

# Limiting Government Liability Thru The Application Of The "Ground And Flight Risk" Clause



Certification Training



Knowledge Sharing



Continuous Learning



Mission Assistance

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# Overview

- Why the CCM-provided training is mandatory:
  - **DFARS prescribing documents**
- Program risk through miss-application
- Evolution of program to-date
- CCM course offerings:
  - **Who we Teach**
  - **What training we provide**
  - **How training can be obtained**

# Why This Training is Mandatory

- DFARS 252.228-7001, “*Ground and Flight Risk*” clause (GFRC):
  - Mandated by DFARS 228.370:
    - ***“Use the clause at 252.228-7001, Ground and Flight Risk, in all solicitations and contracts for the acquisition, development, production, modification, maintenance, repair, flight, or overhaul of aircraft...”***
- Invokes the Combined Instruction, DCMA INST 8210.1C \*, “*Contractor’s Flight and Ground Operations*” which mandates GFR training and appointment

**\* A.K.A. AR95-20 (Army), AFI 10-220 (Air Force), NAVAIRINST 3710.1G (Navy), and COMDTINST M13020.3A (Coast Guard)**

# Why This Training is Mandatory

- DCMA INST 8210.1C, “*Contractor’s Flight and Ground Operations*”:
  - Prohibits the Contractor from performing flight or ground operations until the contractor’s operating Procedures have been approved by the GFR
  - Requires appointment of a GFR prior to commencement of Contractor’s flight and ground operations
  - Requires GFR candidates attend (DAU)-provided training

# Program Risk Thru Miss-Application

- FAR 52.245-1 Government Property clause:
  - Contractor **NOT** liable for loss of Government property
  - USG-furnished aircraft damage not reimbursed when reported under this clause
  - Less incentive for contractor to lower program risk, thus effecting cost, schedule, and performance of contract
- DFARS 252.228-7001, GFRC:
  - Invokes DCMA INST 8210.1C, “Contractor’s Flight and Ground Operations”
  - Contractor liable for lesser of first \$100K of damage to aircraft, or 20% of contract cost
  - Contractor fully liable for damage/destruction due to workmanship
  - Incentivizes Contractor to assure safe and effective operations, thus assuring “Better Acquisitions Outcomes”
    - Not appointing a GFR/GGR may forfeit contractor liability for even the first \$100K

# Program Risk Thru Miss-Application

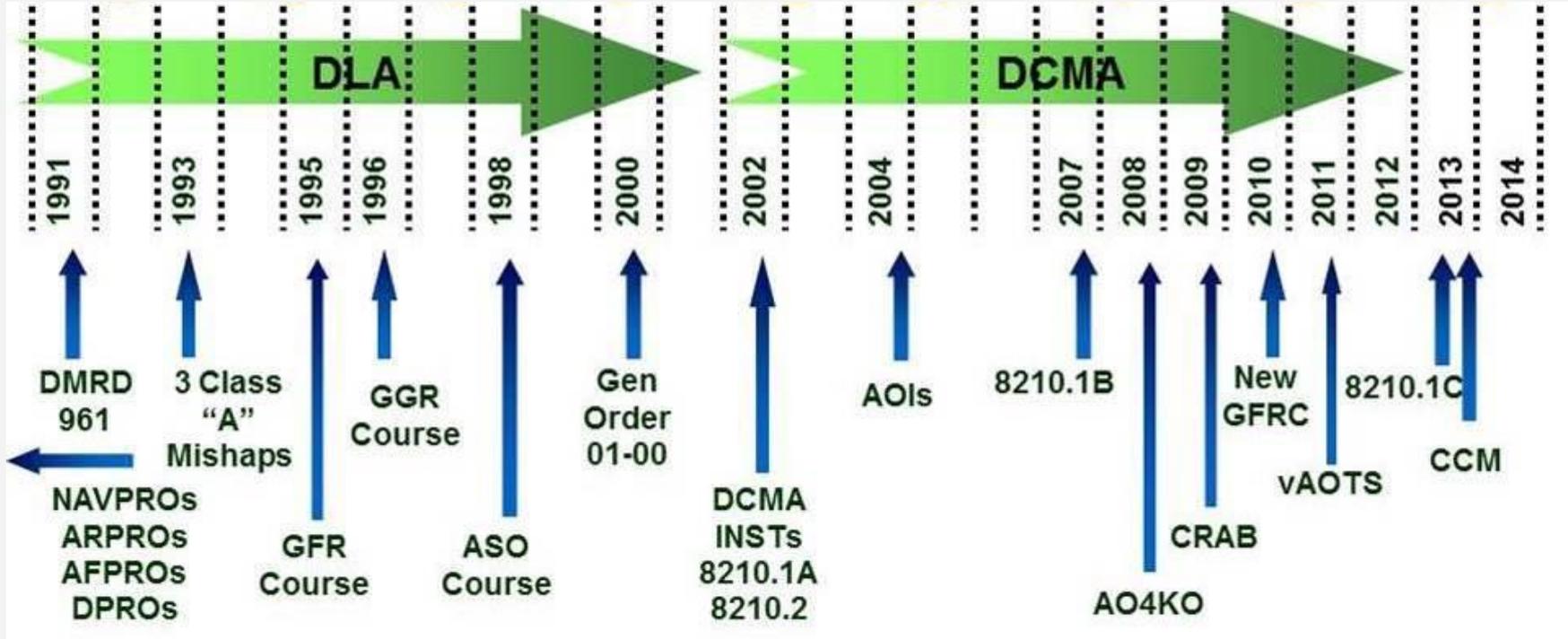
- Cost to Program :
- Possible increased contract cost due to lack of due diligence on USG's part:
  - ***Contractor workmanship results in 5 scrapped H-60 transmission beams. Damage reported under Property clause. Damage actually occurred under GFRC – workmanship not covered. Contractor liable for entire replacement cost (\$200K x 5 = \$1M)***
- Increased post-award workload complying with GFRC requirements after the fact

