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OF THE AIR FORCE**

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Operations

**PROCEDURES FOR CONTRACTED AIR
OPERATIONS FOR TRAINING
SUPPORT**

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This publication implements Department of the Air Force Policy Directive (DAFPD) 10-36, *Contracted Operational Air Services for Training Support*. This instruction provides mandatory guidance and procedures to support the planning and procurement of Department of the Air Force (DAF) operational air services for training support, including the sponsorship of contracted air services procured by foreign governments. The DAF should consult with the State Department prior to entering into a sponsorship of contracted air services procured by a foreign government. This publication applies to DAF contractor aircraft operating to provide training support within and outside of the United States (US) National Airspace System (NAS). This instruction applies to all civilian employees and uniformed members of the Regular Air Force, United States Space Force (USSF), Air Force Reserve, Air National Guard (ANG), and contractors to the extent required by the applicable contract. This instruction does not apply to members assigned to the Air Education Training Command or the Air Force Test Center. This instruction also applies to DAF contractors to the extent required by the applicable contract. Ensure all records created as a result of processes prescribed in this publication are maintained in accordance with Air Force Instruction (AFI) 33-322, *Records Management and Information Governance Program*, and disposed of in accordance with the Air Force Records Disposition Schedule located in the Air Force Records Information Management System. Refer recommended changes and questions about this publication to the Office of Primary Responsibility (OPR), Headquarters Air Force Operational Training Infrastructure Division (AF/A3TI) AF.A3TI.Workflow@us.af.mil, using the AF Form 847, *Recommendation for Change of Publication*; route AF Forms 847 from the field

through the appropriate functional chain of command. This publication may be supplemented at any level, but all supplements must be routed to the OPR listed above for coordination prior to certification and approval. The authorities to waive wing/unit level requirements in this publication are identified with a Tier (“T-0, T-1, T-2, T-3”) number following the compliance statement. See Department of the Air Force Instruction (DAFI) 33-360, *Publications and Forms Management*, for a description of the authorities associated with the Tier numbers. Submit requests for waivers through the chain of command to the appropriate Tier waiver approval authority, or alternately, to the requestor’s commander for non-tiered compliance items. Compliance with Attachments **2 and 3** in this publication is mandatory.

SUMMARY OF CHANGES

This document has been substantially revised and needs to be completely reviewed. Instead of procedures for specific contract activities, this document now establishes procedures for all contracted air operations for training support.

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Chapter 1

INTRODUCTION

1.1. Overview. This instruction provides practical guidance to requiring activities for planning and conducting the acquisition of contracted operational air services for training support, particularly with regard to identifying the need to designate contractor aircraft for operation as public aircraft or state aircraft and identifying risk acceptance authorities.

1.2. Aircraft Status.

1.2.1. To the maximum extent possible, contract requirements should be structured so the required contractor operations (flights) can be performed in civil aircraft status in order to take advantage of commercial insurance, commercial practices, and Federal Aviation Administration (FAA) oversight. Aircraft cannot be operated as civil aircraft and as public or state aircraft at the same time. **(T-0)**

1.2.2. The provision of military services such as air combat maneuvering, air-to-air gunnery, target towing, electronic countermeasures simulation, cruise missile simulation, and air-to-air refueling have been described in some FAA communications as ‘inherently military’ activities. As such it is not clear that the FAA will condone these as civil activities, even though training that involves these activities is not inherently governmental.

1.2.3. Due to limitations imposed on range operations, an aircraft must be in public aircraft status in order to drop ordnance on a range (reference Air Force Manual (AFMAN) 13-212V1, *Range Planning and Operations*). Accordingly, no forward firing, live weapons, or items whose operation the FAA does not allow under the civil certificate may be added to an aircraft that is to be operated as a civil aircraft on an Air Force range.

1.2.4. Not meeting the requirements for Civil Aircraft Operations (CAO) does not in itself result in qualification for public or state aircraft status. In order to operate in public or state aircraft status, the contractor’s aircraft must be specifically designated, in writing, by an authorized United States government official. **(T-0)**

1.2.5. Reference [Chapter 4](#) and [Chapter 5](#) for instructions on the criteria, procedures, and approval authorities for designating a contractor's aircraft as public aircraft or state aircraft.

Chapter 2

ROLES AND RESPONSIBILITIES

2.1. Deputy Chief of Staff, Operations (AF/A3). AF/A3, through AF/A3T (Director of Training and Readiness) will:

2.1.1. Establish guidance for contractor use of Air Force operated ranges in accordance with AFMAN 13-212V1. **(T-1)**

2.1.2. Participate in the early scoping and review of potential environmental issues and enable cross-Departmental communications to ensure consistency in the treatment of contracted air services as needed. **(T-1)**

2.2. Major Command Commanders (MAJCOM/CC) and Field Command Commanders (Field Command/CC). MAJCOM/CCs, Field Command/CCs, and the Director, ANG, with the exception of the AFMC/CC, through appropriate level staff, will:

2.2.1. Serve as the responsible official within the Air Force with the authority to designate contractor-owned civil aircraft to operate as state aircraft outside of the NAS. The commander may designate this authority to no lower than the Deputy Commander.

2.2.2. Designate when contracted aircraft operations may be conducted as Public Aircraft Operations (PAO), when appropriate, in accordance with Title 49 United States Code (USC) §§ 40102(a)(41) and 40125. **(T-0)**

2.2.3. Delegate PAO designation responsibility to an appropriate DAF official, no lower than the Deputy Commander, that has the authority to commit the mishap investigation, maintenance inspection, and aircrew certification resources necessary to support PAO.

2.2.4. Communicate PAO or State Aircraft Operations (SAO) Designation in either written or electronic means to the requiring activity organization.

2.3. Air Force Life Cycle Management Center (AFLCMC/EN-EZ) as the Air Force Technical Airworthiness Authority (TAA). Will conduct technical airworthiness assessments, identify technical airworthiness risks and, if needed, issue airworthiness approvals. **(T-1)**

2.4. Requiring Activity Organization. The requiring activity organization, in coordination with its supporting contracting organization, will:

2.4.1. Plan the acquisition as described in this DAFI (reference [Chapter 3](#)). **(T-1)**

2.4.2. Ensure appropriate oversight for maintenance, safety, and operations is provided for contracted aircraft consistent with the individual aircraft flight status (Civil or Public). **(T-1)**

2.4.3. Contact AFLCMC/EN-EZ (USAF.Airworthiness.Office@us.af.mil) for guidance concerning the airworthiness approach for contracted activity. **(T-1)**

2.4.4. Nominate, in writing, Government Flight Representative(s) (GFR), Government Ground Representative(s) (GGR), and/or Ground Government Flight Representative(s) (GGFR) for all contracts and task orders, as applicable. **(T-1)** Reference Defense Contract Management Agency Instruction (DCMAI) 8210.1/AFI 10-220_IP, *Contractor's Flight and Ground Operations*, for details.

2.4.5. Ensure completion of the Maintenance and Operations (M&O) Assessment portion of the overall airworthiness assessment. **(T-1)**

2.4.6. Prepare, sign, and distribute the PAO Declaration Letter, when applicable. **(T-1)**

2.5. Contracting Officer. The contracting officer will provide the PAO Declaration Letter to the contractor, when applicable. **(T-1)**

Chapter 3

REQUIRING ACTIVITY ORGANIZATION FUNCTIONS RELATED TO ACQUISITION

3.1. Overview. The DAF generally conducts acquisition processes as outlined in statutes, regulations, policies, and guidance affecting procurement that are not duplicated in this instruction. This chapter describes issues unique to contracting for operational air services for training support.

3.2. Before Requesting Acquisition of Operational Air Services. Resolve the following issues before initiating a request for acquisition of operational air services for training support. If any of these issues cannot be fully resolved in favor of contracting, do not proceed to request a contract. For each of the following issues, prepare a memorandum that summarizes the data obtained, describes the analysis, records the decision, and attaches copies of source documents used in the analysis.

3.2.1. Availability of commercial sources and commercial capabilities. Conduct market research to identify the extent of existing or potential operational air service capabilities available from commercial sources. The lack of an existing commercial industry may make acquisition unaffordable or unattainable. Determine why there are no existing sources. Consider the cost elements that would be involved in building a commercial industry. Identify legal, regulatory, and practical barriers to creation of a commercial industry.

