

GSA ORDER

Subject: GSAR Case 2006-G520, Rewrite of GSAR Part 525, Foreign Acquisition (Change 30)

1. Purpose. This order transmits a revision to the General Services Administration (GSAM).
2. Background. The General Services Administration (GSA) issued a final rule to amend the General Services Administration Acquisition Regulation (GSAR) as part of the GSAM Rewrite Project. Current GSAR material is outdated and therefore deleted.

GSA published GSAR Case 2006-G520, Change 30, final rule, in the *Federal Register* at 74 FR 20894, May 6, 2009.

3. Effective date. July 6, 2009.
4. Explanation of changes. The GSAM is amended by revising and updating references and titles and deleting redundant supplementary material. Outdated material is deleted, and other material in this part is updated and clarified.

Subpart 525.3, Balance of Payments Program, Subpart 525.5, Evaluating Foreign Offers—Supply Contracts, Subpart 525.6, Trade Sanctions, Subpart 525.11, Solicitation Provisions and Contract Clauses and its accompanying clause at 552.225-70, Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware, are deleted. A new Subpart 525.10, Additional Foreign Acquisition Regulations, is added to include specialty metals coverage applicable to DoD assisted acquisitions. The new subpart implements three Office of the Chief Acquisition Officer (OCAO) acquisition letters.

Material at Subparts 525.1 and 525.2 covering exceptions to the Buy American Act for supplies and construction materials, respectively, has been expanded and clarified.

5. Cancellations and Rescissions: Acquisition Letter V-08-02, entitled “Implementation of DoD Class Deviation—New Specialty Metals Restrictions, Berry Amendment,” dated April 7, 2008, Acquisition Letter V-07-02, Supplement 1, entitled “New DoD Deviation for Specialty Metals Contracting Requirements for Assisted Acquisitions Using DoD Funds,” dated November 27, 2007, Acquisition Letter V-07-02, entitled “Implementation of Berry Amendment Contracting Requirements for Assisted Acquisitions Using DoD Funds,” dated January 25, 2007, and GSA Acquisition Alert 2008-01, Application of the Trade Agreements Act in GSA Multiple Award Contracts, dated January 7, 2008.

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

Remove Pages

General Structure
pp. v and vi

Part 525 TOC
pp. 525-i and 525-ii
525-1 and 525-2

Part 552 TOC
pp. 552-i and 552-ii
552-19 thru 552-22

Matrix
552-67 and 552-68

Insert Pages

General Structure
pp. v and vi

Part 525 TOC
pp. 525-i and 525-ii
525-1 and 525-2

Part 552 TOC
pp. 552-i and 552-ii
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Matrix
552-67 and 552-68



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PART 516—TYPES OF CONTRACTS

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- 519.7 The Small Business Subcontracting Program
- 519.8 Contracting With the Small Business Administration (The 8(a) Program)
- 519.10 Small Business Competitiveness Demonstration Program
- 519.11 [Reserved]
- 519.12 Small Disadvantaged Business Participation Program
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- 519.14 Service-Disabled Veteran-Owned Small Business Procurement Program
- Appendix 519A Small Business Subcontracting Plan Outline (Model)
- Appendix 519B Subcontracting Plan Evaluation Checklist
- Appendix 519C [Removed and Reserved]
- Appendix 519D [Removed and Reserved]
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- Appendix 519F GSA Acquisition Alert–Contract Bundling

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PART 521—[RESERVED]

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- 522.4 Labor Standards for Contracts Involving Construction
- 522.6 Walsh-Healey Public Contracts Act
- 522.8 Equal Employment Opportunity
- 522.10 Service Contract Act of 1965, As Amended
- 522.13 Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
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PART 525—FOREIGN ACQUISITION

Sec.

	Subpart 525.1—Buy American Act—Supplies		Subpart 525.10—Additional Foreign Acquisition Regulations
525.103	Exceptions		
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525.202	Exceptions.		
525.206	Noncompliance.		

