

GSA ORDER

Subject: GSAR Amendment 2012-01, GSAR Case 2010-G509, Reinstatement of Coverage Pertaining to Final Payment under Construction and Building Service Contracts (Change 53)

1. Purpose. This order transmits a revision to the General Services Administration Acquisition Manual (GSAM).
2. Background. General Services Administration (GSA) issued a proposed rule in the *Federal Register* at 76 FR 13329, on March 11, 2011 to restore coverage on making final payments under construction and building service contracts. A release of claims is a requirement under GSAR clause 552.232-72, Final Payment, precedent to making final payment under construction and building service contracts. GSA Contracting Officers have relied upon GSA Form 1142 to obtain the release of claims under these contracts. However, GSAR 532.905-71, which prescribed the use of GSA Form 1142 for releases of claims under construction and building service contracts, was inadvertently deleted as part of the Rewrite of GSAR Part 532, Contract Financing published in the *Federal Register* at 74 FR 54915, on October 29, 2009, GSAR Case 2006-G515. GSAR 532.905-71 also provided guidance on deductions to final payments under construction and building service contracts.

GSA published GSAR Case 2010-G509, Change 53, final rule, in the *Federal Register* at 77 FR 6988 on February 10, 2012.

3. Effective date. March 12, 2012.
4. Explanation of changes. This change is to amend the GSAM by restoring guidance on the release of claims after completion of construction and building service contracts to ensure contractors are paid in accordance with their contract requirements and for work performed. This guidance prescribes the use of GSA Form 1142, Release of Claims, for releases of claims under construction and building service contracts. Since the referenced GSAR Rewrite of Part 532 (74 FR 54915) also deleted GSAR 532.905-70, this coverage is restored at GSAR 532.905-70 vice GSAR 532.905-71.
5. Cancellations and Rescissions. None.

6. Filing instructions. Insert the following pages to the GSAM:

Remove Pages

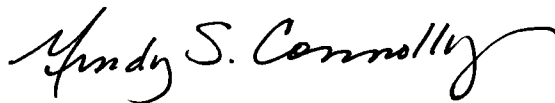
Part 532 TOC
pp. 532-i and 532-ii
532-3 and 532-4

552-25 and 552-26

Insert Pages

Part 532 TOC
pp. 532-i and 532-ii
532-3 and 532-4

552-25 and 552-26



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PART 532—CONTRACT FINANCING

Sec.

Subpart 532.1—Non-Commercial Item Purchase Financing		Subpart 532.8—Assignment of Claims	
532.111	Contract clauses for non-commercial purchases.	532.805	Procedure.
532.112	Payment of subcontractors under contracts for non-commercial items.	532.806	Contract clauses.
532.112-1	Subcontractor assertions of nonpayment.	Subpart 532.9—Prompt Payment	
Subpart 532.4—Advance Payments for Non-Commercial Items		5532.904	Determining payment due dates.
532.402	General.	532.905	Payment documentation and process.
532.407	Interest.	532.905-70	Final payment—construction and building service contracts.
Subpart 532.5—Progress Payments Based on Costs		532.908	Contract clauses.
532.501	General.	Subpart 532.11—Electronic Funds Transfer	
532.501-2	Unusual progress payments.	Subpart 532.70—Authorizing Payment by Government Charge Card	
532.502	Preaward matters.	532.7002	Solicitation requirements.
532.502-2	Contract finance office clearance.	532.7003	Contract clause.
532.503-5	Administration of progress payments.	Subpart 532.71—[Reserved]	
532.503-6	Suspension or reduction of payments.	Subpart 532.72—Payments Under Contracts Subject to Audit	
532.503-9	Liquidation rates—alternate method.	532.7201	General.
Subpart 532.6—Contract Debts		532.7202	Submission and processing of invoices or vouchers.
532.606	Debt determination and collection.	532.7203	Action upon receipt of an audit report.
Subpart 532.7—Contract Funding		532.7204	Suspension and disapproval of amounts claimed.
532.700	Scope of subpart.		
532.702	Policy.		
532.703	Contract funding requirements.		

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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 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) Contracting officers may not process the final payment on construction or building service contracts until the contractor submits a properly executed GSA Form 1142, Release of Claims, except as provided in paragraph (c) of this section

(c) In cases where, after 60 days from the initial attempt, the contracting officer is unable to obtain a release of claims from the contractor, the final payment may be processed with the approval of assigned legal counsel.

(d) 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) Amount withheld for improper payment of labor wages.

