General Services Administration Washington, DC 20405

## APD 2800.12B, CHGE 28 April 14, 2009

## GSA ORDER

Subject: Amendment 2009-02, GSAR Case 2006-G517, GSAM/GSAR Part 528, Bonds and Insurance (Change 28)

1. <u>Purpose</u>. This order transmits a revision to the General Services Administration Acquisition Manual (GSAM).

2. <u>Background</u>. The General Services Administration (GSA) has issued a final rule to amend the General Services Administration Acquisition Regulation (GSAR) as part of the GSAM Rewrite Project. There are a number of changes to the policies and clauses in GSAM Part 528, as well as general editing throughout the part.

GSA published GSAR Case 2006-G517, Change 28, final rule, in the Federal Register at 74 FR 17098, April 14, 2009.

3. Effective date. May 14, 2009.

4. <u>Explanation of changes</u>. To amend the GSAM by revising and updating references and titles and deleting redundant supplementary material. In accordance with FAR 1.302, FAR (Governmentwide) forms and clauses were given preference over GSAunique forms and clauses wherever possible.

This final rule contains the revisions made to Part 528, Bonds and Insurance. The rule revises Part 528 to address the text at GSAR 528.202, Acceptability of corporate sureties and 528.310, Contract clause for work on a Government installation. The rule adds 528.311, Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts and the clause at 552.228-5, Government as Additional Insured; and deletes the clause at 552.228-70, Workers' Compensation Laws.

5. <u>Cancellations and Rescissions</u>: The GSAM revisions include the following—GSAR 528.310, Contract clause for work on a Government installation deletes 528.310(b) and the clause at 552.228-70, Workers' Compensation Laws. The clause at 552.228-70 is deleted because its only purpose is to recite the fact that 40 U.S.C. 3172 effects a limited cession of jurisdiction to States with respect to enforcement of worker's compensation laws and has no contractual effect. GSAR 528.310(b) is being deleted because it relates to proposed deletion of 552.228-70 where it states "in the case of an owner-controlled insurance program, or wrap-up insurance, the clause will be a part of the policy holder's requirements" the phrase "the clause" refers to the clause at 552.528-70.

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

# Remove Pages

# Part 528 TOC pp. 528-i and 528-ii 528-1 and 528-2

Part 552 TOC pp. 552-i and 552-ii 552-21 and 552-22

Matrix 552-69 and 552-70

# Insert Pages

Part 528 TOC pp. 528-i and 528-ii 528-1 and 528-2

Part 552 TOC pp. 552-i and 552-ii 552-21 and 552-22

Matrix 552-69 and 552-70

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# AMENDMENT 2009-02 MAY 14, 2009

# PART 528—BONDS AND INSURANCE

## Sec.

Subpa	rt 528.1—Bonds and Other Financial Protections	Subpart 528.2—Sureties and Other Security for Bonds					
528.101	Bid guarantees.	528.202	Acceptability of corporate sureties.				
528.101-1 528.102	Policy on use. Performance and payment bonds and alternative payment protections for construction contracts.	528.202-70 528.203 528.203-7 528.204	Acceptability of bonds and sureties. Acceptability of individual sureties. Exclusion of individual sureties. Alternatives in lieu of corporate or individual				
528.102-1 528.103 528.103-2 528.103-3	General. Performance and payment bonds for other than construction contracts. Performance bonds. Payment bonds.	528.301 528.310	sureties. <b>Subpart 528.3—Insurance</b> Policy. Contract clause for work on a Government installation.				
528.106 528.106-6	Administration. Furnishing information.	528.311 528.311-1	Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts. Contract clause.				

GENERAL SERVICES ADMINISTRATION ACQUISITION MANUAL

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# PART 528—BONDS AND INSURANCE

# Subpart 528.1—Bonds and Other Financial Protections

#### 528.101 Bid guarantees.

#### 528.101-1 Policy on use.

(a) *Construction contracts*. The contracting officer shall require bid guarantees for contracts awarded under Section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

(b) *Building service contracts*. The contracting officer shall require bid guarantees for building service contracts over 100,000 if it is determined under 528.103-2 that a performance bond is essential to protect the Government's interest.

(c) *All other contracts*. Refer to FAR 28.101 for guidance on the use of bid guarantees.

# 528.102 Performance and payment bonds and alternative payment protections for construction contracts.

#### 528.102-1 General.

The performance and payment bond requirements in FAR 28.102-1 apply to contracts awarded under Section 8(a) of the Small Business Act.

# 528.103 Performance and payment bonds for other than construction contracts.

#### 528.103-2 Performance bonds.

(a) The contracting officer shall not require performance bonds for building service contracts unless a written determination is made explaining why the bond is essential to protect the Government's interest and justifying the additional cost of the bonding requirement.

(b) The contracting officer shall require a performance bond for building service contracts awarded under Section 8(a) of the Small Business Act as amended (15 U.S.C. 637(a)). The contracting officer shall not require a performance bond for building service contracts awarded to workshops for the blind or other severely handicapped under the Javits-Wagner-O'Day Act, as amended (41 U.S.C. 46-48c).

(c) Consider the circumstances and determine the penal amount of the performance bond on a case-by-case basis.

#### 528.103-3 Payment bonds.

(a) The contracting officer may require payment bonds for other than construction contracts if the contracting director determines, under FAR 28.103-3, that such a requirement is in the Government's interest. (b) Consider the circumstances and determine the penal amount of the payment bond on a case-by-case basis.

#### 528.106 Administration.

#### 528.106-6 Furnishing information.

The HCA or designee performs the functions outlined in FAR 28.106-6(c).

# Subpart 528.2—Sureties and Other Security for Bonds

#### 528.202 Acceptability of corporate sureties.

Corporate surety bonds must be manually signed by the Attorney-in-Fact or officer of the surety company and the corporate seal affixed. The contracting officer may waive failure of the surety to affix the corporate seal as a minor informality. (See B-184120, July 2, 1975, 75-2 CPD 9.)

#### 528.202-70 Acceptability of bonds and sureties.

Verify the acceptability of the surety on a bond by placing the words "Acceptability of Bond Verified," and sign immediately thereunder, on the bond or on a properly identified attachment. Retain the bond with the original of the contract. The contracting officer may use the Notice to Proceed to notify the contractor that the bond(s) has been accepted.

#### 528.203 Acceptability of individual sureties.

Refer evidence of possible criminal or fraudulent activities by an individual surety first to the Assistant Inspector General for Investigations or to the appropriate Regional Special Agent in Charge. The Office of Inspector General may conduct an investigation and, when appropriate, refer the matter to the Senior Procurement Executive. Include in referrals the information required by 528.203-7.

#### 528.203-7 Exclusion of individual sureties.

(a) The Senior Procurement Executive or designee excludes individuals from acting as a surety on bonds under FAR 28.203-7.

(b) Include the following, as a minimum, in referrals for consideration of exclusion:

(1) The basis for exclusion (see FAR 28.203-7(b)).

(2) A statement of facts.

(3) Copies of supporting documentary evidence.

(4) The individuals' names and current or last known home and or business addresses, including zip codes.

(5) A statement of GSA's history with such individuals, if any.

# AMENDMENT 2009-02 MAY 14, 2009

#### 528.204

(6) A statement concerning any known active or potential criminal investigations or court proceedings.

(c) In accordance with GSA Order ADM 5000.4A Legal Services, legal review shall be obtained for the proposed exclusion.

# 528.204 Alternatives in lieu of corporate or individual sureties.

Security deposited instead of corporate or individual sureties on bonds must be safeguarded immediately after they are received, as provided in procedures issued by the Office of the Chief Financial Officer (see GSA Order, Accounts Receivable Policy Handbook (CFO P 4253.1)). United States bonds or notes received in the District of Columbia must be deposited with the Treasurer of the United States, as provided in FAR 28.204-1.

## Subpart 528.3—Insurance

#### 528.301 Policy.

Insurance requirements must be adequate, just, and reasonable. They should be predicated on potential loss or damage, not necessarily on the value of the contract.

#### GENERAL SERVICES ADMINISTRATION ACQUISITION MANUAL

# 528.310 Contract clause for work on a Government installation.

Insert the clause at <u>552.228-5</u>, Government as Additional Insured, in each solicitation and contract that meets all the following conditions:

(a) The contract amount is expected to exceed the simplified acquisition threshold; and

(b) The contract will require work to be performed on Government property.

