

0.361, and 1.3 of the Commission's rules, 47 CFR 0.141, 0.361, and 1.3, document DA 08-2808 is adopted.

13. For VRS, the waivers of the one-line VCO, VCO-to-TTY, and VCO-to-VCO; one-line HCO, HCO-to-TTY, and HCO-to-HCO; call release; pay-per-call (900) calls, types of calls, and equal access to interexchange carrier requirements are hereby extended for one year, until January 1, 2010, conditioned on the filing of a report, due April 16, 2009, addressing whether it is necessary for the waivers to remain in effect.

14. For IP Relay, the waivers of the one-line VCO, VCO-to-TTY, and VCO-to-VCO; one-line HCO, HCO-to-TTY, and HCO-to-HCO; call release; pay-per-call (900) calls; and STS requirements are hereby extended for one year until January 1, 2010, conditioned on the filing of a report, due April 16, 2009, addressing whether it is necessary for the waivers to remain in effect. The waiver of the speed dialing requirement for IP Relay is extended until May 1, 2009.

15. AT&T's Request for Extension of Waiver is granted.

Federal Communications Commission.

Mark Stone,

Deputy Chief, Consumer and Governmental Affairs Bureau.

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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 532 and 552

[GSAR Amendment 2009-13; GSAR Case 2006-G515 (Change 41) Docket 2008-0007; Sequence 8]

RIN 3090-A175

General Services Administration Acquisition Regulation; GSAR Case 2006-G515; Rewrite of GSAR Part 532, Contract Financing

AGENCIES: General Services Administration (GSA), Office of Acquisition Policy.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to update Part 532, Contract Financing, of the regulation. This project is part of the GSAM rewrite Project, in which all parts of the regulation are being reviewed and updated to include new statutes, legislation, and policies.

DATES: *Effective Date:* November 25, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Edward Chambers, Procurement Analyst, at (202) 501-3221. For information pertaining to status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, 1800 F Street, NW., Washington, DC 20405, (202) 501-4755. Please cite Amendment 2009-13, GSAR case 2006-G515 (Change 41).

SUPPLEMENTARY INFORMATION:

A. Background

The GSA is amending the GSA Acquisition Regulation (GSAR) to update the text addressing contract financing. This rule is a result of the GSA Acquisition Manual (GSAM) rewrite initiative undertaken by GSA to revise the GSAM to maintain consistency with the Federal Acquisition Regulation (FAR) and implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can utilize when entering into and administering contractual relationships. The GSAM incorporates the GSAR as well as internal agency acquisition policy.

The GSA will rewrite each part of the GSAR and GSAM, and as each GSAR part is rewritten, will publish it in the **Federal Register**.

This rule covers the rewrite of GSAR Part 532, Contract Financing. A proposed rule was published in the **Federal Register** at 73 FR 58515 on October 7, 2008. Three comment letters, with 23 comments, were received in response to the proposed rule.

Many of the comments apply solely to construction and architect-engineer contracts. Two of these comments were referred to the GSAM Part 536 team for consideration in the rewrite of that part. These dealt with the Public Building Service's unique requirement for progress payment meetings and the need to have contractor involvement in such meetings. These comments will be addressed in the final rule for GSAM Part 536, Construction and Architect-Engineer Contracts. The responses to the balance of the construction-related comments were coordinated with the GSAM Part 536 team.

Comment: The commenter believes that GSA Form 1142, Release of Claims, is an unauthorized form. Commenter notes that there is no Office of Management and Budget (OMB) control number and no indication that a Regulatory Flexibility Act analysis was ever performed. Commenter also notes

that the form fails to advise contractors that, by signing the form, they forfeit certain rights.

Response: Currently, use of this form is prescribed at GSAR 532.904(a). The commenter is correct that there is no OMB control number on the GSA Form 1142, and GSAM Part 532 drafters cannot find any record of a Regulatory Flexibility Act analysis ever having been performed for this pre-GSAM Rewrite requirement. Further, the form has not been revised since December 1974. The material on the "form" is minimal, and neither the FAR nor the GSAM require specific wording for the contractor's release of claims. Therefore, the GSA Form 1142 will be cancelled, and GSAR 532.904(a) of the proposed rule is deleted.

Comment: Given that the requirement for a release of claims stems from FAR 52.232-26 and 52.232-27, commenter believes it would be more appropriate for the FAR Council to develop a standard form to be used by all agencies in accordance with FAR 1.304(c), because it is not just pertinent to GSA.