3.2.2. Government-Owned or Contractor-Owned aircraft. Determine whether it is feasible to request acquisition of services that will require a contractor to own, provide, maintain, sustain, and operate its own aircraft. The following are key issues affecting this decision:

3.2.2.1. Demilitarization. Ordinarily, contractors cannot purchase military aircraft or other defense military equipment unless it has been demilitarized in accordance with Department of Defense Instruction (DoDI) 4160.28, *DoD Demilitarization (DEMIL) Program*. Consult Headquarters AF/A4, Logistics, Engineering, and Force Protection, for information about demilitarization requirements associated with particular airframes and other equipment that may be needed for contract performance. If the contract will depend on contractors using military-capable aircraft that normally would require demilitarization, plan to adopt one of the following alternatives:

3.2.2.1.1. Select an organic performance solution (performance by Regular Air Force, USSF, AF Reserve, ANG, or enlisted members, or by DoD civilian employees) consistent with 10 USC § 129a and DoDI 1100.22, *Policies and Procedures for Determining Workforce Mix*.

3.2.2.1.2. Furnish government-owned aircraft to the contractor to operate;

3.2.2.1.3. Obtain Under Secretary of Defense (Acquisition and Sustainment) waiver of the requirement for demilitarization prior to contract award or;

3.2.2.1.4. Incur the costs and time required for the contractor(s) to restore demilitarized aircraft to operational capability, modify, or update the aircraft if needed to attain current operational configuration as required to perform the contract, cooperate with airworthiness and safety assessments, and obtain airworthiness approval, safety risk acceptance, and other certifications as needed.

3.2.2.2. Civil Certification. If the contract will require use of aircraft that cannot be certified by the FAA as civil aircraft, or activities or configurations not allowed under a civil airworthiness certificate, plan to furnish government-owned aircraft or designate contractor aircraft to operate as public aircraft if legally eligible and qualified by 49 USC § 40102(a)(41) and 40125.

3.2.2.3. Liability for Loss of the Contractor's Aircraft.

3.2.2.3.1. Determine whether civilian commercial insurance covers the loss of contractor provided aircraft that are used for military contracts or purposes that the FAA does not certify.

3.2.2.3.2. Assess whether contractors will be likely or unlikely to agree to accept responsibility to be liable and pay for the loss of the hull of the aircraft that is used to perform the contract. Consult the contracting officer and supporting legal office about the implications of the Ground and Flight Risk Clause(s) as prescribed in Defense Federal Acquisition Regulation Supplement (DFARS) 228.370(b).

3.2.2.3.2.1. In some circumstances, prospective contractors and their commercial insurance will waive subrogation against the DAF and will accept full liability and responsibility to pay the costs of replacing a lost or destroyed aircraft, as well as the lost revenue during the time the damaged aircraft is being repaired or replaced. In these circumstances, contracting may be feasible.

3.2.2.3.2.2. When contractors and their insurance will not accept full liability: plan to furnish government-owned aircraft; select an organic performance solution; or consider whether the DAF can and should be open to accepting and obtaining funding for the risk of loss to the contractor aircraft.

3.2.3. Exclusivity and End Use. If demilitarization will be waived so that offerors or contractors will be able to purchase, lease, or otherwise obtain access to military defense equipment, or if the government will furnish military defense equipment to the contractor during the contract, plan to include in the Performance Work Statement or elsewhere in the contract the following requirements:

3.2.3.1. During the contract period, the contractor shall use the equipment and associated technical data exclusively to perform contracts with the United States government and shall not use the equipment or associated technical data for any other purpose or customer; and

3.2.3.2. At the end of the contract period, the contractor shall return or transfer the military defense equipment to the United States government and/or shall pay for the equipment to be demilitarized and destroyed as directed by the contracting officer. **Note:** The word "offeror" applies to those who submit offers, and the word "contractor" applies to those offerors who were awarded contracts.

3.2.4. Inherently Governmental Functions (IGF). As part of the process for determining whether to request contract support, consult the cognizant MAJCOM Manpower Office (A1) or Field Command personnel office (S1) to determine whether any of the functions or activities involved in aircraft or ground operations are inherently governmental or military essential. Federal law (e.g., 10 USC § 129a and Federal Acquisition Regulation (FAR) Subpart 7.5, *Inherently Governmental Functions*) prohibits contracting for performance of IGF. Even if an activity is not inherently governmental, it may be so essential to military capabilities and military manpower that it should not be performed by contractors.

3.3. Requirements Development. The requiring activity organization must plan and prepare a Requirements Approval Document (RAD) and obtain approval pursuant to AFI 63-138, *Acquisition of Services*. **(T-1)** Additionally, if the contract or task order will be issued or administered by a DAF contracting officer, the requiring activity organization (in conjunction with, or in support of, an applicable program management or contracting office) will do the following:

3.3.1. Coordinate with AFLCMC/EN-EZ early during market research and solicitation activities for planning contractual airworthiness requirements. Request guidance on what the solicitation should ask offerors to submit with their proposals and appropriate criteria for conducting a technical evaluation of offeror proposals to determine if they are technically acceptable (i.e., whether the contractor can perform the required mission activities safely within the guidelines of appropriate risk management). **(T-1)**

3.3.2. Coordinate with the PAO designation authority on acceptable level of potential liabilities and required oversight for PAO operations. **(T-1)**

3.3.3. Environmental Compliance. Coordinate with MAJCOM environmental representative(s) (either Air Force Installation and Mission Support Center or Air Force Civil Engineer Center liaison) for National Environmental Policy Act compliance at the location where the contracted air operations will occur. **(T-1)**

3.3.3.1. If environmental assessments or approvals may be required, start the process early and ensure progress and completion. **Note:** Completing environmental assessments and obtaining necessary approvals could be the most difficult and time-lagging part of achieving contract performance.

3.3.3.2. Contracted air support contract actions are not basing decisions under AFI 10-503, *Strategic Basing*.

3.3.4. Coordinate with the MAJCOM or Field Command Safety Office supporting the requiring activity organization and the Cognizant Service Safety Office (CSSO) for review of the contract documentation and to ensure contract requirements and government planning are in place to execute safety oversight and accommodate the potential inclusion of the contractor's activities in the DAF mishap investigation process. **(T-1)**

3.3.5. Assist in the coordination of security requirements through Wing, MAJCOM, Field Command, and/or Air or Space Staff officials, as applicable, to the appropriate cognizant security authority(ies). **(T-1)**

3.3.6. Review DCMAI 8210.1/AFI 10-220_IP for possible incorporation into the Performance Work Statement. **(T-1)** During market research, request information on how operations and maintenance, including safety and training, are addressed in the commercial sector. **(T-1)** **Note:** Contractors can only be held responsible for being in compliance with DCMAI 8210.1/AFI 10-220_IP when the applicable portions of the instruction are integrated into the contract.

3.3.7. Identify and incorporate potential liability and appropriate insurance considerations into the requirement, so that the contracting officer can be informed as to whether and how to modify any of the standard liability and insurance provisions and clauses into the solicitation and resulting contract. **(T-1)**

3.3.8. At a minimum, consider and incorporate the following needs and support into the requirement, as applicable: GFR, GGFR, and/or GGR support; safety support; range operations and Weapon Danger Zone (WDZ) needs; security needs; fuel management needs; and facility needs. **(T-1)**

3.4. Before Contracting Officer Issues Solicitation for Operational Air Services. Resolve the following issues before the contracting officer issues a solicitation for acquisition of operational air services.

3.4.1. Demilitarization Issues.

3.4.1.1. Based on data gathered during market research and pre-solicitation communications with prospective offerors (e.g., at industry days or other opportunities), assess whether offerors are likely to include in their offers a plan to acquire former military equipment of the United States or a foreign government that may be coded for demilitarization.

3.4.1.2. Contact AF/A4 for guidance about demilitarization requirements and the possible need to obtain a waiver.

3.4.1.3. Contact the DoD Demilitarization Program Office (DDPO) in the Defense Logistics Agency for initial indications as to whether a waiver can be expected to be granted or denied and what information would be necessary from offerors, including terms and conditions on end use restrictions.

3.4.1.4. If sufficient information is available to support or initiate a waiver request at this time, prepare the waiver request and submit it through Secretary of the Air Force, Logistics and Product Support (SAF/AQD) to forward with a recommendation to the DDPO.

3.4.1.5. Regardless of whether a waiver request is started at this time, ask the contracting officer to include in the solicitation instructions for proposal preparation specific requests for information that may be needed for successful application for a waiver of demilitarization requirements, including end use agreements.

3.4.2. Multiyear Contract Period.

3.4.2.1. Ordinarily, most services contracts are awarded as a one-year base period of performance with annual options. In contrast, when a contractor will make a large investment and commitment of resources, a multiyear period (more than one year and not in excess of five years, without including options) may be appropriate.

