductory text by removing “228.370(e)” and adding “228.371(e)” in its place.

The revision reads as follows:

252.228-7006 Compliance with Spanish Laws and Insurance.

* * * * *

- 11. Add section 252.228-7007 to read as follows:

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 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.

(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)

[FR Doc. 2023-05673 Filed 3-21-23; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 242

[Docket DARS-2023-0007]

RIN 0750-AL69

Defense Federal Acquisition Regulation Supplement: Contract Administration Office Functions Relating to Direct Costs (DFARS Case 2022-D021)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify when a contract administration office has authority to negotiate and settle direct costs questioned in incurred cost audits.

DATES: Effective March 22, 2023.

FOR FURTHER INFORMATION CONTACT: David E. Johnson, telephone 202-913-5764.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is issuing a final rule to amend the DFARS by adding to section 242.302(b) an additional contract administrative function delegable from a procuring contracting office to a contract administration office. DFARS 242.302(b) specifies functions performed by the contract administration office “only when and to the extent specifically authorized” by the procuring contracting office, as stated in Federal Acquisition Regulation (FAR) 42.302. Any administrative functions unspecified under FAR 42.302 or DFARS 242.302, and not otherwise delegated, remain the responsibility of the procuring contracting office. This

rule explicitly allows delegation of authority from the procuring contracting office to the Government contract administration office to negotiate and settle direct costs questioned in incurred cost audits.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it merely involves assignment among DoD agencies of an existing contract administrative function. This rule does not have a significant cost or administrative impact on contractors or offerors, and it does not have a significant effect beyond DoD's internal operating procedures.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold, for Commercial Services, and for Commercial Products, Including Commercially Available Off-the-Shelf Items

This rule does not create any new solicitation provisions or contract clauses. It does not impact any existing solicitation provisions or contract clauses or prescriptions for their use.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

VII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 242

Government procurement.

Jennifer D. Johnson,
Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR part 242 is amended as follows:

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

- 1. The authority citation for 48 CFR part 242 continues to read as follows:

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

- 2. Amend section 242.302 by adding paragraph (b)(S–71) to read as follows:

242.302 Contract administration functions.

* * * * *

(b) * * *

(S–71)(A) Except for classified contracts, negotiate or settle questioned direct costs in an incurred cost audit. The procuring contracting officer may delegate this authority to the contract administration office (CAO) only upon prior coordination and agreement with the CAO. Upon such delegation, the procuring contracting officer shall provide the CAO access within 30 days to all supporting documentation in their

possession related to the questioned direct costs in an incurred cost audit.

(B) After settlement of the questioned direct costs, the CAO shall provide the procuring contracting office the results of the settlement. The procuring contracting office shall make any adjustments resulting from the settlement on affected contracts and report such adjustments to the CAO.

[FR Doc. 2023–05674 Filed 3–21–23; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 243 and 252

[Docket DARS–2023–0001]

Defense Federal Acquisition Regulation Supplement: Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

DATES: Effective March 22, 2023.

FOR FURTHER INFORMATION CONTACT: Jennifer D. Johnson, telephone 703–717–8226.

SUPPLEMENTARY INFORMATION: This final rule makes the following changes:

1. A final rule published at 88 FR 6578 on January 31, 2023, provided an incorrect reference at amendatory instruction 149 by citing “242.205–71” in lieu of “243.205–71”. This rule provides the correct amendatory instruction.
2. This rule amends section 252.215–7009, Proposal Adequacy Checklist, at item 18 in the column entitled “Submission item” in the introductory text and paragraph a by updating terminology referencing commercial products.

List of Subjects in 48 CFR Parts 243 and 252

Government procurement.

Jennifer D. Johnson,
Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 243 and 252 are amended as follows:

- 1. The authority citation for 48 CFR parts 243 and 252 continues to read as follows: