

PLAIN ENGLISH CLAUSE COMPARISON BETWEEN 3517B AND 3517X
DRAFT June 3, 2005

General Clauses 3517B	Credit Tenant Clauses 3517X
<u>GSAR 552.270-5 Subletting and Assignment</u>	<u>Subletting and Assignment</u>
<p>This clause permits the lessee to sublease or assign all or part of the leased space. The right to sublease is unilateral on the part of the Government (no prior consent of lessor is required). However, any assignment relieves the Government of all future liabilities and is subject to lessor's prior written consent.</p>	<p>This clause permits the government to sublease only after providing written notice to the lessor. The lessor is permitted to object to the subletting if the proposed subletting is unlawful or would have a material adverse effect on the value of the property.</p> <p>Unlike the 3517B, the government may not assign the lease.</p>
<u>GSAR 552.270-28 Mutuality of Obligation</u>	<u>Mutuality of Obligation</u>
<p>This clause makes clear that the Government's obligation to pay rent and the lessor's obligation to provide the demised premises are interdependent. In the event that lessor fails to provide tenantable space to the Government, the Government has the right to withhold or offset rent. This clause is similar in respects to the Failure in Performance clause. Many standard commercial leases contain such a clause.</p>	<p>This clause makes clear that the Government's obligation to pay the <u>base rent</u> and the lessor's obligation to provide the demised premises are interdependent. Further, this clause states that the government's obligation to pay <u>service agreement</u> rent and the lessor's obligation to furnish services, utilities, maintenance, insurance, and non-capital repairs and replacements, as provided in the lease are interdependent.</p> <p>Unlike the 3517B, this clause does not provide any language regarding the government's right to withhold or offset rent.</p>

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GSAR 552.270-17 Delivery and Condition	Delivery and Condition
<p>This clause enables the Government to control the delivery and condition of space. The Government can determine whether to occupy the space in increments, when the space is substantially complete, and can reduce rental payments if the premises do not comply with the provisions of the lease (incomplete punch list items). To the extent that this clause provides the Government with set-off rights, it has been criticized by commercial lessors and financing institutions. <u>NOTE:</u> 40 U.S.C. § 3310 requires such rent setoffs when buildings constructed for lease to and predominant use by the Government fail to comply with lease specifications. Subpart (b) of this clause satisfies this statutory requirement, as do other general clauses, such that inclusion of this language may not be required if provided for elsewhere.</p>	<p>This clause enables the Government to control the delivery and condition of space. The Government can determine whether to occupy the space in increments and when the space is substantially complete.</p> <p>Unlike the 3517B, the clause limits the government's right to offset rent.</p> <p>If necessary, the government must provide written notification specifying any material defects in the construction, including the government's estimated cost to remedy, and the date the lessor must cure said deficiencies. Rental reductions are <u>limited to the service agreement rent</u> and, if taken, will be remitted by the government to the lessor, in full, upon completion and acceptance of the space by the government.</p>
GSAR 552.270-18 Default in Delivery --Time Extensions	Default in Delivery --Time Extensions
<p>This clause confirms that time is of the essence in the delivery of the space and provides the Government with termination and other rights in the event that space not delivered on a timely basis. While certainly a "lessee friendly" clause, it is not unique to the Government and often is included as part of commercial leases.</p>	<p>This clause emphasizes that time is of the essence in the delivery of the space; however, unlike the 3517B, the lessor is provided an opportunity to cure and revise the construction delivery date under certain circumstances. The lessor is still subject to liquidated damages, if established and appropriate.</p>

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GSAR 552.270-10 Failure in Performance	Failure in Performance ✂
<p>This clause sets forth the government's main enforcement mechanism for ensuring that the lessor provides all required services, utilities, maintenance or repairs.</p> <p>The government must document and properly notify the lessor prior to undertaking corrective action and pursuing any "self-help." It is best to coordinate and work with the lessor to guide the lessor in correcting the failure.</p> <p>This "self-help" rule where the Government undertakes performance upon the lessor's failure to perform and then deduct rent payments accordingly, is a powerful, and often complained of, enforcement remedy.</p>	<p>This clause outlines the notification procedures required by the Government prior to performing "self-help" and pursuing any rental deductions.</p> <p>The clause separates failure in performance into service agreement matters and space lease matters.</p> <p>Service agreement matters pertain to a failure by the lessor to provide any service, utility, maintenance, non-capital repair or non-capital replacement required under the lease.</p> <p>The government must provide written notice to the lessor, and provide 30 days for the lessor to cure. If no cure is provided, then the government must provide written notice to the lessor and the lessor's lender and provide an additional 90 days to cure the failure in service. Only after proper notification is provided and the time to cure has expired, then the government has the right to remedy the situation and deduct said expenses from the service agreement rent. If necessary, the government may be required to establish its own service contracts and terminate the service agreement portion of the lease, only.</p> <p>Space lease matters pertain to any physical element or condition requiring capital repair or replacement.</p> <p>The government must provide written notice to the lessor and the lessor's lender, and provide 180 days to cure. Only</p>

