

(2) Offers or quotations under this acquisition are solicited from very small business concerns only. Offers that are from other than an eligible very small business concern shall not be considered and shall be rejected. The offeror represents that it is an eligible very small business concern by submission of an offer or quotation.

(c) *Agreement.* A very small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States. As used in this clause, the term *United States* includes its territories and possessions, the Commonwealth of Puerto Rico, the trust territory of the Pacific Islands, and the District of Columbia.

(End of clause)

*Alternate I (Mar 1999).* As prescribed in 19.905(a), delete paragraph (c) of the basic clause.

*Alternate II (Mar 1999).* As prescribed in 19.905(b), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Agreement.* A very small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by domestic firms in the United States. As used in this clause, the term *United States* includes its territories and possessions, the Commonwealth of Puerto Rico, the trust territory of the Pacific Islands, and the District of Columbia.

[FR Doc. 99-5204 Filed 3-3-99; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 11 and 52

[FAC 97-11; FAR Case 98-612; Item III]

RIN 9000-AI30

#### Federal Acquisition Regulation; Variation in Quantity

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to remove the requirement to include the clause at FAR 52.211-16, Variation in Quantity, in fixed-price solicitations and contracts that do not permit a variation in the quantity of supplies furnished under the contract.

**EFFECTIVE DATE:** May 3, 1999.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501-4764. Please cite FAC 97-11, FAR case 98-612.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule amends FAR 11.703(a) to change the prescription for the clause at 52.211-16, Variation in Quantity. The revised prescription requires that the clause only be used if the contracting officer is authorizing a variation in the quantity of supplies to be furnished under fixed-price supply contracts or fixed-price service contracts that involve the furnishing of supplies. Currently the clause is required in all fixed-price supply contracts for supplies or for services that involve the furnishing of supplies. Where variations are not permitted, the clause is used with a "0%" permissible variation.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

##### B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAC 97-11, FAR case 98-612), in correspondence.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

##### List of Subjects in 48 CFR Parts 11 and 52

Government procurement.

Dated: February 25, 1999.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Parts 11 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 11 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 11—DESCRIBING AGENCY NEEDS

2. Section 11.703 is amended by revising paragraph (a) to read as follows:

##### 11.703 Contract clauses.

(a) The contracting officer shall insert the clause at 52.211-16, Variation in Quantity, in solicitations and contracts, if authorizing a variation in quantity in fixed-price contracts for supplies or for services that involve the furnishing of supplies.

\* \* \* \* \*

#### PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.211-16 is amended by revising the introductory paragraph to read as follows:

##### 52.211-16 Variation in quantity.

As prescribed in 11.703(a), insert the following clause:

\* \* \* \* \*

[FR Doc. 99-5205 Filed 3-3-99; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 13, 16, 32, and 52

[FAC 97-11; FAR Case 91-118; Item IV]

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:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to adopt as final, with changes, the interim rule published in Federal Acquisition Circular 90-42 on August 29, 1996. The rule amends the Federal Acquisition Regulation (FAR) to address the use of electronic funds transfers (EFT) for Federal contract payments made after January 1, 1999, and to

facilitate implementation of Public Law 104-134 which mandates payment by EFT in most situations.

EFFECTIVE DATE: May 3, 1999.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, at (202) 501-0692. Please cite FAC 97-11, FAR case 91-118.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Subsection 31001(x)(1) of the Debt Collection Improvement Act of 1996 (Pub. L. 104-134) amends 31 U.S.C. 3332 to require, subject to the authority of the Secretary of the Treasury to grant waivers, that—

1. Beginning July 26, 1996, payments to newly eligible recipients must be made by EFT unless the recipient of those payments certifies that the recipient does not have an account with a financial institution or an authorized payment agent; and

2. Beginning January 2, 1999, all Federal payments (other than payments under the Internal Revenue Code of 1986) shall be made by electronic funds transfer (EFT).

