PART 529—TAXES

Subpart 529.4—Contract Clauses

AUTHORITY: 40 U.S.C. 486(c).

Subpart 529.4—Contract Clauses

529.470   Domestic contract clauses.

(a) Insert the clause at 552.229–70, Federal, State, and Local Taxes, in solicitations and contracts estimated to exceed the micro-purchase threshold, but not the simplified acquisition threshold.

(b) Insert the clause at 552.229–71, Federal Excise Tax—DC Government, in solicitations and contracts that allow the District of Columbia Government to place orders under the contract.

[86 FR 55520, Oct. 6, 2021]

PART 532—CONTRACT FINANCING

Subpart 532.1—Financing for Other Than a Commercial Purchase

Subpart 532.7—Contract Funding

Subpart 532.8—Assignment of Claims

Subpart 532.9—Prompt Payment

Subpart 532.70—Authorizing Payment by Government Charge Card

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

Subpart 532.1—Financing for Other Than a Commercial Purchase

532.111   Contract clauses for non-commercial purchases.

(a) *FAR deviation.* GSA has a FAR deviation that allows use of the clause at 552.232–1 in lieu of the FAR clause at 52.232–1. Insert the clause at 552.232–1, Payments, in solicitations and contracts when a fixed-price supply contract, a fixed-price service contract, or a contract for nonregulated communication services is contemplated, in lieu of the FAR clause at 52.232–1.

(b) *Construction contracts.* Insert the clause at 552.232–5, Payments under Fixed-Price Construction Contracts, in solicitations and contracts when a fixed-price construction contract is contemplated.

[86 FR 55520, Oct. 6, 2021]

Subpart 532.7—Contract Funding

532.705   Unenforceability of unauthorized obligations.

Supplier license agreements defined in FAR 32.705 are equivalent to commercial supplier agreements defined in 502.101.

532.706–3   Contract clauses for unenforceability of unauthorized obligations.

GSA has a FAR deviation that allows use of the clause in paragraph (a) of this subsection in lieu of the FAR clause at 52.232–39.

(a) Insert the clause at 552.232–39, Unenforceability of Unauthorized Obligations in all solicitations and contracts in lieu of the FAR clause at 52.232–39.

(b) Insert the clause at 552.232–78, Commercial Supplier Agreements-Unenforceable Clauses, in all solicitations and contracts (including orders) when not using FAR part 12.

[86 FR 55520, Oct. 6, 2021]

Subpart 532.8—Assignment of Claims

532.806 Contract clauses.

Insert the clause at 552.232–23, Assignment of Claims, in solicitations and requirements or indefinite quantity contracts under which more than one agency may place orders.

Subpart 532.9—Prompt Payment

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) An official one level above the contracting officer shall approve justifications exercising the authority prescribed by FAR 32.904(d)(1)(i)(B). The time needed should be determined on a case-by-case basis, but the specified constructive acceptance period shall not exceed 30 days.

[74 FR 54917, Oct. 26, 2009, as amended at 86 FR 55520, Oct. 6, 2021]

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.

[74 FR 54917, Oct. 26, 2009]

532.905–70 Final payment—construction and building service contracts.

The following procedures apply to construction and building service contracts:

(a) The Government shall pay the final amount due to the contractor under this contract after the documentation in the payment clauses of the contract is submitted. This includes the final release prescribed for construction at FAR 52.232–5, and for building services at GSAR 552.232–72.

(b) A contracting officer may only process the final payment for a construction or building service contract once:

(1) The contractor submits a properly executed GSA Form 1142, Release of Claims; or

(2) The contracting officer documents in the contract file:

(i) That the contracting officer requested a release of claims from the contractor and did not receive a response within 60 calendar days; and

(ii) Approval to process the final payment from one level above the contracting officer.

[77 FR 6987, Feb. 10, 2012, as amended at 86 FR 60372, Nov. 2, 2021]

532.908 Contract clauses.

(a) *Building services contracts.* Insert the clause at 552.232–72, Final Payment Under Building Services Contracts, in solicitations and contracts for building services.

(b) *Stock, Special Order, and Schedules programs.* (1) GSA has a FAR deviation to authorize payment within 10 days of receipt of a proper invoice. The deviation applies only to:

(i) Orders placed by GSA under Stock, Special Order, and Schedules programs;

(ii) That include FAR clause at 52.232–33; 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 other than commercial products or commercial services, use the clause at 552.232–25, Prompt Payment, in lieu of the FAR clause at 52.232–25.

[86 FR 55520, Oct. 6, 2021, as amended at 86 FR 68443, Dec. 2, 2021]

Subpart 532.70—Authorizing Payment by Government Charge Card

532.7002 Solicitation requirements.

(a) In solicitations for supplies and services, except FSS schedule solicitations, request offerors to indicate if they will accept payment by Governmentwide commercial purchase card. Identify the card brand(s) under the GSA SmartPay® program that may be used to make payments under the contract, on the cover page or in Section L of the solicitation.

(b) For FSS schedule contracts, identify the card brand(s) under the GSA SmartPay® program that may be used to make payments under the contract in the contract award letter.

(c) For orders placed by GSA, you may authorize payment by Governmentwide commercial purchase card only for orders that do not exceed $100,000 (see GSA Order, Guidance on Use of the Credit Card for Purchases (CFO 4200.1)).

(d) Consider requesting offerors to designate different levels for which they may accept payment by Govern-

mentwide commercial purchase card, for example:

''If awarded a contract under this solicitation, the offeror agrees to accept payment by Governmentwide commercial purchase card for orders of:

____ $2,500 or less
____ $25,000 or less
____ $50,000 or less
____ $100,000 or less]''

[88 FR 43257, July 7, 2023]

532.7003 Contract clause.

For Schedule contracts that provide for payment using the Government charge card, use the clause(s) prescribed at part 538.

[74 FR 54918, Oct. 26, 2009, as amended at 88 FR 43257, July 7, 2023]

PART 533—PROTESTS, DISPUTES, AND APPEALS

Subpart 533.1—Protests

Subpart 533.2—Disputes and Appeals

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

SOURCE: 64 FR 37224, July 9, 1999, unless otherwise noted.

Subpart 533.1—Protests

533.103 Protests to the agency.

533.103–1 Filing a protest.

(a) Any protester filing an agency protest has the choice of requesting either that the contracting officer or the Agency Protest Official decide the protest. If the protest is silent on this matter, the contracting officer will decide the protest. If a party requests a review at a level above the contracting officer, the Agency Protest Official will decide the protest. The decision by the Agency Protest Official for GSA is an alternative to a decision by the contracting officer on a protest. The Agency Protest Official for GSA will not consider an appeal of the contracting officer's decision on an agency protest.