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	<p>after proper notification is provided and the time to cure has expired, then the government has the right to remedy the situation and deduct said expenses from the service agreement reserve and the lessor's management fee itemized on the GSA Form 1217,</p> <p>In both remedies, the lessor's base rent is preserved and maintained as a rental obligation by the government despite failures in performance. However, these remedies do not preclude the Government from pursuing other courses of legal action, if necessary.</p>
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<u>GSAR 552.270-22 Default by Lessor During the Term</u>	<u>Default by Lessor During the Term</u>
<p>This clause sets forth the standard for default and provides the Government with the right to terminate the lease for default, without the risk of breaching the lease, when any of the enumerated conditions are met.</p>	<p>This clause provides the Government with the right offset the service agreement rent and/or the service agreement reserve, without the risk of breaching the lease, if necessary.</p> <p>No circumstances under this clause entitle the government to terminate the space lease or withhold any portion of the base rent.</p>
<u>GSAR 552.270-7 Fire and Casualty Damage</u>	<u>Fire and Casualty Damage</u>
<p>This clause gives GSA the right to cancel all or a portion of the lease after a fire or casualty. This clause offers many of the same protections for the Government as reflected in the Mutuality of Obligation clause (No. 9) and is another clause which is often criticized by lessors and financing institutions.</p>	<p>Unlike the 3517B, if the lessor can demonstrate that damaged or destroyed property can be reconstructed or repaired within 365 calendar days after the date of destruction, or longer if acceptable by the government, the lease is not terminated.</p> <p>If all or a portion of the space is rendered untenable, rent for the untenable premises may be suspended after the government provides written notice and a supplemental lease agreement. Further, rent will not accrue to the lessor until the government reoccupies the space.</p>

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	<u>NON-INTERRUPTABILITY OF BASE RENT</u>
	<p>This clause is not in the 3517B. This clause limits the Government's right to terminate the space lease portion of the contract to an event of fire or other casualty to the physical real estate. All other Government remedies for breach of contract such as debarment and rental offset, which are found in other contract clauses, including the EEO and Affirmative Action clauses, remain in full force and effect in the service agreement portion of the contract.</p> <p>In a letter dated May 22, 1998, The Deputy Assistant Secretary for Federal Contract Compliance, Office of Federal Contract Compliance Programs, U.S. Department of Labor, approved the use of this paragraph in Credit Lease agreements, <u>only</u>.</p> <p>Again, with the exception of an event of fire or other casualty, the government may not reduce or terminate the base rent once the contracting officer accepts the premises.</p> <p>Further, the clause explains that the government and the lessor will determine the amount of the tenant improvement allowance, which the lessor may include in the base rent. If there is unused tenant allowance, the unused portion will be applied against the succeeding month's rent. If additional funding is required for tenant improvements, the government shall pay the lessor lump sum.</p>

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<u>GSAR 552.203-70 Price Adjustment for Illegal or Improper Activity</u>	<u>Price Adjustment for Illegal or Improper Activity</u>
<p>The provisions of this clause are required by GSA 503.104-9 as part of the agency's implementation of the OFPPA procurement integrity provisions. While the statute does not require inclusion of this clause, it puts lessors on notice of the Governments statutory rights to reduce rental and other payments if it is determined that there was a violation of subsection 27(a) of the OFPPA (41 U.S.C. § 423). This clause is included if the estimated value of the acquisition exceeds \$100,000.</p>	<p>Similar to the 3517B, this clause puts lessors on notice of the Governments statutory rights to reduce rental and other payments if it is determined that there was a violation of subsection 27(a) of the OFPPA (41 U.S.C. § 423); however, unlike the 3517B, the rental reduction is limited to service agreement rent.</p>
<u>GSAR 552.270-13 Proposals for Adjustment</u>	<u>Proposals for Adjustment</u>
<p>This clause sets forth the detailed information that a Lessor must submit in order to be reimbursed for changes made under the Changes clause. The clause also is intended to ensure that contracting officers receive sufficient information on which to make informed decisions about price adjustment requests.</p>	<p>This clause sets forth the detailed information that a lessor must submit in order to be reimbursed for changes made under the Changes clause. The clause also is intended to ensure that contracting officers receive sufficient information on which to make informed decisions about price adjustment requests,</p> <p>Once the government accepts the space, this clause does not permit the government to reduce the base rent portion of the rent.</p>

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<u>GSAR 552.270-14 Changes</u>	<u>Changes</u>
<p>This clause allows a contracting officer to make certain changes within the scope of the contract as long as the contracting officer pays the contractor for the additional work. The clause allows the Government to direct within scope changes, unilaterally, without the risk of breaching the lease.</p>	<p>This clause allows a contracting officer to make certain changes within the scope of the contract as long as the contracting officer pays the contractor for the additional work. The clause allows the Government to direct within scope changes, unilaterally, without the risk of breaching the lease.</p> <p>Once the government accepts the space, this clause does not permit the government to reduce the base rent portion of the rent.</p>
	<u>552.203-71 - RESTRICTION ON ADVERTISING (VARIATION) (SEP 1999)</u>
	<p>This clause does not permit the lessor to refer to this lease contract in advertising or promotions.</p> <p>This clause can be included in the 3517B, if deemed appropriate.</p>