# 528.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

#### 528.311-1 Contract clause.

Use the clause at FAR 52.228-7, Insurance–Liability to Third Persons, in solicitations and contracts, other than those for construction and those for architect-engineer services, when a cost-reimbursement contract is contemplated, unless the head of the contracting activity waives the requirement for use of the clause.

# AMENDMENT 2009–02 MAY 14, 2009

# PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

<ul> <li>552.000 Scope of part.</li> <li>Subpart 552.1—Instructions for Using Provisions and Clauses</li> <li>552.101-70 Using Part 552.</li> <li>552.102 Incorporating provisions and clauses.</li> <li>552.103 Identification of provisions and clauses.</li> <li>552.104 Procedures for modifying and completing provisions and clauses.</li> <li>552.105 Procedures for using alternates.</li> <li>552.107-70 Provisions and clauses prescribed in Subpart 552.2—Text of Provisions and Clauses</li> <li>552.200 Scope of subpart.</li> <li>552.203-5 Covenant Against Contingent Fees.</li> <li>552.203-70 Price Adjustment for Illegal or Improper Activity.</li> <li>552.211-8 Time of Delivery.</li> <li>552.211-70 [Reserved]</li> <li>552.211-71 Standard References.</li> <li>552.211-72 Reference to Specifications in Drawings.</li> <li>552.211-73 Marking.</li> <li>552.211-74 Charges for Marking.</li> <li>552.211-75 Preservation, Packaging and Packing.</li> <li>552.211-76 Charges for Packaging and Packing.</li> <li>552.211-77 Packing List.</li> <li>552.211-78 Commercial Delivery Schedule (Multiple Award Schedule).</li> </ul>
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552.211-79 Acceptable Age of Supplies.
552.211-80 Age on Delivery.
552.211-81 Time of Shipment.
552.211-82 Notice of Shipment.
552.211-83 Availability for Inspection, Testing, and
Shipment/Delivery.
552.211-84 Non-Compliance with Contract
Requirements.
552.212-70 Preparation of Offer (Multiple Award Schedule).
Schedule).
Schedule).552.212-71Contract Terms and Conditions Applicable
<ul><li>Schedule).</li><li>552.212-71 Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items.</li></ul>
<ul> <li>Schedule).</li> <li>Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items.</li> <li>Contract Terms and Conditions Required to</li> </ul>
<ul><li>Schedule).</li><li>552.212-71 Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items.</li></ul>

552.212-73	Evaluation—Commercial Items (Multiple
	Award Schedule).

552.214-70	"All or None" Offers.
552.214-71	Progressive Awards and Monthly Quantity
	Allocations.
552.214-72	Bid Sample Requirements.
552.215-70	Examination of Records by GSA.
552.215-71	Examination of Records by GSA (Multiple
	Award Schedule).
552.215-72	Price Adjustment—Failure to Provide
	Accurate Information.
552.216-70	Economic Price Adjustment—FSS Multiple
002.210 / 0	Award Schedule Contracts.
552.216-71	Economic Price Adjustment—Stock and
002.210 /1	Special Order Program Contracts.
552.216-72	Placement of Orders.
552.216-73	Ordering Information.
552.217-70	Evaluation of Options.
552.217-71	Notice Regarding Option(s).
552.219-70	Allocation of Orders—Partially Set-aside
002.219 /0	Items.
552.219-71	Notice to Offerors of Subcontracting Plan
	Requirements.
552.219-72	Preparation, Submission, and Negotiation of
	Subcontracting Plans.
552.219-73	Goals for Subcontracting Plan.
552.219-74	Section 8(a) Direct Award.
552.223-70	Hazardous Substances.
552.223-71	Nonconforming Hazardous Materials.
552.223-72	Hazardous Material Information.
552.225-70	Notice of Procurement Restriction—Hand or
	Measuring Tools or Stainless Steel Flatware.
552.227-70	Government Rights (Unlimited).
552.227-71	Drawings and Other Data to Become
	Property of Government.
552.228-5	Government as Additional Insured.
552.229-70	Federal, State, and Local Taxes.
552.229-71	Federal Excise Tax—DC Government.
552.232-1	Payments.
552.232-8	Discounts for Prompt Payment.
552.232-23	Assignment of Claims.
552.232-25	Prompt Payment.
552.232-70	Invoice Requirements.
552.232-71	Adjusting Payments.
552.232-72	Final Payment.
552.232-73	Availability of Funds.
552.232-74	Invoice Payments.
552.232-75	Prompt Payment.

