

and industrial facilities with coal-fired boilers; and (4) radionuclide releases to all media from coal and coal ash piles at utility and industrial facilities with coal-fired boilers. All background materials and public comments related to the November 30, 1992 proposal are available for inspection in Docket Number 102RQ-RN-1 located at the U.S. EPA CERCLA Docket Office (address provided above in the "Document Viewing" section).

After evaluating the public comment letters received on the November 30, 1992 proposal, the Agency decided to issue a supplemental proposal, which was published on August 4, 1995 (60 FR 40042), to request information and comment on expanded reporting exemptions for radionuclide releases. In the August 4, 1995 proposal, EPA proposed to grant reporting exemptions for releases of naturally occurring radionuclides associated with (1) land disturbance incidental to extraction activities at certain kinds of mines, and (2) coal and coal ash piles at all kinds of sites. The Agency also requested comments on two alternatives to these exemptions.

The three comment letters received to date that requested a 60-day extension to the comment period for the August 4, 1995 proposed rule cited a number of factors contributing to their request: (1) The volume and complexity of the technical information EPA used to support the proposed exemptions; (2) the need to address the basis not only for the proposed expanded reporting exemptions, but also for the two alternatives as well as other aspects of the proposal; and (3) the need to review two different rulemaking dockets (one for the August 4, 1995 proposal and one for the November 30, 1992 proposal) to prepare more thorough comments.

EPA recognizes that additional time may be warranted to prepare public comments on the August 4, 1995 proposal, based on the factors described above. In addition, the Agency does not believe that the temporary delay in the schedule for finalizing the exemptions will pose a threat to public health, welfare, or the environment. Thus, in today's action, EPA is granting a 60-day extension to the comment period for the August 4, 1995 proposal.

Elaine Davies,

Acting Director, Office of Emergency and Remedial Response.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32 and 52

[FAR Case 91-118]

RIN 9000-AG49

Federal Acquisition Regulation; Payment by Electronic Fund Transfer

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are considering changes to the Federal Acquisition Regulation (FAR) to address the use of electronic fund transfers for Federal contract payments. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866 dated September 30, 1993.

DATES: *Comment Due Date:* To be considered in the formulation of a final rule, comments should be submitted to the address given below on or before December 4, 1995.

ADDRESSES: Comments should be submitted to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW, Room 4037, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy F. Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR case 91-118.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils are committed to advancing the use of electronic fund transfers (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. The Councils also believe that many of the banks used by Federal contractors are not currently capable of properly handling the complex data transmissions used for many Government contract payments. Similarly, many Government offices

involved in certifying invoices and disbursing contract payments are not currently capable of using EFT as the standard method of payment. In drafting the proposed rule, the Councils tried to avoid committing the Government to the routine use of EFT capabilities it does not yet possess. This does not lessen the Councils' commitment to the use of EFT as a contract payment method but recognizes that, as new computer systems and attendant EFT procedures develop in both the public and private sectors, the use of EFT as a normal payment practice will also expand.

The proposed rule amends FAR Subpart 32.9 to provide guidance concerning the use of electronic fund transfers (EFT) as a method of contract payment. The rule also adds solicitation provisions and contract clauses at FAR section 52.232 to implement the guidance. The rule establishes a requirement for contractors to provide certain information which would enable the Government to make payments under the contract by electronic fund transfer rather than by check. The information necessary to make the EFT transaction is specified in two new clauses at section 52.232-00, Mandatory Information for Electronic Fund Transfer Payment, and section 52.232-01, Optional Information for Electronic Fund Transfer Payment. Under section 52.232-00, the contractor is required to provide the information, prior to the submission of the first request for payment, as a condition of payment under the contract. The clause at section 52.232-01 is used if EFT may become a viable method of payment during the period of contract performance and if the contractor consents and provides the necessary data to enable payment by EFT.

B. Regulatory Flexibility Act

The proposed FAR 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 changes are intended to advance the use of EFT as a method of contract payment and reduce the current administrative burden associated with payments made by check. Under the proposed regulations, any business which enters into a contract with the Government would be required to submit certain information which would enable the Government to make contract payments by EFT rather than by check. This requirement may have a significant impact on a substantial number of small businesses because it is expected that the majority of small businesses will receive

payments by EFT under their contracts when EFT becomes the standard method of contract payment. Based on fiscal years 1991 and 1992 data for contracts over \$25,000, if fully implemented, EFT as a method of payment would affect nearly 22,000 small businesses who received over 86,000 new contract awards. An Initial Regulatory Flexibility Analysis (IRFA) has been performed. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. 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.* (FAR case 91-118), in all correspondence.

C. Paperwork Burden

Under the provisions of the Paperwork Reduction Act of 1995 (Pub.L. 104-13), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement under Section 3507(d) of the Act concerning Payment by Electronic Fund Transfer.

Dates: Comments may be submitted on or before December 4, 1995.

Addresses: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503 and a copy to the FAR Secretariat at the address listed below for comments on the proposed rule.

Annual Reporting Burden: Public reporting burden for this collection of information is estimated to average .5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated to be \$2,235,000 as a result of the following estimated number of hours of labor for compliance: Respondents, 31,000; responses per respondent, 10; total annual responses,

310,000; preparation hours per response, .5; and total response burden hours, 155,000.

List of Subjects in 48 CFR Parts 32 and 52

Government procurement.