Response: This comment pertains to whether the GSA Form 1142 should be retained or a Standard Form should be designed as a FAR Part 32 change. Given that neither FAR clause designates specific wording for the contractor's release of claims, it does not appear to be an appropriate candidate for a standard form.

Comment: Commenter believes that the FAR Council should consider allowing contractors to submit the release jointly along with the electronic submission of a final invoice request.

Response: This is outside the scope of the GSAM Rewrite.

Comment: Commenter believes that, under GSAR 532.904, contracting officers' repeated attempts to obtain release of claims from contractors could be considered coercion penalizing contractors by withholding funds. Commenter thinks that GSAM should justify the reasonableness of withholding final payments.

Response: Because the GSA Form 1142 has been cancelled, the balance of GSAR 532.904(a) should also be deleted. Further, obtaining a release of claims is a FAR requirement, not a GSA requirement.

Comment: Commenter believes that the GSAM should provide guidance for contracting officers to initiate an action for architect-engineer (A-E) design services in advance of approved appropriations. Many find nothing in the FAR that precludes contracting officers from selecting an A-E using Brooks Act procedures through the solicitation and negotiation phase up to

award when the appropriations request is included in the President's Budget.

Response: There is currently appropriate guidance on contracting in advance of funds in FAR Subpart 32.7 and GSAM Subpart 532.7. There is no reason to treat A-E design services differently.

Comment: Commenter states that contractors experience numerous problems attempting to submit invoices electronically to GSA for payment. Frequently, commenter claims, GSA has failed to enter obligations into Pegasys which, in turn, prohibits contractors from being able to submit a pay request and establish a receipt date for purposes of computing interest, which appears to be in direct violation of FAR 32.907(f).

Response: This comment is outside the scope of the GSAM Rewrite. The commenter appears to have issues with Pegasys, which is a financial system, not a contracting system.

Comment: Commenter recommends that GSA include in its invoicing system a citation to FAR 32.909(b) that suggests that contractors contact GSA small business specialist or representative from the Office of Small and Disadvantaged Business Utilization to obtain additional assistance related to payment issues, late payment interest penalties, and information on the Prompt Payment Act.

Response: FAR 1.304(b) states that "(a)gency acquisition regulations shall not * * * (u)necessarily repeat, paraphrase, or otherwise restate material contained in the FAR or higher-level agency acquisition regulations." Therefore, the commenter's recommendation is not accepted.

Comment: Commenter suggests that, to eliminate confusion and ensure consistency, all GSA contractors should be permitted to submit invoices electronically, including those for construction contracts awarded on an SF 1442. Invoices for construction contracts awarded on a GSA Form 300 as a task order against an indefinite delivery/indefinite quantity contract are permitted to be submitted electronically. All construction payments are 14-day pay.

Response: The GSA Form 300 was cancelled in connection with the rewrite of GSAR Part 513. Therefore, using the cancelled form as a reason to revise the invoicing rules for contracts awarded using another form is moot. Further, authority to submit invoices electronically is provided by Office of the Chief Financial Officer, not the GSAM.

Comment: Commenter states that, per FAR 32.103, retainage should not be used as a substitute for good contract

management, and the contracting officer should not withhold funds without cause.

Response: We agree with the commenter but do not propose to revise the GSAM as a result.

Comment: Commenter addresses GSA Form 2419 using the same rationale as commenter used for the GSA Form 1142. Just like the Release of Claims form, commenter says, it would seem more appropriate for the FAR Council to develop a standard form to be used by all agencies in accordance with FAR 1.304(c) in lieu of GSA's Certification of Progress Payment, Form 2419, since the requirement is set forth for all construction contracts under FAR 32.904.

Response: While we agree with the commenter that it would make sense for the FAR to prescribe a standard form in lieu of the GSA Form 2419, Certification of Progress Payments Under Fixed-Price Construction Contracts, the FAR does not currently do so. The GSA form will be retained unless or until a standard form is prescribed in the FAR.

The commenter likens the GSA Form 2419 to the GSA Form 1142, but the two forms are different in two very important ways. First, the clause at FAR 52.232-5, Payments Under Fixed-Price Construction Contracts, provides exact language that must be used in the certification. Second, the GSA Form 2419 does have an OMB clearance and has been through the Paperwork Reduction Act and Regulatory Flexibility Act review process.

Comment: The proposed rule, at GSAR 532.905(a), required contractors to submit invoices or vouchers concurrently to the Office of the Chief Financial Officer and the contracting officer for approval. The GSA's Office of General Counsel questioned the requirement for contractors to submit more than one copy to the Government, given that the contracting officer is considered to be the "one-face" to the public. The Office of General Counsel recommended that any internal distribution of contractors' invoices or vouchers should be an internal procedural matter.

Response: Agree. The GSAR at 532.905(a) has been revised.

Comment: Commenter recommends that any rejection of invoices should "cite the specific section of FAR 32.905(b)(1) that is in non-compliance" and also advise contractors of their rights under the disputes clause.

Response: FAR 32.905(b)(3) currently requires the designated billing office, if the invoice does not comply with the requirements of FAR 32.905(b)(1), to return it "with the reasons why it is not

a proper invoice." Given that FAR 1.304(b) prohibits agency acquisition regulations from unnecessarily repeating the FAR, there will not be a change made to the GSAM as a result of this comment.

Comment: Commenter states that GSA has collected electronic funds transfer information from contractors using a form that has not been approved by OMB for this information collection. Further, there is no indication that GSA is ensuring the financial information collected is protected as privileged and confidential in accordance with FAR 32.1104.

Response: The form described is not prescribed by GSAM. This comment is outside the scope of the GSAM Rewrite. Commenter should direct her concerns to the GSA Office of the Chief Financial Officer.

Comment: Commenter recommends that the reference to FAR 52.232-25(a)(6)(i), at GSAR 532.905(a)(1), should be corrected to 52.232-25(a)(5)(i).

Response: Agree.

Comment: Commenter refers to GSAR 532.905(a)(3), stating that FAR 52.232-26(a)(4)(i)(B) does not give the option of entering an alternative to the 7-day constructive approval for prompt payment. Further, the instructions for the FAR clause state "insert the clause", not "insert a clause substantially the same as."

Response: Agree. The authority at 532.905(a)(3) to select longer periods of time is deleted.

Comment: Commenter refers to 532.905(b)(1), stating that FAR 52.232-27(a)(1)(i)(A) does not give the option of entering an alternative to the 14-day period for payment. Further, the instructions for the FAR clause state "insert the clause," not "insert a clause substantially the same as."

Response: Agree. The authority at 532.905(b)(1) to select longer periods is deleted.

Comment: GSAR 532.905(b)(2) and FAR 52.232-27(a)(4)(i) does not give the option of entering an alternative to the 7-day period for constructive approval for prompt payment. Further, the instructions state "insert the clause", not "insert a clause substantially the same as."

Response: Agree. The authority at GSAR 532.905(b)(2) to select longer periods is deleted.

Comment: With regard to the clause at GSAR 552.232-1, commenter notes that, while this deviation is included in GSAR Part 552, there is no corresponding mention of it in the clause section of Part GSAR 532. The

clause prescription should be added to Part 532.

Response: Agree. A new GSAR 532.905(a) will be added as follows: "GSA has a FAR deviation that allows this agency to use the clause at 552.232-1, Payments, in lieu of the clause at FAR 552.232-1, Payments."

Comment: For the preface to the clause at GSAR 552.232-73, the clause prescription should be revised from GSAR 532.705-1 to 532.705-1(b).

Response: Not applicable. The clause at GSAR 552.232-73 has been deleted on the recommendation of GSA's Office of General Counsel.

Comment: With regard to the new clause GSAR 552.232-7007, Limitation of Government's Obligation, commenter strongly believes that authorizing incremental funding of fixed-price, time-and-materials, and labor-hour contracts is ill advised. Commenter believes that limiting the Government's obligation to pay (*i.e.*, conditioning the payment requirement on the availability of funds) is antithetical to the notion of fixed-price contracts. It would also transfer from the Government to the contractor the burden of tracking the costs of contract performance.

Response: Agree. We could not find any agency FAR supplement that authorizes use of incremental funding on time-and-materials or labor-hour contracts. We note that DoD carefully circumscribes the use of incremental funding on fixed-price contracts. Effectively, the same limits already had been provided for GSA under Acquisition Letter V-07-04, dated June 12, 2007. The proposed clause at GSAR 552.232-7007, Limitation of Government's Obligation, and its prescription at 532.705-1(c), have been deleted from the final rule.

Comment: If GSAR 552.232-7007 is retained, commercial-item contracts should be exempted from its use.