Under this statute, the Department of the Treasury is responsible for issuing implementing regulations. Treasury issued an interim rule which was published at 61 FR 39254, July 26, 1996. The interim rule added Part 208 to Title 31, Code of Federal Regulations, and addressed the time period from July 26, 1996, through January 1, 1999 ("phase one"). Treasury published a final rule at 63 FR 51490, September 25, 1998 that provides guidance at 31 CFR 208 regarding compliance with Pub. L. 104-134's EFT requirement and establishes the circumstances under which waivers are available for the time period beginning January 2, 1999 ("phase two").

An interim FAR rule was published at 61 FR 45770, August 29, 1996. A proposed FAR rule, which differed significantly from the interim rule, was published at 63 FR 36522, July 6, 1998. Public comments on the proposed rule were received from 17 sources. All comments were considered in developing the final rule.

This final rule differs from the proposed rule to—

- (1) Reflect the analysis and disposition of public comments;
- (2) Implement applicable provisions of Treasury's final rule;
- (3) Remove references to the "phase one" time period, which ended January 1, 1999;

(4) Add a new contract clause at 52.232-38, Submission of Electronic Funds Transfer Information with Offer;

(5) Address the situation when an offeror is required to submit EFT information prior to award; and

(6) Make editorial changes.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**B. Regulatory Flexibility Act**

The changes 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 IRFA was performed in conjunction with the proposed rule published at 63 FR 36522, July 6, 1998.

A Final Regulatory Flexibility Analysis (FRFA) has been performed and submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the FRFA may be obtained from the FAR Secretariat. The FRFA is summarized as follows:

The objective of the rule is to revise current procedures for the use of electronic funds transfers for Federal contract payments to comply with Subsection 31001(x)(1) of the Debt Collection Improvement Act of 1996 (Pub. L. 104-134). Subsection 31001(x)(1) of the Act amends 31 U.S.C. 3332 to require, subject to the authority of the Secretary of the Treasury to grant waivers, that all Federal payment shall be made by EFT beginning January 2, 1999.

Several respondents commented on the impact of this rule on small businesses. One respondent remarked on the "financial burden now being inflicted by the changing payment policies." This method of payment, rather than a financial burden, should be economically beneficial to small and large entities. Administratively, EFT information is noncomplex and easy to provide to the Government with an offer, after award, or through the Central Contractor Registration process. Once the information has been furnished, the payment process will be faster and less burdensome than the payment process by check since small businesses will not have to worry about mail delays, depositing checks, lost mail, etc. A second respondent raised the concern about protecting small businesses from financial harm by safeguarding banking information from unauthorized use. The final rule addresses this concern at FAR 32.1104 by requiring agencies to safeguard EFT information provided to the Government.

The final rule will apply, beginning January 2, 1999, to all small and large businesses who enter into contracts with the Federal Government unless one of the conditions enumerated at FAR 32.1103 applies. The rule requires contractors to submit identification and account number information which will enable the Government to make contract payments by EFT. Administrative or financial personnel who have general knowledge of the contractor's bank account or a financial agent, are able to prepare the information required by the clauses.

The goal of the alternative selected and reflected in the final rule is to provide flexibility with regard to the needs of small entities within the constraints and objectives of Pub. L. 104-134 and implementing Treasury Regulations.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act (Pub. L. 96-511) is deemed to apply because the final rule contains information collection requirements. The collection of this information has been approved by the Office of Management and Budget (OMB) under OMB Control Number 9000-0144. Public comments concerning this request were invited through a **Federal Register** notice.

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

Government procurement.

Dated: February 25, 1999.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Parts 13, 16, 32, and 52 are 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 13.201 is amended in paragraph (d) by removing "32.1103" and inserting "32.1110".

3. Section 13.301 is amended at the end of paragraph (b) by adding a new sentence to read as follows:

**13.301 Governmentwide commercial purchase card.**

\* \* \* \* \*

(b) \* \* \* See 32.1110(d) for instructions for use of the appropriate clause when payment under a written contract will be made through use of the card.