Dated: September 27, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

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

PART 32—CONTRACT FINANCING

1. The authority citation for 48 CFR parts 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.

2. Section 32.902 is amended by adding the definition of "Specified payment date" in alphabetical order to read as follows:

32.902 Definitions.

* * * * *

Specified payment date means, for a payment by electronic fund transfer (EFT), 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 financial agent (see 32.911-3). 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 two days' notice before a specified payment date to process a transaction, release to the Federal Reserve Bank of a payment transaction instruction one day before the specified payment date could not constitute a valid date under the rules of the Federal Reserve System.

3. Section 32.908 is amended by revising paragraph (d) and adding paragraph (e) to read as follows:

32.908 Contract clauses.

* * * * *

(d) The contracting officer shall insert the clause at section 52.232-00, Mandatory Information for Electronic Fund Transfer Payment, in all solicitations and contracts unless instructed not to by the cognizant payment office.

(e) The contracting officer shall insert the clause at section 52.232-01, Optional Information for Electronic Fund Transfer Payment, in all solicitations and contracts not containing the clause at section 52.232-00.

32.910 [Reserved]

4. Section 32.910 is reserved.

5. Sections 32.911 through 32.911-4 are added to read as follows:

32.911 Payment by electronic fund transfer (EFT).

32.911-1 Policy.

(a) The decision as to which clause is to be included in a contract is that of the office responsible for making payment on the contract per 31 CFR part 206. Normally, the payment office will notify the contracting office of which clause to use. However, when in doubt, the contracting officer shall consult with the payment office. (Note: If the certifying and disbursing functions are separated, the decision as to which clause to use shall be made by the office performing the disbursing function.)

(b) Contracting officers shall not commit the Government to use or not use EFT, but shall refer all contractor requests to the payment office. When authorized by agency regulations, the payment office has the authority not to exercise the Government's right to require submission of EFT information.

(c) The clause at section 52.232-00 contains the terms and conditions for payment by EFT and permits the Government to refuse to make any payments until the contractor submits the information needed to make payment by EFT.

(d) The clause at section 52.232-01 states the terms and conditions for EFT payment if the contractor should request that the Governor use EFT for payment.

(e) If more than one payment office will be making payments on a contract, the contracting officer shall include the EFT clause appropriate for each office and shall identify the applicability by payment office and contract line item.

32.911-2 EFT information.

To protect against improper disclosure of a contractor's EFT information, the clauses at section 52.232-00 and section 52.232-01 require the contractor to submit such information directly to the payment office. However, if the information is inadvertently sent to the contracting officer, the information shall be protected and delivered immediately to the designated payment office.

32.911-3 Prompt payment.

The information provided to the Federal Reserve system that constitutes the Government's order to pay the contractor includes a specified payment date. The valid specified payment date 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.

32.911-4 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 section 52.232-00, Mandatory Information for Electronic Fund Transfer, and section 52.232-01, Optional Information for Electronic Fund Transfer.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

542.232-28 [Reserved]

6. Section 52.232-28 is removed and reserved.

7. Sections 52.232-00 and 52.232-01 are added to read as follows:

52.232-00 Mandatory Information for Electronic Fund Transfer Payment.

As prescribed in 32.908(d), insert the following clause:

MANDATORY INFORMATION FOR ELECTRONIC FUND TRANSFER PAYMENT (DATE)

(a) *Method of payment.* Payments by the Government under this contract, including invoice and contract financing payments, may be made by check or electronic fund 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. For this clause, the term EFT includes both the fund transfer and 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.

(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 the Automated Clearing House (ACH) or Federal Reserve System wire transfer 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 account number at the Contractor's financial agent.

(3) The signature, 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 System Wire Transfer 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 System's wire transfer network, 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 agent receiving the wire transfer payment.

(e) *Suspension of payment.* (1) Notwithstanding the provisions of any other clause, the Government is not required to make any payment under this contract until after receipt from the Contractor of the correct EFT payment information by the designated payment office. 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. 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 fund transfer and associated electronic payment information 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 rights 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 due 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 seven 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 clause at section 52.232-23, Assignment of Claims, the assignee shall provide the EFT information required by paragraph (d) of this clause for the assignee. 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, a request may be submitted 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.

(End of clause)

52.232-01 Optional information for electronic fund transfer payment.

As prescribed in 32.908(e), insert the following clause:

OPTIONAL INFORMATION FOR
ELECTRONIC FUND TRANSFER PAYMENT
(DATE)

(a) *Method of payment.* After the Contractor provides the information described in paragraph (d) of this clause, in accordance with paragraph (b), payments by the Government under this contract, including invoice and contract financing payments, may be made by check or electronic fund 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. For this clause, the term EFT includes both the fund transfer and the information transfer.

(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. If the Contractor does not provide the EFT information, this clause is inoperative. 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 the Automated Clearing House (ACH) or Federal Reserve System wire transfer 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 account number at the Contractor's financial agent.

(3) The signature, 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 System Wire Transfer 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 System's wire transfer network, 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 agent receiving the wire transfer payment.

(e) *Suspension of payment:* (1) Notwithstanding the provisions of any other clause, 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, and until after receipt from the Contractor of the correct EFT information by the designated payment office: (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. 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 fund transfer and associated electronic payment information 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 due 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 seven 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 clause at section 52.232-23, Assignment of Claims, the assignee shall provide the EFT information required by paragraph (d) of this clause for the assignee. 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, a request may be submitted 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.

(End of clause)

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