

GSA ORDER

Subject: General Services Administration Acquisition Manual; GSAR Case 2019-G503 Streamline GSA Commercial Contract Clause Requirements

1. **Purpose.** This order transmits a revision to the General Services Administration Acquisition Manual (GSAM) to make several changes to GSAR Clauses 552.212-71 and 552.212-72, and other related GSAR sections to clarify and streamline the clauses contracting officers should reference in GSA acquisitions for commercial products and commercial services.
2. **Background.** As part of GSA’s regulatory reform efforts, GSA has been conducting reviews of the GSAM. Through this effort, GSA’s Office of Governmentwide Policy identified areas of improvement for procuring commercial products and services. Specifically, GSA identified improvements needed in three areas: a) reorganizing clauses and applicable parts so contracting officers could more easily identify which clauses should be used in solicitations and contracts, b) relocation or removal of outdated or duplicative clauses, and c) editorial changes. GSA published the proposed rule in the Federal Register at 87 FR 77783 on December 20, 2022 and no public comments were received.

A breakdown of the revision for each commercial clause is reflected in the tables below.

GSAR 552.212-71 - Clauses Implementing GSA Policy

Clause Incorporated by Reference	Reason for Revision
552.215-72 Price Adjustment—Failure to Provide Accurate Information	Reference to clause removed because the clause applies exclusively to FSS contracts and is not appropriate for broad commercial procurements. This is moved to 538.273, and renumbered as 552.238-117.
552.228-70 Workers’ Compensation Laws	Reference to clause removed as it was deleted by GSAR Case 2006-G517 and is now obsolete.
552.232-71 Adjusting Payment	Reference to clause removed as it was deleted by GSAR Case 2006-G515 and is now obsolete.
552.232-72 - Final Payment	Title of referenced clause revised from “Final

Under Building Services Contracts	Payment” to current clause title, “Final Payment Under Building Services Contracts”
552.232-73 Availability of Funds	Reference to clause removed as it was deleted by GSAR Case 2006-G515 and is now obsolete.
552.232-78 Payment Information	Reference to clause removed as it was deleted by GSAR Case 2006-G515 and is now obsolete.
552.246-76 Warranty of Pesticides	Reference to clause removed as it was deleted by GSAR Case 2008-G514 and is now obsolete.

GSAR 552.212-72 - Clauses Implementing Law

Clause Incorporated by Reference	Reason for Revision
552.238-73 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped	Reference to clause removed because the clause applies exclusively to FSS contracts and is not appropriate for broad commercial procurements. This is sufficiently covered under 538.273.
552.238-78 Identification of Products That Have Environmental Attributes	Reference to clause removed because the clause applies exclusively to FSS contracts and is not appropriate for broad commercial procurements. This is sufficiently covered under 538.273.
552.215-70 Examination of Records	Reference to clause relocated from GSAR 552.212-71 to GSAR 552.212-72 because it is required to implement statute, Examination of Facilities and Records of Contractor, 41 U.S.C. § 4706.
552.232-23 Assignment of Claims	Reference to clause relocated from GSAR 552.212-71 to GSAR 552.212-72 because it is required to implement statute, Assignment of Claims Act, 41 U.S.C. § 6305, et. al.

3. Effective date. October 12, 2023.
4. Explanation of changes. This amendment includes regulatory changes only. For full text changes of the amendment see Attachment A, GSAR Text Line-In/Line-Out.

This amendment revises the language of the following GSAR subparts, changes summarized below:

GSAR Part 515—Contracting By Negotiation

- 515.408(a) - Removed (1) and renumbered remaining items.
- 515.408(b) - Removed the first sentence in the introductory text. Removed reference to definition of “concession: and “discount” in 552.212-70.
- 515.408(c) - Removed the first sentence in Column 2.
- 515.408(d) - Removed all text in this paragraph.
- 515.408(e) - Redesignated paragraph to (d).

GSAR Part 538—Federal Supply Schedule Contracting

- 538.273(d) - Revised the introductory text of paragraph (22) for clarity. Added (d) (37) 552.238-117, *Price Adjustment—Failure to Provide Accurate Information* to the list of provisions for FSS solicitations.

