

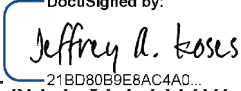


9/16/2022

GSA Office of Governmentwide Policy

Class Deviation CD-2021-11

MEMORANDUM FOR PBS LEASING CONTRACTING ACTIVITIES

FROM: JEFFREY A. KOSES 
SENIOR PROCUREMENT EXECUTIVE
OFFICE OF ACQUISITION POLICY (MV)

SUBJECT: GSAR Class Deviation - Updated GSAR Leasing Clauses

1. Purpose.

This memorandum approves a class deviation to the General Services Administration Regulation (GSAR) at Subpart 552.270 to provide updated clause language for lease procurements.

2. Background.

As part of an on-going review of acquisition policies across the agency, GSA has identified the need to consolidate, update, and revise policy to fulfill statutory and executive order requirements, meet the needs of evolving acquisition programs and ensure more consistency with I Acquisition Regulations. Policy rewrite efforts have largely been completed for the FAS Federal Supply Schedule (FSS) Program¹ and the PBS Construction Program².

This deviation is one of several updates planned to separately address the needs of PBS leasing contracts and update GSAR Part 570 text. This deviation is focused on incorporating existing lease guidance reflecting non-complex updates to provisions and clauses that were previously implemented through internal PBS policies and is an interim step towards a full policy update.

Lease Acquisition Circular LAC-2012-02, issued by the Office of Leasing on June 1, 2012, updated templates reflecting changes to certain lease clauses and paragraphs implemented through the PBS Lease Reform Initiative. These clauses and paragraphs, which have been subsequently updated through multiple Office of Leasing policy

¹ [GSAR Change 100](#), Dated May 23, 2019 for GSAR Case 2013-G502

² [GSAR Change 98](#), Dated February 13, 2019 for GSAR Case 2015-G503

issuances since 2012, are not consistent with the text in GSAM 570. GSAM 501.404 requires the Senior Procurement Executive (SPE) to approve class deviations to the FAR or GSAR.

Pursuant to GSAM 501.404, this class deviation aligns the following updated leasing clauses for compliance with the GSAR and satisfies the SPE approval requirement:

Leasing Clause Title	Last Revision by Leasing	GSAR Clause Title	Last Revision by GSAR
Subletting and Assignment	Jan 2011	GSAR 552.270-5, Subletting and Assignment	Sep 1999
Maintenance of the Property, Right to Inspect	Apr 2015	GSAR 552.270-6, Maintenance of Building and Premises—Right of Entry	Sep 1999
Fire and Casualty Damage	Jun 2016	GSAR 552.270-7, Fire and Casualty Damage	Jun 2011
Compliance with Applicable Law	Jan 2011	GSAR 552.270-8, Compliance with Applicable Law	Jan 2011
Changes	Mar 2013	GSAR 552.270-14, Changes	Jun 2011
Liquidated Damages	Jun 2012	GSAR 552.270-15, Liquidated Damages	Sep 1999
Adjustment for Vacant Premises	Oct 2017	GSAR 552.270-16, Adjustment for Vacant Premises	Jun 2011
Delivery and Condition	Jan 2011	GSAR 552.270-17, Delivery and Condition	Sep 1999
Integrated Agreement	Jun 2012	GSAR 552.270-27, Integrated Agreement	Sep 1999
Acceptance of Space and Certificate of Occupancy	Apr 2015	GSAR 552.270-29, Acceptance of Space	Jun 2011

The following clauses will be addressed separately:

- GSAR 552.270-4 Definitions

- GSAR 552.270-10 Failure in Performance
- GSAR 552.270-18 Default in Delivery - Time Extensions
- GSAR 552.270-20 Payment
- Other Local PBS Leasing Clauses, as appropriate

3. Authority.

This class deviation is issued under the authority of FAR 1.404 and General Services Administration Acquisition Manual (GSAM) 501.404.