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PART 525—FOREIGN ACQUISITION

**Subpart 525.1—Buy American Act—
Supplies**

525.103 Exceptions

(a) *Public Interest.* The HCA is authorized to make the determination required by FAR 25.103(a). The HCA may not redelegate this authority.

(b) *Class Determination.* FAR 25.103(b)(1)(i) does not allow for class determinations to be made at the agency level.

(c) *Class Determination - Notice of Availability.* Regarding FAR 25.103(b)(1)(iii)(C), documentation supporting removal of an item from the list of Nonavailable Articles at FAR 25.104 should be submitted by the contracting officer to the Senior Procurement Executive (SPE) in the Office of the Chief Acquisition Officer. The SPE will determine whether the documentation should be forwarded to the Civilian Agency Acquisition Council (CAAC).

(d) *Individual Determinations—Nonavailability.* For the one-time, single procurement determination required by FAR 25.103(b)(2)(i):

If the estimated value of the supplies...	Then...
(1) Exceeds \$100,000.	Only the HCA may make the determination. The HCA may not redelegate this authority.
(2) Does not exceed \$100,000.	The HCA may redelegate authority to make the determination.

(e) *Individual Determinations—Notice of Nonavailability.* Regarding When the contracting officer considers that non-availability of an item will affect future acquisitions (see FAR 25.103(b)(2)(ii)), documentation supporting the addition of articles to the list of Nonavailable Articles at FAR 25.104 should be submitted by the contracting officer to the SPE. The SPE will determine whether the documentation should be forwarded to the CAAC.

**Subpart 525.2—Buy American Act—
Construction Materials**

525.202 Exceptions.

(a) *Public Interest.* The HCA is authorized to make the determination required by FAR 25.202(a)(1). The HCA may not redelegate this authority.

(b) *Nonavailability.* For the determination under FAR 25.202(a)(2):

If the estimated cost of materials...	Then...
(1) Exceeds \$100,000.	Only the HCA may make the determination. The HCA may not redelegate this authority.
(2) Does not exceed \$100,000.	The HCA may redelegate authority to make the determination.

525.206 Noncompliance.

Regarding potentially fraudulent noncompliance under FAR 25.206(c)(4), refer the matter to the appropriate Office of Inspector General Office.

**Subpart 525.10—Additional Foreign
Acquisition Regulations**

525.1070 Purchases Using Department of Defense (DoD) Appropriated Funds.

(a) The Berry Amendment, 10 U.S.C. 2533a, applies domestic-source requirements to certain food, clothing, fabrics, specialty metals, and hand or measuring tools when purchased with DoD appropriated funds. The Berry Amendment, as applicable to purchases using DoD appropriated funds, is implemented at DFARS Subpart 225.70 and in clauses prescribed there.

(b) GSA acquisition personnel are responsible for reviewing requests for purchases using DoD appropriated funds to ensure that all special funding and procurement requirements, e.g., Berry Amendment applicability, have been disclosed to GSA.

