

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-35

RIN 3090-AG03

Relocation of FIRMR Provisions Relating to the Use of Government Telephone Systems and GSA Services and Assistance

AGENCY: Office of Governmentwide Policy; GSA.

ACTION: Interim rule.

SUMMARY: The General Services Administration (GSA) is extending Federal Property Management Regulations provisions regarding Management and Use of Telecommunications Resources.

DATES: Effective date: This rule was effective August 8, 1996. Expiration date: August 8, 1999.

FOR FURTHER INFORMATION CONTACT: David R. Middledorf, Office of Governmentwide Policy, telephone 202-501-1551.

SUPPLEMENTARY INFORMATION: FPMR interim F1 was published in the **Federal Register** on August 7, 1996, 61 FR 41003. The expiration date of the interim rule is August 8, 1998. This supplement extends the expiration date until August 8, 1999.

List of Subjects in 41 CFR Part 101-35

Archives and records, Computer technology, Telecommunications, Government procurement, Property management, Records management, Information technology. Therefore, the expiration date for interim rule F-1 published at 61 FR 41003, August 7, 1996, is extended until August 8, 1999.

Dated: May 12, 1998.

David Barram,

Administrator of General Services.

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BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

[DFARS Case 98-D012]

Defense Federal Acquisition Regulation Supplement; Electronic Funds Transfer

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule

amending the Defense Federal Acquisition Regulation Supplement (DFARS) to provide policy and procedures for the use of the electronic funds transfer (EFT) method of contract payment when the payment office uses the central contractor registration (CCR) database as its source of EFT information. This rule eliminates requirements for duplicate submissions of EFT information by DoD contractors.

DATES: Effective date: June 1, 1998.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before July 20, 1998, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD(A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax number (703) 602-0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 98-D012 in all correspondence related to this issue. E-mail comments should cite DFARS Case 98-D012 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberline, (703) 602-0131.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule amending the Federal Acquisition Regulation (FAR) was published in the **Federal Register** on August 29, 1996 (61 FR 45770). The rule added a new FAR Subpart 32.11, Electronic Funds Transfer, which provides policy and procedures for Government payment by EFT. The rule also added two contract clauses: FAR 52.232-33, Mandatory Information for Electronic Funds Transfer Payment, and FAR 52.232-34, Optional Information for Electronic Funds Transfer Payment. FAR 52.232-33 requires the contractor to provide EFT information as a condition of payment under the contract. When FAR 52.232-33 will not be included in a contract, FAR 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 the contractor agree to commence EFT. Both clauses require the contractor to provide EFT information to the cognizant payment office for each contract awarded to the contractor.

A final DFARS rule was published in the **Federal Register** on March 31, 1998 (63 FR 15316). The rule added DFARS Subpart 204.73 and a contract clause at

DFARS 252.204-7004, Required Central Contractor Registration, and requires contractor registration in a DoD CCR database prior to award of a contract, basic agreement, basic ordering agreement, or blanket purchase agreement, unless the award results from a solicitation issued on or before May 31, 1998. The rule requires that contractors register on a one-time basis, and confirm on an annual basis that their CCR registration is accurate and complete. As part of the registration process, contractors are required to furnish their EFT payment information into the CCR database.

This interim DFARS rule eliminates conflicting and administratively burdensome requirements for contractors to provide EFT information to the payment office for each contract awarded (in accordance with FAR 52.232-33 or FAR 52.232-34), and into the CCR database (in accordance with DFARS 252.204-7004). This rule prescribes the use of a new clause at DFARS 252.232-7009, Payment by Electronic Funds Transfer (CCR), instead of either EFT FAR clause, for contracts that include the clause at 252.204-7004 and that will be paid by EFT. DFARS 252.232-7009 is especially tailored for those DoD contractors that are required to register in the CCR database.

B. Regulatory Flexibility Act

The interim rule may have a significant beneficial economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. An Initial Regulatory Flexibility Analysis has been performed and is summarized as follows:

The objective of the rule is to revise current procedures for the use of electronic funds transfer in order to accommodate the DoD requirement for contractors to register into a CCR database; thus, eliminating conflicting and administratively burdensome requirements for both large and small contractors.