3.4.2.2. If so, based on the marketing research and information obtained from prospective offerors, initiate drafting of factual analysis and staffing to obtain the determination and approval required by DFARS Subpart 217.171, *Multiyear Contracts for Services*. **Note:** The analysis and determination required for a multiyear contract for services is relatively simple compared to a multiyear contract for a weapon system.

3.4.2.3. Consult supporting legal counsel for assistance on the statutory criteria.

3.4.3. Pre-Solicitation Notification to Congressional Defense Committees. If planning a services contract in which a contractor will use a contractor-provided aircraft for a period of performance of five years or longer or the terms of the contract provide for a substantial termination liability on the part of the United States, comply with 10 USC § 2401. **(T-0)**

3.4.3.1. Prepare a short notification of intent to issue a solicitation for services requiring the use of a contractor's aircraft for a period of five years or longer.

3.4.3.2. Address the notification to congressional defense committees and staff it through DAF legislative affairs officials.

3.4.3.3. Ensure the legislative affairs officials deliver the notification to the congressional defense committees prior to issuance of the solicitation.

3.4.4. Solicitation Requirements if Planning State Aircraft Designation. If planning a services contract for performance outside of the NAS that may necessitate designation of contractor aircraft to operate as state aircraft, ask the contracting officer to include the following in the solicitation:

3.4.4.1. Request offerors explain their understanding of and plan to fulfill their obligations with respect to international law and United States and DoD policy regarding operation of state aircraft.

3.4.4.2. Describe evaluation criteria for assessing whether each offeror has demonstrated that it is sufficiently familiar with and has an appropriate plan for complying with the rights and responsibilities relevant to state aircraft operations, including applicable US and DoD policies (reference [paragraph 5.3](#) and [Attachment 3](#)).

3.4.5. Former Foreign Military Sales (FMS) Equipment. If contractors may provide or use military defense equipment from foreign governments who previously purchased the equipment through FMS or other US government security assistance programs, ensure the contracting officer includes in the solicitation and contract (in the Performance Work Statement or elsewhere):

3.4.5.1. A requirement for offerors/contractors to submit a copy of the Provisos/Conditions or other agreement(s) associated with Department of State (DoS) approval of the Third Party Transfer (TPT) from the foreign seller to the offeror/contractor within 30 days after DoS approval of the TPT, including appropriate provisions for end use and demilitarization, if needed.

3.4.5.2. A requirement for offerors/contractors to agree to incorporate the approved TPT Provisos or other agreement into the contract via bilateral modification as an enforceable term and condition of the contract.

3.5. Before Contract or Task Order Award. Complete the following before the contracting officer awards the contract or task order, as applicable.

3.5.1. Demilitarization Waiver. Obtain waiver of demilitarization requirements and provide a copy to the contracting officer. Ensure the contract includes exclusivity and end use restrictions and the prospective awardee has signed an end use agreement consistent with the waiver.

3.5.2. Pre-Award Notification to Congressional Defense Committees. If the period of performance of a services contract in which a contractor will use its aircraft for performance will exceed five years, comply with 10 USC § 2401. **(T-0)**

3.5.2.1. Prepare the required factual and cost analyses, obtain the determination by the Secretary of the Air Force, and staff through legislative affairs officials.

3.5.2.2. Ensure the legislative affairs officials deliver the notification to the congressional defense committees before contract award.

Chapter 4

PUBLIC AIRCRAFT OPERATIONS (PAO)

4.1. General. Contractors shall operate their aircraft as civil aircraft whenever possible. For DAF contractor air operations within the NAS that cannot be conducted as CAO, the DAF has the responsibility to determine whether contemplated contractor aircraft are legally qualified for designation as PAO (reference 49 USC §§ 40102(a)(41) and 40125), and whether or not such designation and declaration is in the DAF's interest.

4.1.1. When a contractor aircraft has been designated as a public aircraft, the use of such an aircraft for performance of a mission, usage, or contract is commonly referred to as PAO. PAO refers to the operation of an aircraft that meets the legal definition of "public aircraft" established in 49 USC § 40102(a)(41) and meets the legal qualifications for public aircraft status outlined in 49 USC § 40125 and has been designated and declared to be in PAO status by appropriate government authorities.

4.1.2. The PAO designation authority designates public aircraft status for specific aircraft operated in the NAS. Aircraft status as civil or public may change on a flight-by-flight basis.

4.1.3. An aircraft that has been designated to operate as a public aircraft within the NAS does not automatically become eligible to be designated as a state aircraft once it leaves the NAS. Also, a public aircraft cannot be deemed a state aircraft without a specific written designation by the MAJCOM/CC or Field Command/CC (designated no lower than the Deputy Commander) based on the criteria and for the purposes described in [Chapter 5](#).

4.1.4. Contract performance that requires the use or carrying of military-style live ordnance or forward-firing weapons is necessarily a direct activity and operation of the armed forces. Consequently, the contract terms must be structured to ensure the aircraft qualifies for and can be designated as public aircraft (reference [paragraph 4.3.2.3.2.3](#)).

4.1.5. All uses of contractor aircraft other than those involving live ordnance or forward-firing weapons require case-by-case analysis and review before any designation as public aircraft, depending on factors in this chapter.

4.1.6. Public aircraft status is not a substitute for civil aircraft registration, certification, or safety requirements. Unless a contractor's aircraft meets the legal qualifications to be eligible for public status and is specifically selected, in writing, for designation as a public aircraft after applying the policy and factual criteria in [paragraph 4.3](#) below, the contractor shall operate as a civil aircraft and obtain appropriate civil aviation insurance.

4.2. Procedures.

4.2.1. Determine whether contractors can operate civil aircraft to perform the contract.

4.2.1.1. Perform market research and gather data about civil aircraft capabilities in contrast with the proposed contract requirements.

4.2.1.2. Consult the Air Force TAA (AFLCMC/EN/EZZ) for an initial technical assessment as to whether a contractor can operate civil aircraft to perform the technical requirements of the proposed contract, including aerial maneuvers, mission, cargo load, location(s), etc.

- 4.2.1.3. Consult the local logistics office (or AF/A4) about potential demilitarization restrictions on the type of aircraft that might be expected for contract performance.
- 4.2.2. Prepare staffing package to obtain public aircraft designation. The requiring activity shall prepare a staffing package to request the PAO designation authority (or delegatee) (reference [paragraph 2.3](#)) to designate a contractor's aircraft to be operated as a public aircraft. **(T-1)** The requiring activity will ensure the staffing package includes:
- 4.2.2.1. Non-contract alternatives for the commander to consider. **(T-1)**
 - 4.2.2.2. Facts and rationale from which the PAO designation authority can determine the alternative that best serves the DAF's interest. **(T-1)**
 - 4.2.2.3. Statutory criterion under which contractor aircraft might be qualified as public aircraft and the facts that support that conclusion. **(T-1)**
 - 4.2.2.4. Legal review from supporting legal offices as to statutory qualification for public aircraft (reference [paragraph 4.3.2](#)). **(T-1)**
- 4.2.3. Designation of public aircraft. The PAO designation authority (or delegatee):
- 4.2.3.1. May designate contractor aircraft to be operated as public aircraft for one or more sorties, or all or part of a Task Order or contract, if the contractor's aircraft are legally qualified for such status and if doing so is in the DAF's best interest, applying the factors in [paragraph 4.3](#).
 - 4.2.3.2. Shall reflect the designation decision in an internal government memorandum, staff summary sheet, or other document setting out the facts, factors, analysis, and decision. **(T-1)**
- 4.2.4. Actions Upon PAO Designation Decision. If the commander decides the contractor aircraft should be designated as public aircraft, the requiring activity organization or program manager shall:
- 4.2.4.1. Include a statement in the Performance Work Statement or elsewhere in the solicitation that informs offerors or contractors (depending on the timing of this action) about the decision (reference [paragraph 4.2.3](#)) that performance is authorized to be conducted by public aircraft, when required. **(T-1)**
 - 4.2.4.2. Through the solicitation or contract, ask offerors or contractors to provide information to enable completion of the PAO Declaration Letter (reference [Attachment 2](#)). **(T-1)**
 - 4.2.4.3. Prepare and sign a PAO Declaration Letter (reference [Attachment 2](#)) and provide copies to the contracting officer, the FAA Flight Standards Office, the Safety Office of the PAO designation authority, the Air Force TAA, and the CSSO prior to the initiation of any affected flights. **(T-1)**
 - 4.2.4.4. Ask the contracting officer to provide a copy to the affected contractor(s). **(T-1)**

4.2.4.5. Retain all documents related to PAO designation of contractor aircraft for a minimum period of six years after final payment under the contract. For matters in litigation, retain the documents until final disposition of the litigation (including appeals) or six years from final payment, whichever is longer (reference FAR 4.805, Table 4-1(1) & (8)). If any of the documents are covered by an agency disposition plan that requires retention for a longer period, retain the documents for the longer period.

