

authority is available to all agencies subject to that Act.

(b) 10 U.S.C. 2307(h)(2) and 41 U.S.C. 255, as amended by the Federal Acquisition Streamlining Act of 1994, Public Law 103-355, provide for a reduction or suspension of further payments to a contractor when the agency head determines there is substantial evidence that the contractor's request for advance, partial, or progress payments is based on fraud. This authority does not apply to commercial interim payments under subpart 32.2, or performance-based payments under subpart 32.10.

(c) The agency head may not delegate his or her responsibilities under these statutes below Level IV of the Executive Schedule.

(d) Authority to reduce or suspend payments under these statutes is in addition to other Government rights, remedies, and procedures.

(e) In accordance with these statutes, agency head determinations and decisions under this section may be made for an individual contract or any group of contracts affected by the fraud.

32.006-2 Definitions.

As used in this section—

Remedy coordination official means the person or entity in the agency who coordinates within that agency the administration of criminal, civil, administrative, and contractual remedies resulting from investigations of fraud or corruption related to procurement activities. (See 10 U.S.C. 2307(h)(10) and 41 U.S.C. 255(g)(9).)

Substantial evidence means information sufficient to support the reasonable belief that a particular act or omission has occurred.

32.006-3 Responsibilities.

(a) Agencies shall establish appropriate procedures to implement the policies and procedures of this section.

(b) Government personnel shall report suspected fraud related to advance, partial, or progress payments in accordance with agency regulations.

32.006-4 Procedures.

(a) In any case in which an agency's remedy coordination official finds substantial evidence that a contractor's request for advance, partial, or progress payments under a contract awarded by that agency is based on fraud, the remedy coordination official shall recommend that the agency head reduce or suspend further payments to the contractor. The remedy coordination official shall submit to the agency head a written report setting forth the remedy

coordination official's findings that support each recommendation.

(b) Upon receiving a recommendation from the remedy coordination official under paragraph (a) of this subsection, the agency head shall determine whether substantial evidence exists that the request for payment under a contract is based on fraud.

(c) If the agency head determines that substantial evidence exists, the agency head may reduce or suspend further payments to the contractor under the affected contract(s). Such reduction or suspension shall be reasonably commensurate with the anticipated loss to the Government resulting from the fraud.

(d) In determining whether to reduce or suspend further payment(s), as a minimum, the agency head shall consider—

(1) A recommendation from investigating officers that disclosure of the allegations of fraud to the contractor may compromise an ongoing investigation;

(2) The anticipated loss to the Government as a result of the fraud;

(3) The contractor's overall financial condition and ability to continue performance if payments are reduced or suspended;

(4) The contractor's essentiality to the national defense, or to the execution of the agency's official business; and

(5) Assessment of all documentation concerning the alleged fraud, including documentation submitted by the contractor in its response to the notice required by paragraph (e) of this subsection.

(e) Before making a decision to reduce or suspend further payments, the agency head shall, in accordance with agency procedures—

(1) Notify the contractor in writing of the action proposed by the remedy coordination official and the reasons therefor (such notice must be sufficiently specific to permit the contractor to collect and present evidence addressing the aforesaid reasons); and

(2) Provide the contractor an opportunity to submit information within a reasonable time, in response to the action proposed by the remedy coordination official.

(f) When more than one agency has contracts affected by the fraud, the agencies shall consider designating one agency as the lead agency for making the determination and decision.

(g) The agency shall retain in its files the written justification for each—

(1) Decision of the agency head whether to reduce or suspend further payments; and

(2) Recommendation received by an agency head in connection with such decision.

(h) Not later than 180 calendar days after the date of the reduction or suspension action, the remedy coordination official shall—

(1) Review the agency head's determination on which the reduction or suspension decision is based; and

(2) Transmit a recommendation to the agency head as to whether the reduction or suspension should continue.

32.006-5 Reporting.

(a) In accordance with 41 U.S.C. 255, the head of an agency, other than the Department of Defense, shall prepare a report for each fiscal year in which a recommendation has been received pursuant to 32.006-4(a). Reports within the Department of Defense shall be prepared in accordance with 10 U.S.C. 2307.

(b) In accordance with 41 U.S.C. 255 and 10 U.S.C. 2307, each report shall contain—

(1) Each recommendation made by the remedy coordination official;

(2) The actions taken on the recommendation(s), with reasons for such actions; and

(3) An assessment of the effects of each action on the Government.

[FR Doc. 95-23863 Filed 9-25-95; 8:45 am]

BILLING CODE 6820-EP-P

48 CFR Part 32

[FAC 90-33; FAR Case 94-761, Item V]

RIN 9000-AG34

Federal Acquisition Regulation; Assignment of Claims

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

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to Section 2451 of 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 was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: October 1, 1995.

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, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-33, FAR case 94-761.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355 (the Act), provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements.

This rule revises FAR 32.803(d) 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. Until an agency has received such a determination of need, the "No-Setoff" Alternate I of the clause at 52.232-23, Assignment of Claims, shall not be used.

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 amended 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

The Department of Defense, the General Services Administration, and

the National Aeronautics and space Administration certify that this rule will not have a significant economic impact on a substantial number of small entities because this rule does not significantly change the existing procedures for use of assignment of claims and no-setoff commitments.

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.*

D. Public Comments

The proposed rule was published in the Federal Register on January 19, 1995 (60 FR 3988). Editorial and technical comments were received from a number of Government agencies; however, no non-Government comments were received. This final rule reflects appropriate changes as a result of those Government comments. The major change is the adjustment of the definition of "designated agency" at 32.801.

List of Subjects in 48 CFR Part 32

Government procurement.

Dated: September 21, 1995.

Edward C. Loeb,

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

Therefore, 48 CFR Part 32 is amended as set forth below:

PART 32—CONTRACT FINANCING

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).

2. Section 32.801 is amended by revising the definition of "Designated agency" to read as follows:

32.801 Definitions.

* * * * *

Designated agency, as used in this subpart, means any department or agency of the executive branch of the United States Government (see 32.803(d)).

* * * * *

3. Section 32.803 is amended by revising paragraph (d) 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 and after such determination has been published in the Federal Register.

* * * * *

4. Section 32.806 is amended by revising paragraph (a) 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 exceed 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 exceed 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 has been authorized by the President (see 32.801 and 32.803(d)), the contracting officer shall use the clause with its Alternate I.

* * * * *

[FR Doc. 95-23864 Filed 9-25-95; 8:45 am]

BILLING CODE 6820-EP-P