32.411 Agreement for special account at a financial institution.

The *contracting officer must* use substantially the following form of agreement for a special account for advance payments:

Agreement for Special Account

This agreement is entered into this _____ *day* of _____, 20___, between the *United States* of America (the Government), represented by the *Contracting Officer* executing this agreement, _____ [*Insert the name of the Contractor*], a _____ [*Insert the name of the State of incorporation*] corporation (the Contractor), and _____, a financial institution operating under the laws of _____, located at _____ (the financial institution).

Recitals

(a) Under date of _____, 20__, the Government and the Contractor entered into Contract No. _____, or a related *supplemental agreement*, providing for advance payments to the Contractor. A copy of the advance payment terms was furnished to the financial institution.

(b) The contract or *supplemental agreement* requires that amounts advanced to the Contractor be deposited separate from the Contractor's general or other funds, in a Special Account at a member bank of the Federal Reserve System, any "insured" bank within the meaning of the Act creating the Federal Deposit *Insurance* Corporation (12 U.S.C. 1811), or a credit union insured by the National Credit Union Administration. The parties agree to deposit the amounts with the financial institution, which meets the requirement.

(c) This Special Account is designated "_____ [*Insert the Contractor's name*], _____ [*Insert the name of the Government agency*] Special Account."

Covenants

In consideration of the foregoing, and for other good and valuable considerations, the parties agree to the following conditions:

(a) The Government *shall* have a lien on the credit balance in the account to secure the repayment of all advance payments made to the Contractor. The lien is paramount to any lien or *claim* of the financial institution regarding the account.

(b) The financial institution is bound by the terms of the contract relating to the deposit and withdrawal of funds in the Special Account, but is not responsible for the application of funds withdrawn from the account. The financial institution *shall* act on written directions from the *Contracting Officer*, the administering office, or a duly authorized representative of either. The financial institution is not liable to any party to this agreement for any action that complies with the written directions. Any written directions received by the financial institution through the *Contracting Officer* on _____ [*Insert the name of the agency*] stationery and purporting to be signed by, or by the direction of _____ or duly authorized representative, *shall* be, as far as the rights, duties, and liabilities of the financial institution are concerned, considered as being properly issued and filed with the financial institution by the _____ [*Insert the name of the agency*].

(c) The Government, or its authorized representatives, *shall* have access to the books and records maintained by the financial institution regarding the Special Account at all reasonable times and for all reasonable purposes, including (but not limited to), the *inspection* or copying of the books and records and any and all pertinent memoranda, checks, correspondence, or documents. The financial institution *shall* preserve the books and records for a period of 6 years after the closing of this Special Account.

(d) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings regarding the Special Account, the financial institution will promptly notify _____ [*Insert the name of the administering office*].

(e) While this Special Account exists, the financial institution *shall* inform the Government each month of the financial institution's published prime interest rate and changes to the rate during the month. The financial institution *shall* give this information to the *Contracting Officer* on the last business *day* of the month. [*This covenant will not be included in the Special Account Agreements covering interest-free advance payments*.]

Each of the parties to this agreement has executed the agreement on _____, 20____.

_____ _____

[*Signatures and Official Titles*]

Parent topic: Subpart 32.4 - Advance Payments for Other Than Commercial Acquisitions