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PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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552.000	Scope of part.	552.212-73	Evaluation—Commercial Items (Multiple Award Schedule).
	Subpart 552.1—Instructions for Using Provisions and Clauses	552.214-70	“All or None” Offers.
552.101-70	Using Part 552.	552.214-71	Progressive Awards and Monthly Quantity Allocations.
552.102	Incorporating provisions and clauses.	552.214-72	Bid Sample Requirements.
552.103	Identification of provisions and clauses.	552.215-70	Examination of Records by GSA.
552.104	Procedures for modifying and completing provisions and clauses.	552.215-71	Examination of Records by GSA (Multiple Award Schedule).
552.105	Procedures for using alternates.	552.215-72	Price Adjustment—Failure to Provide Accurate Information.
552.107-70	Provisions and clauses prescribed in Subpart 552.1.	552.216-70	Economic Price Adjustment—FSS Multiple Award Schedule Contracts.
	Subpart 552.2—Text of Provisions and Clauses	552.216-71	Economic Price Adjustment—Stock and Special Order Program Contracts.
552.200	Scope of subpart.	552.216-72	Placement of Orders.
552.203-5	Covenant Against Contingent Fees.	552.216-73	Ordering Information.
552.203-70	Price Adjustment for Illegal or Improper Activity.	552.217-70	Evaluation of Options.
552.203-71	Restriction on Advertising.	552.217-71	Notice Regarding Option(s).
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552.211-15	Defense Priorities and Allocations System Requirements.	552.219-71	Notice to Offerors of Subcontracting Plan Requirements.
552.211-70	[Reserved]	552.219-72	Preparation, Submission, and Negotiation of Subcontracting Plans.
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552.211-80	Age on Delivery.	552.228-5	Government as Additional Insured.
552.211-81	Time of Shipment.	552.229-70	Federal, State, and Local Taxes.
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552.232-76	Electronic Funds Transfer Payment.		by Certain Entities—Cooperative Purchasing.
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552.236-76	Measurements.	552.270-2	Historic Preference.
552.236-77	Specifications and Drawings.	552.270-3	Parties to Execute Lease.
552.236-78	Shop Drawings, Coordination Drawings, and Schedules.	552.270-4	Definitions.
552.236-79	Samples.	552.270-5	Subletting and Assignment.
552.236-80	Heat.	552.270-6	Maintenance of Building and Premises—Right of Entry.
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552.236-82	Subcontracts.	552.270-8	Compliance with Applicable Law.
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552.238-73	Cancellation	552.270-17	Delivery and Condition.
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		552.270-24	Statement of Lease.
		552.270-25	Substitution of Tenant Agency.
		552.270-26	No Waiver.

whether the goals stated in the plan adequately reflect the anticipated potential for subcontracting to small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns; and

(4) Review the offeror's description of its strategies, historical performance and significant achievements in placing subcontracts for the same or similar products or services with small, HUBZone small, small disadvantaged, women-owned, veteran-owned, and service-disabled veteran owned small business concerns. The offeror's description can apply to commercial as well as previous Government contracts.

(d) Failure to submit an acceptable subcontracting plan and/or correct deficiencies in a plan within the time specified by the Contracting Officer shall make the offeror ineligible for award.

(End of provision)

Alternate I (Sep 1999). As prescribed in [519.708-70\(c\)\(2\)](#), delete paragraph (b) of the basic provision and redesignate paragraphs (c) and (d) as paragraphs (b) and (c).

552.219-74 Section 8(a) Direct Award.

As prescribed in [519.870-8](#), insert the following clause:

SECTION 8(A) DIRECT AWARD (SEP 1999)

(a) This contract is issued as a direct award between the contracting activity and the 8(a) Contractor pursuant to the Memorandum of Understanding between the Small Business Administration (SBA) and the General Services Administration. SBA retains the responsibility for 8(a) certifications, 8(a) eligibility determinations, and related issues, and will provide counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is:

[Complete at time of award]

(b) The contracting activity is responsible for administering the contract and taking any action on behalf of the Government under the terms and conditions of the contract. However, the contracting activity shall give advance notice to SBA before it issues a final notice terminating performance, either in whole or in part, under the contract. The contracting activity shall also coordinate with SBA prior to processing any advance payments or novation agreements. The contracting activity may assign contract administration functions to a contract administration office.

(c) The Contractor agrees:

(1) To notify the Contracting Officer, simultaneous with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21),

transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership and control.

(2) To the requirements of 52.219-14, Limitations on Subcontracting.

(End of clause)

552.223-70 Hazardous Substances.

As prescribed in [523.303\(a\)](#), insert the following clause:

HAZARDOUS SUBSTANCES (MAY 1989)

(a) If the packaged items to be delivered under this contract are of a hazardous substance and ordinarily are intended or considered to be for use as a household item, this contract is subject to the Federal Hazardous Materials Act, as amended (15 U.S.C. 1261-1276), implementing regulations thereof (16 CFR Chapter II), and Federal Standard No. 123, Marking for Shipment (Civil Agencies), issue in effect on the date of this solicitation.

(b) The packaged items to be delivered under this contract are subject to the preparation of shipping documents, the preparation of items for transportation, shipping container construction, package making, package labeling, when required, shipper's certification of compliance, and transport vehicle placarding in accordance with Parts 171 through 178 of 49 CFR and the Hazardous Materials Transportation Act.