4. Applicability.

This class deviation applies to PBS Leasing.

5. Deviation.

See Attachment A for the changes in the GSAR text as revised by this deviation. See Attachment B for a clean version of the new GSAR text.

6. Effective Date.

This deviation is effective immediately and remains in effect until rescinded or incorporated into the GSAR.

7. Point of Contact.

Any questions regarding this deviation may be directed to Marten D. Wallace Sr., GSA Acquisition Policy Division, at GSARPolicy@gsa.gov.

Attachments

Attachment A – GSAR Deviation Text

Attachment B – Clean Version of GSAR Deviation Text

**Class Deviation CD-2021-11
Attachment A**

GSAR Deviation Text, Line-In/Line-Out

GSAR Baseline: Change 155 effective 08/30/2022

- Additions to baseline made by proposed rule are indicated by **[bold text in brackets]**
- Deletions to baseline made by proposed rule are indicated by ~~strikethroughs~~
- Five asterisks (* * * * *) indicate that there are no revisions between the preceding part and/or subpart, and following section
- Three asterisks (* * *) indicate that there are no revisions between the material shown within a section or subsection

PART 552 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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Subpart 552.000 Scope of part.

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Subpart 552.2 - Text of Provisions and Clauses

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552.270-5 Subletting and Assignment [(DEVIATION)].

SUBLETTING AND ASSIGNMENT ~~(SEP 1999)~~ [(SEP 2022) (DEVIATION)]

The Government may sublet any part of the premises but shall not be relieved from any obligations under this lease by reason of any such subletting. The Government may at any time assign this lease, and be relieved from all obligations to Lessor under this lease excepting only unpaid rent and other liabilities, if any, that have accrued to the date of said assignment. Any **[subletting or]** assignment shall be subject to prior written consent of **[the]** Lessor, which shall not be unreasonably withheld.

(End of clause)

552.270-6 Maintenance of [the Property] ~~Building and Premises~~—Right [to Inspect] [(DEVIATION)].

MAINTENANCE OF [THE PROPERTY] ~~BUILDING AND PREMISES~~—RIGHT [TO INSPECT] ~~(SEP 1999)~~ [(SEP 2022) (DEVIATION)]

~~Except in case of damage arising out of the willful act or negligence of a Government employee, [The] Lessor shall maintain the [property] premises, including the building, [building systems,] and all equipment, fixtures, and appurtenances furnished by the Lessor under this lease, in good repair and [tenantable] condition so that they are suitable in appearance and capable of supplying such heat, air conditioning, light, ventilation, [safety systems,] access and other things to the premises, without reasonably preventable or recurring disruption, as is required for the Government's access to, occupancy, possession, use and enjoyment of the premises as provided in this lease.~~

[(a)] For the purpose of so maintaining the premises, the Lessor may at reasonable times enter the premises with the approval of the authorized Government representative in charge.

[(b) Upon request of the Lease Contracting Officer (LCO), the Lessor shall provide written documentation that building systems have been properly maintained, tested, and are operational within manufacturer's warranted operating standards.

(c) The Lessor shall maintain the premises in a safe and healthful condition according to applicable OSHA standards and all other requirements of this lease, including standards governing indoor air quality, existence of mold and other biological hazards, presence of hazardous materials, etc.

(d) The Government shall have the right, at any time after the lease award date and during the term of the lease, to inspect all areas of the property to which access is necessary for the purpose of determining the Lessor's compliance with this clause.]

(End of clause)

552.270-7 Fire and Casualty Damage [(DEVIATION)].

