

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

48 CFR Parts 12, 13, 32, and 52

[FAC 90-42, FAR Case 91-118]

RIN 9000-AG49

**Federal Acquisition Regulation;  
Payment by Electronic Funds Transfer**

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

**ACTION:** Interim rule with request for comment.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule 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, and is not a major rule under 5 U.S.C. 804. A companion document, the Small Entity Compliance Guide, follows this FAC and may be located on the Internet at <http://www.gsa.gov/far>.

**DATES:** *Effective Date:* August 29, 1996.

*Comment Date:* Comments should be submitted to the FAR Secretariat at the address shown below on or before October 28, 1996 to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90-42, FAR case 91-118 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-42, FAR case 91-118.

**SUPPLEMENTARY INFORMATION:****A. Background**

Public Law 104-134, the Omnibus Consolidated Rescissions and Appropriations Act of 1996, contained a separate chapter 10 entitled Debt Collection Improvements. Subsection (x)(1) of Section 31001, the Debt Collection Improvement Act of 1996, amended Section 3332 of title 31, United States Code, by adding the following new statutory requirement: "(e)(1) Notwithstanding subsections (a) through (d) of this section, sections 5120(a) and (d) of title 38, and any other provision of law, all Federal payments to a recipient who becomes eligible for that type of payment after 90 days after the date of the enactment of the Debt Collection Improvement Act of 1996 shall be made by electronic funds transfer."

The statute further defines Federal payments to include vendor payments and expense reimbursements, as well as providing exemption for payments to certain recipients. The effective date of this provision is July 26, 1996.

Public Law 104-134 also contained provisions for payments by EFT which become applicable after January 1, 1999.

Under this statute, the Department of the Treasury is responsible for issuing regulations necessary for carrying out the statute. On July 26, 1996, the Financial Management Service issued an interim rule (61 FR 39254) which added Part 208 to Title 31, Code of Federal Regulations, to provide a regulation for payments through EFT. This interim rule reflects the provisions of the Treasury interim rule with respect to vendor payments.

The Councils are committed to advancing the use of EFT as the standard method of payment under Federal contracts, and believe that the use of EFT will ultimately reduce the administrative burden currently associated with contract invoice or financing payments made by check for both the Government and contractors. The rule, therefore, provides a contract clause which requires contractor submission of the information needed for payment by EFT as a condition of payment. With certain limited exceptions, this is the clause that will normally be used. However, some Government offices involved in certifying invoices and disbursing contract payments are not currently capable of using EFT as the standard method of payment. The rule provides a contract clause for contractor optional submission of EFT information where that is appropriate and consistent with the statute. The determination whether

a particular payment must be made by EFT is that of the payment official.

The rule recognizes that contracts using non-United States currency and contracts issued outside the United States and Puerto Rico are currently not capable of being paid by EFT through the domestic banking system of the United States. In addition, certain classified contracts and certain contracts related to military operations and emergency situations will not be appropriate for payment by EFT. In accordance with the Treasury interim rule, these contracts have been excepted from the requirement for payment by EFT.

The Treasury Department has stated that a credit card transaction is an electronic payment. The rule, therefore, directs that contracts to be paid through use of a Governmentwide commercial purchase card will not include either EFT clause.

The statute provides that until January 1, 1999, recipients of payments who certify they do not have an account with a financial institution or an authorized payment agent shall be paid by other than EFT. To implement this statutory right, the clause at 52.232-33 (the mandatory EFT information clause) provides for non-EFT payment upon receipt of a contractor certification. Note that the certification is an explicit statutory requirement of 31 U.S.C. 3332(e)(2).

In addition to the provisions taking effect on July 26, 1996 (31 U.S.C. 3332(e)), Public Law 104-134 contained provisions which take effect after January 1, 1999 (31 U.S.C. 3332(f), *et al.*).

The most significant is a requirement that all payments after that date be made by EFT. While the statute provides for waivers of the applicable subsection by the Secretary of the Treasury after January 1, 1999, detailed regulations regarding these waivers have not been established. Therefore, both contract clauses provide that, after January 1, 1999, contractors shall provide EFT information for the contracts containing the clauses established in this rule.

A significant difference between EFT contract payments and EFT beneficiary or payroll payments is the additional information which must be provided by the Government to contractor recipients for contract payments. In order for a business receiving a contract payment to maintain its accounting books and records, it must obtain information such as invoice numbers, discounts taken, interest paid, and other payment adjustments with the payment. With paper checks, this information has normally been provided as an "advice of

payment", or other paper notice forwarded with the check. However, if this information is provided electronically, using appropriate formats, contractors can use more advanced accounting systems which do not require manual entry and processing of payment information. The contract clauses in this interim rule authorize the Government, at its option, to forward this information electronically, with the EFT payment, as provided for in the domestic banking system. However, the Government is aware that many banks and financial institutions do not yet provide their customers with this information electronically. In response to the proposed rule published in the Federal Register on October 3, 1995 (60 FR 51766), a significant issue raised was the desire to receive this remittance information electronically. The particular methods used for forwarding this information are specific to individual agencies and payment offices. Companies desiring payment information in specific formats should express their preferences to the agencies concerned, and their banks or financial institutions.

The rule adds a new FAR Subpart 32.11, Electronic Funds Transfer, which provides policy and procedures for Government payment by EFT. The rule replaces the contract clause at 52.232-28, Electronic Funds Transfer Payment Methods, with two new clauses at 52.232-33, Mandatory Information for Electronic Funds Transfer Payment, and 52.232-34, Optional Information for Electronic Funds Transfer Payment. Under the clause at 52.232-33, the contractor is required to provide the EFT information, prior to the submission of the first request for payment, as a condition of payment under the contract. The clause at 52.232-34 is used if EFT may become a viable method of payment during the period of contract performance, and the clause becomes effective if the Government and contractor agree to commence EFT.

Three sources submitted public comments in response to the proposed rule published on October 3, 1995. All comments were considered in developing this interim rule.

#### B. Regulatory Flexibility Act

An Initial Regulatory Flexibility Analysis has been prepared and submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Analysis may be obtained from the FAR Secretariat at the General Services Administration, 18th & F Streets, NW.,

Room 4035, Washington, DC 20405. The Analysis is summarized as follows:

This interim rule amends the Federal Acquisition Regulation (FAR) to address the use of electronic funds transfer (EFT) for payments to contractors under Government contracts. When fully implemented, it is expected that the use of EFT for contract payments will reduce the administrative burden that is currently associated with contract invoice or financing payments made by check. The objective of the rule is to facilitate implementation of Section 31001(x)(1) of the Debt Collection Improvement Act of 1996 (Pub. L. 104-134). Section 31001(x)(1) amends 31 U.S.C. 3332 to require that, effective July 26, 1996, payment to newly eligible vendors must be made by EFT. The rule will apply to all small businesses who enter into Government contracts that (1) Will not be paid through use of the Governmentwide commercial purchase card; (2) are issued by a contracting officer within the United States or Puerto Rico; (3) are denominated and paid in U.S. dollars, and (4) do not involve certain classified information or military or emergency operations. To date, no supporting data has been collected; therefore, there is no available estimate of the number of small businesses that will be subject to the rule.

The Councils considered several alternatives which include permitting a transition period before requiring contractors to receive payment by EFT, and excluding, or making voluntary, EFT payments for certain types of contracts. The Councils selected the alternative that, within the constraints and objectives of the Debt Collection Improvement Act and the Treasury regulations, allows small entities to take advantage of the benefits of the EFT method of payment but also provides flexibility with regard to the needs of small entities. In accordance with 31 U.S.C. 3332, the rule provides for exemption of EFT requirements until January 1, 1999, for contractors who certify that they do not have an account with a financial institution or an authorized payment agent. As indicated above, the rule also exempts certain classes of contracts. The mandatory information clause contained in the rule requires contractors to submit identification and account number information, prior to the submission of the first request for payment, as a condition of payment under the contract. This clause permits a Contractor who does not wish to receive payment by EFT methods to submit a request to the payment office. The decision to grant the request, however,

is solely that of the Government. The rule also contains an optional information clause which, if included in a contract, would permit a contractor to request EFT payment after award of the contract. However, in accordance with the EFT statute, under the optional clause, the contractor is required to furnish EFT information for any payment to be made after January 1, 1999. The Federal Register notice containing the Treasury interim rule states that, after this date, the Secretary is authorized to waive the EFT requirement for individuals or classes of individuals for whom compliance imposes a hardship, for certain categories of checks, and in other circumstances deemed necessary.

