

## GENERAL SERVICES ADMINISTRATION

### 48 CFR Parts 532 and 552

[GSAR Case 2022–G513; Docket No. GSA–GSAR–2023–0008; Sequence No. 1]

RIN 3090–AK55

### General Services Administration Acquisition Regulation; Removing the GSA Payments Clause for Non- Commercial Contracts

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

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration is amending the General Services Administration Acquisition Regulation (GSAR) to remove clause 552.232–1 *Payments*. This clause requires the Government to pay a contractor without submission of an invoice or voucher for non-commercial fixed price contracts for supplies or services.

**DATES:** *Effective:* August 2, 2024.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Ms. Taylor McDaniels, Procurement Analyst; Mr. J. Curtis Hauschildt, Procurement Analyst; or Mr. Bryon Boyer, Procurement Analyst, at [gsarpolicy@gsa.gov](mailto:gsarpolicy@gsa.gov) or 817–850–5580. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov) or 202–501–4755. Please cite GSAR Case 2022–G513.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

This final rule amends the General Services Administration Acquisition Regulation to remove clause 552.232–1 *Payments*. The General Services Administration conducts routine reviews of its acquisition regulations to identify outdated content and to ensure there is no unnecessary duplication of or conflict with the Federal Acquisition Regulation (FAR), pursuant to FAR 1.304. Through one of these reviews in Fiscal Year (FY) 2022, GSA identified that GSAR clause 552.232–1 *Payments* conflicts with FAR clause 52.232–1 *Payments* and should be removed. As this GSAR clause is over 10 years old, GSA does not have any historical information that explains why the GSAR clause was initially created. This rule seeks to rectify the issue.

#### II. Discussion and Analysis

##### A. Summary of Significant Changes

There are no changes from the proposed rule in this final rule.

##### B. Analysis of Public Comments

A proposed rule was submitted for public comment on February 28, 2023, and no comments were received by the closing date of May 1, 2023.

##### C. Expected Cost Impact to the Public

This rule removes one conflicting GSAR clause regarding payments for non-commercial fixed price contracts for supplies or services. GSA believes the exception to invoicing in the GSAR clause is not currently followed, and applicable contractors are already following the invoice requirements of the FAR clause. However, GSA conducted the analysis below demonstrating that the expected impact of this rule is not significant.

With this change, contractors with non-commercial, fixed-price, contracts for supplies or services will now have to submit proper invoices in order to receive payments in accordance with FAR 52.232–1 *Payments*. Information generated from the System for Award Management ([SAM.gov](http://SAM.gov)) for FY 2023 reflects approximately 142,120 GSA contracts were awarded for non-commercial fixed price contracts for supplies or services across approximately 735 separate contractors.

Consistent with the methodology and analysis for the FAR clause information collection<sup>1</sup>, the affected contracts on average are estimated to have 6 invoices per contract per year, for a total of 852,720 total responses. Each response is estimated to require 0.25 hours, for a total of 213,180 hours of total burden. Applying a GS–12 pay rate, the total cost is estimated to be \$12,517,930<sup>2</sup>, or approximately \$17,031 per contractor which is not significant.

#### III. Executive Orders 12866, 13563 and 14904

Executive Order (E.O.) 12866 (Regulatory Planning and Review) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. E.O. 14094 (Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in E.O. 12866 and E.O. 13563. OIRA has determined this rule to not be a significant regulatory action and, therefore, is not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

#### IV. Congressional Review Act

OIRA has determined that this rule is not a major rule under 5 U.S.C. 804(2). Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a “major rule” may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The General Services Administration will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register**.

#### V. Regulatory Flexibility Act

GSA does not expect this rule to 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 is a noncontroversial action that only impacts the agency’s internal operating procedures, and GSA anticipates no significant adverse comments. Therefore, a Final Regulatory Flexibility Analysis has not been prepared.

#### VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under the Office of Management and Budget Control Number 9000–0073, *Certain Federal Acquisition Regulation Part 32 Requirements*.

<sup>1</sup> Office of Management and Budget Control Number 9000–0073, *Certain Federal Acquisition Regulation Part 32 Requirements*.

<sup>2</sup> The hourly rate for GS–12 is \$58.72 (\$43.10 as a GS–12/step 5 salary OPM 2023 pay scale Rest of US, with a 36.25% fringe factor pursuant to OMB memorandum M–08–13).

**List of Subjects in 48 CFR Parts 532 and 552**

Government procurement.

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*Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide 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.**

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.

**PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES****552.232–1 [Removed and Reserved]**

■ 3. Remove and reserve section 552.232–1.

**552.232–5 [Amended]**

■ 4. Amend section 552.232–5 by removing from the introductory text “552.111(b)” and adding “532.111” in its place.