(c) The minimum packaging acceptable for packaging Department of Transportation regulated hazardous materials shall be those in 49 CFR 173.

(End of clause)

552.223-71 Nonconforming Hazardous Materials.

As prescribed in [523.303\(b\)](#), insert the following clause:

NONCONFORMING HAZARDOUS MATERIALS (SEP 1999)

(a) Nonconforming supplies that contain hazardous material or that may expose persons who handle or transport the supplies to hazardous material and which require replacement under the inspection and/or warranty clauses of this contract shall be reshipped to the Contractor at the Contractor's expense. The Contractor agrees to accept return of these nonconforming supplies and to pay all costs occasioned by their return.

(b) "Hazardous materials," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(c) If the Contractor fails to provide acceptable disposition instructions for the nonconforming supplies within 10 days from the date of the Government's request (or such longer period as may be agreed to between the Contracting Officer

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and the Contractor), or fails to accept return of the reshipped nonconforming supplies, such failure:

- (1) May be interpreted as a willful failure to perform,
- (2) May result in termination of the contract for default and

(3) Shall be considered by the Contracting Officer in determining the responsibility of the Contractor for any future award (see FAR 9.104-3(b) and 9.406-2).

(d) Pending final resolution of any dispute, the Contractor shall promptly comply with the decision of the Contracting Officer.

(End of clause)

552.223-72 Hazardous Material Information.

As prescribed in [523.370](#), insert the following provision:

HAZARDOUS MATERIAL INFORMATION (SEP 1999)

Offeror shall indicate for each national stock number (NSN) the following information:

NSN	DOT Shipping Name	DOT Hazard Class	DOT Label Required
			Yes [] No []
			Yes [] No []
			Yes [] No []

(End of provision)

552.227-70 Government Rights (Unlimited).

As prescribed in [527.409\(a\)](#), insert the following clause:

GOVERNMENT RIGHTS (UNLIMITED) (MAY 1989)

The Government shall have unlimited rights in all drawings, designs, specifications, notes and other works developed in the performance of this contract, including the right to use same on any other Government design or construction without additional compensation to the Contractor. The Contractor hereby grants to the Government a paid-up license throughout the world to all such works to which he may assert or establish any claim under design patent or copyright laws. The Contractor for a period of three years after completion of

the project agrees to furnish the original or copies of all such works on the request of the Contracting Officer.

(End of clause)

552.227-71 Drawings and Other Data to Become Property of Government.

As prescribed in [527.409\(b\)](#), substitute the following clause:

DRAWINGS AND OTHER DATA TO BECOME PROPERTY OF GOVERNMENT (MAY 1989)

All designs, drawings, specifications, notes and other works developed in the performance of this contract shall become the sole property of the Government and may be used on any other design or construction without additional compensation to the Contractor. The Government shall be considered the "person for whom the work was prepared" for the purpose of authorship in any copyrightable work under Section 201(b) of Title 17, United States Code. With respect thereto, the Contractor agrees not to assert or authorize others to assert any rights nor establish any claim under the design patent or copyright laws. The Contractor for a period of three years after completion of the project agrees to furnish all retained works on the request of the Contracting Officer. Unless otherwise provided in this contract, the Contractor shall have the right to retain copies of works beyond such period.

(End of clause)

552.228-5 Government as Additional Insured.

As prescribed in [528.310](#), insert the following clause:

GOVERNMENT AS ADDITIONAL INSURED (MAY 2009)

(a) This clause supplements the requirements set forth in FAR clause 52.528-5, Insurance-Work on a Government Installation.

(b) Each insurance policy required under this contract, other than workers' compensation insurance, shall contain an endorsement naming the United States as an additional insured with respect to operations performed under this contract. The insurance carrier is required to waive all subrogation rights against any of the named insured.

(End of clause)

552.229-70 Federal, State, and Local Taxes.