4.2.5. PAO Supporting Elements. Following the issuance of a PAO Declaration Letter, the requiring activity organization, program manager, or contracting agency, as applicable, must ensure the following supporting elements of the contract or task order will be awarded or administered by a DAF contracting officer:

4.2.5.1. Coordination of contract requirements and government planning are in place to oversee aircrew qualification and ground maintenance in accordance with Defense Contract Management Agency Instruction (DCMAI) 8210.1/AFI 10-220_IP. **(T-1)**

4.2.5.2. Designation of primary and alternate GFR, GGFR, and/or GGR, as applicable, in accordance with DCMAI 8210.1/AFI 10-220_IP. **(T-1)**

4.2.5.3. And when appropriate, receipt of airworthiness approvals issued by the TAA. **(T-1)**

4.3. Factors to Consider Before Designating Public Aircraft.

4.3.1. Commander's Determination of DAF's Best Interest.

4.3.1.1. If an initial assessment under [paragraph 4.2.1.2](#) indicates that, from a technical standpoint, the contractor aircraft can be used consistent with civil aviation certification(s) and approval(s) from the FAA or other Civil Aviation Authority (CAA), the contractor should operate the aircraft as a civil aircraft when performing the contract.

4.3.1.2. If the contractor will not be able to perform the contract using the aircraft as a civil aircraft, consider alternatives, such as the use of organic DAF assets or changing the contract performance requirements so it can be performed as CAO.

4.3.1.3. If there is no suitable alternative for contractor performance consistent with CAO, seek a legal review from the supporting legal office as to whether the contractor aircraft will qualify as public aircraft under any of the statutory criteria explained in [paragraph 4.3.2](#).

4.3.1.4. If conducting proposed contractor operations as CAO is not operationally feasible and if conducting them as PAO is legal, the PAO designation authority (or delegatee) (reference [paragraph 2.3](#)) then decides whether some or all contract operations should be designated as PAO.

4.3.1.5. Before designating PAO, the PAO designation authority (or delegatee) should consider factors such as: availability of organic DAF assets; the possibility of modifying the operations to allow eligibility for CAO; cost; schedule; liability; mission risk; safety risk; public perception; the potential need for access to airspace outside of the NAS (as this cannot support contract performance as PAO); and the airworthiness and operational oversight the DAF will assume with PAO.

4.3.2. Legal Qualification for Public Aircraft. The PAO designation authority (or delegatee) obtains a legal review from the supporting legal office to verify proposed contract performance meets statutory qualification criteria under 49 USC § 40102(a)(41) and 40125 to find if contractor aircraft can be designated as a public aircraft. The criteria used for designating a contractor aircraft as a public aircraft include:

4.3.2.1. Exclusive Use of Aircraft for the Government. An aircraft used only for the government, except when the aircraft is used for commercial purposes or to carry an individual other than a crewmember or a qualified non-crewmember.

4.3.2.1.1. For example, if the aircraft will be owned and operated by a contractor subject to a waiver of demilitarization that requires that the aircraft be used by the contractor only for the use of the United States government, it might meet this criterion.

4.3.2.1.2. For example, if the contractor acquires and operates an aircraft from a foreign nation that formerly acquired the aircraft under a foreign military sale from the United States government and is subject to an end user agreement that requires the aircraft be used by the contractor only for the use of the United States government, it might meet this criterion.

4.3.2.1.3. Contract Terms. In order to ensure the contractor operations will qualify and maintain eligibility for public aircraft status under this criterion, and to ensure enforceability of the conditions that restrict the use of the aircraft, incorporate the following into the contract:

4.3.2.1.3.1. A clear requirement for the contractor to use the aircraft only for the United States government (reference [paragraph 3.2.3](#) and [paragraph 3.4.5](#)).

4.3.2.1.3.2. A copy of the demilitarization waiver conditions, end user agreement, TPT Provisos, or other document(s) that proves the aircraft will be used by the contractor only for the use of the United States government (reference [paragraph 3.2.3](#) and [paragraph 3.4.5](#)).

4.3.2.2. Ownership of Aircraft. An aircraft owned by the armed forces.

4.3.2.3. Operation of Aircraft under Direct Control of Armed Forces in accordance with Title 10 USC.

4.3.2.3.1. Contractor-Owned, Government-Operated (COGO). COGO aircraft are eligible and qualified to be designated as public aircraft.

4.3.2.3.2. Contractor-Owned, Contractor-Operated (COCO).

4.3.2.3.2.1. Normally, a COCO aircraft is not considered to be operated by the armed forces. Under a performance-based contract for non-personal services, the contractor makes the decisions about how to operate its own aircraft.

4.3.2.3.2.2. Certain kinds of activities (such as air-to-air combat maneuvers; air-to-air gunnery; activities with live munitions; intelligence; target towing; electronic countermeasures simulation; cruise missile simulation; and aerial refueling) are not generally found in the private sector and, thus, the aircraft may be considered to be operated under the direct control of the armed forces under Title 10 for the purposes of this legal criterion.

4.3.2.3.2.3. Contract Terms. Factors that may support an assertion of "direct control by the armed forces" include contract requirements for:

4.3.2.3.2.3.1. Performance of activities (reference [paragraph 4.3.2.3.2.2](#)) that the FAA does not normally certify civil aircraft to perform, or

4.3.2.3.2.3.2. Control that will be exercised by the GFR, GGR, and/or GGFR under DCMAI 8210.1/AFI 10-220_IP.

4.3.2.4. Operation of Aircraft by Armed Forces under Other Titles of USC. The aircraft is operated in the performance of a governmental function under any of the following titles of the USC, and the aircraft is not used for commercial purposes:

4.3.2.4.1. Title 14 USC for the US Coast Guard, Coast Guard Reserve, or auxiliary;

4.3.2.4.2. Title 31 USC for the US Treasury (including the offices of the comptroller of the currency, fiscal service, intelligence and analysis, terrorism and financial intelligence, financial crimes enforcement network, customs service, federal insurance, and the US Mint and Federal Financing Bank), the Office of Management and Budget, the Government Accountability Office, and agency Chief Financial Officers;

4.3.2.4.3. Title 32 USC for an aircraft owned or operated by the National Guard or Air National Guard of a state, the District of Columbia, or any territory or possession of the United States, if the aircraft is operated under the direct control of the DoD;

4.3.2.4.4. Title 50 USC for any of the agencies, programs, activities, or interests covered by this title (including the Central Intelligence Agency, National Security Agency, National Nuclear Security Administration, DoD Cooperative Threat Reduction agency, foreign intelligence surveillance, military selective service, chemical and biological warfare program, and defense production).

4.3.2.5. Aircraft Chartered by the Armed Forces. An aircraft chartered to provide transportation or other commercial air service to the armed forces.

4.3.2.5.1. To qualify as a public aircraft, the Secretary of Defense (or the Secretary of the department in which the Coast Guard is operating) must designate the operation of the aircraft as being required in the national interest.

4.3.2.5.2. The term "other commercial air service" means: an aircraft operation that is within the United States territorial airspace, the Administrator of the FAA determines is available for compensation or hire to the public, and must comply with all applicable civil aircraft rules under Title 14 of the Code of Federal Regulations (CFR).

4.4. Effects of Declaring PAO. Before requesting a contractor aircraft be designated and declared as a public aircraft, consider the following:

4.4.1. When the DAF designates and declares contracted flights as PAO, the DAF becomes responsible for airworthiness approval, oversight of the operation, oversight of maintenance procedures, verification of aircrew qualifications and training, and may also become responsible for safety and accident investigations as described in 49 USC § 1132.

4.4.2. In addition to the shift of responsibilities, a significant shift of liability to the government contracting agency may occur when a contractor-owned aircraft operation transitions from CAO to PAO.

4.4.2.1. Ordinarily, a private entity will be responsible to pay for all liability in excess of the maximum dollar amount of commercial (civilian) insurance. The insurer pays up to the maximum insurance coverage, and the insured entity pays the remainder to reach 100% of the total "damages" (compensation) awarded to the injured party(ies).

4.4.2.2. When a private entity performs a cost-reimbursement services contract for the Federal government, the equation changes, as implemented in Federal Acquisition Regulation (FAR) clause 52.228-7, *Insurance - Liability to Third Persons*. Under this contract clause, the government will reimburse the contractor for damages awarded in excess of the insurance maximum. The contractor shall not be reimbursed for liabilities resulting from willful misconduct or lack of good faith on the part of the contractor. The parties may agree on a different amount or arrangement for paying for damages and expressly state that agreement somewhere in the contract.

4.4.2.3. As long as the contractor's aircraft is used in civil aircraft status consistent with the airworthiness certifications issued by the FAA, the commercial civil aviation insurance policy should apply. When the government designates the contractor's aircraft as a public aircraft, however, and asks the contractor to operate its aircraft in ways that are outside of the boundaries of the commercial civil aviation insurance policy, the portion of liability that would have been paid by the commercial insurance carrier may be reduced or nullified. In such cases, depending on the facts, courts and boards may rule that the government becomes responsible to pay the amount in excess of whatever is left of the commercial civil aviation insurance. If the commercial insurance has collapsed to zero percent of the damages awarded, the government may be found responsible to pay 100% of the damages.

4.4.2.4. Questions may arise about liability for loss of the hull of the contractor's aircraft and loss to government property. In this context, specialized contract clauses may be a means to mitigate the potential liability to the DAF that comes with designating a contractor's aircraft to be operated as a public aircraft. Consult the contracting officer and supporting legal office about DFARS 228.370.

Chapter 5

STATE AIRCRAFT

5.1. General. For DAF contractor air operations outside of the NAS that cannot be conducted by civil aircraft, the DAF has the opportunity to determine whether contemplated contractor aircraft should be designated to operate as state aircraft under international law.

5.1.1. Contractors shall operate their aircraft as civil aircraft whenever possible, consistent with Department of Defense Directive (DoDD) 4500.54E, *DoD Foreign Clearance Program (FCP)*. (T-0)

5.1.2. If the DAF wants the contractor to operate as state aircraft, the designation must be in writing by an authorized US official (reference [paragraph 2.1](#), [paragraph 5.2.2](#), and [paragraph 5.2.3](#)). (T-0) The US will officially recognize state aircraft status when the contractor has been officially designated, in writing, by an authorized US official. (T-0)

5.1.3. The DAF remains responsible for ensuring any state aircraft operations conducted by contractors are conducted in conformity with and fulfill US obligations applicable to state aircraft under international law, and in compliance with US and DoD policies applicable to state aircraft. Oversight must be sufficient to enable this. (T-0) See DoDI 4540.01, *Use of International Airspace by U.S. Military Aircraft and for Missile and Projectile Firings*; DoDI S-2005.01, *Freedom of Navigation (FON) Program* (U); and DoDD 4500.54E (reference [paragraph 3.4.4](#), [paragraph 5.3](#), and [Attachment 3](#)).

5.2. Procedures.

5.2.1. Determine whether contractors can operate civil aircraft to perform the contract.

5.2.1.1. The requiring activity shall consult the Air Force TAA (AFLCMC/EN/EZZ) for an initial technical assessment as to whether a contractor can operate civil aircraft to perform the technical requirements of the proposed contract, including aerial maneuvers, mission, cargo load, location(s), etc.

5.2.1.1.1. If an initial assessment under [paragraph 4.2.1.2](#) indicates that, from a technical standpoint, the contractor aircraft can be used consistent with their civil aviation certifications and approvals from the FAA or other CAA, the contractor should operate the aircraft as a civil aircraft when performing the contract.

5.2.1.1.2. If the contractor will not be able to perform the contract using the aircraft as a civil aircraft, consider alternatives, such as the use of organic DAF assets, waivers or exemptions authorizing deviation from FAA and foreign CAA certifications and/or flight rules, or changing the contract performance requirements so it can be performed as CAO. DAF personnel shall not use state aircraft status to plan or conduct contractor air operations solely to deviate from CAA certifications and/or flight rules.

- 5.2.1.1.3. If there is no suitable alternative for contractor performance consistent with CAO, consider whether to request designation as state aircraft based on factors such as: the availability of organic DAF assets; the possibility of modifying the operations to allow eligibility for CAO; cost; schedule; liability; mission risk; safety risk; public perception; and the airworthiness and operational oversight the DAF will assume with state aircraft operations. Consult FAA regulations, advisories, and Notices to Airmen about any restrictions for flight operations in or over the intended locations for contract performance.
- 5.2.1.2. It may also be necessary at this stage to consult with the supporting legal office about potentially relevant international agreements applicable in countries where the aircraft may operate, and impact on civil aviation insurance. Consult additional subject matter experts regarding state aircraft policies and practices relevant to the contemplated activities.
- 5.2.2. Request MAJCOM/CC or Field Command/CC designation of state aircraft. The requiring activity shall prepare and route a staffing package through the MAJCOM or Field Command Operations office (A3 or S3) to request the MAJCOM or Field Command/CC (or delegated no lower than the Deputy Commander) designate a contractor's aircraft to be operated as a state aircraft. **(T-1)** Consider the following:
- 5.2.2.1. Non-contract alternatives for consideration.
 - 5.2.2.2. Facts and rationale from which the MAJCOM or Field Command/CC can determine the alternative that best serve the DAF interest (including the availability of organic DAF assets; the possibility of modifying the operations to allow eligibility for CAO; cost; schedule; liability; mission risk; safety risk; public perception; and the airworthiness and operational oversight the DAF will assume with state aircraft operations).
 - 5.2.2.3. The international or foreign nation(s) airspace over which contractors will operate and territory(ies) in which they will land.
 - 5.2.2.4. The legal requirements applicable in each affected nation to civil and state aircraft (e.g., clearance requirements, taxes, landing or parking fees, inspections, boarding, registration, marking, and accident investigation).
 - 5.2.2.5. Perceived barriers to contract performance in each affected international or foreign airspace or territory(ies) and explain how state aircraft status will alleviate each barrier.
 - 5.2.2.6. Legal review of the staffing package.
- 5.2.3. Inform contractors of state aircraft designation. If the MAJCOM or Field Command/CC decides contractor aircraft should be designated as state aircraft, the requiring activity organization or program manager shall:
- 5.2.3.1. Prepare and sign an SAO Declaration Letter using the format in [Attachment 3](#). **(T-1)** Provide a copy to the contracting officer. **(T-1)** Ask the contracting officer to provide a copy to the affected contractor(s). **(T-1)**

5.2.3.2. Include a statement in the Performance Work Statement or elsewhere in the solicitation that informs offerors or contractors (depending on the timing of this action) about the decision (reference [paragraph 4.2.3](#)) to designate performance that will be conducted by state aircraft. **(T-1)**

5.2.3.3. Through the solicitation or contract, ask offerors or contractors to provide information to enable completion of the SAO Declaration Letter (reference [Attachment 3](#)). **(T-1)**

5.2.3.4. Retain all documents related to contractor's aircraft designated as state aircraft for a minimum period of six years after final payment under the contact. For matters in litigation, retain the documents until final disposition of the litigation (including appeals) or six years from final payment, whichever is longer (reference FAR 4.805, Table 4-1(1) & (8)). If any of the documents are covered by an agency disposition plan that requires retention for a longer period, retain the documents for the longer period.

5.2.4. SAO Supporting Elements. Following the issuance of an SAO Declaration Letter, the requiring activity organization, program manager or contracting agency, as applicable, must ensure the following supporting elements if the contract or task order will be awarded or administered by a DAF contracting officer:

5.2.4.1. Coordination of contract requirements and government planning are in place to oversee aircrew qualification and ground maintenance in accordance with DCMAI 8210.1/AFI 10-220_IP. **(T-1)**

5.2.4.2. Designation of primary and alternate GFR, GGR, and/or GGFR, as applicable, in accordance with DCMAI 8210.1/AFI 10-220_IP. **(T-1)**

5.2.4.3. And when appropriate, receipt of airworthiness approvals issued by the TAA.

5.3. Effects of Designating State Aircraft. Before requesting a contractor's aircraft be designated as a state aircraft, consider the following:

5.3.1. When a contractor operates a state aircraft, the foreign nation in whose airspace or territory(ies) the operations occur may assert priority for investigation of any accident or mishap, including access to and/or control of the accident scene, debris, equipment, human remains, etc.

5.3.2. Before operating in state aircraft status, the contractor must obtain foreign clearance for the country or countries in whose territory the contractor aircraft will land and/or over which the aircraft will fly. Contractor must comply with any clearance conditions. **(T-0)** The approved system for clearance management is the Aircraft and Personnel Automated Clearance System (APACS).