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

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.

Subpart 532.11—Electronic Funds Transfer

[Reserved]

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 Governmentwide 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”

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—[Reserved]

Subpart 532.72—Payments Under Contracts Subject to Audit

532.7201 General.

(a) The contracting officer should not approve an initial invoice or voucher before having consulted with the Assistant Inspector General for Auditing or the Field Audit Office regarding cost or other supporting data as required under:

- (1) Cost-reimbursement type contracts.
- (2) The cost-reimbursement portion of fixed-price type contracts.
- (3) Time and materials or labor-hour contracts.
- (4) Fixed-price contracts providing for any of the following:
 - (i) Progress payments based on costs.
 - (ii) Advance payments.
 - (iii) Guaranteed loans.
 - (iv) Cost-based Incentives or redetermination.

(b) Except for fixed-price contracts with redetermination where no price revision (upward or downward) is to be made, the contracting officer shall not approve the final payment invoice or voucher for contracts specified in [532.7201\(a\)](#) or the final payment or settlement of other contracts subject to audit prior to:

- (1) Receipt and review of the contract audit report; or
- (2) Consultation with the Assistant Inspector General for Auditing or the Field Audit Office if no audit is to be conducted.

532.7202 Submission and processing of invoices or vouchers.

(a) Contractors should be required to submit invoices or vouchers to the contracting officer. The date on which the contracting officer receives the invoice or voucher 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 is responsible for making the required deduction, except as provided in [532.7203](#).

(b) Subject to [532.7201](#), the contracting officer should note approval of any payment on (or attached to) the invoice or voucher submitted by the contractor, then forward the invoice or voucher to the appropriate contract finance office for retention after certification and scheduling for payment by a disbursing office.

532.7203 Action upon receipt of an audit report.

Audit reports will be furnished to the contracting officer and Field Audit Office, with a copy to the appropriate contract finance office. Upon receipt of an audit report, pursuant to contract terms, the contracting officer is responsible for determining the allowability of all costs covered by audit. While the auditor's recommendations should be given full consideration, the contracting officer must make an independent business judgment before taking any action based on the audit report. If there is doubt or question about the auditor's recommendations, the contracting officer is required to follow the audit resolution procedures in GSA Order ADM P 2030.2C, Audit Resolution and Followup System, Chapter 4, paragraph 3.

532.7204 Suspension and disapproval of amounts claimed.

(a) The contracting officer shall notify the appropriate contract finance office in writing when amounts claimed for payment are—

- (1) Suspended;
- (2) Disapproved as not being allowable according to contract terms; or
- (3) Not allocable to the contract.

(b) The contracting officer's notice forms the basis for the contract finance office to issue GSA Form 533, Administrative Difference Statement. Finance will attach a copy of GSA Form 533 to each copy of the invoice or voucher from which the deduction has been made, and will include an explanation of the deduction.

(a)(6)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day without incurring a late payment interest penalty.

(i) A proper invoice was received by the designated billing office.

(ii) A receiving report or other Government documentation authorizing payment was processed, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(7) *Computing penalty amount.* The interest penalty shall be at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the day after the due date, except where the interest penalty is prescribed by other governmental authority (e.g., tariffs). This rate is referred to as the “Renegotiation Board Interest Rate,” and it is published in the Federal Register semiannually on or about January 1 and July 1. The interest penalty shall accrue daily on the invoice principal payment amount approved by the Government until the payment date of such approved principal amount; and will be compounded in 30-day increments inclusive from the first day after the due date through the payment date. That is, interest accrued at the end of any 30-day period will be added to the approved invoice principal payment amount and will be subject to interest penalties if not paid in the succeeding 30-day period. If the designated billing office failed to notify the Contractor of a defective invoice within the periods prescribed in paragraph (c)(5) of this clause, the due date on the corrected invoice will be adjusted by subtracting from such date the number of days taken beyond the prescribed notification of defects period. Any interest penalty owed the Contractor will be based on this adjusted due date. Adjustments will be made by the designated payment office for errors in calculating interest penalties.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance shall be deemed to have occurred constructively on the 7th day (unless otherwise specified in this contract) after the Contractor delivered the supplies or performed the services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. In the event that actual acceptance occurs within the constructive acceptance period, the determination of an interest penalty shall be based on the actual date of acceptance. The constructive acceptance requirement does not, however, compel Government officials

to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The following periods of time will not be included in the determination of an interest penalty:

(A) The period taken to notify the Contractor of defects in invoices submitted to the Government, but this may not exceed 7 days (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils).