\* \* \* \* \*

4. 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 32.1110. See Subpart 32.11 for instructions for use of the appropriate clause in purchase orders. When obtaining oral 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

5. Section 16.505 is amended by redesignating paragraph (a)(6)(viii) as (a)(6)(ix); and adding a new paragraph (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 32.1110(e)).

\* \* \* \* \*

#### PART 32—CONTRACT FINANCING

6–7. Subpart 32.11 is revised to read as follows:

##### Subpart 32.11—Electronic Funds Transfer

- 32.1100 Scope of subpart.
- 32.1101 Statutory requirements.
- 32.1102 Definitions.
- 32.1103 Applicability.
- 32.1104 Protection of EFT information.
- 32.1105 Assignment of claims.
- 32.1106 EFT mechanisms.
- 32.1107 Payment information.
- 32.1108 Payment by Governmentwide commercial purchase card.
- 32.1109 EFT information submitted by offerors.
- 32.1110 Solicitation provision and contract clauses.

##### Subpart 32.11—Electronic Funds Transfer

##### 32.1100 Scope of subpart.

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

##### 32.1101 Statutory requirements.

31 U.S.C. 3332 requires, subject to implementing regulations of the Secretary of the Treasury at 31 CFR part 208, that EFT be used to make all contract payments.

##### 32.1102 Definitions.

*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, Fedwire transfers, and transfers made at automatic teller machines and point-of-sale terminals. For purposes of compliance with 31 U.S.C. 3332 and implementing regulations at 31 CFR part 208, the term “electronic funds transfer” includes a Governmentwide commercial purchase card transaction.

*EFT information* means information necessary for making a payment by EFT through specified EFT mechanisms.

*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 Applicability.

The Government shall provide all contract payments through EFT except if—

(a) The office making payment under a contract that requires payment by EFT, loses the ability to release payment by EFT. To the extent authorized by 31 CFR part 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;

(b) The payment is to be received by or on behalf of the contractor outside the United States and Puerto Rico (but see 32.1106(b));

(c) A contract is paid in other than United States currency (but see 32.1106(b));

(d) Payment by EFT under a classified contract (see 4.401) could compromise the safeguarding of classified information or national security, or where arrangements for appropriate EFT payments would be impractical due to security considerations;

(e) 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 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, if—

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

(2) EFT payment would not support the objectives of the operation;

(f) The agency does not expect to make more than one payment to the same recipient within a one-year period;

(g) An agency’s need for supplies and services is of such unusual and compelling urgency that the Government would be seriously injured unless payment is made by a method other than EFT;

(h) There is only one source for supplies and services and the Government would be seriously injured unless payment is made by a method other than EFT; or

(i) Otherwise authorized by Department of the Treasury Regulations at 31 CFR part 208.

##### 32.1104 Protection of EFT information.

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

##### 32.1105 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.

##### 32.1106 EFT mechanisms.

(a) *Domestic EFT mechanisms.* 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 (U.S. Automated Clearing House, and Fedwire Transfer System) of EFT. However, the head of an agency may authorize the use of any other EFT mechanism for domestic EFT with the concurrence of the office or agency responsible for making payments.

(b) *Nondomestic EFT mechanisms and other than United States currency.* The Government shall provide payment by other than EFT for payments received by or on behalf of the contractor outside the United States and Puerto Rico or for contracts paid in other than United States currency. However, the head of an agency may authorize appropriate use of EFT with the concurrence of the office or agency responsible for making payments if—

(1) The political, financial, and communications infrastructure in a foreign country supports payment by EFT; or

(2) Payments of other than United States currency may be made safely.

**32.1107 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 EFT instruction to the Federal Reserve System.

**32.1108 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. The Government reimburses the third party at a later date for the third party's payment to the contractor.