[FR Doc. 2024–14352 Filed 7–2–24; 8:45 am]

**BILLING CODE 6820–61–P**

**DEPARTMENT OF TRANSPORTATION****Office of the Secretary****49 CFR Parts 23 and 26**

[Docket No. DOT–OST–2022–0051]

RIN 2105–AE98

**Disadvantaged Business Enterprise and Airport Concession Disadvantaged Business Enterprise Program Implementation Modifications; Corrections**

**AGENCY:** Office of the Secretary (OST), U.S. Department of Transportation (DOT or the Department).

**ACTION:** Correcting amendments.

**SUMMARY:** The U.S. Department of Transportation (DOT or Department) is correcting a final rule that appeared in

the **Federal Register** on April 9, 2024, concerning the Disadvantaged Business Enterprise (DBE) and Airport Concession Disadvantaged Business Enterprise (ACDBE) program regulations.

**DATES:** Effective on July 3, 2024.

**FOR FURTHER INFORMATION CONTACT:** For questions related to the final rule or general information about the DBE and ACDBE Program regulations, please contact Marc D. Pentino, Associate Director, Disadvantaged Business Enterprise Programs Division, Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W78–302, Washington, DC 20590 at 202–366–6968/[marc.pentino@dot.gov](mailto:marc.pentino@dot.gov) or Lakwame Anyane-Yebova, ACDBE and DBE Compliance Lead, Disadvantaged Business Enterprise Programs Division, Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W78–103, Washington, DC 20590, at 202–366–9361/[Lakwame.Anyane-Yebova@dot.gov](mailto:Lakwame.Anyane-Yebova@dot.gov). Questions concerning part 23 amendments should be directed to Marcus England, Office of Civil Rights, National Airport Civil Rights Policy and Compliance (ACR–4C), Federal Aviation Administration, 600 Independence Ave. SW, Washington, DC 20591 at 202–267–0487/[marcus.england@faa.gov](mailto:marcus.england@faa.gov) or Nicholas Giles, Office of Civil Rights, National Airport Civil Rights Policy and Compliance (ACR–4C), Federal Aviation Administration, 600 Independence Ave. SW, Washington, DC 20591, at 202–267–0201/[nicholas.giles@faa.gov](mailto:nicholas.giles@faa.gov). Office hours are from 8 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:****Background**

The Department identified technical errors in the **Federal Register** Document 2024–05583 published in the **Federal Register** on April 9, 2024 (89 FR 24898); “Disadvantaged Business Enterprise and Airport Concession Disadvantaged Business Enterprise Program Implementation Modifications”. This document corrects technical/typographical errors. It also clarifies that the current personal net worth (PNW) limit as of May 9, 2024 is \$2.047 million, as detailed in sections §§ 23.35(a) and 26.68(a) and as indicated in the preamble to the final rule. Adjustments to this limit will start on May 9, 2027, based on the formula in sections §§ 23.35(b), (c) and 26.68(d). For FTA-assisted programs, FTA Tier II

recipients do not need to set goals if they operate a race-neutral DBE program. Additionally, this document clarifies that Good Faith Efforts are required in certain situations described in 26.53(g).

**List of Subjects in 49 CFR Part 23 and 26**

Administrative practice and procedure, Airports, Civil Rights, Government contracts, Grant programs—transportation; Mass transportation, Minority Businesses, Reporting and recordkeeping requirements.

Accordingly, 49 CFR parts 23 and 26 are corrected by making the following correcting amendments.

**PART 23—PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS**

■ 1. The authority citation for part 23 is revised to read as follows:

**Authority:** 49 U.S.C. 47107 and 47113; 42 U.S.C. 2000d; 49 U.S.C. 322; E.O. 12138, 44 FR 29637, 3 CFR, 1979 Comp., p. 393.

■ 2. Revise § 23.35 to read as follows:

**§ 23.35 What role do business development and mentor-protégé programs have in the DBE program?**

(a) An owner whose PNW exceeds \$2,047,000 is not presumed economically disadvantaged.

(b) The Department will adjust the PNW cap by May 9, 2027 by multiplying \$1,600,000 by the growth in total household net worth since 2019 as described by “Financial Accounts of the United States: Balance Sheet of Households (Supplementary Table B.101.h)” produced by the Board of Governors of the Federal Reserve (<https://www.federalreserve.gov/releases/z1/>), and normalized by the total number of households as collected by the Census in “Families and Living Arrangements” (<https://www.census.gov/topics/families/families-and-households.html>) to account for population growth. The Department will adjust the PNW cap every 3 years on the anniversary of the adjustment date described in this section. The Department will post the adjustments on the Departmental Office of Civil Rights’ web page, available at <https://www.Transportation.gov/DBEPNW>. Each such adjustment will become the currently applicable PNW limit for purposes of this regulation.

(c) The Department will use formula 1 to this paragraph (c) to adjust the PNW limit:

**Formula 1 to Paragraph (c)**