FIRE AND CASUALTY DAMAGE ~~(JUN 2011)~~ [(SEP 2022) (DEVIATION)]

~~If the entire premises are~~

[(a) If the building in which the premises are located is totally] destroyed by fire or other casualty [damaged by fire or other casualty], this lease [shall] will immediately terminate. ~~In case of partial destruction.~~

[(b) If the building in which the premises are located are only partially destroyed] or damage~~[d]~~, so as to render the premises untenable, ~~as determined by the Government, the Government may terminate the lease by giving written notice to the Lessor within 15 calendar days after such determination; if so terminated, no rent will accrue to the Lessor after such partial destruction or damage; and if not so terminated, the rent will be reduced proportionately by supplemental agreement hereto effective from the date of such partial destruction or damage.~~ **[or not usable for their intended purpose:**

(1) The Lessor shall have the option to elect to repair and restore the premises or terminate the lease.

(2) Unless otherwise approved by the Lease Contracting Officer, the Lessor shall be permitted a reasonable amount of time, not to exceed 270 days from the event of destruction or damage, to repair or restore the premises, provided that the Lessor submits to the Government a reasonable schedule for repair of the premises within 60 days of the event of destruction or damage.

(i) If the Lessor fails to timely submit a reasonable schedule for completing the work, the Government may elect to terminate the lease effective as of the date of the event of destruction or damage.

(ii) If the Lessor elects to repair or restore the premises, but fails to repair or restore the premises within 270 days from the event of destruction or damage, or fails to diligently pursue such repairs or restoration so as to render timely completion commercially impracticable, the Government may terminate the lease effective as of the date of the destruction or damage.

(3) During the time that the premises are unoccupied, rent shall be abated. Termination of the lease by either party under this clause shall not give rise to liability for either party.]

[(4)] Nothing in this lease shall be construed as relieving Lessor from liability for damage to or destruction of property of the United States of America caused by the willful or negligent act or omission of Lessor.

(End of clause)

552.270-8 Compliance with Applicable Law [(DEVIATION)].

COMPLIANCE WITH APPLICABLE LAW ~~(SEP 1999)~~ [(SEP 2022) (DEVIATION)]

Lessor shall comply with all Federal, state[, **tribal,**] and local laws applicable to the Lessor as owner or lessor, or both, of the building or premises, including, without limitation, laws applicable to the construction, ownership, alteration or operation of both or either thereof, and will obtain all necessary permits, licenses and similar items at Lessor's expense. **[its ownership and leasing of the property, including, without limitation, laws applicable to the construction, ownership, alteration or operation of all buildings, structures, and facilities located thereon, and obtain all necessary permits, licenses and similar items at its own expense.]** The Government will comply with all Federal, state [**tribal,**] and local laws applicable to and enforceable against it as a tenant under this lease, provided that nothing in this lease shall be construed as a waiver of the sovereign immunity of the Government. This lease shall be governed by Federal law.

(End of clause)

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552.270-14 Changes [(DEVIATION)].

CHANGES ~~(JUN 2011)~~ [(SEP 2022) (DEVIATION)]

(a) The ~~Contracting Officer~~**[Lease Contracting Officer (LCO)]** may at any time, by written order, ~~make~~**[direct]** changes **[to the tenant improvements within the space, building security requirements, or the services required under the lease. within the general scope of this lease in any one or more of the following:**

- ~~(1) Specifications (including drawings and designs).~~
- ~~(2) Work or services.~~
- ~~(3) Facilities or space layout.~~
- ~~(4) Amount of space, provided the Lessor consents to the change.~~

(b) If any such change causes an increase or decrease in Lessor's cost ~~of or the time required for performance~~ **[of its obligations under this lease, whether or not changed by the order, the Lessor shall be entitled to an amendment to the lease providing for one or more of the following:]** ~~under this lease, whether or not changed by the order, the Contracting Officer shall modify this lease to provide for one or more of the following:~~

- ~~(1) A modification~~**[An adjustment]** of the delivery date.
- ~~(2) An equitable adjustment in the rental rate.~~
- ~~(3) A lump sum equitable adjustment. [or]~~
- [(4) An adjustment to the operating cost base, if applicable.]**

