

GSA ORDER

Subject: General Services Administration Acquisition Manual; GSAM Case 2021-G519, Incorporate GSA Form 2437

1. Purpose. This order transmits a revision to the General Services Administration Acquisition Manual (GSAM) to incorporate GSA Form 2437, which shall be used for most change orders for construction contracts.
2. Background.

Section 855 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019, requires solicitations for construction contracts anticipated to be awarded to a small business to provide data regarding time required to definitize requests for equitable adjustment (REA) for change orders for construction.

Federal Acquisition Regulation (FAR) Case 2018–020¹, Construction Contract Administration, implements section 855 of the FY2019 NDAA.

Further, In July 2019, GAO issued GAO Report 19-500² which addressed the implementation of the Section 855 of FY2019 NDAA and FAR Case 2018-020. The report found that “GSA lacks information on the contract change process” and recommended “a strategy that outlines the steps needed to routinely collect information on and monitor the time frames for finalizing construction contract changes at the headquarters level”.

In response to the GAO report, Public Buildings Service (PBS) provided revised guidance through PBS Procurement Instructional Bulletin (PIB) 20-03 regarding the use of updated GSA Form 2437.

This case incorporates PBS’ guidance and mandates the use of GSA Form 2437 for change orders on construction contracts, prior to modification,

¹ 87 FR 58227.

² GAO, GAO-19-500, Federal Construction: Army Corps of Engineers and GSA Need to Improve Data on Contract Charges (2019). Retrieved from: <https://www.gao.gov/assets/710/700108.pdf>.

except those that accomplish a unilateral administrative change pursuant to FAR 43.103(b)(1). This will allow for greater collection of data on construction contract changes.

The information collected on GSA Form 2437 is exempt from the Paperwork Reduction Act (PRA) because the form is either completed by a Government employee or the information is “obtained through direct observation by an employee or agent of [GSA] or through non-standardized oral communication in connection with such direct observations.” 5 CFR § 1320.3(h)(3).

Therefore, an information collection approval number from the Office of Management and Budget is not required as long as the form is filled out by GSA employees or agents of GSA.

While general construction contractors are generally not considered agents of GSA, construction management contractors may be considered agents of GSA under the PRA if they are authorized to obtain the information necessary to complete GSA Form 2437.

3. Effective date. December 16, 2022

4. Explanation of changes.

This amendment includes non-regulatory changes. For full text changes of the amendment see Attachment A, GSAM Text Line-In/Line-Out.

GSAM 543.2 (Change Orders):

- 543.202 (Authority to issue change orders). Removed the section because using an authorized COR for change orders is not supported.
- 543.204 (Administration) Added a new section that requires the completion of GSA Form 2437 prior to the issuance of all construction contract change orders, except unilateral administrative changes pursuant to FAR 43.103(b)(1).

GSAM 553.3 (Illustration of Forms):

- 553.300 (Listing of Standard, Optional, and Agency forms). Added new reference to GSA Form 2437 and incorporated editorial changes in GSAM Case 2020-G527, Update References to Construction GSA Form 184, for clarity.

- 553.300-70 (Forms not illustrated). Deleted the section as the critical information contained in the section was moved into GSAM 553.300 mirroring the editorial changes in GSAM Case 2020-G527, Update References to Construction GSA Form 184.
5. Point of contact. For clarification of content, contact Logan Kemp or Vernita Misidor, GSA Acquisition Policy Division, at gsarpolicy@gsa.gov.

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GSAM Case 2021-G519

GSAM Text, Line-In/Line-Out

GSAM Baseline: Change 158 effective 12/15/2022

- 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 543 - Contract Modification

Subpart 543.2 - Change Orders

~~543.202 Authority to issue change orders.~~

~~This section applies to construction contracts.~~

~~(a) *COR authority.* The contracting officer may authorize a warranted COR to issue change orders. Authorization must be in writing, on a contract-by-contract basis, and must identify any limitations. For example, identify dollar limitations or specify that authority is only valid in emergency situations.~~

~~(b) *Additional restrictions.* The Contracting Officer should provide the following instruction to the COR as part of the written authorization:~~

~~———— (1) For any single change order, the COR may perform some or all of these actions:~~

~~———— (i) Determining the need for a change.~~

~~———— (ii) Preparing the Government's cost estimate.~~

~~———— (iii) Conducting negotiations.~~

~~———— (iv) Issuing the change order.~~

~~———— (v) Inspecting the work.~~

~~———— (2) For an unpriced change order, if the COR personally performs all the actions in paragraph (1) of this section, the change order must be reviewed by a designated official before issuance or definitization.~~

~~(c) *Review change orders.* For unpriced change orders when the COR personally performs all actions, the contracting officer must either personally review each change order or designate a capable official to perform the review. Consider~~

~~designating the COR's immediate supervisor or a higher-level official within the organization. Avoid designating more than one official to review change orders issued under an individual contract.~~

~~(d) *Coordination of change orders.* Issue change orders only after coordination, as appropriate, with quality control, finance, audit or other technical personnel.~~

[543.204 Administration.

(a) *Documentation.* For construction contracts, the Contracting Officer or appropriate agent shall complete GSA Form 2437 for all modifications, except unilateral administrative changes pursuant to FAR 43.103(b)(1). This form shall be completed promptly prior to the Contracting Officer issuance of a contract modification, including price to be determined later change orders.

(b) *Data.* For construction contracts, data regarding the definitization of equitable adjustments for change orders can be found at <https://www.gsa.gov/constructioncontractadmin.>]

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Part 553—Forms

Subpart 553.3—[Forms Used in Acquisitions]Illustrations of Forms

553.300 [Listing of Standard, Optional, and Agency forms]Scope of subpart.

~~[(a)]This subpart [lists]illustrates standard and GSA forms prescribed or referenced in Parts 501–551 and 571. Instructions on completing a form, if included, are identified by the suffix “I” after the GSAR section number.~~

~~553.300-70 Forms not illustrated.~~

~~[(b)] This subpart does not [list]illustrate either:~~

~~(a) S[s]tandard forms [listed]illustrated in the FAR.~~

~~(b) Forms available on line.~~

~~[(c)] You can a[A]ccess the forms listed below on the GSA Forms Library at <https://www.gsa.gov/forms>.~~

| Form No. | Title | Reference |
|-------------------------------|--|--|
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| GSA Form 2419 | Certification of Progress Payments Under Fixed-Price Construction Contracts | 552.232-5 |
| [GSA Form 2437 | Findings of Fact for Contract Modification | <u>543.204</u> |
| GSA Form 2689 | Small Business Analysis Record | 519.202-1, 519.502- 70 |
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