(a) The clause at 52.232-36, 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) 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 at 52.232-36, Payment by Third Party, as prescribed by 32.1110(d). However, payment by a purchase card also may 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 52.232-36, Payment by Third Party, requires that the contract—

(1) Identify the third party and the particular purchase card to be used; and

(2) Not include the purchase card account number. The purchase card account number should be provided separately to the contractor.

**32.1109 EFT information submitted by offerors.**

If offerors are required to submit EFT information prior to award, the successful offeror is not responsible for resubmitting this information after award of the contract except to make changes, or to place the information on invoices if required by agency procedures. Therefore, contracting officers shall forward EFT information provided by the successful offeror to the appropriate office.

**32.1110 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(a) through (i) applies—

(1) The contracting officer shall insert the clause at 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, in all solicitations and contracts if the payment office uses the Central Contractor Registration (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—Other than Central Contractor Registration, in all other solicitations and contracts. The contracting officer also shall insert this clause if the payment office currently does not 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 (b)(1) of the clause, a particular time after award, such as a fixed number of days, or event such as the submission of the first request for payment.

(B) If no agency procedures are prescribed, the time period inserted in paragraph (b)(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 authorized, in accordance with 32.1106, 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 nondomestic 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 52.232-35, Designation of Office for Government Receipt of Electronic Funds Transfer Information, or a clause substantially the same as 52.232-35 that clearly informs the contractor 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 52.232-36, 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 52.232-36, 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 that the ordering office designate the method of payment for individual orders, the contracting officer shall insert, in the solicitation and contract or agreement, the clause at 52.232-37, Multiple Payment Arrangements, and, to the extent they are applicable, the clauses at—

(1) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration;

(2) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration; and

(3) 52.232-36, Payment by Third Party.

(f) If more than one disbursing office will make payment under a contract or agreement, the contracting officer, or ordering office (if the contract provides for choices between EFT clauses on individual orders or classes of orders), shall include or identify 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—Other than Central Contractor Registration, and an offeror is required to submit EFT information prior to award—

(1) The contracting officer shall insert in the solicitation the provision at 52.232-38, Submission of Electronic Funds Transfer Information with Offer, or a provision substantially the same; and

(2) For sealed bid solicitations, the contracting officer shall amend 52.232-

38 to ensure that a bidder's EFT information—

- (i) Is not a part of the bid to be opened at the public opening; and
- (ii) May not be released to members of the general public who request a copy of the bid.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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

**52.212-4 Contract Terms and Conditions—Commercial Items.**

\* \* \* \* \*

Contract Terms and Conditions—Commercial Items (May 1999)

\* \* \* \* \*

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

\* \* \* \* \*

9. Section 52.212-5 is amended by revising the date of the clause; in the parenthetical in paragraph (b)(21) by inserting a period after the "C" in "U.S.C"; by redesignating (b)(22) and (b)(23) as (b)(25) and (b)(26); and by adding new paragraphs (b)(22) through (b)(24) 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 (May 1999)

\* \* \* \* \*

- (b) \* \* \*
  - \_\_\_\_\_(22) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration (31 U.S.C. 3332).
  - \_\_\_\_\_(23) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration (31 U.S.C. 3332).
  - \_\_\_\_\_(24) 52.232-36, Payment by Third Party (31 U.S.C. 3332).

\* \* \* \* \*

10. Section 52.213-4 is amended by revising the date of the clause; by removing paragraph (a)(2)(vi); and redesignating paragraphs (a)(2)(vii) through (a)(2)(ix) as (a)(2)(vi) through (a)(2)(viii), respectively; and by adding new 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 Acquisitions (Other Than Commercial Items) (May 1999)

\* \* \* \* \*

- (b) \* \* \*
- (1) \* \* \*
- (ix) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration (May 1999). (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information.)

(x) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration (May 1999). (Applies when the payment will be made by EFT and the payment office does not use the CCR database as its source of EFT information.)

