

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 13, 16, 32 and 52**

[FAR Case 91-118]

RIN 9000-AG49

**Federal Acquisition Regulation;
Electronic Funds Transfer**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to address the use of electronic funds transfers (EFT) for Federal contract payments and to facilitate implementation of Public Law 104-134 which mandates payment by EFT in certain situations. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before September 4, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRs), 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over the Internet should be addressed to: farcase.91-118@gsa.gov.

Please cite FAR case 91-118 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, 1800 F Street, NW, Room 4035, Washington, DC 20405, (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, Procurement Analyst, at (202) 501-3221. Please cite FAR case 91-118.

SUPPLEMENTARY INFORMATION:**A. Background**

An interim rule was published in the **Federal Register** on August 29, 1996 (61 FR 45770) to implement subsection (x)(1) of the Debt Collection Improvement Act of 1996. The Debt Collection Improvement Act is chapter

10 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104-134). Subsection (x)(1) amends 31 U.S.C. 3332 to require, beginning July 26, 1996, that all Federal payments to a recipient who becomes eligible for that type of payment shall be made by electronic funds transfer. The statute provides an exemption for payments to certain recipients, and stipulates that the Department of the Treasury is responsible for issuing regulations necessary for carrying out the statute. On July 26, 1996, the Department of the Treasury's Financial Management Service issued an interim rule (61 FR 39254) which added Part 208 to Title 31, Code of Federal Regulations, to provide regulations for payments through EFT.

This proposed FAR rule differs significantly from the interim FAR rule. One of the main differences is the location where the Government will receive the contractor's EFT information. The interim rule clauses at 52.232-33, Mandatory Information for Electronic Funds Transfer Payment, and 52.232-34, Optional Information for Electronic Funds Transfer Payment, require the contractor to submit that information directly to the payment office. The proposed rule revises these two contract clauses with new language at 52.232-33, Payment by Electronic Funds Transfer (CCR), and 52.232-34, Payment by Electronic Funds Transfer (Non-CCR). The new clause at 52.232-33 is prescribed when the payment office uses the Central Contract Registration (CCR) database as its source of EFT information. The new clause at 52.232-34 is used when the contractor submits EFT information to a source other than the CCR database.

The proposed rule also recognizes that agencies may use differing administrative approaches in the collection, tracking, and maintenance of contractor EFT banking information. The two most distinctly different approaches are those that involve obtaining contractor banking information prior to award (as a condition of award) as opposed to obtaining that information after award (as a normal contract performance duty).

The proposed rule also differs from the interim rule by more rigidly requiring payment by EFT except for two categories of exceptions described at FAR 32.1103-1: "non-banked contractors" and "non-EFT system". In contrast, the interim rule provides the clause at 52.232-34 for optional submission of EFT information by the contractor for payments occurring on or before January 1, 1999. The determination whether a particular

payment must be made by EFT is made by the payment official. In addition, the proposed rule contains three new clauses at 52.232-X1, Designation of Office for Government Receipt of EFT Information, 52.232-X2, Payment by Third Party, and 52.232-X3, Multiple Payment Arrangements. The clause at 52.232-X1 is prescribed when the Government has designated an office other than the payment office to receive the contractor's EFT information. The clause at 52.232-X2 is prescribed when payment on a written contract is made by a third party on behalf of the Government (e.g., Governmentwide commercial purchase card). The clause at 52.232-X3 is prescribed when the contract or agreement provides for the use of delivery orders and provides for multiple types of payment arrangements. The solicitation provision at 52.232-X4, Submission of EFT Information with Offer, is prescribed when the Government has determined that EFT banking information is to be submitted prior to award, along with the offer.

Public comments were received from sixteen sources. All comments were considered in the development of this proposed rule.

B. Regulatory Flexibility Act

The rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because the majority of small entities will have payment made by EFT under their contracts. An Initial Regulatory Flexibility Analysis (IRFA) was performed in conjunction with the interim rule published at 61 FR 45770, August 29, 1996, and a revised Initial Regulatory Flexibility Analysis has been performed in conjunction with this proposed rule. The analysis is summarized as follows:

The rule will apply, prior to January 2, 1999, to all small businesses who enter into contracts with the Federal Government except for two categories: "Non-banked" contractors and "Non-EFT system". "Non-banked contractors" are those contractors who do not have an account at a domestic United States financial institution and do not have an authorized payment agent. These contractors are waived from the requirement to be paid by EFT, upon submission of a certificate. Contractors are also exempt from receiving payment by EFT if agencies are unable to make payment because of system limitations. This "non-EFT system" category consists of contracts (1) in which the cognizant payment offices are not capable of making payment through EFT; (2) that are paid in other than U.S. dollars; (3) that are classified; (4) that are awarded by a deployed

contracting officer in the course of military operations; and (5) where payments are received by, or on behalf of, the contractor outside the United States or Puerto Rico. On and after January 2, 1999, however, payments under all contracts, subject to implementing regulations of the Secretary of the Treasury, are required to be made by EFT. To date no supporting data has been collected, therefore there is no estimate available of the number of small businesses that will be subject to the rule.

A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments from small entities concerning the affected FAR subparts shall also be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite FAR case 91-118 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Public Law 96-511) applies because the proposed rule contains information collection requirements. The Office of Management and Budget has approved an information collection concerning Electronic Funds Transfer (9000-0144) through August 31, 1999, based on the requirements in the interim rule for contractors to provide EFT information for each contract award. The proposed rule decreases the collection requirements since the rule permits contractors to provide EFT information to the CCR database on an annual basis, rather than per contract award.

Annual Reporting Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: *Respondents:* 14,000; *Responses per respondent:* 10; *Total annual responses:* 140,000; *Preparation hours per response:* .5; and *Total response burden hours:* 70,000.

D. Request for Comments Regarding Paperwork Burden

Members of the public are invited to comment on the recordkeeping and information collection requirements and estimates set forth above. Please send comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Mr. Peter N. Weiss, FAR Desk Officer, New Executive Office Building, Room 10102,

725 17th Street, NW, Washington, DC 20503.

Also send a copy of any comments to the FAR Secretariat at the address shown under ADDRESSES. Please cite FAR case 91-118, Electronic Funds Transfer, in all correspondence related to this estimate.

List of Subjects in 48 CFR Parts 13, 16, 32 and 52

Government procurement.

Dated: June 23, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 13, 16, 32 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 13, 16, 32 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

2. Section 13.301 is amended in paragraph (c)(3) by adding a sentence at the end to read as follows:

13.301 Governmentwide commercial purchase card.

* * * * *

(c) * * *

(3) * * * See 32.1105(d) for instructions for use of the appropriate clause when payment under a written contract will be made through use of the card.

3. Section 13.302-1 is amended by revising paragraph (e) to read as follows:

13.302-1 General.

* * * * *

(e) In accordance with 31 U.S.C. 3332, electronic funds transfer (EFT) is required for payments except as provided in 32.1103-1. See Subpart 32.11 for instructions for use of the appropriate clause in purchase orders. When obtaining verbal quotes, the contracting officer shall inform the quoter of the EFT clause that will be in any resulting purchase order.

PART 16—TYPES OF CONTRACTS

4. Section 16.505 is amended in paragraph (a) by redesignating paragraph (a)(6)(viii) as (a)(6)(ix) and by adding a new (a)(6)(viii) to read as follows:

16.505 Ordering.

(a) * * *

(6) * * *

(viii) Method of payment and payment office, if not specified in the contract (see 32.1105(e)).

* * * * *

PART 32—CONTRACT FINANCING

5. Subpart 32.11 is revised to read as follows:

Subpart 32.11—Electronic Funds Transfer

Sec.

32.1100 Scope of subpart.

32.1101 Statutory requirements.

32.1102 Definitions.

32.1103 Policy.

32.1103-1 Applicability.

32.1103-2 Protection of EFT information.

32.1103-3 Assignment of claims.

32.1103-4 EFT mechanisms.

32.1103-5 Government inability to make EFT payment.

32.1103-6 Payment information.

32.1103-7 EFT for contracts awarded from solicitations issued prior to July 26, 1996.

32.1104 Payment by Governmentwide commercial purchase card.

32.1105 Solicitation provision and contract clauses.

Subpart 32.11—Electronic Fund Transfer

32.1100 Scope of subpart.

This subpart provides policy and procedures for providing financing and delivery payments to contractors by electronic funds transfer (EFT).

32.1101 Statutory requirements.

For contracts resulting from solicitations issued on or after July 26, 1996, 31 U.S.C. 3332, as implemented by Department of the Treasury regulations, requires payment be made by EFT in most situations (see 32.1103-1). For all contracts, regardless of solicitation date, 31 U.S.C. 3332 requires, subject to implementing regulations of the Secretary of the Treasury, that all payments made after January 1, 1999, be made by EFT.

32.1102 Definitions.

EFT information means information necessary for making a payment by electronic funds transfer through specified EFT mechanisms.

Electronic Funds Transfer (EFT) means any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes Automated Clearing House transfers, Federal Reserve Wire

transfers, transfers made at automatic teller machines, and point-of-sale terminals (e.g., Governmentwide commercial purchase cards).

Governmentwide commercial purchase card, as used in this part, means a card that is similar in nature to a commercial credit card that is used to make financing and delivery payments for supplies and services. The purchase card is an EFT method and it may be used as a means to meet the requirement to pay by EFT, to the extent that purchase card limits do not preclude such payments.

Payment information means the payment advice provided by the Government to the contractor that identifies what the payment is for, any computations or adjustments made by the Government, and any information required by the Prompt Payment Act.

32.1103 Policy.

Except as authorized by this subpart or otherwise authorized in accordance with Treasury regulations at 31 CFR 208, all types of contract payments shall be made by an EFT method.

32.1103-1 Applicability.

Pursuant to 31 U.S.C. 3332, payment through EFT is the required method of contract payment. However, certain classes of contracts have been authorized limited exceptions from the requirement to pay by EFT.

(a) *Non-Banked Contractors*. Through January 1, 1999, contractors that do not have an account at a domestic United States financial institution and do not have an authorized payment agent are waived from the requirement to be paid by EFT, upon submission of a certification (see paragraph (b) of the EFT clauses at 52.232-33 and 52.232-34).

(b) *Non-EFT System*. (1) If the Government office making payment under the contract is not capable of making payment through EFT, payment by other than EFT is authorized, subject to the requirements of 31 CFR 208.3(c) (see 32.1103-5).

(2) Except as provided in 32.1103-4(b), if the payment is to be received by or on behalf of the contractor, outside the United States and Puerto Rico, payment shall be made by other than EFT.

(3) Except as provided in 32.1103-4(b), if a contract is paid in other than United States currency, payment shall be made by other than EFT.

(4) If a contract is a classified contract (see 4.401), the contract shall provide for payment by other than EFT where payment by EFT could compromise the safeguarding of classified information or

national security, or where arrangements for appropriate EFT payments would be impractical due to security considerations.

(5) If a contract is awarded by a deployed contracting officer in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13), or if a contract is awarded by any contracting officer in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies, the contract shall provide for payment by other than EFT where—

(i) EFT is not known to be possible; or

(ii) EFT payment would not support the objectives of the operation.

32.1103-2 Protection of EFT information.

The Government shall protect against improper disclosure of contractors' EFT information.

32.1103-3 Assignment of claims.

The use of EFT payment methods is not a substitute for a properly executed assignment of claims in accordance with Subpart 32.8. EFT information that shows the ultimate recipient of the transfer to be other than the contractor, in the absence of a proper assignment of claims, is considered to be incorrect EFT information within the meaning of the "Suspension of Payment" paragraphs of the EFT clauses at 52.232-33 and 52.232-34.

32.1103-4 EFT mechanisms.

(a) *Domestic EFT*. The EFT clauses at 52.232-33 and 52.232-34 are designed for use with the domestic United States banking system, using United States currency, and only the specified mechanisms of EFT (U.S. Automated Clearing House, and Federal Reserve Wire Transfer System). The head of the agency shall not authorize the use of any other EFT mechanism for domestic EFT without the prior concurrence of the office or agency responsible for making payments.

(b) *Non-Domestic EFT Mechanisms and Non-United States Currency*. For payments received by or on behalf of the contractor outside the United States and Puerto Rico or for contracts paid in non-United States currency, payment shall be made by other than EFT. However, if the head of an agency determines that a particular non-domestic EFT mechanism is appropriate and safe for use outside the domestic United States, or for payments of non-United States currency, the head of the agency may authorize appropriate use of EFT. Any such determination shall not be made

effective without the prior concurrence of the office or agency responsible for making payments.

32.1103-5 Government inability to make EFT payment.

(a) If the Government payment office is not capable of making payment by EFT, the Government is relieved of the requirement to pay by EFT if the agency complies with 31 CFR 208.3(c), which requires written notice and submittal of an implementation plan to the Department of the Treasury, Financial Management Service.

(b) If the payment office does not have or loses the ability to release payment by EFT under a contract that requires payment by EFT, to the extent authorized by 31 CFR 208, the payment office shall make necessary payments pursuant to paragraph (a)(2) of the clause at either 52.232-33 or 52.232-34 until such time as it can make EFT payments.

32.1103-6 Payment information.

The payment or disbursing office shall forward to the contractor available payment information that is suitable for transmission as of the date of release of the electronic funds transfer instruction to the Federal Reserve System.

32.1103-7 EFT for contracts awarded from solicitations issued prior to July 26, 1996.

(a) Prior to January 2, 1999, payment by EFT is not required on contracts resulting from solicitations issued prior to July 26, 1996. However, while not statutorily required, it is nevertheless Federal policy to maximize the use of EFT. For contracts to be paid by payment offices capable of making EFT payments, the contracting officer is encouraged to use EFT, whenever reasonable, in any contract resulting from a pre-July 26, 1996, solicitation for which the contractor is willing to accept payment by EFT. The contractor's willingness to accept payment by EFT constitutes sufficient consideration for modification of existing contracts to incorporate EFT.

(b) Regardless of the solicitation date of the contract, all payments to be made after January 1, 1999, shall be made by EFT, to the extent required by the implementing regulations of the Secretary of the Treasury, whether or not an EFT clause is included in the contract.

32.1104 Payment by Governmentwide commercial purchase card.

A Governmentwide commercial purchase card charge authorizes the Third Party (e.g., financial institution) that issued the purchase card to make immediate payment to the contractor.

That payment is reimbursed at a later date by a subsequent payment by the Government to the Third Party.

(a) The clause at 52.232–X2, Payment by Third Party, governs when a contractor submits a charge against the purchase card for contract payment. The clause provides that the contractor shall make such payment requests by a charge to a Government account with the Third Party at the time the payment clause(s) of the contract authorizes the contractor to submit a request for payment and for the amount due in accordance with the terms of the contract. To the extent that such a payment would otherwise be approved, the charge against the purchase card should not be disputed when the charge is reported to the Government by the Third Party. To the extent that such payment would otherwise not have been approved, an authorized individual (see 1.603–3(b)) shall take action to remove the charge, such as by disputing the charge with the Third Party or by requesting that the contractor credit the charge back to the Government under the contract.

(b) Written contracts to be paid by purchase card should include the clause 52.232–X2, Payment by Third Party, as prescribed by 32.1105(d). However, payment by a purchase card may also be made under a contract that does not contain the clause to the extent the contractor agrees to accept that method of payment.

(c) The clause at 52.232–X2, Payment by Third Party, requires that the Third Party and the particular purchase card to be used be identified elsewhere in the contract. The purchase card account number should not be included in the contract, but should be separately provided.

32.1105 Solicitation provision and contract clauses.

(a) Unless payment will be made exclusively through use of the Governmentwide commercial purchase card or other third party payment arrangement (see 13.301 and paragraph (d) of this section) or an exception listed in 32.1103–1(b)(2) through (5) applies—

(1) The contracting officer shall insert the clause at 52.232–33, Payment by Electronic Funds Transfer (CCR), in all solicitations and contracts if the payment office uses the CCR database as its source of EFT information. The contracting officer also shall insert this clause if the payment office does not currently have the ability to make payment by EFT, but will use the CCR database as its source of EFT information when it begins making payments by EFT.

(2)(i) The contracting officer shall insert the clause at 52.232–34, Payment by Electronic Funds Transfer (Non-CCR), in all other solicitations and contracts. The contracting officer also shall insert this clause if the payment office does not currently have the ability to make payment by EFT, but will use a source other than the CCR database for EFT information when it begins making payments by EFT.

(ii)(A) If permitted by agency procedures, the contracting officer may insert in paragraph (c)(1) of the clause, a particular time after award, such as a fixed number of days. However, in no event shall the time period be later than 15 days prior to submission of the first request for payment.

(B) If no agency procedures are prescribed, the time period inserted in paragraph (c)(1) of the clause shall be “no later than 15 days prior to submission of the first request for payment.”

(b) If the head of the agency has made a determination in accordance with 32.1103–4(b) to use a nondomestic EFT mechanism, the contracting officer shall insert in solicitations and contracts a clause substantially the same as 52.232–33 or 52.232–34 that clearly addresses the non-domestic EFT mechanism.

(c) If EFT information is to be submitted to other than the payment office in accordance with agency procedures, the contracting officer shall insert in solicitations and contracts the clause at 52.232–X1, Designation of Office for Government Receipt of EFT Information, or a clause substantially the same as 52.232–X1 that clearly informs the contractor of where to send the EFT information.

(d) If payment under a written contract will be made by a charge to a Government account with a third party such as a Governmentwide commercial purchase card, then the contracting officer shall insert the clause at 52.232–X2, Payment by Third Party, in solicitations and contracts. Payment by a purchase card may also be made under a contract that does not contain the clause at 52.232–X2, to the extent the contractor agrees to accept that method of payment.

(e) If the contract or agreement provides for the use of delivery orders, and provides for a choice of payment methods for individual orders, the contracting officer shall insert, in the solicitation and contract or agreement, the clause at 52.232–X3, Multiple Payment Arrangements, and, to the extent they are applicable, the clauses at—

(1) 52.232–33, Payment by Electronic Funds Transfer (CCR);

(2) 52.232–34, Payment by Electronic Funds Transfer (Non-CCR); and

(3) 52.232–X2, Payment by Third Party.

(f) If more than one disbursing office will make payment under a contract, the contracting officer shall include the EFT clause appropriate for each office and shall identify the applicability by disbursing office and contract line item.

(g) If the solicitation contains the clause at 52.232–34, Payment by Electronic Funds Transfer (Non-CCR), and an offeror is required to submit EFT information prior to award, the contracting officer shall insert in the solicitation the provision at 52.232–X4, Submission of Electronic Funds Transfer Information with Offer, or a provision substantially the same.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Section 52.212–4 is amended by revising the clause date and the third sentence in paragraph (i) to read as follows:

52.212–4 Contract Terms and Conditions—Commercial Items.

* * * * *

Contract Terms and Conditions—Commercial Items (Date)

* * * * *

(i) *Payment.* * * * If the Government makes payment by Electronic Funds Transfer (EFT), see 52.212–5 for the appropriate EFT clause. * * *

* * * * *

7. Section 52.212–5 is amended by revising the clause date; and in paragraph (b) by redesignating (b)(16) and (17) as (19) and (20), respectively, and by adding new paragraphs (16), (17), and (18) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Date)

* * * * *

(b) * * *
____ (16) 52.232–33, Payment by Electronic Funds Transfer (CCR) (31 U.S.C. 3332).

____ (17) 52.232–34, Payment by Electronic Funds Transfer (Non-CCR) (31 U.S.C. 3332).

____ (18) 52.232–X2, Payment by Third Party (31 U.S.C. 3332).

* * * * *

8. Section 52.213–4 is amended by revising the clause date; by removing paragraph (a)(2)(vi) and redesignating paragraphs (a)(2)(vii) through (a)(2)(ix) as (a)(2)(vi) through

(a)(2)(viii); and by adding paragraphs (b)(1)(ix) and (b)(1)(x) to read as follows:

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

Terms and Conditions—Simplified Acquisition (Other Than Commercial Items) (Date)

* * * * *

(b) * * *

(1) * * *

* * * * *

(ix) 52.232-33, Payment by Electronic Funds Transfer (CCR) (Date). (Applies when payment will be made by EFT and the payment office uses the Central Contractor Registration database as its source of EFT information.)

(x) 52.232-34, Payment by Electronic Funds Transfer (Non-CCR) (Date). (Applies when payment will be made by EFT and the payment office does not use the Central Contractor Registration database as its source of EFT information.)

* * * * *

9. Sections 52.232-33 and 52.232-34 are revised and new sections 52.232-X1 through 52.232-X4 are added to read as follows:

52.232-33 Payment by Electronic Funds Transfer (CCR).

As prescribed in 32.1105(a)(1), insert the following clause:

Payment by Electronic Funds Transfer (CCR) (Date)

(a) *Method of payment.* (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) or (b) of this clause. As used in this clause, the term EFT refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (e) of this clause).

(b) *Alternative contractor certification.* If the Contractor certifies in writing, as part of its registration with the Central Contractor Registration (CCR) database (FAR 4.503), that it does not have an account with a financial institution and does not have an authorized payment agent, payment shall be made by check to the remittance address contained in the CCR database. All contractor certifications will expire on January 1, 1999.

(c) *Contractor's EFT information.* Except as provided in paragraph (b) of this clause, the Government shall make payment to the Contractor using the EFT information contained in the CCR database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(d) *Mechanisms for EFT payment.* The Government may make payment by EFT

through either an Automated Clearing House (ACH) subject to the banking laws of the United States or the Federal Reserve Wire Transfer System.

(e) *Suspension of Payment.* If the Contractor's EFT information in the CCR database is incorrect and the Contractor has not certified under paragraph (b) of this clause, then the Government need not make payment to the Contractor under this contract until correct EFT information or certification is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(f) *Contractor EFT arrangements.* If the Contractor has identified multiple payment receiving points (i.e., more than one remittance address and/or EFT information set) in the CCR database, and the Contractor has not notified the Government of the payment receiving point applicable to this contract, the Government shall make payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the CCR database.

(g) *Liability for uncompleted or erroneous transfers.* (1) If an uncompleted or erroneous transfer occurs because the Government failed to use the Contractor's EFT information in the correct manner, the Government remains responsible for—

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (e) shall apply.

(h) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(i) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register in the CCR database and shall be paid by EFT in accordance with the terms of this clause.

In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (e) of this clause.

(j) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(k) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the electronic funds transfer instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Contractor has certified in accordance with paragraph (b) of this clause or if the Government otherwise makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

(End of clause)

52.232-34 Payment by Electronic Funds Transfer (Non-CCR).

As prescribed in 32.1105(a)(2), insert the following clause:

Payment by Electronic Funds Transfer (Non-CCR) (Date)

(a) *Method of Payment.* (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) or (b) of this clause. As used in this clause, the term EFT refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due dates until such time as the Government makes payment by EFT (but see paragraph (e) of this clause).