Comments are invited. Comments from small entities concerning the affected FAR subparts will also be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite FAR Case 91-118 in correspondence.

#### C. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Pub. L. 104-13) applies because the interim rule contains information collection requirements. Accordingly, a request for approval of an information collection concerning Electronic Funds Transfer (9000-0144) has been submitted to the Office of Management and Budget (OMB) and approved through August 31, 1999.

#### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This rule is necessary for effective implementation of Section 31001(x)(1) of the Debt Collection Improvement Act of 1996 (Pub. L. 104-134), which requires that beginning 90 days (July 26, 1996) after enactment of the Act (April 26, 1996), payments to newly eligible vendors must be made by electronic funds transfer. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

#### E. Determination of Applicability of Section 31001(x)(1) of Public Law 104-134 to Contracts Not Greater Than the Simplified Acquisition Threshold and Procurements of Commercial Items

In accordance with 41 U.S.C. 429 and 41 U.S.C. 430, the Federal Acquisition

Regulatory Council has determined that it would not be in the best interest of the Federal Government to exempt contracts in amounts not greater than the simplified acquisition threshold, or contracts for the procurement of commercial items, from the applicability of Section 31001(x)(1) of the Debt Collection Improvement Act of 1996 (Pub. L. 104-134). Section 31001(x)(1) amends 31 U.S.C. 3332 to require that, beginning July 26, 1996, payments to newly eligible vendors must be made by electronic funds transfer. Electronic funds transfer payment methods, when fully implemented, are expected to significantly reduce the administrative burden that is currently associated with contract payments made by check and, therefore, should apply to all Federal contracts.

List of Subjects in 48 CFR Parts 12, 13, 32, and 52

Government procurement.

Dated: August 23, 1996.

Edward C. Loeb,  
Director, Federal Acquisition Policy Division.

Therefore, 48 CFR parts 12, 13, 32, and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 12, 13, 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 12—ACQUISITION OF COMMERCIAL ITEMS**

**12.302 [Amended]**

2. Section 12.302 is amended in paragraph (b)(3) by adding “(except as provided in subpart 32.11)” after “Payment”.

**PART 13—SIMPLIFIED ACQUISITION PROCEDURES**

3. Section 13.501 is amended by adding paragraph (i) to read as follows:

**13.501 General.**

(i) In accordance with 31 U.S.C. 3332, payment under contracts may be required to be made by electronic funds transfer (EFT). See 32.1103 for instructions for use of the appropriate clause in purchase orders. When obtaining verbal quotes, the contracting officer shall inform the offeror of the EFT clause that will be in any resulting purchase order. Contracting officers shall not accept EFT payment data. All such data shall be provided by the contractor directly to the payment office.

**PART 32—CONTRACT FINANCING**

4. Section 32.000 is amended in paragraph (g) by removing the word “and”; in paragraph (h) by removing the period and inserting “; and” in its place; and adding paragraph (i) to read as follows:

**32.000 Scope of part.**

\* \* \* \* \*

(i) Electronic funds transfer payments.  
5. Section 32.002 is amended by adding paragraph (a)(7) to read as follows:

**32.002 Applicability of subparts.**

(a) \* \* \*

(7) Subpart 32.11, Electronic Funds Transfer.

\* \* \* \* \*

6. Section 32.902 is amended by revising the definition “Payment date” and adding, in alphabetical order, the definition “Specified payment date” to read as follows:

**32.902 Definitions.**

\* \* \* \* \*

*Payment date* means the date on which a check for payment is dated or, for an electronic funds transfer, the specified payment date.