As prescribed in [529.401-70](#), insert the following clause:

FEDERAL, STATE, AND LOCAL TAXES (APR 1984)

The contract price includes all applicable Federal, State, and local taxes. No adjustment will be made to cover taxes which may subsequently be imposed on this transaction or changes in the rates of currently applicable taxes. However, the Government will, upon the request of the Contractor, furnish evidence appropriate to establish exemption from any tax from which the Government is exempt and which was not included in the contract price.

(End of clause)

552.229-71 Federal Excise Tax—DC Government.

As prescribed in [529.401-71](#), insert the following clause:

FEDERAL EXCISE TAX—DC GOVERNMENT (SEP 1999)

If the District of Columbia cites an Internal Revenue Tax Exempt Certificate Number on orders placed under this contract, the Contractor shall bill shipments to the District of Columbia at prices exclusive of Federal excise tax and show the amount of such tax on the invoice.

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MATRIX OF PROVISIONS AND CLAUSES

KEY: Sup = Supply
 Serv = Service Contract (excluding construction and A-E services)
 Const = Construction Services
 A-E = Architect-Engineer Services
 SAT = Acquisitions at or under the simplified acquisition threshold
 Util = Utility services, sole supplier-regulated rate

Leas = Acquisitions of leasehold interests in real property
 P = Provision
 C = Clause
 R = Required
 WR = When required
 O = Optional

P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
C	552.203-5	503.404	Covenant Against Contingent Fees							WR
C	552.203-70	503.104-9	Price Adjustment for Illegal or Improper Activity							WR
C	552.203-71	503.570-2	Restriction on Advertising	R	R	R	R			R
C	552.211-8	511.404	Time of Delivery	WR				WR		
C	552.211-71	511.204(a)	Standard References			WR				
C	552.211-72	511.204(b)	Reference to Specifications in Drawings	WR	WR	WR		WR		
C	552.211-73	511.204(c)(1)	Marking	WR						
C	552.211-74	511.204(c)(2)	Charges for Marking	WR						
C	552.211-75	511.204(c)(3)	Preservation, Packaging and Packing	WR				O		
C	552.211-76	511.204(c)(4)	Charges for Packaging and Packing	WR				WR		
C	552.211-77	511.204(d)	Packing List	WR				WR		
C	552.211-78	511.404(a)(2)	Commercial Delivery Schedule (Multiple Award Schedule)	WR						
C	552.211-79	511.404(a)(3)(i)	Acceptable Age of Supplies	WR				WR		
C	552.211-80	511.404(a)(3)(ii)	Age on Delivery	WR				WR		
C	552.211-81	511.404(a)(4)	Time of Shipment	WR				WR		
C	552.211-82	511.404(a)(5)	Notice of Shipment	WR				WR		
C	552.211-83	511.404(a)(6)	Availability for Inspection, Testing, and Shipment/Delivery	WR				WR		
C	552.211-84	511.404(b)	Non-Compliance with Contract Requirements			R				
C	552.212-70	512.301(a)(1)	Preparation of Offer (Multiple Award Schedule)	WR	WR					
C	552.212-71	512.301(a)(2)	Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items	WR	WR			WR		
C	552.212-72	512.301(a)(3)	Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items	WR	WR			WR		
P	552.212-73	512.301(a)(4)	Evaluation—Commercial Items (Multiple Award Schedule)	WR	WR					
P	552.214-70	514.201-6	"All or None" Offers	WR	WR			WR		
C	552.214-71	514.201-7(a)	Progressive Awards and Monthly Quantity Allocations	WR						
P	552.214-72	514.202-4(a)(3)	Bid Sample Requirements	WR	WR			WR		
C	552.215-70	514.201-7(a)(1) 515.209-70(a)	Examination of Records by GSA	WR	WR	WR	WR			WR
C	552.215-71	515.209-70(c)	Examination of Records by GSA (Multiple Award Schedule)	WR	WR					
C	552.215-72	515.408(d)	Price Adjustment—Failure to Provide Accurate Information	WR	WR					
C	552.216-70	516.203-4(a)	Economic Price Adjustment—FSS Multiple Award Schedule Contracts	WR	WR					
C	552.216-71	516.203-4(b)	Economic Price Adjustment—Stock and Special Order Program Contracts	WR				WR		