~~(4) An equitable adjustment of the annual operating costs per ABOA square foot specified in this lease~~

(c) The Lessor must assert its right to an adjustment~~adjustment~~**[amendment]** under this clause within 30 days from the date of receipt of the change order and must submit a proposal for adjustment. ~~The Lessor's failure to assert its right for adjustment within the time frame specified herein shall be a waiver of the Lessor's right to an adjustment under this paragraph. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause excuses the lessor from proceeding with the change as directed.~~**[the pendency of an adjustment or existence of a dispute shall not excuse the Lessor from proceeding with the change as directed.]**

(d) Absent such~~such~~**[a]** written change order ~~[from the LCO], [or from a Government official to whom the LCO has explicitly and in writing delegated the authority to direct changes,]~~ **[from the LCO], [or from a Government official to whom the LCO has explicitly and in writing delegated the authority to direct changes,]** the Government is not liable to Lessor under this clause.

(End of clause)

552.270-15 Liquidated Damages [(DEVIATION)].

LIQUIDATED DAMAGES ~~(SEP 1999)~~ [(SEP 2022) (DEVIATION)]

In case of failure on the part of the Lessor to complete the work within the time fixed in the lease contract or letter of award, the Lessor shall pay the Government as fixed and agreed liquidated damages, ~~[\$ _____] pursuant to this clause, the sum of \$ _____~~ for each and every calendar day that the delivery is delayed beyond the date specified for delivery of all of the space ready for occupancy by the Government. This remedy is not exclusive and is in addition to any other remedies which may be available under this lease or at law. **[This liquidated sum is not meant as a penalty, but as an approximation of actual damages that would be suffered by the Government because of the Lessor's delay.]**

(End of clause)

552.270-16 Adjustment for Vacant Premises [(DEVIATION)].

ADJUSTMENT FOR VACANT PREMISES ~~(JUN 2014)~~ [(SEP 2022) (DEVIATION)]

(a) If the Government fails to occupy any portion of the leased premises or vacates the premises in whole or in part ~~before the lease term expires~~**[prior to expiration of the**

term of the lease], the rental rate [and the base for operating cost adjustments] will be reduced [using the figure specified in the “Rate for Adjustment for Vacant Leased Premises” paragraph of this Lease]. ~~The reduction shall occur after the Government gives 30 calendar days notice to the Lessor, and shall continue in effect until the Government occupies or reoccupies the vacant premises or the lease expires or is terminated.~~

(b) ~~The~~**[If no] rate [reduction has been established in this lease], [the rate]** will be reduced by that portion of the costs per ABOA square foot of operating expenses not required to maintain the space. ~~In addition, at the first operating cost adjustment after the notice of reduction to the rent, the base cost of services subject to escalation will be reduced by said amount. In the event that the Government occupies or reoccupies the vacant premises on the lease anniversary date following the occupation of the vacant premises, the base cost of services subject to escalation will be increased by said amount.~~

[(c) Said reduction shall occur after the Government gives 30 calendar days' prior notice to the Lessor and shall continue in effect until the Government occupies the vacant premises or the lease expires or is terminated.]

~~(c) The reduction in operating costs shall be negotiated and stated in the lease.~~
(End of clause)

552.270-17 Delivery and Condition [(DEVIATION)].

DELIVERY AND CONDITION ~~(SEP 1999)~~ [(SEP 2022) (DEVIATION)]

(a) ~~Unless the Government elects to have the space occupied in increments, the space must be delivered ready for occupancy as a complete unit. The Government reserves the right to determine when the space is substantially complete.~~

~~(b) If the premises do not in every respect comply with the provisions of this lease the Contracting Officer may, in accordance with the Failure in Performance clause of this lease, elect to reduce the rent payments.~~

[(b) The Government may elect to accept the space notwithstanding the Lessor's failure to deliver the space substantially complete; if the Government so elects, it may reduce the rent payments.]