\* \* \* \* \*

*Specified payment date*, as it applies to electronic funds transfer (EFT), means the date which the Government has placed in the EFT payment transaction instruction given to the Federal Reserve System as the date on which the funds are to be transferred to the contractor’s account by the financial agent. If no date has been specified in the instruction, the specified payment date is 3 business days after the payment office releases the EFT payment transaction instruction.

7. Section 32.903 is amended by adding the following three sentences at the end of the section:

**32.903 Policy.**

\* \* \* For payments made by electronic funds transfer, the specified payment date, included in the Government’s order to pay the contractor, is the date of payment for prompt payment purposes, whether or not the Federal Reserve System actually makes the payment by that date, and whether or not the contractor’s financial agent credits the contractor’s account on that date. However, a specified payment date must be a valid date under the rules of the Federal Reserve System. For example, if the Federal Reserve System requires 2 days’ notice before a specified payment date to process a transaction, release of a payment transaction

instruction to the Federal Reserve Bank 1 day before the specified payment date could not constitute a valid date under the rules of the Federal Reserve System.

**32.908 [Amended]**

8. Section 32.908 is amended by removing paragraph (d).

9. Subpart 32.11, consisting of sections 32.1100 through 32.1103, is added to read as follows:

**SUBPART 32.11—ELECTRONIC FUNDS TRANSFER**

Sec.

32.1100 Scope of subpart.

32.1101 Policy.

32.1102 Assignment of claims.

32.1103 Contract clauses.

**32.1100 Scope of subpart.**

This subpart provides policy and procedures for Government payment by electronic funds transfer (EFT).

**32.1101 Policy.**

(a) 31 U.S.C. 3332(e) requires payment by EFT in certain situations. The payment office, not the contracting officer, determines if payment is to be made by EFT. The payment office may determine not to require submission of EFT information in accordance with paragraph (j) of the contract clauses at 52.232-33 and 52.232-34.

(b) The Government will protect against improper disclosure of a contractor’s EFT information. The clauses at 52.232-33 and 52.232-34 require the contractor to submit such information directly to the payment office.

(c) Contractors that do not have an account at a domestic United States financial institution or an authorized payment agent are exempted by 31 U.S.C. 3332 until January 1, 1999, from the requirement to be paid by EFT. The clause at 52.232-33 provides for the contractor to submit a certification to that effect directly to the payment office in lieu of the EFT information otherwise required by the clause.

(d) Payment by EFT is the preferred method of contract payment in normal contracting situations. However, in accordance with 31 CFR 208.3(c), certain classes of contracts have been authorized specific limited exceptions as listed in paragraphs (d) (1) through (4) of this section. In these situations, the method of payment shall be specified by the payment office, either through agency regulations or by specific agreement.

(1) Contracts awarded by contracting officers outside the United States and Puerto Rico shall provide for payment by other than EFT. However, payment

by EFT is acceptable for this type of contract if the contractor agrees and the payment office concurs.

(2) Contracts denominated or paid in other than United States dollars shall provide for payment by other than EFT.

(3) Classified contracts (see 4.401) 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.

(4) Contracts executed by deployed contracting officers in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13), or contracts executed by any contracting officer in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies, shall provide for payment by other than EFT where (i) EFT payment is not known to be possible, or (ii) EFT payment would not support the objectives of the operation. Contracting officers pre-designated to perform contracting duties in the event of these operations shall include coordinated plans for payment arrangements as part of the pre-contingency contract operations planning.

**32.1102 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 which 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 Contract clauses.**

(a) Unless instructed otherwise by the cognizant payment office or agency guidance, the contracting officer shall insert the clause at 52.232-33, Mandatory Information for Electronic Funds Transfer Payment, in all solicitations and resulting contracts which (1) will not be paid through use of the Governmentwide commercial purchase card (see 13.103(e)); and (2) are not otherwise excepted in accordance with 32.1101(d). The clause may be inserted in other contracts if the contractor requests payment by EFT and the payment office concurs.

(b) Unless instructed otherwise by agency guidance, the contracting officer shall insert the clause at 52.232-34,

Optional Information for Electronic Funds Transfer Payment, in all solicitations and resulting contracts which (1) Do not contain the clause at 52.232-33; (2) Will not be paid through use of the Governmentwide commercial purchase card (see 13.103(e)); and (3) Are not otherwise excepted in accordance with 32.1101(d).

(c) For contracts containing the clause at 52.212-4, Contract Terms and Conditions—Commercial Items, if the clause at 52.232-33, Mandatory Information for Electronic Funds Transfer Payment, will not be included in the contract in accordance with paragraph (a) of this section, the contracting officer shall attach an addendum to the contract that deletes the clause at 52.232-33 and—

(1) If required by paragraph (b) of this section, incorporates the clause at 52.232-34, Optional Information for Electronic Funds Transfer Payment, in the contract; or

(2) If the clause at 52.232-34 is not required, specifies that the Government will make payment under the contract by check.

(d) 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.

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

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

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

\* \* \* \* \*

**CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (AUG 1996)**

\* \* \* \* \*

(i) \* \* \* Unless otherwise provided by an addendum to this contract, the Government shall make payment in accordance with the clause at FAR 52.232-33, Mandatory Information for Electronic Funds Transfer Payment, which is incorporated herein by reference. \* \* \* For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

\* \* \* \* \*

**52.232-28 [Reserved]**

11. Section 52.232-28 is removed and reserved.

12. Section 52.232-33 and 52.232-34 are added to read as follows:

**52.232-33 Mandatory Information for Electronic Funds Transfer Payment.**

As prescribed in 32.1103(a) and (c), insert the following clause:

**MANDATORY INFORMATION FOR ELECTRONIC FUNDS TRANSFER PAYMENT (AUG 1996)**

(a) *Method of payment.* Payments by the Government under this contract, including invoice and contract financing payments, may be made by check or electronic funds transfer (EFT) at the option of the Government. If payment is made by EFT, the Government may, at its option, also forward the associated payment information by electronic transfer. As used in this clause, the term "EFT" refers to the funds transfer and may also include the information transfer.

(b) *Mandatory submission of Contractor's EFT information.* (1) The Contractor is required, as a condition to any payment under this contract, to provide the Government with the information required to make payment by EFT as described in paragraph (d) of this clause, unless the payment office determines that submission of the information is not required. However, until January 1, 1999, in the event the Contractor certifies in writing to the payment office that the Contractor does not have an account with a financial institution or an authorized payment agent, payment shall be made by other than EFT. For any payments to be made after January 1, 1999, the Contractor shall provide EFT information as described in paragraph (d) of this clause.

(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 payment office.

(c) *Contractor's EFT information.* Prior to submission of the first request for payment (whether for invoice or contract financing payment) under this contract, the Contractor shall provide the information required to make contract payment by EFT, as described in paragraph (d) of this clause, directly to the Government payment office named in this contract. If more than one payment 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 changed information to the designated payment office(s).

(d) *Required EFT information.* 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 at the Government's option. The Contractor shall provide the following information for both methods in a form acceptable to the designated payment office. The Contractor may supply this data for this or multiple contracts (see paragraph (b) of this clause).

(1) The contract number to which this notice applies.

(2) The Contractor's name and remittance address, as stated in the contract, and account number at the Contractor's financial agent.

(3) The signature (manual or electronic, as appropriate), title, and telephone number of

the Contractor official authorized to provide this information.

(4) For ACH payments only:

(i) Name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.

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

(5) For Federal Reserve Wire Transfer System payments only:

(i) Name, address, telegraphic abbreviation, and the 9-digit Routing Transit Number for the Contractor's financial agent.

(ii) 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, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment.

(e) *Suspension of payment.* (1) Notwithstanding the provisions of any other clause of this contract, the Government is not required to make any payment under this contract until after receipt, by the designated payment 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, any invoice or contract financing request shall be deemed not to be a valid invoice or contract financing request as defined in the Prompt Payment clause of this contract.

(2) If the EFT information changes after submission of correct EFT information, the Government shall begin using the changed EFT information no later than the 30th day after its receipt to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the changed EFT information is implemented by the payment office. If such suspension would result in a late payment under the Prompt Payment clause 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) *Contractor EFT arrangements.* The Contractor shall designate a single financial agent capable of receiving and processing the electronic funds transfer using the EFT methods described in paragraph (d) of this clause. The Contractor shall pay all fees and charges for receipt and processing of transfers.