FAR 52.232-33 and FAR 52.232-34 require, for each contract awarded, the contractor to provide EFT information to the cognizant payment office. In addition, DFARS 204.7302 requires contractor registration in a DoD CCR database prior to award of a contract, basic agreement, basic ordering agreement, or blanket purchase agreement, unless the award results from a solicitation issued on or before May 31, 1998. As part of the registration process, contractors are required to furnish their EFT information. Therefore, Contractors are required to

furnish EFT information into the CCR database, and to the cognizant payment office for each contract awarded to them.

This interim DFARS rule applies to small entities that are required to register in the DoD CCR database in accordance with DFARS 252.204-7004, and that are required to be paid by EFT in accordance with FAR 52.232-33 or FAR 52.232-34. The rule does not apply to small entities that are exempted from CCR or exempted from the EFT method of payment. This rule reduces the burden on small entities by eliminating the requirement for DoD contractors to furnish EFT information to the payment office for each contract. To date, no supporting data has been collected; therefore, there is no available estimate of the number of small entities that will be subject to the rule.

The interim rule decreases information collection requirements by requiring the use of DFARS 252.232-7009 instead of the FAR clauses and their associated reporting requirements. The new DFARS clause only applies to contractors that are required to register in the CCR database. The requirement to register in the database already is prescribed at DFARS 204.7302.

This rule has a beneficial economic impact on small entities by eliminating conflicting and administratively burdensome requirements for submission of EFT information. There are no significant alternatives that would have a more beneficial economic impact on small entities and at the same time comply with 31 U.S.C. 3332, as amended by Subsection 31001(x) of Public Law 104-134, that " * * * all Federal payments to a recipient who becomes eligible for that type of payment * * * shall be made by electronic funds transfer."

A copy of the Initial Regulatory Flexibility Analysis may be obtained from the address specified herein. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite DFARS Case 98-D012.

C. Paperwork Reduction Act

The interim rule decreases the information collection requirement currently approved under Office of Management and Budget (OMB) Control Number 9000-0144. The decrease results from the rule removing the requirement to use the clause at FAR 52.232-33 or FAR 52.232-34, when a contract includes the clause at DFARS

252.204-7004, Required Central Contractor Registration, and will be paid by EFT. OMB approved the information collection requirement to submit EFT information in the CCR database on November 20, 1997, under OMB Control Number 0704-0400, which expires on November 30, 2000.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish this interim rule prior to affording the public an opportunity to comment. This action is necessary to expeditiously eliminate conflicting and administratively burdensome requirements for DoD contractors. Effective June 1, 1998, DoD contractors are required to register in a CCR database. The contractor payment information required by the clauses at FAR 52.232-33 and 52.232-34 duplicates information required for registration in the CCR database. This interim rule prescribes a DFARS clause for use in place of the FAR clauses, to eliminate requirements for duplicate submissions of information by DoD contractors. However, comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 232 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 232 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 232—CONTRACT FINANCING

2. Subpart 232.11 is added to read as follows:

Subpart 232.11—Electronic Funds Transfer

Sec.

232.1101 Policy.

232.1103 Contract clause.

232.1101 Policy.

(a) If the payment office is not capable of making payment by electronic funds transfer (EFT), the payment office is relieved of the requirement to pay by EFT if DoD complies with 31 CFR 208.3, which requires written notice and submittal of an implication plan to the

Department of the Treasury, Financial Management Service.

232.1103 Contract clause.

If the solicitation or contract includes the clause at 252.204-7004, Required Central Contractor Registration, and payment under the contract will be made by electronic funds transfer, use the clause at 252.232-7009, Payment by Electronic Funds Transfer (CCR), instead of the clause at FAR 52.232-33, Mandatory Information for Electronic Funds Transfer Payment, or the clause at FAR 52.232-34, Optional Information for Electronic Funds Transfer Payment.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.232-7009 is added to read as follows:

252.232-7009 Payment by Electronic Funds Transfer (CCR).

As prescribed in 232.1103, use the following clause:

Payment by Electronic Funds Transfer (CCR) (JUN 1998)

(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 (e) of this clause).

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

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

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

(e) *Suspension of payment.* If the Contractor's EFT information in the CCR

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

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

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

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

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT

information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

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

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

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

(i) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee register in the CCR database and be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other

than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (e) of this clause.

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

(k) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the 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 Contractor has certified in accordance with paragraph (b) of this clause or if the Government otherwise makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

(End of clause)

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