(End of clause)

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552.270-27 Integrated Agreement [(DEVIATION)].

INTEGRATED AGREEMENT ~~(SEP 1999)~~ [(SEP 2022) (DEVIATION)]

This L[~~I~~]ease, upon execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of the L[~~I~~]ease. **[Except as expressly attached to and made a part of the lease, neither the request for lease proposals nor any pre-award communications by either party shall be incorporated in the lease.]**

(End of clause)

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552.270-29 Acceptance of the Space [and Certificate of Occupancy (DEVIATION)].

**ACCEPTANCE OF SPACE [AND CERTIFICATE OF OCCUPANCY] ~~(JUN 2011)~~
[(SEP 2022) (DEVIATION)]**

~~(a) When the lessor has completed all alterations, improvements, and repairs necessary to meet the requirements of the lease, the lessor shall notify the Contracting Officer. The Contracting Officer or designated representative shall promptly inspect the space.~~

~~(b) The Government will accept the space and the lease term will begin after determining that the space is substantially complete and contains the required ABOA square footage as indicated in the solicitation paragraph, Amount and Type of Space.~~

[(a) Ten (10) working days prior to the completion of the space, the Lessor shall issue written notice to the Government to schedule the inspection of the space for acceptance. The Government shall accept the space only if the construction of building shell and tenant improvements conforming to this lease and the approved design intent drawings (DIDs) is substantially complete, and a certificate of occupancy has been issued as set forth below.

(b) The space shall be considered substantially complete only if the space may be used for its intended purpose and completion of remaining work will not unreasonably interfere with the Government's enjoyment of the space. Acceptance shall be final and binding upon the Government with respect to conformance of the completed tenant improvements to the approved DIDs, with

the exception of items identified on a punchlist generated as a result of the inspection, concealed conditions, latent defects, or fraud, but shall not relieve the Lessor of any other lease requirements.

(c) The Lessor shall provide a valid certificate of occupancy, issued by the local jurisdiction, for the intended use of the Government. If the local jurisdiction does not issue certificates of occupancy or if the certificate of occupancy is not available, the Lessor may satisfy this condition by providing a report prepared by a licensed fire protection engineer that indicates that the premises and building are compliant with all applicable local codes and ordinances and all fire protection and life safety-related requirements of this lease to ensure an acceptable level of safety is provided. Under such circumstances, the Government shall only accept the space without a certificate of occupancy if a licensed fire protection engineer determines that the offered space is compliant with all applicable local codes and ordinances and fire protection and life safety-related requirements of this lease.]

(End of clause)

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**Class Deviation CD-2021-11
Attachment B**

Clean Version of GSAR Deviation Text

552.270-5 Subletting and Assignment (DEVIATION).

SUBLETTING AND ASSIGNMENT (SEP 2022) (DEVIATION)

The Government may sublet any part of the premises but shall not be relieved from any obligations under this lease by reason of any such subletting. The Government may at any time assign this lease, and be relieved from all obligations to Lessor under this lease excepting only unpaid rent and other liabilities, if any, that have accrued to the date of said assignment. Any subletting or assignment shall be subject to prior written consent of the Lessor, which shall not be unreasonably withheld.

(End of clause)

552.270-6 Maintenance of the Property—Right to Inspect (DEVIATION).

**MAINTENANCE OF THE PROPERTY—RIGHT TO INSPECT (SEP 2022)
(DEVIATION)**

The Lessor shall maintain the property, including the building, building systems, and all equipment, fixtures, and appurtenances furnished by the Lessor under this lease, in good repair and tenantable condition so that they are suitable in appearance and capable of supplying such heat, air conditioning, light, ventilation, safety systems, access and other things to the premises, without reasonably preventable or recurring disruption, as is required for the Government's access to, occupancy, possession, use and enjoyment of the premises as provided in this lease.

(a) For the purpose of so maintaining the premises, the Lessor may at reasonable times enter the premises with the approval of the authorized Government representative in charge.