(B) The period between the defects notice and resubmission of the corrected invoice by the Contractor.

(C) For incorrect electronic funds transfer (EFT) information, in accordance with the EFT clause of this contract.

(iii) Interest penalties will not continue to accrue after the filing of a claim for such penalties under the clause at 52.233-1, Disputes, or for more than 1 year. Interest penalties of less than \$1 need not be paid.

(iv) Interest penalties are not required on payment delays due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance or on amounts temporarily withheld or retained in accordance with the terms of the contract. Claims involving disputes, and any interest that may be payable, will be resolved in accordance with the clause at 52.233-1, Disputes.

(8) *Prompt payment discounts.* An interest penalty also shall be paid automatically by the designated payment office, without request from the Contractor, if a discount for prompt payment is taken improperly. The interest penalty will be calculated as described in paragraph (c)(7) of this clause on the amount of discount taken for the period beginning with the first day after the end of the discount period through the date when the Contractor is paid.

(9) *Additional interest penalty.* (i) If this contract was awarded on or after October 1, 1989, a penalty amount, calculated in accordance with paragraph (a)(9)(iii) of this clause, shall be paid in addition to the interest penalty amount if the Contractor—

(A) Is owed an interest penalty of \$1 or more;

(B) Is not paid the interest penalty within 10 days after the date the invoice amount is paid; and

(C) Makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(9)(ii) of this clause, postmarked not later than 40 days after the invoice amount is paid.

(ii) (A) Contractors shall support written demands for additional penalty payments with the following data. No additional data shall be required. Contractors shall—

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all

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overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) Demands must be postmarked on or before the 40th day after payment was made, except that—

(1) If the postmark is illegible or nonexistent, the demand must have been received and annotated with the date of receipt by the designated payment office on or before the 40th day after payment was made; or

(2) If the postmark is illegible or nonexistent and the designated payment office fails to make the required annotation, the demand's validity will be determined by the date the Contractor has placed on the demand; provided such date is no later than the 40th day after payment was made.

(iii) (A) The additional penalty shall be equal to 100 percent of any original late payment interest penalty, except—

(1) The additional penalty shall not exceed \$5,000;

(2) The additional penalty shall never be less than \$25; and

(3) No additional penalty is owed if the amount of the underlying interest penalty is less than \$1.

(B) If the interest penalty ceases to accrue in accordance with the limits stated in paragraph (a)(5)(iii) of this clause, the amount of the additional penalty shall be calculated on the amount of interest penalty that would have accrued in the absence of these limits, subject to the overall limits on the additional penalty specified in subdivision (a)(7)(iii)(A) of this clause.

(C) For determining the maximum and minimum additional penalties, the test shall be the interest penalty due on each separate payment made for each separate contract. The maximum and minimum additional penalty shall not be based upon individual invoices unless the invoices are paid separately. Where payments are consolidated for disbursing purposes, the maximum and minimum additional penalty determination shall be made separately for each contract therein.

(D) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) *Contract financing payments.* (1) Due dates for recurring financing payments. If this contract provides for contract

financing, requests for payment shall be submitted to the designated billing office as specified in this contract or as directed by the Contracting Officer. Contract financing payments shall be made on the *[insert day as prescribed by Agency head; if not prescribed, insert 30th day]* day after receipt of a proper contract financing request by the designated billing office. In the event that an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the due date specified.

(2) Due dates for other contract financing. For advance payments, loans, or other arrangements that do not involve recurring submissions of contract financing requests, payment shall be made in accordance with the corresponding contract terms or as directed by the Contracting Officer.

(3) Interest penalty not applicable. Contract financing payments shall not be assessed an interest penalty for payment delays.

(c) Fast payment procedure due dates. If this contract contains the clause at 52.213-1, Fast Payment Procedure, payments will be made within 15 days after the date of receipt of the invoice.

(End of clause)

552.232-70 [Reserved]

552.232-71 [Reserved]

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 (MAR 2012)

Before final payment is made, the Contractor shall complete and furnish the Contracting Officer with GSA Form 1142, Release of Claims, releasing all claims against the Government relating to this contract, other than claims in stated amounts that are specifically excepted by the Contractor from the release. If the Contractor's claim to amounts payable under the contract has been assigned under the Assignment of Claims Act of 1940, as amended (31 U.S.C. 3727, 41 U.S.C. 15), a release may also be required of the assignee.

(End of clause)