(g) *Liability for uncompleted or erroneous transfers.* (1) If an uncompleted or erroneous transfer occurs because the Government failed to use the Contractor-provided 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 Contractor-provided EFT information was incorrect at the time 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 retains the right to either make payment by mail or suspend the payment in accordance with paragraph (e) of this clause.

(h) *EFT and prompt payment.* (1) A payment shall be deemed to have been made in a timely manner in accordance with the Prompt Payment clause of this contract if, in the EFT payment transaction instruction given 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.

(2) When payment cannot be made by EFT because of incorrect EFT information provided by the Contractor, no interest penalty is due after the date of the uncompleted or erroneous payment transaction, provided that notice of the defective EFT information is issued to the Contractor within 7 days after the Government is notified of the defective EFT information.

(i) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the Assignment of Claims clause of this contract, the assignee shall provide the assignee EFT information required by paragraph (d) of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information which 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) *Payment office discretion.* If the Contractor does not wish to receive payment by EFT methods for one or more payments, the Contractor may submit a request to the designated payment office to refrain from requiring EFT information or using the EFT payment method. The decision to grant the request is solely that of the Government.

(k) *Change of EFT information by financial agent.* The Contractor agrees that the Contractor's financial agent may notify the Government of a change to the routing transit number, Contractor account number, or account type. The Government shall use the changed data in accordance with paragraph (e)(2) of this clause. The Contractor agrees that the information provided by the agent is deemed to be correct information as if it were provided by the Contractor. The Contractor agrees that the agent's notice of changed EFT data is deemed to be a request by the Contractor in accordance with paragraph (e)(2) that no further payments be made until the changed EFT information is implemented by the payment office.

(End of clause)

#### **52.232-34 Optional Information for Electronic Funds Transfer Payment.**

As prescribed in 32.1103 (b) and (c), insert the following clause:

#### **OPTIONAL INFORMATION FOR ELECTRONIC FUNDS TRANSFER PAYMENT (AUG 1996)**

(a) *Method of payment.* (1) Except as provided in paragraph (a)(2) of this clause, after the Contractor provides the information described in paragraph (d) of this clause, in accordance with paragraph (b) of this clause, payments by the Government under this contract, including invoice and contract financing payments, may be made by check or electronic funds transfer (EFT) at the option of the Government. If payment is made by EFT, the Government may, at its option, also forward the associated payment information by electronic transfer. As used in this clause, the term "EFT" refers to the funds transfer and may also include the information transfer.

(2) Notwithstanding the provision of this clause making the furnishing of EFT information optional, the Contractor shall furnish the EFT information described in paragraph (d) for any payment to be made after January 1, 1999.

(b) *Contractor consent.* (1) If the Contractor is willing to be paid by EFT, the Contractor shall provide the EFT information described in paragraph (d) of this clause. The Contractor agrees that, after providing EFT information in accordance with this clause, the Contractor cannot withdraw the Government's right to make payment by EFT for this contract.

(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 payment office.

(c) *Contractor's EFT information.* Prior to submission of the first request for payment (whether for invoice or contract financing payment) under this contract, for which the Contractor desires EFT payment, the Contractor shall provide the information required to make contract payment by EFT, as described in paragraph (d) of this clause, directly to the Government payment office named in this contract. If more than one payment 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 changed information to the designated payment office(s).

(d) *Required EFT information.* The Government may make payment by EFT through either an Automated Clearing House (ACH) subject to the domestic banking laws of the United States or the Federal Reserve Wire Transfer System at the Government's option. The Contractor shall provide the following information for both methods in a form acceptable to the designated payment office. The Contractor may supply this data for this or multiple contracts (see paragraph (b) of this clause).

(1) The contract number to which this notice applies.

(2) The Contractor's name and remittance address, as stated in the contract, and account number at the Contractor's financial agent.

(3) The signature (manual or electronic, as appropriate), title, and telephone number of

the Contractor official authorized to provide this information.