GSAR Part 552—Administrative Matters

- 552.212-71 - Replaced date of clause for new date.
- 552.212-71(a) - Transferred instructional language for contracting officers to check clauses and delete those that do not apply and add clause date into paragraph.
- 552.212-71(b) -
Removed the following clauses from the list:
 - 552.215-70 Examination of Records by GSA
 - 552.216-72 Price Adjustment- Failure to Provide Accurate Information
 - 552.228-70 Workers’ Compensation Laws
 - 552.232-23 Assignment of Claims
 - 552.232-71 Adjusting Payments
 - 555.232-73 Availability of Funds
 - 552.232-78 Payment Information
 - 552.246-76 Warranty of PesticidesAdded correct title to clause 552.232-72
- 552.212-72 - Transferred instructional language for contracting officers to check clauses and delete those that do not apply and add clause date.
- 552.212-72(b) -
Added the following clauses to the list of appropriate clauses:
 - 552.215-70 Examination of Records by GSA
 - 552.232-23 Assignment of ClaimsDeleted the following clauses from the list of appropriate clauses:
 - 552.238-73 Identification of Electronic Office Equipment Providing Accessibility for the Handicapped
 - 552.238-78 Identification of Products That Have Environmental Attributes

- 552.215-72 - Deleted content and reserved section.
- 552.238-117 - Added to list of clauses.
- 552.300 - Updated to remove 552.215-72 and add 552.238-117.

5. Point of contact. For clarification of content, contact Mr. Nicholas Giles or Ms. Johnnie McDowell, GSA Acquisition Policy Division, at gsarpolicy@gsa.gov.

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TAB A – GSAR Text, Line-In/Line-Out

GSAM Baseline: Change 166 effective 05/05/2023

- Additions to baseline made by rule are indicated by [bold text in brackets]
- Deletions to baseline made by rule are indicated by ~~strikethroughs~~
- Five asterisks (*****) indicate that there are no revisions between the preceding and following sections
- Three asterisks (***) indicate that there are no revisions between the material shown within a subsection

Part 515 - Contracting by Negotiation
Subpart 515.4 - Contract Pricing

515.408 Solicitation provisions and contract clauses.

MAS Requests for Information Other Than Cost or Pricing Data

(a) ***

~~(1) An offer prepared and submitted in accordance with the clause at 552.212-70, Preparation of Offer (Multiple Award Schedule).~~

~~(2) [(1)] ***~~

~~(3) [(2)] ***~~

~~(4) [(3)] ***~~

(b) ***

Commercial Sales Practices Format

Name of Offeror _____ SIN(s) _____

~~Note: Please refer to Clause 552.212-70, Preparation of Offer (Multiple Award Schedule), for additional information concerning your offer. Provide the following~~

information for each SIN (or group of SINs or SubSIN for which information is the same).

* * *

(3) Based on your written discounting policies (standard commercial sales practices in the event you do not have written discounting policies), are the discounts and any concessions which you offer the Government equal to or better than your best price (discount and concessions in any combination) offered to any customer acquiring the same items regardless of quantity or terms and conditions? YES__ NO__ (See definition of “concession” and “discount” in 552.212-70.)

* * *

(c) * * *

Figure 515.4 - Instructions for Commercial Sales Practices Format

* * *

Column 1 - Identify the Applicable Customer or Category of Customer

* * *

Column 2 - Identify the Discount

~~The term “discount” is as defined in solicitation clause 552.212-70, Preparation of Offer (Multiple Award Schedule).~~ Indicate the best discount (based on your written discounting policies or standard commercial discounting practices if you do not have written discounting policies) at which you sell to the customer or category of customer identified in column 1, without regard to quantity; terms and conditions of the agreements under which the discounts are given; and whether the agreements are written or oral. Net prices or discounts off of other price lists should be expressed as percentage discounts from the price list which is the basis of your offer. If the discount disclosed is a combination of various discounts (prompt payment, quantity, etc.), the percentage should be broken out for each type of discount. If the price lists which are the basis of the discounts given to the customers identified in the chart are different than the price list submitted upon which your offer is based, identify the type or title and date of each price list. The contracting officer may require submission of these price lists. To expedite evaluation, offerors may provide these price lists at the time of submission.

* * *

~~(d) When the contract contains the basic clause 552.238-80 Industrial Funding Fee and Sales Reporting, insert the clause at 552.212-72, Price Adjustment-Failure to Provide Accurate Information, in solicitations and contracts under the MAS program~~

~~(e) [d]~~ * * *

* * * * *

Part 538 - Federal Supply Schedule Contracting
Subpart 538.2 - Establishing and Administering Federal Supply Schedules

* * * * *

538.273 FSS solicitation provisions and contract clauses.

(a) * * *

(b) * * *

(c) * * *

(d) As prescribed in this paragraph, insert the following clauses as an addendum to Clause 52.212-4, Contract Terms and Conditions—Commercial Products and Commercial Services:

* * *

(22) 552.238-98, Clauses for Overseas Coverage. Use only in FSS solicitations and contracts when overseas acquisition is contemplated. The following **[GSAR]** clauses and **[GSAR]** provisions **[in paragraphs (d)(22)(i) through (xi) of this subsection]** shall also be inserted in full text, when applicable.

* * *

[(37) 552.238-117, Price Adjustment—Failure to Provide Accurate Information. Use only in FSS solicitations and contracts under the MAS program. This clause is

used when the contract contains the basic clause 552.238-80 Industrial Funding Fee and Sales Reporting.]

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Part 552—Administrative Matters
Subpart 552.2 - Text of Provisions and Clauses

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552.212 – [Reserved]

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552.212-70 [Reserved]

552.212-71 Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Products and Commercial Services.

As prescribed in 512.301(a)(1), insert the following clause:

CONTRACT TERMS AND CONDITIONS APPLICABLE TO GSA ACQUISITIONS OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (**[DATE]** JAN-2022)

(a) The Contractor agrees to comply with any clause that is incorporated herein by reference to implement agency policy applicable to acquisition of commercial products, including commercial components, and commercial services. []The clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. **[The Contracting Officer should check the clauses in paragraph (b) that apply or delete the clauses that do not apply from the list. The Contracting Officer may add the date of the clause if desired for clarity.]** The GSAR clauses[]in paragraph (b) of this section are incorporated by reference:[.]

~~[The Contracting Officer should check the clauses that apply or delete the clauses that do not apply from the list. The Contracting Officer may add the date of the clause if desired for clarity.]~~

(b) Clauses.

[552.203-71](#) Restriction on Advertising

[552.211-73](#) Marking

~~[552.215-70](#) Examination of Records by GSA~~

~~[552.215-72](#) Price Adjustment—Failure to Provide Accurate Information~~

[552.219-70](#) Allocation of Orders—Partially Set-Aside Items

~~552.228-70 Workers' Compensation Laws~~

[552.229-70](#) Federal, State, and Local Taxes

~~[552.232-23](#) Assignment of Claims~~

~~[552.232-71](#) Adjusting Payments~~

[552.232-72](#) Final Payment [**Under Building Services Contracts**]

~~[552.232-73](#) Availability of Funds~~

~~[552.232-78](#) Payment Information~~

[552.237-71](#) Qualifications of Employees

[552.242-70](#) Status Report of Orders and Shipments

~~552.246-76 Warranty of Pesticides~~

(End of clause)

552.212-72 Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Products and Commercial Services.

As prescribed in [512.301\(a\)\(2\)](#), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO GSA ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (**[DATE]** ~~JAN 2022~~)

The Contractor agrees to comply with any provision or clause that is incorporated herein by reference to implement provisions of law or Executive Orders applicable to acquisition of commercial items or components. The provision or clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless

otherwise stated herein. **[The contracting officer should either check the provisions and clauses that apply or delete the provisions and clauses that do not apply from the lists in paragraphs (a) and (b). The contracting officer may add the date of the provision or clause if desired for clarity.]** The **[GSAR]** following provisions **[in paragraph (a)]** and **[GSAR]** clauses **[in paragraph (b)]** are incorporated by reference: [.]