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552.300

GENERAL SERVICES ADMINISTRATION ACQUISITION MANUAL

P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
C	552.216-72	516.506(a)	Placement of Orders	WR				WR		
P	552.216-73	516.506(e)	Ordering Information	WR	WR			WR		
P	552.217-70	517.208(a)	Evaluation of Options	WR				WR		
P	552.217-71	517.208(b)	Notice Regarding Option(s)	WR	WR	WR	WR	WR		
C	552.219-70	519.508	Allocation of Orders—Partially Set-aside Items	WR						
P	552.219-71	519.708-70(a)	Notice to Offerors of Subcontracting Plan Requirements	WR	WR	WR	WR			WR
P	552.219-72	519.708-70(b)	Preparation, Submission, and Negotiation of Subcontracting Plans	WR	WR	WR	WR			WR
P	552.219-73	519.708-70(c)	Goals for Subcontracting Plan	WR	WR	WR	WR			WR
C	552.219-74	519.870-8(a)	Section 8(a) Direct Award	WR	WR	WR	WR	WR		WR
C	552.223-70	523.303(a)	Hazardous Substances	WR				WR		
C	552.223-71	523.303(b)	Nonconforming Hazardous Materials	WR				WR		
P	552.223-72	523.370	Hazardous Material Information	WR				WR		
C	552.227-70	527.409(a)	Government Rights (Unlimited)					WR		
C	552.227-71	527.409(b)	Drawings and Other Data to Become Property of Government					WR		
C	552.228-5	528.310	Government as Additional Insured	WR	R	WR	WR			WR
C	552.229-70	529.401-70	Federal, State, and Local Taxes		WR	WR	WR	R		
C	552.229-71	529.401-71	Federal Excise Tax—DC Government	WR	WR			WR		
C	552.232-71	532.7103(a)	Payments		WR					
C	552.232-8	532.206	Discounts for Prompt Payment	WR	WR					
C	552.232-23	532.806	Assignment of Claims	WR	WR					
C	552.232-25	532.908(a)(2)	Prompt Payment	WR	WR			WR		
C	552.232-70	532.111(a)	Invoice Requirements	WR	WR	WR	WR	WR	WR	WR
C	552.232-71	532.111(b)	Adjusting Payments		WR					
C	552.232-72	532.111(c)	Final Payment		WR					
C	552.232-73	532.705-1	Availability of Funds		WR			WR		
C	552.232-74	532.908(a)(1)	Invoice Payments	WR	WR			WR		
C	552.232-75	532.908(b)(1)	Prompt Payment							R
C	552.232-76	532.908(b)(2)	Electronic Funds Transfer Payment							WR
C	552.232-77	532.7003	Payment By Governmentwide Commercial Purchase Card	WR	WR			WR		
C	552.232-78	532.908(c)	Payment Information	R	R	R	R	R	R	R
C	552.232-79	532.7003(c)	Payment by Credit Card	WR	WR					
C	552.232-81	532.206(b)	Payments by Non-Federal Ordering Activities	WR	WR					
C	552.232-82	532.206(c)	Contractor's Remittance (Payment) Address	WR	WR					
C	552.232-83	532.206(d)	Contractor's Billing Responsibilities	WR	WR					
C	552.236-70	536.570-1	Definitions			WR	WR	WR		
C	552.236-71	536.570-2	Authorities and Limitations			WR	WR			
C	552.236-72	536.570-3	Specialist			WR		WR		
P	552.236-73	536.570-4	Basis of Award—Construction Contract			WR				
C	552.236-74	536.570-5	Working Hours			R				
C	552.236-75	536.570-6	Use of Premises			R		WR		
C	552.236-76	536.570-7	Measurements			R		WR		
C	552.236-77	536.570-8	Specifications and Drawings			R				
C	552.236-78	536.570-9	Shop Drawings, Coordination Drawings, and Schedules			R				
C	552.236-79	536.570-10	Samples			WR		WR		