(4) For ACH payment only:

(i) Name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.

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

(5) For Federal Reserve Wire Transfer System payments only:

(i) Name, address, telegraphic abbreviation, and the 9-digit Routing Transit Number for the Contractor's financial agent.

(ii) 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, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment.

(e) *Suspension of payment.* (1) Notwithstanding the provisions of any other clause of this contract, if, after receipt of the Contractor's EFT information in accordance with paragraph (b) of this clause, the EFT information is found to be incorrect, or, for payment after January 1, 1999, if EFT information has not been furnished, then until receipt by the designated payment office of the correct EFT information from the Contractor, (i) the Government is not required to make any further payment under this contract; and (ii) any invoice or contract financing request shall be deemed not to be a valid invoice or contract financing request as defined in the Prompt Payment clause of this contract.

(2) If the EFT information changes after submission of correct EFT information, the Government shall begin using the changed EFT information no later than the 30th day after its receipt to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the changed EFT information is implemented by the payment office. If such suspension would result in a late payment under the Prompt Payment clause 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) *Contractor EFT arrangements.* The Contractor shall designate a single financial agent capable of receiving and processing the electronic funds transfer using the EFT methods described in paragraph (d) of this clause. The Contractor shall pay all fees and charges for receipt and processing of transfers.

(g) *Liability for uncompleted or erroneous transfers.* (1) If an uncompleted or erroneous transfer occurs because the Government failed to use the Contractor-provided 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 Contractor-provided EFT information was incorrect at the time 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 retains the right to either make payment by mail or suspend the payment in accordance with paragraph (e) of this clause.

(h) *EFT and prompt payment.* (1) A payment shall be deemed to have been made in a timely manner in accordance with the Prompt Payment clause of this contract if, in the EFT payment transaction instruction given 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.

(2) When payment cannot be made by EFT because of incorrect EFT information provided by the Contractor, no interest penalty is due after the date of the uncompleted or erroneous payment transaction, provided that notice of the defective EFT information is issued to the Contractor within 7 days after the Government is notified of the defective EFT information.

(i) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the Assignment of Claims clause of this contract, the assignee shall provide the assignee EFT information required by paragraph (d) of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information which 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) *Payment office discretion.* If, after submitting the EFT information, the Contractor does not wish to receive payment by EFT methods for one or more payments, the Contractor may submit a request to the designated payment office to refrain from using the EFT payment method. The decision to grant the request is solely that of the Government.

(k) *Change of EFT information by financial agent.* The Contractor agrees that the Contractor's financial agent may notify the Government of a change to the routing transit number, Contractor account number, or account type. The Government shall use the changed data in accordance with paragraph (e)(2) of this clause. The Contractor agrees that the information provided by the agent is deemed to be correct information as if it were provided by the Contractor. The Contractor agrees that the agent's notice of changed EFT data is deemed to be a request by the Contractor in accordance with paragraph (e)(2) that no further payments be made until the changed EFT information is implemented by the payment office.

(End of clause)

Federal Acquisition Circular (FAC) 90-42 is issued under the authority of

the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-42 is effective August 29, 1996.

Dated: August 21, 1996.

Eleanor R. Specter,  
*Director, Defense Procurement.*

Dated: August 22, 1996.

Ida M. Ustad,  
*Deputy Associate Administrator, Office of Acquisition Policy.*

Dated: August 21, 1996.

Tom Luedtke,  
*Deputy Associate Administrator for Procurement, NASA.*  
[FR Doc. 96-22034 Filed 8-28-96; 8:45 am]

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Chapter 1

#### Federal Acquisition Regulation; Small Entity Compliance Guide

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

**ACTION:** Small Entity Compliance Guide.

**SUMMARY:** This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration as the Federal Acquisition Regulation (FAR) Council. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121). It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 90-42 which amends the FAR. Further information regarding this rule may be obtained by referring to FAC 90-42 which precedes this notice. This document may be obtained from the Internet at <http://www.gsa.gov/far>.

**FOR FURTHER INFORMATION CONTACT:** Beverly Fayson, FAR Secretariat, (202) 501-4755.