

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 32**

[FAR Case 94-761]

RIN 9000-XXXX

**Federal Acquisition Regulation;
Assignment of Claims**

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

ACTION: Proposed rule.

SUMMARY: This proposed rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 to implement revisions which expand the authority to prohibit setoffs against assignees when contractors assign a contract to a financial institution. This regulatory action is not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before March 20, 1995 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: -General Services Administration, FAR Secretariat (VRS), -18th & F Streets, NW., Room 4037, Washington, DC 20405.

Please cite FAR case 94-761 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. John Galbraith, Finance/Payment Team Leader, at (703) 697-6710, in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GSA Building, Washington, DC 20405 (202) 501-4755. Please cite FAR case 94-761.

SUPPLEMENTARY INFORMATION:**A. Background**

The Federal Acquisition Streamlining Act of 1994, Public Law 103-355, (the Act) provides authorities that streamline the acquisition process and minimize burdensome government-unique requirements. Major changes that can be expected in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, Simplified Acquisition Procedures, the Truth in Negotiations Act, and

introduction of the Federal Acquisition Computer Network (FACNET). In order to promptly achieve the benefits of the provisions of the Act, the government is issuing implementing regulations on an expedited basis. We believe prompt publication of proposed rules provides the public the opportunity to participate more fully in the process of developing regulations.

The FAR Council is interested in an exchange of ideas and opinions with respect to the regulatory implementation of the Act. For that reason, the FAR Council is conducting a series of public meetings. However, the FAR Council has not scheduled a public meeting on this rule (FAR case 94-761) because of the clarity and non-controversial nature of the rule. If the public believes such a meeting is needed with respect to this rule, a letter requesting a public meeting and outlining the nature of the requested meeting shall be submitted to and received by the FAR Secretariat, Room 4037, GSA Building, Washington, DC 20405 (202) 501-4755, on or before February 21, 1995. Please cite FAR case 94-761. The FAR Council will consider such requests in determining whether a public meeting on this rule should be scheduled.

FAR Case 94-761

This notice announces FAR revisions developed under FAR case 94-761. The language in FAR 32.803(d) is changed to expand the authorization of a no-setoff commitment in contracts which are assigned under the Act. Prior to the Act, the no-setoff commitment could only be included in a contract during time of war or national emergency. Under the Act, the inclusion of the no-setoff commitment is based solely on whether the President makes a determination of need. The Act further states that each determination of need by the President shall be published in the Federal Register.

The Act also resulted in a reorganization of the United States Code (U.S.C.) to improve the reading format. Some parts of the U.S.C. were deleted as a result of obsolescence, such as the inclusion of the Atomic Energy Commission as a designated agency which may utilize the no-setoff commitment in contracts. Further, the U.S.C. reference to contracts awarded prior to October 9, 1940, was deleted. These changes to 41 U.S.C. 15 did not affect the current FAR language at Subpart 32.8.

The FAR has also been revised to reflect the micro-purchase threshold, in lieu of the previous floor of \$1,000, for use of the Assignment of Claims clause.

B. Regulatory Flexibility Act

This proposed rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577, and publication for public comments is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, et seq. (FAR case 94-761), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 32

Government procurement.

Dated: January 12, 1995.

Edward Loeb,

*Deputy Project Manager for the
Implementation of the Federal Acquisition
Streamlining Act of 1994.*

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

1. The authority citation for 48 CFR Part 32 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 32—CONTRACT FINANCING**32.801 [Amended]**

2. Section 32.801 is amended in the definition of "Designated agency" by inserting "the Department of Energy," following "Federal Aviation Administration,".

3. Section 32.803(d) is revised to read as follows:

32.803 Policies.

* * * * *

(d) Any contract of a designated agency (see 32.801), except a contract under which full payment has been made, may include a no-setoff commitment only when a determination of need is made by the President. Each such determination of need will be published in the Federal Register.

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4. Section 32.806(a) is revised to read as follows:

32.806 Contract clauses.

(a)(1) The contracting officer shall insert the clause at 52.232-23,

Assignment of Claims, in solicitations and contracts expected to be above the micro-purchase threshold, unless the contract will prohibit the assignment of claims (see 32.803(b)). The use of the clause is not required for purchase orders. However, the clause may be

used in purchase orders expected to be above the micro-purchase threshold, that are accepted in writing by the contractor, if such use is consistent with agency policies and regulations.

(2) If a no-setoff commitment is to be included in the contract (see 32.801 and

32.803(d)), the contracting officer shall use the clause with its Alternate I.

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