~~[The contracting officer should either check the provisions and clauses that apply or delete the provisions and clauses that do not apply from the list. The contracting officer may add the date of the provision or clause if desired for clarity.]~~

(a) *Provisions.* * * *

(b) *Clauses.*

[[552.215-70](#) Examination of Records by GSA]

[552.223-70](#) Hazardous Substances

[552.223-71](#) Nonconforming Hazardous Material

[552.223-73](#) Preservation, Packaging, Packing, Marking, and Labeling of Hazardous Materials (HAZMAT) for Shipments.

[[552.232-23](#) Assignment of Claims]

~~[552.238-73](#) Identification of Electronic Office Equipment Providing Accessibility for the Handicapped.~~

~~[552.238-78](#) Identification of Products That Have Environmental Attributes.~~

(End of clause)

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552.215 [Reserved]

552.215-70 Examination of Records by GSA.

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552.215-72 **[Reserved]** ~~Price Adjustment—Failure to Provide Accurate Information.~~

As prescribed in 515.408(d), insert the following clause:

~~Price Adjustment—Failure to Provide Accurate Information (Aug 1997)~~

~~(a) The Government, at its election, may reduce the price of this contract or contract modification if the Contracting Officer determines after award of this contract or contract modification that the price negotiated was increased by a significant amount because the Contractor failed to:~~

~~(1) Provide information required by this solicitation/contract or otherwise requested by the Government; or~~

~~(2) Submit information that was current, accurate, and complete; or~~

~~(3) Disclose changes in the Contractor's commercial pricelist(s), discounts or discounting policies which occurred after the original submission and prior to the completion of negotiations.~~

~~(b) The Government will consider information submitted to be current, accurate and complete if the data is current, accurate and complete as of 14 calendar days prior to the date it is submitted.~~

~~(c) If any reduction in the contract price under this clause reduces the price for items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States—~~

~~(1) The amount of the overpayment; and~~

~~(2) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective each quarter prescribed by the Secretary of Treasury under 26 U.S.C.6621(a)(2).~~

~~(d) Failure to agree on the amount of the decrease shall be resolved as a dispute.~~

~~(e) In addition to the remedy in paragraph (a) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.~~

~~(End of clause)~~

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552.238 [Reserved]

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[552.238-117 Price Adjustment—Failure to Provide Accurate Information.

As prescribed in 538.273(d)(37), insert the following clause:

Price Adjustment—Failure to Provide Accurate Information (DATE)

(a) The Government, at its election, may reduce the price of this contract or contract modification if the Contracting Officer determines after award of this contract or contract modification that the price negotiated was increased by a significant amount because the Contractor failed to:

(1) Provide information required by this solicitation/contract or otherwise requested by the Government; or

(2) Submit information that was current, accurate, and complete; or

(3) Disclose changes in the Contractor's commercial pricelist(s), discounts or discounting policies which occurred after the original submission and prior to the completion of negotiations.

(b) The Government will consider information submitted to be current, accurate and complete if the data is current, accurate and complete as of 14 calendar days prior to the date it is submitted.

(c) If any reduction in the contract price under this clause reduces the price for items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States—

(1) The amount of the overpayment; and

(2) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective each quarter prescribed by the Secretary of Treasury under 26 U.S.C.6621(a)(2).

(d) Failure to agree on the amount of the decrease shall be resolved as a dispute.

(e) In addition to the remedy in paragraph (a) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)]

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Subpart 552.3 - Provision and Clause Matrixes

552.300 Scope of subpart.

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Matrix of Provisions and Clauses:

			Format			Type of Contract		
Number	Title	Prescription	P ORC	IBR	UCF	***	FSS*	***

552.215-72	Price Adjustment—Failure to Provide Accurate Information	515.408(d)	C	Y	I		A	

552.238-117	Price Adjustment—Failure to Provide Accurate Information	538.273(d)	C	Y	I		A	

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