# AMENDMENT 2008-04 JANUARY 9, 2009

# GENERAL SERVICES ADMINISTRATION ACQUISITION MANUAL

		OLIVERAL DER	TELS ADMINISTRATION ACQUISITION MANOA
552.232-76	Electronic Funds Transfer Payment.	552.246-17	Warranty of Supplies of a Noncomplex
552.232-77	Payment By Governmentwide Commercial		Nature
	Purchase Card.	552.246-70	Source Inspection by Quality Approved
552.232-78	Payment Information.		Manufacturer.
552.232-79	Payment by Credit Card.	552.246-71	Source Inspection by Government.
552.232-81	Payments by Non-Federal Ordering	552.246-72	Final Inspection and Tests.
552 222 02	Activities.	552.246-73	Warranty—Multiple Award Schedule.
552.232-82	Contractor's Remittance (Payment) Address.	552.246-74	[Reserved]
552.232-83	Contractor's Billing Responsibilities.	552.246-75	Guarantees.
552.236-70	Definitions.	552.246-76	Warranty of Pesticides.
552.236-71 552.236-72	Authorities and Limitations.	552.247-70	Placarding Railcar Shipments.
552.236-72 552.236-73	Specialist. Basis of Award—Construction Contract.	552.247-71	Diversion of Shipment Under f.o.b.
552.236-75 552.236-74			Destination Contracts.
552.236-74	Working hours. Use of Premises.	552.249-70	Termination for Convenience of the
552.236-75	Measurements.		Government (Fixed Price) (Short Form).
552.236-70	Specifications and Drawings.	552.249-71	Submission of Termination Liability
552.236-77	Shop Drawings, Coordination Drawings, and		Schedule.
552.250-78	Schedules.	552.252-5	Authorized Deviations in Provisions.
552.236-79	Samples.	552.252-6	Authorized Deviations in Clauses.
552.236-80	Heat.	552.270-1	Instructions to Offerors—Acquisition of
552.236-80	Use of Equipment by the Government.	002.270 1	Leasehold Interests in Real Property.
552.236-82	Subcontracts.	552.270-2	Historic Preference.
552.236-83	Requirement for a Project Labor Agreement.	552.270-2	Parties to Execute Lease.
552.237-70	Qualifications of Offerors.		Definitions.
552.237-71	Qualifications of Employees.	552.270-4	
552.237-72	Prohibition Regarding "Quasi-Military	552.270-5	Subletting and Assignment.
	Armed Forces."	552.270-6	Maintenance of Building and Premises—
552.237-73	Restriction on Disclosure of Information.		Right of Entry.
552.238-70	Identification of Electronic Office	552.270-7	Fire and Casualty Damage.
	Equipment Providing Accessibility for the	552.270-8	Compliance with Applicable Law.
	Handicapped.	552.270-9	Inspection—Right of Entry.
552.238-71	Submission and Distribution of Authorized	552.270-10	Failure in Performance.
	FSS Schedule Pricelists.	552.270-11	Successors Bound.
552.238-72	Identification of Products that have	552.270-12	Alterations.
	Environmental Attributes.	552.270-13	Proposals for Adjustment.
552.238-73	Cancellation	552.270-14	Changes.
552.238-74	Industrial Funding Fee and Sales Reporting.	552.270-15	Liquidated Damages.
552.238-75	Price Reductions.	552.270-16	Adjustment for Vacant Premises.
552.238-76	Definition (Federal Supply Schedules)—	552.270-17	Delivery and Condition.
	Recovery Purchasing.	552.270-18	Default in Delivery—Time Extensions.
552.238-77	Definition (Federal Supply Schedules).	552.270-18	Progressive Occupancy.
552.238-78	Scope of Contract (Eligible Ordering		
	Activities).	552.270-20	Payment.
552.238-79	Use of Federal Supply Schedule Contracts	552.270-21	Effect of Acceptance and Occupancy.
	by Certain Entities—Cooperative	552.270-22	Default by Lessor During the Term.
	Purchasing.	552.270-23	Subordination, Nondisturbance and
552.238-80	Use of Federal Supply Schedule Contracts		Attornment.
552 242 50	by Certain Entities–Recovery Purchasing.	552.270-24	Statement of Lease.
552.242-70	Status Report of Orders and Shipments.	552.270-25	Substitution of Tenant Agency.
550 040 71	En italia Adiaturant	552.270-26	No Waiver.
552.243-71	Equitable Adjustments.		

552-ii

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## PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

# 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 <u>529.401-70</u>, 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 <u>529.401-71</u>, 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. GENERAL SERVICES ADMINISTRATION ACQUISITION MANUAL

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# AMENDMENT 2009-01 APRIL 24, 2009

# 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 WR = When required
  - Util = Utility services, sole supplier-regulated rate

- Leas = Acquisitions of leasehold interests in real property
- = Provision Р
  - = Clause

С

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- R = Required
- - = Optional

P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Leas
С	552.203-5	503.404	Covenant Against Contingent Fees							WR
С	<u>552.203-70</u>	503.104-9	Price Adjustment for Illegal or Improper Activity							WR
С	552.203-71	503.570-2	Restriction on Advertising	R	R	R	R			R
С	552.211-8	511.404	Time of Delivery	WR				WR		
С	552.211-71	<u>511.204(a)</u>	Standard References			WR				
С	552.211-72	511.204(b)	Reference to Specifications in Drawings	WR	WR	WR		WR		
С	552.211-73	511.204(c)(1)	Marking	WR						
С	552.211-74	511.204(c)(2)	Charges for Marking	WR						
С	552.211-75	511.204(c)(3)	Preservation, Packaging and Packing	WR				0		
С	552.211-76	511.204(c)(4)	Charges for Packaging and Packing	WR				WR		
С	552.211-77	511.204(d)	Packing List	WR				WR		
С	552.211-78	511.404(a)(2)	Commercial Delivery Schedule (Multiple Award Schedule)	WR						
С	552.211-79	511.404(a)(3)(i)	Acceptable Age of Supplies	WR				WR		
С	552.211-80	511.404(a)(3)(ii)	Age on Delivery	WR				WR		
С	552.211-81	511.404(a)(4)	Time of Shipment	WR				WR		
С	552.211-82	511.404(a)(5)	Notice of Shipment	WR				WR		
С	552.211-83	511.404(a)(6)	Availability for Inspection, Testing, and Shipment/Delivery	WR				WR		
С	552.211-84	511.404(b)	Non-Compliance with Contract Requirements			R				
С	552.212-70	512.301(a)(1)	Preparation of Offer (Multiple Award Schedule)	WR	WR					
С	552.212-71	512.301(a)(2)	Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items	WR	WR			WR		
С	552.212-72	<u>512.301(a)(3)</u>	Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items	WR	WR			WR		
Р	552.212-73	<u>512.301(a)(4)</u>	Evaluation—Commercial Items (Multiple Award Schedule)	WR	WR					
Р	552.214-70		"All or None" Offers	WR	WR			WR		
С	552.214-71	514.201-7(a)	Progressive Awards and Monthly Quantity Allocations	WR						
Р	552.214-72	514.202-4(a)(3)	Bid Sample Requirements	WR	WR			WR		
С	552.215-70	514.201-7(a)(1) 515.209-70(a)	Examination of Records by GSA	WR	WR	WR	WR			WR
С	552.215-71	<u>515.209-70(c)</u>	Examination of Records by GSA (Multiple Award Schedule)	WR	WR					
С	552.215-72	<u>515.408(d)</u>	Price Adjustment—Failure to Provide Accurate Information	WR	WR					
С	552.216-70	<u>516.203-4(a)</u>	Economic Price Adjustment—FSS Multiple Award Schedule Contracts	WR	WR					