Response: We agree that commercial-item contractors do not have the accounting systems needed to track the Government's funds expenditures and should not be required to take on this risk. Although DoD authorizes the use of incremental funding on fixed-price contracts, as the commenter points out, DoD does not award many contracts under FAR Part 12 and therefore does not have any need to address this circumstance. The proposed clause at GSAR 552.232-7007 has been deleted from the final rule.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This

rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule does not add any new contract clauses and, in fact, simplifies agency contract financing rules by eliminating 12 contract clauses from the current GSAR Part 532. For these reasons, it is expected that the number of entities impacted by this rule will be minimal. Therefore, a Regulatory Flexibility Analysis was not performed.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

List of Subjects in 48 CFR Parts 532 and 552

Government procurement.

Dated: October 20, 2009.

David A. Drabkin,

Senior Procurement Executive, Office of Acquisition Policy, General Services Administration.

■ Therefore, GSA amends 48 CFR parts 532 and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 532 and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 532—CONTRACT FINANCING

■ 2. Revise section 532.111 to read as follows:

532.111 Contract clauses for non-commercial purchases.

For contracts that include the clause at FAR 52.232-5, Payments Under Fixed-Price Construction Contracts, the contracting officer shall provide the contractor with GSA Form 2419, Certification of Progress Payments Under Fixed-Price Construction Contracts, to be used to make the certification required by FAR 52.232-5(c).

Subpart 532.2 [Removed]

■ 3. Remove Subpart 532.2.

Subpart 532.7 [Removed]

■ 4. Remove Subpart 532.7.

532.902 [Removed]

■ 5. Remove section 532.902.

■ 6. Add section 532.904 to read as follows:

532.904 Determining payment due dates.

Payment due dates for construction contracts are addressed at FAR 32.904(d). The following procedures apply to construction and building service contracts:

(a) The amount of final payment must include, as appropriate, deductions to cover any of the following:

(1) Liquidated damages for late completion.

(2) Liquidated damages for labor violations.

(3) Amounts withheld for improper payment of labor wages.

(4) The amount of unilateral change orders covering defects and omissions.

(5) The agreed-upon dollar amount in a Deficiency Report, which is included in all applicable Operation and Maintenance (O&M) service contracts.

(b) When the contract is for the performance of building services, the contracting officer shall include the clause at 552.232-72, Final Payment Under Building Services Contracts.

■ 7. Revise section 532.905 to read as follows:

532.905 Payment documentation and process.

For contracts of the type shown in 532.7201(a)(1) through (4):

(a) Contractors are to submit invoices or vouchers to the contracting officer for approval. Invoices must be annotated with the date of receipt, as required by FAR 32.905. That date will be used to determine interest penalties for late payments. The contracting officer or designee must review the processing of invoices or vouchers before payment to determine if the items and amounts claimed are consistent with the contract terms and represent prudent business transactions. The contracting officer must ensure that these payments are commensurate with physical and technical progress under the contract. If the contractor has not deducted questionable amounts from the invoice or amounts required to be withheld, the contracting officer must make the required deduction, except as provided in 532.7203. Subject to 532.7201, the contracting officer must note approval of any payment on (or attached to) the invoice or voucher submitted by the contractor and forward the invoice or voucher to the appropriate contract

finance office for retention after certification and scheduling for payment by a disbursing office.

(b) See GSAM 532.7203 for the handling of audit findings.

532.905–70 [Removed]

■ 8. Remove section 532.905–70.

532.905–71 [Removed]

■ 9. Remove section 532.905–71.

■ 10. Revise section 532.908 to read as follows:

532.908 Contract clauses.

(a) GSA has a FAR deviation that allows this agency to use the clause at 552.232–1, Payments, in lieu of the clause at FAR 52.232–1, Payments.

(b) *General.* Before exercising the authority to modify the date for constructive acceptance or constructive approval of progress payments in paragraph (a)(5)(i) of the clause at FAR 52.232–25, Prompt Payment, the contracting officer must prepare a written justification explaining why a longer period is necessary. An official one level above the contracting officer must approve the justification. The time needed should be determined on a case-by-case basis, but the specified constructive acceptance period shall not exceed 30 days.

(c) *Stock, Special Order, and Schedules Programs.* (1) GSA has obtained a FAR Deviation to authorize payment within 10 days of receipt of a proper invoice. The authority applies only to:

(i) Orders placed by GSA under the referenced programs;

(ii) That include FAR 52.232–33, Mandatory Information for Electronic Funds Transfer Payment; and

(iii) For which the order is placed, and the contractor submits invoices, using EDI in accordance with the Trading Partner Agreement.

(2) If the contract is for commercial items and will include FAR 52.212–4, use the clause with its Alternate II. If the contract is not for commercial items, use the clause at 552.232–25, Prompt Payment, instead of FAR 52.232–25.