(b) Upon request of the Lease Contracting Officer (LCO), the Lessor shall provide written documentation that building systems have been properly maintained, tested, and are operational within manufacturer's warranted operating standards.

(c) The Lessor shall maintain the premises in a safe and healthful condition according to applicable OSHA standards and all other requirements of this lease, including standards

governing indoor air quality, existence of mold and other biological hazards, presence of hazardous materials, etc.

(d) The Government shall have the right, at any time after the lease award date and during the term of the lease, to inspect all areas of the property to which access is necessary for the purpose of determining the Lessor's compliance with this clause.

(End of clause)

552.270-7 Fire and Casualty Damage (DEVIATION).

FIRE AND CASUALTY DAMAGE (SEP 2022) (DEVIATION)

(a) If the building in which the premises are located is totally destroyed or damaged by fire or other casualty, this lease shall immediately terminate.

(b) If the building in which the premises are located are only partially destroyed or damaged, so as to render the premises untenable, or not usable for their intended purpose:

(1) The Lessor shall have the option to elect to repair and restore the premises or terminate the lease.

(2) Unless otherwise approved by the Lease Contracting Officer, the Lessor shall be permitted a reasonable amount of time, not to exceed 270 days from the event of destruction or damage, to repair or restore the premises, provided that the Lessor submits to the Government a reasonable schedule for repair of the premises within 60 days of the event of destruction or damage.

(i) If the Lessor fails to timely submit a reasonable schedule for completing the work, the Government may elect to terminate the lease effective as of the date of the event of destruction or damage.

(ii) If the Lessor elects to repair or restore the premises, but fails to repair or restore the premises within 270 days from the event of destruction or damage, or fails to diligently pursue such repairs or restoration so as to render timely completion commercially impracticable, the Government may terminate the lease effective as of the date of the destruction or damage.

(3) During the time that the premises are unoccupied, rent shall be abated. Termination of the lease by either party under this clause shall not give rise to liability for either party.

(4) Nothing in this lease shall be construed as relieving Lessor from liability for damage to or destruction of property of the United States of America caused by the willful or negligent act or omission of Lessor.

(End of clause)

552.270-8 Compliance with Applicable Law (DEVIATION).

COMPLIANCE WITH APPLICABLE LAW (SEP 2022) (DEVIATION)

Lessor shall comply with all Federal, state, tribal, and local laws applicable to its ownership and leasing of the property, including, without limitation, laws applicable to the construction, ownership, alteration or operation of all buildings, structures, and facilities located thereon, and obtain all necessary permits, licenses and similar items at its own expense. The Government will comply with all Federal, state, tribal, and local laws applicable to and enforceable against it as a tenant under this lease, provided that nothing in this lease shall be construed as a waiver of the sovereign immunity of the Government. This lease shall be governed by Federal law.

(End of clause)

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552.270-14 Changes (DEVIATION).

CHANGES (SEP 2022) (DEVIATION)

(a) The Lease Contracting Officer (LCO) may at any time, by written order, direct changes to the tenant improvements within the space, building security requirements, or the services required under the lease.

(b) If any such change causes an increase or decrease in Lessor's cost or time required for performance of its obligations under this lease, whether or not changed by the order, the Lessor shall be entitled to an amendment to the lease providing for one or more of the following:

- (1) An adjustment of the delivery date.
- (2) An equitable adjustment in the rental rate.
- (3) A lump sum equitable adjustment. or
- (4) An adjustment of the operating cost base, if applicable.

(c) The Lessor must assert its right to an amendment under this clause within 30 days from the date of receipt of the change order and must submit a proposal for adjustment. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, the pendency of an adjustment or existence of a dispute shall not excuse the Lessor from proceeding with the change as directed.

(d) Absent a written change order from the LCO, or from a Government official to whom the LCO has explicitly and in writing delegated the authority to direct changes, the Government is not liable to Lessor under this clause.