552.300

# AMENDMENT 2009-02 MAY 14, 2009

552.300

# GENERAL SERVICES ADMINISTRATION ACQUISITION MANUAL

P/C	Number	Reference.	Title	Sup	Serv	Const	A-E	SAT	Util	Lea
С	552.216-71	<u>516.203-4(b)</u>	Economic Price Adjustment—Stock and Special Order Program Contracts	WR				WR		
С	552.216-72	516.506(a)	Placement of Orders	WR				WR		
Р	552.216-73	516.506(e)	Ordering Information	WR	WR			WR		
Р	552.217-70	517.208(a)	Evaluation of Options	WR				WR		
Р	552.217-71	517.208(b)	Notice Regarding Option(s)	WR	WR	WR	WR	WR		
С	552.219-70	519.508	Allocation of Orders—Partially Set-aside Items	WR						
Р	552.219-71	519.708-70(a)	Notice to Offerors of Subcontracting Plan Requirements	WR	WR	WR	WR			WF
Р	552.219-72	519.708-70(b)	Preparation, Submission, and Negotiation of Subcontracting Plans	WR	WR	WR	WR			WR
Р	552.219-73	519.708-70(c)	Goals for Subcontracting Plan	WR	WR	WR	WR			WF
С	552.219-74	519.870-8(a)	Section 8(a) Direct Award	WR	WR	WR	WR	WR		WF
С	552.223-70	523.303(a)	Hazardous Substances	WR				WR		
С	552.223-71		Nonconforming Hazardous Materials	WR				WR		
Р	552.223-72		Hazardous Material Information	WR				WR		
С	552.225-70	525.109	Notice of Procurement Restriction—Hand or Measuring Tools or Stainless Steel Flatware	WR						
С	552.227-70	527.409(a)	Government Rights (Unlimited)				WR			
С	552.227-71	<u>527.409(b)</u>	Drawings and Other Data to Become Property of Government				WR			
С	552.228-5	528.310	Government as Additional Insured	WR	R	WR	WR			WI
С	552.229-70	529 401 70	Federal, State, and Local Taxes		WR	WR	WR	R		
$\frac{c}{c}$	552.229-71		Federal Excise Tax—DC Government	WR	WR	WIX	WK	WR		
C		<u>532.7103(a)</u>	Payments	WK	WR			WK		
C	<u>552.232-71</u> 552.232-8	532.206	Discounts for Prompt Payment	WR	WR					
C	<u>552.232-8</u> 552.232-23		Assignment of Claims	WR	WR					
C		532.908(a)(2)	Prompt Payment	WR	WR			WR		
C	<u>552.232-25</u> 552.232-70		Invoice Requirements	WR	WR	WR	WR	WR	WR	WI
C	<u>552.232-70</u> 552.232-71		Adjusting Payments	WK	WR	WK	WK	WK	WIX	** ]
C	552.232-71		Final Payment		WR					
C	<u>552.232-72</u> 552.232-73		Availability of Funds		WR			WR		
C		<u>532.908(a)(1)</u>	Invoice Payments	WR	WR			WR		
C		532.908(b)(1)	Prompt Payment	WIX	WK			WK		R
		<u>532.908(b)(2)</u>	Electronic Funds Transfer Payment							W
	552.232-77		Payment By Governmentwide Commercial Purchase Card	WR	WR			WR		** 1
	552.232-78		Payment Information	R	R	R	R	R	R	R
	552.232-79		Payment by Credit Card	WR		R.	K	K	ĸ	
	552.232-81		Payments by Non-Federal Ordering Activities	WR						
	552.232-82		Contractor's Remittance (Payment) Address	WR	WR					<u> </u>
C	552.232-83		Contractor's Billing Responsibilities	WR	WR					
	552.236-70		Definitions			WR	WR	WR		
	552.236-71		Authorities and Limitations			WR	WR			
	552.236-72		Specialist			WR		WR		<u> </u>
	552.236-73		Basis of Award—Construction Contract			WR				
	552.236-74		Working Hours			R				├──
C	552.236-75		Use of Premises			R	-	WR		<u> </u>
$\frac{C}{C}$	552.236-76		Measurements			R		WR		<u> </u>
	552.236-77		Specifications and Drawings			R				