(b) *Alternative Contractor Certification.* If the Contractor certifies in writing to the designated office (see paragraph (c)(1) of this clause) that it does not have an account with a financial institution and does not have an authorized payment agent, payment shall be made by check to the remittance address specified in this contract and the Contractor need not provide EFT information. All contractor certifications will expire on January 1, 1999. For any payments to be made after January 1, 1999, the Contractor

shall provide EFT information as described in paragraph (k) of this clause and payment shall be made by EFT.

(c) *Mandatory submission of Contractor's EFT information.* (1) Except as provided in paragraph (b) of this clause, the Contractor is required, as a condition to any invoice or contract financing payment under this contract, to provide the Government with the information required to make payment by EFT (see paragraph (k) of this clause). The Contractor shall provide this information directly to the office designated in this contract to receive that information (hereafter: "designated office") by [Insert date, days after award, or days before first request as prescribed by Agency head; if not prescribed, insert "no later than 15 days prior to submission of the first request for payment"]. If not otherwise specified in this contract, the payment office is the designated office for receipt of the Contractor's EFT information. If more than one designated office is named for the contract, the Contractor shall provide a separate notice to each office. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the designated office(s).

(2) If the Contractor provides EFT information applicable to multiple contracts, the Contractor shall specifically state the applicability of this EFT information in terms acceptable to the designated office. However, EFT information supplied to a designated office shall be applicable only to contracts which identify that designated office as the office to receive EFT information for that contract.

(d) *Mechanisms for EFT Payment.* The Government may make payment by EFT through either an Automated Clearing House (ACH) subject to the banking laws of the United States or the Federal Reserve Wire Transfer System.

(e) *Suspension of Payment.* (1) The Government is not required to make any payment under this contract until after receipt, by the designated office, of the correct EFT payment information from the Contractor or a certificate submitted in accordance with paragraph (b) of this clause. Until receipt of the correct EFT information or certificate, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(2) If the EFT information changes after submission of correct EFT information, the Government shall begin using the changed EFT information no later than 30 days after its receipt to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the updated EFT information is implemented by the payment office. If such suspension would result in a late payment under the prompt payment terms of this contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(f) *Liability for uncompleted or erroneous transfers.* (1) If an uncompleted or erroneous

transfer occurs because the Government failed to use the Contractor's EFT information in the correct manner, the Government remains responsible for—

- (i) Making a correct payment;
- (ii) Paying any prompt payment penalty due; and
- (iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

- (i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment and the provisions of paragraph (e) shall apply.

(g) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(h) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (k) of this clause to the designated office, and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (e) of this clause.

(i) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information provided by the Contractor's financial agent.

(j) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the electronic funds transfer instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Contractor has certified in

accordance with paragraph (b) of this clause or if the Government otherwise makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address in the contract.

(k) *EFT Information.* The Contractor shall provide the following information to the designated office. The Contractor may supply this data for this or multiple contracts (see paragraph (c) of this clause). The Contractor shall designate a single financial agent per contract capable of receiving and processing the EFT using the EFT methods described in paragraph (d) of this clause.

(1) The contract number (or other procurement identification number).

(2) The Contractor's name and remittance address, as stated in the contract(s).

(3) The signature (manual or electronic, as appropriate), title, and telephone number of the Contractor official authorized to provide this information.

(4) The name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.

(5) The Contractor's account number and the type of account (checking, saving, or lockbox).

(6) The Federal Reserve Wire Transfer System telegraphic abbreviation of the Contractor's financial agent.

(7) If the Contractor's financial agent is not directly on-line to the Federal Reserve Wire Transfer System and, therefore, not the receiver of the wire transfer payment, the Contractor shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment.

(End of clause)

52.232-X1 Designation of Office for Government Receipt of EFT Information.

As prescribed in 32.1105(c) insert the following clause:

Designation of Office for Government Receipt of EFT Information (Date)

(a) As provided for in paragraph (c) of the clause at 52.232-34, Payment by Electronic Funds Transfer (Non-CCR), the Government has designated the following office as the office to receive the Contractor's EFT information, in lieu of the payment office of this contract.

(b) The Contractor shall send all EFT information, and any changes of EFT information to the office designated in paragraph (c) of this clause. The Contractor shall not send EFT information to the payment office, or any other office than that designated in paragraph (c). The Government need not use any EFT information sent to any office other than that designated in paragraph (c).

(c) Designated Office:

Name: _____

Mailing Address: _____

Telephone Number: _____

Person to Contact: _____

Electronic Address: _____

(End of clause)

52.232–X2 Payment by Third Party.

As prescribed in 32.1105(d), insert the following clause:

Payment by Third Party (Date)

(a) *General.* The Contractor agrees to accept payments due under this contract, through payment by a Third Party in lieu of payment directly from the Government, in accordance with the terms of this clause. The Third Party and the particular Governmentwide commercial purchase card to be used are identified elsewhere in this contract.

(b) *Contractor payment request.* In accordance with those clauses of this contract that authorize the Contractor to submit invoices, contract financing requests, other payment requests, or as provided in other clauses providing for payment to the Contractor, the Contractor shall make such payment requests through a charge to the Government account with the Third Party, at the time and for the amount due in accordance with the terms of this contract.

(c) *Payment.* The Contractor and the Third Party shall agree that payments due under this contract shall be made upon submittal of payment requests to the Third Party in accordance with the terms and conditions of an agreement between the Contractor, the Contractor's financial agent (if any), and the Third Party and its agents (if any). No payment shall be due the Contractor until such agreement is made. Payments made or due by the Third Party under this clause are not payments made by the Government and are not subject to the Prompt Payment Act or any implementation thereof in this contract.

(d) *Documentation.* Documentation of each charge against the Government's account shall be provided to the Contracting Officer upon request.

(e) *Assignment of Claims.* Notwithstanding any other provision of this contract, if any payment is made under this clause, then no payment under this contract shall be assigned under the provisions of the Assignment of Claims terms of this contract or the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15.

(f) *Other Payment Terms.* The other payment terms of this contract shall govern the content and submission of payment requests. If any clause requires information or documents in or with the payment request, that is not provided for in the Third Party agreement referenced in paragraph (c) of this clause, the Contractor shall obtain instructions from the Contracting Officer before submitting such a payment request.

(End of clause)

53.232–X3 Multiple Payment Arrangements.

As prescribed in 32.1105(e), insert the following clause:

Multiple Payment Arrangements (Date)

This contract or agreement provides for payments to the Contractor through several alternative methods. The applicability of specific methods of payment and the designation of the payment office(s) are either stated—

(a) Elsewhere in this contract or agreement; or

(b) In individual orders placed under this contract or agreement.

(End of clause)

52.232–X4 Submission of Electronic Funds Transfer Information with Offer.

As prescribed in 32.1105(g), insert the following provision:

Submission of Electronic Funds Transfer Information With Offer (Date)

The offeror shall provide, with its offer, the following information that is required to make payment by electronic funds transfer (EFT) under any contract that results from this solicitation. This submission satisfies the requirement to provide EFT information under paragraphs (c)(1) and (k) of the clause at 52.232–34, Payment By Electronic Funds Transfer (Non-CCR).

(1) The solicitation number (or other procurement identification number).

(2) The offeror's name and remittance address, as stated in the offer.

(3) The signature (manual or electronic, as appropriate), title, and telephone number of the offeror's official authorized to provide this information.

(4) The name, address, and 9-digit Routing Transit Number of the offeror's financial agent.

(5) The offeror's account number and the type of account (checking, saving, or lockbox).

(6) The Federal Reserve Wire Transfer System telegraphic abbreviation of the offeror's financial agent.

(7) If the offeror's financial agent is not directly on-line to the Federal Reserve Wire Transfer System and, therefore, not the receiver of the wire transfer payment, the offeror shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment.

(End of provision)

[FR Doc. 98–17148 Filed 7–2–98; 8:45 am]

BILLING CODE 6820–EP–P