5.3.2.1. Theater and country foreign clearance procedures and templates are included in the DoDD 4500.54E; the *DoD Foreign Clearance Guide (FCG)*, *DoD Commercial Contract Aircraft Appendix*; and the supplementing *DoD Foreign Clearance Manual (FCM)*.

5.3.2.2. The SAO Designation Letter ([Attachment 3](#)) outlines other requirements with which the contractor must comply.

5.3.3. Contractor rights and responsibilities when operating state aircraft in support of US DoD requirements include:

5.3.3.1. The contractor shall not consent to the exercise of jurisdiction by foreign government authorities, except at the direction of the DoD component headquarters or the Chief of the US Mission (Ambassador or Charge D’Affair). **(T-0)** Consider the following:

5.3.3.1.1. State aviation is not legally bound by civil aviation rules, so the DAF must ensure that contractors operating state aircraft do not inadvertently concede discretion that belongs to the United States sovereign with regard to state aircraft operations. **(T-0)**

5.3.3.1.2. For example, the SAO Designation Letter ([Attachment 3](#)) requires that contractors will not: request or accept clearance for flights in international airspace; pay overflight fees or parking and landing fees at government facilities; or submit to boarding and inspection by foreign authorities.

5.3.3.2. While a foreign government may not seize state aircraft lawfully present with diplomatic clearance, the contractor shall promptly depart from the country if boarding is officially requested by foreign government officials and denied by the contractor's aircrew.

5.3.3.3. Once personnel and/or cargo are deplaned, they will be subject to normal local inspection procedures unless exempted by treaty, agreement, or diplomatic status. **(T-0)**

5.3.3.4. The contractor must immediately contact the local US embassy if a foreign government asks the contractor or its crew to violate any of the conditions that apply when operating a state aircraft in support of US DoD requirements. **(T-0)**

Chapter 6

SPONSORING MAJCOM OR FIELD COMMAND

6.1. Sponsoring MAJCOM or Field Command. Within the NAS, DAF organizations may sponsor contracted operational air services for training support procured by foreign governments within the continental United States.

6.1.1. Waiver. Waivers to AFMAN 13-212V1, paragraph 4.3.1, are processed through AF/A3T. For USSF, waivers are routed through the Space Staff SF/S7O's training branch for processing with AF/A3T. The appropriate DAF official at the requesting MAJCOM or Field Command headquarters must use AF Form 679, *Air Force Publication Compliance Item Waiver Request/Approval*, for the waiver process. **(T-1)** In considering such requests for waivers, AF/A3T must make an informed decision regarding the degree of risk the DAF is assuming by permitting the planned activities to take place on, and around DoD ranges. **(T-1)**

6.1.2. Department of State (DoS) Permission. Any foreign government contracted aircraft to be operated as state aircraft must request and receive permission through the DoS. **(T-0)**

6.1.2.1. Any requesting MAJCOM or Field Command must provide both AF/A3T and the appropriate division(s) and/or country desk within Secretary of the Air Force, International Affairs (SAF/IA) documentation showing either that the foreign government has been granted clearance to operate their state aircraft in US airspace, or documentation indicating aircraft will operate as civil aircraft and comply with applicable requirements. **(T-1)**

6.1.2.2. If foreign government contracted aircraft will operate as civil aircraft, FAA Order 8130.2J, *Airworthiness Certification of Aircraft*, Chapter 22 addresses the requirements for these types of operations. The TAA will rely on the airworthiness assessment of the foreign government who procured the contracted aircraft. **(T-0)**

6.1.3. Operational Security (OPSEC). Requesting MAJCOM or Field Command and AF/A3T should also consider any impact to OPSEC, noting any potential for personnel from the foreign contract provider(s), or personnel of the foreign partner, to perform intelligence gathering activities on and around DoD ranges while they are conducting their planned training.

6.2. Agreements. A detailed agreement between the foreign government and its contractor must be in place during the planned training activities that are sponsored by a DAF organization. **(T-1)**

6.2.1. All provisions in the agreement must be deemed sufficient to protect DAF and DoD equities by AF/A3T, including range safety. Particular attention will be given to clauses addressing cannabis use by foreign aircrew members and/or foreign aircraft maintenance personnel.

6.2.2. Under the Convention on International Civil Aviation, the United States expects contractors procured by foreign governments will operate in civil aircraft status as much as possible. The procuring foreign government may choose to designate its contractor to operate as state aircraft of that foreign government. If so, that designation will be communicated to the DoS by the foreign government or its contractor through the appropriate Embassy (reference [paragraph 6.1.2](#)). The US officials cannot designate a foreign government's contractor to perform as a public aircraft under 49 USC § 40102(a)(41) and 40125.

6.3. Automatic Dependent Surveillance-Broadcast (ADS-B) Out. The FAA rule for ADS-B Out equipage (14 CFR § 91.225, *Automatic Dependent Surveillance-Broadcast (ADS-B) Out Equipment and Use*) went into effect on 1 January 2020. The rule expressly allows Air Traffic Control (ATC) to authorize operation of aircraft without ADS-B equipment or use. The FAA and DoD negotiated an exemption for DoD aircraft to operate in the NAS after 1 January 2020 that are (a) not ADS-B Out equipped or (b) are ADS-B Out equipped but are not broadcasting ADS-B Out. If necessary, the sponsoring MAJCOM and/or the foreign government contractor will consult with FAA ATC (per 14 CFR § 91.225) to verify whether specific foreign aircraft may operate without ADS-B Out equipment. **(T-0)**

Chapter 7

RISK MANAGEMENT AND RISK ACCEPTANCE

7.1. Risk Management. For contracted operational air services for training support, safety risk management shall be conducted in accordance with AFI 91-202, *The US Air Force Mishap Prevention Program*, and AFI 90-802, *Risk Management*. **(T-1)**

7.1.1. Pursuant to AFI 91-202 and AFI 90-802, risk acceptance decisions should be made by an appropriate decision-making authority who can effectively allocate resources and implement controls to mitigate or eliminate hazards associated with an operation or activity to the lowest acceptable level. When hazards cannot be eliminated, making risk acceptance decisions at the right level establishes accountability.

7.1.2. Safety risk assessments shall be conducted in accordance with AFI 91-202. **(T-1)** Risk assessments should address all identified hazards that have the potential to result in mishaps. Risks requiring acceptance include those identified through the airworthiness assessment (both design and M&O), ammo storage assessments, and base operations assessments. For PAO, the contract requiring activity is responsible for obtaining documented acceptance of event risks by the appropriate risk acceptance authority.

7.1.3. Risks must be accepted before exposing people, equipment, or the environment to known hazards. **(T-1)**

7.2. Risk Acceptance Authority Levels. For PAO, each safety risk identified may be accepted or rejected at the following risk acceptance authority level for the requiring activity organization:

7.2.1. Low/Medium Risks: Acceptance by MAJCOM/A3T (or the appropriate MAJCOM or Field Command Division(s)). Implementing commands may delegate acceptance of Low/Medium risk to centers.

7.2.2. Serious Risks: Acceptance by MAJCOM/A3 (or the appropriate MAJCOM or Field Command Directorate(s)). Implementing commands may delegate acceptance of Serious risk to centers.

7.2.3. High Risks: Acceptance by MAJCOM or Field Command/CC or Deputy Commander. For implementing commands, High risk acceptance may be delegated to Center Commanders.

7.3. Accepting Risk.

7.3.1. If risks have already been accepted or assumed by the DAF, its contractor or another entity (e.g., the owner of the aircraft), the risk acceptance authority may need only to express understanding of the risks that have been identified (e.g., based on a technical airworthiness assessment) and confirm that contract performance is to start, proceed, or continue. The risk acceptance authority may also direct or reject recommended measures to eliminate or mitigate the hazards underlying the associated risks.

7.3.2. For PAO.

7.3.2.1. When the risk acceptance authority elects to accept the safety risk(s) associated with contractor operations, this authority is accepting potential government liability for personal injury to or death of government personnel, contractor employees, and third parties, subject to contract clauses, terms, or conditions that state the contractor assumes the risk of loss and indemnifies the government.

7.3.2.2. The acceptance of risk also means acceptance of potential government liability for damage to or loss of property or equipment of the government, contractors and third parties, subject to contract clauses, terms or conditions by which the contractor assumes the risk of loss.