# Evolution Of Program To-Date

- In 1993, contractors were involved in 3 class A\* accidents:
  - **April 6<sup>th</sup>** – SH-60 pilots performed a low pass over a local gun club, lost situational awareness and impacted a golf course. 3 aircrew injured, aircraft destroyed
  - **May 14<sup>th</sup>** – QF-4 pilots performed low pass over Bar-Stoolers' golf tournament, lost situational awareness and impacted the ground. 2 pilots killed, aircraft destroyed
  - **May 24<sup>th</sup>** – F-16 pilot performs split-S maneuver to regain position on formation, ejects due to altitude, floats into fireball. 1 pilot killed, aircraft destroyed
- Investigation findings:
  - All aircraft functioning normally
  - Deficiencies in Contractor flight operations supervision
- \* *Class A: Minimum of \$2 million in costs, destruction of aircraft, fatality or permanent total disability*

# Evolution Of Program To-Date

- Evolution of Aircraft Operations



# Who the CCM/CMA teaches

## – **Parent Organizations:**

- DCMA, Army, Air Force, Navy, Marine Corps, DoD Civilians, Industry

## – **Voluntary Organizations:**

- State Dept, Dept of Homeland Security (Coast Guard, Customs Service), Dept of Transportation
  - USCG co-writes and is a signatory to the Combined Instruction

## – **Contracts they support as GFR/GGR:**

- All DoD aircraft production/maintenance contracts
- Non-DoD administered contracts:
  - Non-DoD entities realize contract aviation flight and ground operations oversight is equally important in protection of their assets

# What training the CCM/CMA provides

- CLX 110 – Fundamentals of the GFR and GGR
  - 3-5 hour online course (prerequisite for CMA 211 and CMA 221)
- CMA 211 – Government Flight Representative (GFR)
  - 4-day in-residence course
- CMA 221 – Government Ground Rep (GGR)
  - 4-day in-residence course
- All three courses available for registration at [www.dau.mil](http://www.dau.mil)
  - Student TDY/TAD user-funded

# Final Points...

- **Ad hoc offerings of CMA 211 and CMA 221 available on request**
  - Subject to CCM instructor availability
  - Instructor TDY unit funded
  - Example: 9 Navy GGFRs offered CMA 221 at Fallon NAS, 19 Army GFRs offered CMA 211 at Hohenfels, Germany, 27 Navy GGFRs offered CMA 221 at Pax River
- Only source for industry GFR/GGR training
  - Not mandatory, limited seats
  - Government students benefit from industry perspective in class exercises
  - Industry gains insight on how to better work with GFRs/GGRs
- CLX 110 (3 hour on-line course)
  - Ideal for personnel needing to know basic duties/responsibilities of GFRs/GGRs (Contracting Officers, Industry, Commanders, Supervisors)



# **For additional information regarding aviation contract requirements, contact:**

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