■ 11. Revise the heading in Subpart 532.70 to read as follows:

Subpart 532.70—Authorizing Payment by Government Charge Card

532.7001 [Removed]

■ 12. Remove section 532.7001.

■ 13. Revise section 532.7003 to read as follows:

532.7003 Contract clause.

For indefinite-delivery, indefinite-quantity (IDIQ) contracts other than

Schedules, insert the clause at 552.232–77, Payment By Government Charge Card, if the contract will provide for payment by Government charge card as an alternative method of payment for orders. For Schedule contracts that provide for payment using the Government charge card, use the clause(s) prescribed at Part 538.

Subpart 532.71 [Removed]

■ 14. Remove subpart 532.71.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 15. Add section 552.212–4 to read as follows:

552.212–4 Contract Terms and Conditions—Commercial Items.

Alternate II (FAR Deviation) NOV 2009.

When a commercial item contract is contemplated and the contract will include the clause at FAR 52.212–4, insert this Alternate II instead of subparagraph (g)(2) of the FAR clause.

(g)(2) The due date for making invoice payments by the designated payment office is the later of the following two events:

(i) The 10th day after the designated billing office receives a proper invoice from the Contractor. If the designated billing office fails to annotate the invoice with the date of receipt at the time of receipt, the invoice payment due date shall be the 10th day after the date of the Contractor's invoice; provided the Contractor submitted a proper invoice and no disagreement exists over quantity, quality, or Contractor compliance with contract requirements.

(ii) The 10th day after Government acceptance of supplies delivered or services performed by the Contractor.

■ 16. Amend section 552.232–1 by revising the date of the clause and paragraph (c) to read as follows:

552.232–1 Payments.

* * * * *

Payments (NOV 2009) (Deviation FAR 52.232–1)

* * * * *

(c) When processing payment, GSA's Finance Office will automatically generate the 12 digit invoice number using the PDN assigned to the contract, followed by an abbreviated month and year of service (e.g., 84261554JUN7, for June 2007). The PDN appears on the contract award document.

552.232–8 [Removed]

■ 17. Remove section 552.232–8.

552.232–25 [Amended]

■ 18. Amend section 552.232–25 by—
■ a. Removing from the introductory paragraph “532.908(a)(2)” and adding “532.908(c)(2)” in its place;

■ b. Removing from the clause heading “(Jul 1998)” and adding (NOV 2009) in its place; and

■ c. Removing from paragraph (a)(1)(i) “Federal Supply Service (FSS)” and adding “Federal Acquisition Service (FAS)” in its place.

552.232–70 [Removed]

■ 19. Remove section 552.232–70.

552.232–71 [Removed]

■ 20. Remove section 552.232–71.

■ 21. Amend section 552.232–72 by revising the section heading, the introductory paragraph, and the clause heading to read as follows:

552.232–72 Final Payment Under Building Services Contracts.

As prescribed in 532.904(c), insert the following clause:

Final Payment Under Building Services Contracts (NOV 2009)

* * * * *

552.232–73 [Removed]

■ 22. Remove section 552.232–73.

552.232–74 [Removed]

■ 23. Remove section 552.232–74.

552.232–75 [Removed]

■ 24. Remove section 552.232–75.

552.232–76 [Removed]

■ 25. Remove section 552.232–76.

■ 26. Amend section 552.232–77 by revising the section heading, adding an introductory paragraph, and revising the clause heading, and paragraphs (a) and (c); and removing Alternate I.

The revised text reads as follows:

552.232–77 Payment By Government Charge Card.

Payment By Government Charge Card (NOV 2009)

As prescribed in 532.7003, insert the following clause:

(a) *Definitions.* “Governmentwide commercial purchase card” means a uniquely numbered charge card issued by a contractor under the GSA SmartPay® program contract for Fleet, Travel, and Purchase Card Services to named individual Government employees or entities to pay for official Government purchases.

* * * * *

(c) The Contractor shall not process a transaction for payment using the charge card until the purchased supplies have been shipped or services performed. Unless the cardholder requests correction or replacement of a defective or faulty item

under other contract requirements, the Contractor must immediately credit a cardholder's account for items returned as defective or faulty.

* * * * *

552.232-78 [Removed]

- 27. Remove section 552.232-78.

552.232-79 [Removed]

- 28. Remove section 552.232-79.

552.232-81 [Removed]

- 29. Remove section 552.232-81.

552.232-82 [Removed]

- 30. Remove section 552.232-82.

552.232-83 [Removed]

- 31. Remove section 552.232-83.

[FR Doc. E9-25606 Filed 10-23-09; 8:45 am]

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