7.4. Not Accepting Risk.

7.4.1. PAO. If the risk acceptance authority does not accept the risk(s) for the contract (or for a particular task order, specific flight operation, or specific COCO aircraft) to be conducted in public aircraft status, a DAF airworthiness approval cannot be issued and the program office or acquisition authority must investigate alternatives. **(T-1)**

7.4.2. CAO. For CAO, no additional risk acceptance is required because all of the risk was accepted at the time of contract award. It may be appropriate or necessary, however, for the requiring activity organization or program manager, as appropriate, to confirm that contract performance is to start, proceed, or continue (reference [paragraph 7.3.1](#)).

7.4.3. SAO. For SAO, no additional risk acceptance is required because all of the risk was accepted at the time of contract award. It may be appropriate or necessary, however, for the requiring activity organization or program manager, as appropriate, to confirm that contract performance is to start, proceed, or continue (reference [paragraph 7.3.1](#)).

7.4.4. FMS. For FMS, no additional risk acceptance is required by any US official because all of the risk was accepted by the FMS customer in the Letter of Offer and Acceptance (LOA). It may be appropriate or necessary, however, for the DAF FMS program manager, or other appropriate official, to confirm that contract performance is to start, proceed, or continue (reference [paragraph 7.3.2](#)).

Chapter 8

MANAGEMENT

8.1. Safety.

8.1.1. The requiring activity shall consider safety at all stages of acquisition planning and contract execution in order to avoid safety deficiencies and costly after-the-fact corrective actions. **(T-1)**

8.1.2. Safety Review of RAD, Statement of Work, or Performance Work Statement. In accordance with AFI 91-202, timely involvement of safety personnel in the requirements development process will result in a safer workplace, improved procedures and equipment, and a decrease in mishaps. As appropriate, include safety processes in the Performance Work Statement for contracted work.

8.1.3. The requiring activity organization will ensure all requirement documentation incorporates the full range of safety requirements. **(T-1)**

8.1.4. Safety and Mishap Response.

8.1.4.1. Normally, the National Transportation Safety Board (NTSB) and FAA respond to any mishap involving an aircraft that holds a civil certificate. During the course of the investigation, if it is determined that the aircraft was in public aircraft status and operating under an airworthiness approval issued by the DAF TAA or another military department, the NTSB and the FAA may reach out to the DoD to seek assistance in support of the investigation.

8.1.4.2. The DAF will convene safety investigations for mishaps in PAO status that result in damage to public or private property, or injury or illness to non-DoD personnel, caused by DAF military operations.

8.1.5. The requiring activity should include in the Statement of Work or the Performance Work Statement provisions requiring the contractor to provide government access to the same evidence, data, and personnel available to NTSB investigators for any mishap investigation.

8.2. Range Agreements.

8.2.1. In accordance with AFMAN 13-212V1, range operating authorities must have a written agreement from all unassigned range users before the range operating authorities can agree to provide support for training. **(T-1)**

8.2.2. The requiring activity shall coordinate with the range operating authorities before or at the time of contract award to reach agreement on the requirements for delivery of TAA-issued airworthiness approval to allow contractor access to the range for contract performance. **(T-1)**

JOSEPH T. GUASTELLA Jr., Lt Gen, USAF
Deputy Chief of Staff, Operations

Attachment 1**GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION*****References***

10USC § 129a, *General Policy for Total Force Management*

10USC § 2401, *Requirements for Authorization by Law of Certain Contracts Relating to Vessels, Aircraft, and Combat Vehicles*

14USC, *Coast Guard*

31USC, *Money and Finance*

32USC, *National Guard*

49USC § 1132, *Civil Aircraft Accident Investigations*

49USC § 40102(a)(41), *Public Aircraft*

49USC § 40125, *Qualifications for Public Aircraft Status*

50USC, *War and National Defense*

14CFR § 91.225, *Automatic Dependent Surveillance-Broadcast (ADS-B) Out Equipment and Use*

14CFR, *Aeronautics and Space*

FAR Part 4.805, *Storage, Handling, and Contract Files*

FAR Subpart 7.5, *Inherently Governmental Functions – Acquisition Planning*

FAR Clause 52.228-7, *Insurance – Liability to Third Persons*

DFARS Subpart 228.370(b), *Insurance*

DFARS Subpart 217.171, *Multiyear Contracts for Services*

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DoD *Foreign Clearance Guide (FCG)*, 4 February 2017

DoD *Foreign Clearance Manual (FCM)*, 30 September 2019

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DoDI S-2005.01, *Freedom of Navigation (FON) Program (U)*, 20 October 2014

DoDI 4540.01, *Use of International Airspace by U.S. Military Aircraft and for Missile and Projectile Firings*, 2 June 2015

DoDI 4160.28, *DoD Demilitarization (DEMIL) Program*, 7 April 2011

DCMAI 8210.1/AFI 10-220_IP, *Contractor's Flight and Ground Operations*, 5 April 2017

AFI 33-322, *Records Management and Information Governance Program*, 23 March 2020

DAFI 33-360, *Publications and Forms Management*, 1 December 2015

AFI 10-503, *Strategic Basing*, 14 October 2020

AFI 63-138, *Acquisition of Services*, 30 September 2019

AFI 90-802, *Risk Management*, 1 April 2019

AFI 91-202, *The US Air Force Mishap Prevention Program*, 12 March 2020

AFMAN 13-212V1, *Range Planning and Operations*, 22 June 2018

DAFPD 10-36, *Contracted Operational Air Services for Training Support*, 30 September 2020

Prescribed Forms

None

Adopted Forms

AF Form 847, *Recommendation for Change of Publication*

AF Form 679, *Air Force Publication Compliance Item Waiver Request/Approval*

Abbreviations and Acronyms

ADS-B—Automatic Dependent Surveillance-Broadcast

AFI—Air Force Instruction

AFLCMC—Air Force Life Cycle Management Center

AFMAN—Air Force Manual

ANG—Air National Guard

APACS—Aircraft and Personnel Automated Clearance System

ATC—Air Traffic Control

CAA—Civil Aviation Authority

CAO—Civil Aircraft Operations

CC—Commander

CFR—Code of Federal Regulations

COCO—Contractor-Owned, Contractor-Operated

COGO—Contractor-Owned, Government-Operated

CSSO—Cognizant Service Safety Office

DAF—Department of the Air Force

DAFI—Department of the Air Force Instruction

DAFPD—Department of the Air Force Policy Directive

DCMAI—Defense Contract Management Agency Instruction

DDPO—DoD Demilitarization Program Office
DFARS—Defense Federal Acquisition Regulation Supplement
DEMIL—Demilitarization
DoD—Department of Defense
DoDD—Department of Defense Directive
DoDI—Department of Defense Instruction
DoS—Department of State
EN—EZ—AFLCMC Engineering and Technical Engineering directorate
FAA—Federal Aviation Administration
FAR—Federal Acquisition Regulation
FCG—Foreign Clearance Guide
FCM—Foreign Clearance Manual
FCP—Foreign Clearance Program
FMS—Foreign Military Sales
GFR—Government Flight Representative
GGFR—Ground Government Flight Representative
GGR—Government Ground Representative
IGF—Inherently Governmental Functions
LOA—Letter of Offer and Acceptance
MAJCOM—Major Command
M&O—Maintenance and Operations
NAS—National Airspace System
NTSB—National Transportation Safety Board
OPR—Office of primary responsibility
OPSEC—Operational Security
PAO—Public Aircraft Operations
RAD—Requirements Approval Document
SAO—State Aircraft Operations
TAA—Technical Airworthiness Authority
TPT—Third Party Transfer
US—United States
USC—United States Code

USSF—United States Space Force

WDZ—Weapon Danger Zone

Terms

Civil Aircraft Operation (CAO)—Within the NAS, all aircraft operations other than those conducted as PAO in accordance with applicable law. Outside of the NAS, all aircraft operations other than those that have been designated to operate in state aircraft status.

Contracted Operational Air Services for Training Support—A contract for air services that support an operational military unit in conducting continuation training that ensures mission ready combat mission ready aircrews.

Cognizant Service Safety Office (CSSO)—The service safety office that has primary responsibility for mishap investigation and reporting on a specific aircraft and contract.

Organic DAF Assets—Includes civilian employees, uniformed members, real property, personal property (including aircraft), intellectual property, and other resources of the Regular Air Force, United States Space Force, Air Force Reserve, and Air National Guard. Excludes contractors, their employees, and their property.

National Airspace System (NAS)—Airspace, navigation facilities and airports of the United States along with their associated information, services, rules, regulations, policies, procedures, personnel and equipment. It includes components shared jointly with the military. It is one of the most complex aviation systems in the world and services air travel in the US and over large portions of the world's oceans.

Public Aircraft Operation (PAO)—The operation of an aircraft that meets the legal definition of “public aircraft” established in 49 United States Code § 40102(a)(41) and the legal qualifications for public aircraft status outlined in 49 United States Code § 40125 and has been designated and declared to be in PAO status by appropriate government official.

Public Aircraft Operations Declaration Letter—Formal written notice of public aircraft operations for designated flights, provided by an authorized government official to the contractor.

Public Aircraft Operations Designation—A decision, made by an authorized government official, that specific operations are authorized to be conducted as PAO.

Public Aircraft Operations Designation Authority—MAJCOM or Field Command/CC or delegated staff official who decides when contracted operations are to be performed in public aircraft status.

Requiring Activity Organization—Commander that identifies a need for and is the principal user of contracted services. Budgets for and defines the requirement for contracted services.

State Aircraft—An aircraft operated by a government for sovereign, non-commercial purposes such as military, customs and police services.

Weapon Danger Zone (WDZ) —Encompasses the ground and airspace for lateral and vertical containment of a user-determined percentage of projectiles, fragments, debris, and components resulting from the firing, launching, and/or detonation of aviation delivered ordnance. This three-dimensional zone accounts for weapon accuracy, failures, ricochets, and broaches (resurfacing) of a specific weapon and munitions type delivered by a specific aircraft type under planned specific delivery release parameter.

Attachment 2

PAO DECLARATION LETTER FORMAT

Figure A2.1. PAO Declaration Letter Format.

<p>LETTERHEAD [use letterhead of the official who will sign this letter]</p> <p>[Insert the office symbol and mailing address of the sending official]</p> <p>[Insert the name, title and mailing address of the contractor's representative]</p> <p>Subject: Public Aircraft Declaration</p> <p>1. The [insert: official title of official authorized under this instruction] has designated certain contractor aircraft to operate as public aircraft. This letter informs you of that designation and provides instructions for operating public aircraft.</p> <p>2. Declaration of Public Aircraft Designation: The aircraft (tail number xxxxxx) supporting [insert name of contractor] contract number [insert number] within the Department of the Air Force is designated as a "public aircraft" under the qualification standards of 49 USC §§ 40102(a)(41) and 40125 for the [summarize missions or flights] in the area of, to/from and surrounding [insert general location(s) where contract performance will occur] during the period of [insert to and from dates].</p> <ul style="list-style-type: none">a. Name of civil operator (the contracted operator);b. Aircraft type(s) to be used for the PAO;c. Name of aircraft owner(s);d. Aircraft registration number(s);e. Date of contract;f. Date of proposed first flight as a PAO;g. Date of contract expiration;h. Name of the government entity declaring public aircraft status (the government entity contracting for aircraft services);
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i. Name, title, and contact information for the government official making the declaration of PAO status; and

j. Nature of operations [include enough detail to demonstrate that the flights qualify for PAO status under the statute].

3. Prior to operating public aircraft, you may be required to obtain Department of the Air Force airworthiness approval and/or other certifications, clearances, conditions, operating limitations, or restrictions. You may be required to submit documentation and/or to submit your aircraft for inspection, testing or other assessment to support requests for such approval, certification, etc. Consult the contracting officer for guidance and/or points of contact for guidance.

4. You are required to provide a copy of this PAO Declaration Letter to your associated Federal Aviation Administration (FAA) Flight Standards Office and to carry a copy of the declaration and the Air Force airworthiness approval onboard the aircraft (or ground control stations for unmanned aircraft systems) for operations conducted within the US National Airspace (NAS).

Signature Block
[Requiring activity organization or program manager]

Copy To:
Contracting Officer
FAA Flight Standards Office
Safety Office of the PAO designation authority
Air Force Technical Airworthiness Authority (TAA)
Cognizant Service Safety Office (CSSO)

Attachment 3

SAO DECLARATION LETTER FORMAT

Figure A3.1. SAO Declaration Letter Format.

<p>LETTERHEAD [use letterhead of the official who will sign this letter]</p> <p>[Insert the mailing address of the official sending this letter]</p> <p>[Insert the name, title and mailing address of the contractor's representative]</p> <p>Subject: State Aircraft Operation (SAO) Declaration</p> <p>1. The [insert: Secretary of the Air Force, or official title of other official authorized under this instruction] has designated certain contractor aircraft to operate as state aircraft. This letter informs you of that designation and provides instructions for operating state aircraft.</p> <p>2. Declaration of State Aircraft Designation: The aircraft (tail number <u>xxxxx</u>) supporting [insert name of contractor] contract number [insert number] with the Department of the Air Force is designated as a "state aircraft" under Article 3 of the Convention on International Civil Aviation; Department of Defense Directive (<u>DoDD</u>) 4500.54E, <i>DoD Foreign Clearance Program</i> (FCP); and Department of the Air Force Policy Directive (DAFPD) 10-36, <i>Contracted Operational Air Services for Training Support</i>, for the [summarize missions or flights] in the area of, to/from and surrounding [insert general location(s) where contract performance will occur] during the period of [insert to and from dates].</p> <ul style="list-style-type: none">a. Name of civil operator (the contracted operator);b. Aircraft type(s) to be used for SAO;c. Name of aircraft owner(s);d. Aircraft registration number(s);e. Date of contract;f. Date of proposed first flight as a SAO;g. Date of contract expiration;h. Name of the government entity declaring SAO status (the government entity contracting for aircraft services);
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- i. Name, title, and contact information for the government official making the declaration of SAO status; and
- j. Nature of operations [include enough detail to demonstrate that the flights qualify for SAO status under Article 3 of the Convention on International Civil Aviation, Department of Defense Directive (DoDD) 4500.54E, and DAFFD 10-36].

3. Before operating in state aircraft status, you must obtain foreign clearance through the United States embassy or embassies for the country or countries in whose territory you will land and/or over which you will fly.

- a. Detailed theater and country FCP procedures and templates are included in the DoD Foreign Clearance Guide (FCG) and the supplementing DoD Foreign Clearance Manual (FCM).
- b. You are required to request and receive appropriate clearances to operate in foreign national airspace or to land in foreign territory in accordance with specific foreign theater and country requirements and procedures identified in the FCG and the supplementing FCM.
- c. Use the Aircraft and Personnel Automated Clearance System (APACS) to initiate and confirm foreign clearance requests and to confirm compliance with DoD-required pre-travel training, documentation, and procedures for foreign travel locations.
- d. Do not request foreign clearance to operate in international airspace (including foreign managed Flight Information Regions) when not penetrating foreign national airspace. State aircraft exercising the right of transit passage through a strait used for international navigation, or the right of archipelagic sea lanes passage in an air route over the archipelagic waters of another state, are also not required to obtain, and personnel operating them will not submit a request for, diplomatic clearance. Follow International Civil Aviation Organization flight procedures when on routine point-to-point flights in international airspace in accordance with DoD Instruction 4540.01, *Use of International Airspace by US Military Aircraft and for Missile and Projectile Firings*.

4. When operating in state aircraft status in support of United States Department of Defense requirements, the following attributes apply to your aircraft:

- a. You shall not pay air navigation, overflight, or similar fees.
- b. You shall not pay landing and parking fees (or other use fees) at foreign government airports.
- c. You may pay fees at non-government airports.

- d. You may pay reasonable charges for services requested and received at all foreign airports.
- e. You shall not agree or submit to search, seizure, and inspection (including customs, safety, and agriculture inspections) or any other exercise of jurisdiction by a foreign government over your aircraft, or the personnel, equipment, or cargo while on board the aircraft.
- f. You shall not consent to the exercise of jurisdiction by foreign government authorities, except at the direction of the DoD Component headquarters or the Chief of the US Mission (Ambassador or Charge D'Affair).
- g. While a foreign government may not seize state aircraft lawfully present with diplomatic clearance, you shall promptly depart from the country if boarding is officially requested by foreign government officials and denied by your aircrew.
- h. Once personnel and/or cargo are deplaned, they will be subject to normal local inspection procedures unless exempted by treaty, agreement, or diplomatic status.
- i. Immediately contact the local US embassy if a foreign government asks you to violate any of these conditions that apply when you are operating a state aircraft in support of United States DoD requirements.

5. You are required to provide a copy of this SAO Declaration Letter to your associated Federal Aviation Administration (FAA) Flight Standards Office and to carry a copy of the declaration and the Air Force airworthiness approval onboard the aircraft (or ground control stations for unmanned aircraft systems) for operations conducted within the US National Airspace (NAS).

Signature Block

[Requiring activity organization or program manager]

Copy To:
Contracting Officer
Air Force Technical Airworthiness Authority (TAA)