(End of clause)

552.270-15 Liquidated Damages (DEVIATION)].

LIQUIDATED DAMAGES (SEP 2022) (DEVIATION)

In case of failure on the part of the Lessor to complete the work within the time fixed in the lease, the Lessor shall pay the Government as fixed and agreed liquidated damages, \$_____ for each and every calendar day that the delivery is delayed beyond the date specified for delivery of all of the space ready for occupancy by the Government. This remedy is not exclusive and is in addition to any other remedies which may be available under this lease or at law. This liquidated sum is not meant as a penalty, but as an approximation of actual damages that would be suffered by the Government because of the Lessor's delay.

(End of clause)

552.270-16 Adjustment for Vacant Premises (DEVIATION).

ADJUSTMENT FOR VACANT PREMISES (SEP 2022) (DEVIATION)

(a) If the Government fails to occupy any portion of the leased premises or vacates the premises in whole or in part prior to expiration of the term of the lease, the rental rate and the base for operating cost adjustments will be reduced using the figure specified in the "Rate for Adjustment for Vacant Leased Premises" paragraph of this Lease.

(b) If no rate reduction has been established in this lease, the rate will be reduced by that portion of the costs per ABOA square foot of operating expenses not required to maintain the space.

(c) Said reduction shall occur after the Government gives 30 calendar days' prior notice to the Lessor and shall continue in effect until the Government occupies the vacant premises or the lease expires or is terminated.

(End of clause)

552.270-17 Delivery and Condition (DEVIATION).

DELIVERY AND CONDITION (SEP 2022) (DEVIATION)

(a) Unless the Government elects to have the space occupied in increments, the space must be delivered ready for occupancy as a complete unit.

(b) The Government may elect to accept the space notwithstanding the Lessor's failure to deliver the space substantially complete; if the Government so elects, it may reduce the rent payments.

(End of clause)

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552.270-27 Integrated Agreement (DEVIATION).

INTEGRATED AGREEMENT (SEP 2022) (DEVIATION)

This lease, upon execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of the lease. Except as expressly attached to and made a part of the lease, neither the request for lease proposals nor any pre-award communications by either party shall be incorporated in the lease.

(End of clause)

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552.270-29 Acceptance of the Space and Certificate of Occupancy (DEVIATION).

**ACCEPTANCE OF THE SPACE AND CERTIFICATE OF OCCUPANCY (SEP 2022)
(DEVIATION)**

(a) Ten (10) working days prior to the completion of the space, the Lessor shall issue written notice to the Government to schedule the inspection of the space for

acceptance. The Government shall accept the space only if the construction of building shell and tenant improvements conforming to this lease and the approved design intent drawings (DIDs) is substantially complete, and a certificate of occupancy has been issued as set forth below.

(b) The space shall be considered substantially complete only if the space may be used for its intended purpose and completion of remaining work will not unreasonably interfere with the Government's enjoyment of the space. Acceptance shall be final and binding upon the Government with respect to conformance of the completed tenant improvements to the approved DIDs, with the exception of items identified on a punchlist generated as a result of the inspection, concealed conditions, latent defects, or fraud, but shall not relieve the Lessor of any other lease requirements.

(c) The Lessor shall provide a valid certificate of occupancy, issued by the local jurisdiction, for the intended use of the Government. If the local jurisdiction does not issue certificates of occupancy or if the certificate of occupancy is not available, the Lessor may satisfy this condition by providing a report prepared by a licensed fire protection engineer that indicates that the premises and building are compliant with all applicable local codes and ordinances and all fire protection and life safety-related requirements of this lease to ensure an acceptable level of safety is provided. Under such circumstances, the Government shall only accept the space without a certificate of occupancy if a licensed fire protection engineer determines that the offered space is compliant with all applicable local codes and ordinances and fire protection and life safety-related requirements of this lease.

(End of clause)

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