\* \* \* \* \*

11. Sections 52.232-33 and 52.232-34, headings and text, are revised to read as follows:

**52.232-33 Payment by Electronic Funds Transfer—Central Contractor Registration.**

As prescribed in 32.1110(a)(1), insert the following clause:

Payment by Electronic Funds Transfer—Central Contractor Registration (May 1999)

(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) 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 (d) of this clause).

(b) *Contractor's EFT information.* The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) *Mechanisms for EFT payment.* The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) *Suspension of payment.* If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information 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.

(e) *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.

(f) *Liability for uncompleted or erroneous transfers.* (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, 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 (d) of this clause 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 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 (d) 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 made 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 EFT 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 Government 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—Other than Central Contractor Registration.**

As prescribed in 32.1110(a)(2), insert the following clause:

Payment by Electronic Funds Transfer—Other Than Central Contractor Registration (May 1999)

(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) 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 payment due dates until such time as the Government makes payment by EFT (but see paragraph (d) of this clause).

(b) *Mandatory submission of Contractor's EFT information.* (1) The Contractor is required to provide the Government with the information required to make payment by EFT (see paragraph (j) 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

[the Contracting Officer shall insert date, days after award, days before first request, the date specified for receipt of offers if the provision at 52.232-38 is utilized, or "concurrent with first request" as prescribed by the head of the agency; 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 that identify that designated office as the office to receive EFT information for that contract.

(c) *Mechanisms for EFT payment.* The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) *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. Until receipt of the correct EFT information, 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 by the designated office 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.

(e) *Liability for uncompleted or erroneous transfers.* (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, 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 (d) shall apply.

(f) *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.

(g) *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 (j) 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 (d) of this clause.

(h) *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.

(i) *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 EFT 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 Government 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.

(j) *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 (b) of this clause). The Contractor shall designate a single financial agent per contract capable of receiving and processing the EFT information using the EFT methods described in paragraph (c) 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) If applicable, the Fedwire Transfer System telegraphic abbreviation of the Contractor's financial agent.

(7) If applicable, 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 if the Contractor's financial agent is not directly on-line to the Fedwire Transfer System; and, therefore, not the receiver of the wire transfer payment.

(End of clause)

12. Sections 52.232-35, 52.232-36, 52.232-37, and 52.232-38 are added to read as follows:

**52.232-35 Designation of Office for Government Receipt of Electronic Funds Transfer Information.**

As prescribed in 32.1110(c), insert the following clause:

Designation of Office for Government Receipt of Electronic Funds Transfer Information (May 1999)

(a) As provided in paragraph (b) of the clause at 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration, the Government has designated the office cited in paragraph (c) of this clause as the office to receive the Contractor's electronic funds transfer (EFT) information, in lieu of the payment office of this contract.

(b) The Contractor shall send all EFT information, and any changes to 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)

**52.232-36 Payment by Third Party.**

As prescribed in 32.1110(d), insert the following clause:

Payment by Third Party (May 1999)

(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, if applicable, 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 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)

**52.232-37 Multiple Payment Arrangements.**

As prescribed in 32.1110(e), insert the following clause:

Multiple Payment Arrangements (May 1999)

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)

**52.232-38 Submission of Electronic Funds Transfer Information with Offer.**

As prescribed in 32.1110(g), insert the following provision:

Submission of Electronic Funds Transfer Information With Offer (May 1999)

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 (b)(1) and (j) of the clause at 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration.

(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, savings, or lockbox).

(6) If applicable, the Fedwire Transfer System telegraphic abbreviation of the offeror's financial agent.

(7) If applicable, 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 if the offeror's financial agent is not directly on-line to the Fedwire and, therefore, not the receiver of the wire transfer payment.

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 15**

[FAC 97-11; FAR Case 98-302; Item V]

RIN 9000-AI31

**Federal Acquisition Regulation; Waiver of Cost or Pricing Data for Subcontracts**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Section 805 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261).

**EFFECTIVE DATE:** May 3, 1999.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS