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GENERAL SERVICES ADMINISTRATION

48 CFR Part 532

[GSAR Case 2020-G521 Docket No. 2020-0017; Sequence No. 1]

RIN 3090-AK25

General Services Administration Acquisition Regulation; **Remove Office of General Counsel Review for Final Payments**

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

ACTION: Direct final rule with request for comments.

SUMMARY: The General Services Administration (GSA) is issuing a final rule amending the General Services Administration Acquisition Regulation (GSAR) to revise internal agency approval procedures for processing a final payment for construction and building service contracts where, after 60 days, a contracting officer is unable to obtain a release of claims from a contractor.

DATES: This final rule is effective on **[Insert date 60 days after date of publication in the FEDERAL REGISTER]** without further notice unless adverse comments are received by **[Insert date 30 days after date of publication in the FEDERAL REGISTER]**. If GSA receives adverse comments, we will publish a timely withdrawal in the *Federal Register* informing the public that the rule will not take effect.

ADDRESSES: Submit comments in response to GSAR Case 2020-G521 via the Federal eRulemaking portal at *Regulations.gov* by searching for "GSAR Case 2020-G521". Select the link "Comment Now" that corresponds with GSAR Case 2020-G521. Follow the instructions provided at the "Comment Now" screen. Please include your name, company name (if any), and "GSAR Case 2020-G521" on your attached document.

Instructions: Please submit comments only and cite GSAR Case 2020-G521 in all correspondence related to this case. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov> approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr. Alexander Beyrent, GSA Acquisition Policy Division, at gsarpolicy@gsa.gov, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite GSAR Case 2020-G521.

SUPPLEMENTARY INFORMATION:

I. Background

As part of GSA's regulatory reform efforts, GSA determined that GSAR 532.905-70 should no longer require contracting officers to obtain approval of legal counsel before processing final payments for construction and building service contracts where, after 60 days, the contracting officers are unable to obtain releases of claims from contractors. Legal review is not a statutory requirement, and the decision to process final payments in such cases is a business decision, rather than a legal one.

II. Authority for This Rulemaking

Title 40 of the United States Code (U.S.C.) Section 121 authorizes GSA to issue regulations, including the GSAR, to control the relationship between GSA and contractors.

III. Discussion and Analysis

Prior to the issuance of this rule, GSA guidance on final payments for construction and building service contracts provided that, "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." GSA is proposing to amend GSAR 532.905-70(c) by removing the legal approval requirement because this is a business decision to be made by the

contracting officer, not a legal decision. Therefore, upon implementation of this rule, a contracting officer may instead process a final payment in such a situation after documenting in the contract file: (i) that the contracting officer requested a release of claims from the contractor and did not receive a response within 60 calendar days; and (ii) approval to process the final payment from one level above the contracting officer.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct 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 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This final rule was not subject to E.O. 13771 because this rule is not a significant regulatory action under E.O. 12886.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant GSAR revision.

VII. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 532

Government procurement.

Jeffrey A. Koses,
Senior Procurement Executive,
Office of Acquisition Policy,
Office of Governmentwide Policy,
General Services Administration.

Therefore, GSA amends 48 CFR part 532 as set forth below:

PART 532 – CONTRACT FINANCING

1. The authority citation for 48 CFR part 532 continues to read as follows:

Authority: 40 U.S.C. 121(c).

2. Amend section 532.905-70 by:

a. Removing from paragraph (a) "amount due the Contractor" and adding "amount due to the contractor" in its place;

b. Revising paragraph (b); and

c. Removing paragraphs (c) and (d).

The revision reads as follows:

532.905-70 Final payment—construction and building service contracts.

* * * * *

(b) A contracting officer may only process the final payment for a construction or building service contract once:

- (1) The contractor submits a properly executed GSA Form 1142, Release of Claims; or
- (2) The contracting officer documents in the contract file:

(i) That the contracting officer requested a release of claims from the contractor and did not receive a response within 60 calendar days; and,

(ii) Approval to process the final payment from one level above the contracting officer.

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