

(R.S. § 3736.)

CODIFICATION

R.S. §3736 derived from act May 1, 1820, ch. 52, §7, 3 Stat. 568.

§ 15. Transfers of contracts; assignments; assignee not subject to reduction or setoff**(a) Transfer**

No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States is concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States.

(b) Assignment

The provisions of subsection (a) of this section shall not apply in any case in which the moneys due or to become due from the United States or from any agency or department thereof, under a contract providing for payments aggregating \$1,000 or more, are assigned to a bank, trust company, or other financing institution, including any Federal lending agency, provided:

(1) That, in the case of any contract entered into after October 9, 1940, no claim shall be assigned if it arises under a contract which forbids such assignment.

(2) That, unless otherwise expressly permitted by such contract, any such assignment shall cover all amounts payable under such contract and not already paid, shall not be made to more than one party, and shall not be subject to further assignment, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing.

(3) That, in the event of any such assignment, the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of the assignment with—

(A) the contracting officer or the head of his department or agency;

(B) the surety or sureties upon the bond or bonds, if any, in connection with such contract; and

(C) the disbursing officer, if any, designated in such contract to make payment.

(c) Validity of assignment

Notwithstanding any law to the contrary governing the validity of assignments, any assignment pursuant to this section shall constitute a valid assignment for all purposes.

(d) Assignee liability

In any case in which moneys due or to become due under any contract are or have been assigned pursuant to this section, no liability of any nature of the assignor to the United States or any department or agency thereof, whether arising from or independently of such contract, shall create or impose any liability on the part of the assignee to make restitution, refund, or repayment to the United States of any amount heretofore since July 1, 1950, or hereafter received under the assignment.

(e) Amendment of contract

Any contract of the Department of Defense, the General Services Administration, the Department of Energy, or any other department or agency of the United States designated by the President, except any such contract under which full payment has been made, may, upon a determination of need by the President, provide or be amended without consideration to provide that payments to be made to the assignee of any moneys due or to become due under such contract shall not be subject to reduction or setoff. Each such determination of need shall be published in the Federal Register.

(f) Assignor liability arising independent of contract

If a provision described in subsection (e) of this section or a provision to the same general effect has been at any time heretofore or is hereafter included or inserted in any such contract, payments to be made thereafter to an assignee of any moneys due or to become due under such contract shall not be subject to reduction or setoff for any liability of any nature of the assignor to the United States or any department or agency thereof which arises independently of such contract, or hereafter for any liability of the assignor on account of—

(1) renegotiation under any renegotiation statute or under any statutory renegotiation article in the contract;

(2) fines;

(3) penalties (which term does not include amounts which may be collected or withheld from the assignor in accordance with or for failure to comply with the terms of the contract); or

(4) taxes, social security contributions, or the withholding or non withholding of taxes or social security contributions, whether arising from or independently of such contract.

(g) Accrued rights and obligations

Except as herein otherwise provided, nothing in this section shall be deemed to affect or impair rights or obligations heretofore accrued.

(R.S. § 3737; Oct. 9, 1940, ch. 779, §1, 54 Stat. 1029; May 15, 1951, ch. 75, 65 Stat. 41; Pub. L. 103-355, title II, §2451, Oct. 13, 1994, 108 Stat. 3324; Pub. L. 104-106, div. D, title XLIII, §4321(i)(9), Feb. 10, 1996, 110 Stat. 676.)

CODIFICATION

R.S. §3737 derived from act July 17, 1862, ch. 200, §14, 12 Stat. 596.

AMENDMENTS

1996—Subsec. (g). Pub. L. 104-106 substituted “rights or obligations” for “rights of obligations”.

1994—Pub. L. 103-355, §2451, amended section generally, revising it as follows:

Subsec. (a), designated first par. as subsec. (a) and substituted “is concerned” for “are concerned”.

Subsec. (b), designated second par. as subsec. (b) and inserted subparagraphs and cl. designations; substituted in introductory provisions “provisions of subsection (a) of this section” for “provisions of the preceding paragraph” and “lending agency, provided:” for “lending agency: Provided,; in par. designations, “That,” for “That” and periods for semicolons at end; and struck out former par. 1 which read as follows: “That in the case of any contract entered into prior to October 9,

1940, no claim shall be assigned without the consent of the head of the department or agency concerned;”.

Subsec. (c), designated third par. as subsec. (c) and substituted “this section” for “this section.”.

Subsec. (d), designated fourth par. as subsec. (d).

Subsec. (e), designated first part of fifth par. as subsec. (e), substituted “Department of Energy” for “Atomic Energy Commission”, “may, upon a determination of need by the President, provide” for “may, in time of war or national emergency proclaimed by the President (including the national emergency proclaimed December 16, 1950) or by Act or joint resolution of the Congress and until such war or national emergency has been terminated in such manner, provide”, and “subject to reduction or set-off.” for “subject to reduction or set-off.”, and inserted “Each such determination of need shall be published in the Federal Register.”

Subsec. (f), designated last part of fifth par. as subsec. (f), realigned margins of pars. (1) to (4) and substituted semicolons for commas at end, and substituted, in introductory provisions, “If a provision described in subsection (e) of this section or a provision to the same general effect has been at any time heretofore or is hereafter included or inserted in any such contract, payments to be made thereafter to an assignee of any moneys due or to become due under such contract shall not be subject to reduction or setoff for any liability of any nature of the assignor to the United States or any department or agency thereof which arises independently of such contract, or hereafter for any liability of the assignor on account of—” for “and if such provision or one to the same general effect has been at any time heretofore or is hereafter included or inserted in any such contract, payments to be made thereafter to an assignee of any moneys due or to become due under such contract, whether during or after such war or emergency, shall not be subject to reduction or set-off for any liability of any nature of the assignor to the United States or any department or agency thereof which arises independently of such contract, or hereafter for any liability of the assignor on account of” and, in par. (4), “non withholding” for “nonwithholding”.

Subsec. (g), designated sixth par. as subsec. (g).

1951—Act May 15, 1951, made it clear that a bank or other financing institution taking an assignment of claims pursuant to this section would not be subject to later recovery by the Government of amounts previously paid to the bank by the assignee except in cases of fraud.

1940—Act Oct. 9, 1940, inserted second and third pars.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of this title.

DELEGATION OF AUTHORITY

Memorandum of President of the United States, Oct. 3, 1995, 60 F.R. 52289, provided:

Memorandum for the Heads of Executive Departments and Agencies

Section 2451 of the Federal Acquisition Streamlining Act of 1994, Public Law 103–355 ([amending] 41 U.S.C. 15) (“Act”), provides, in part, that “[a]ny contract of the Department of Defense, the General Services Administration, the Department of Energy or any other department or agency of the United States designated by the President, except [contracts where] . . . full payment has been made, may, upon a determination of need by the President, provide or be amended without consideration to provide that payments to be made to the assignee of any moneys due or to become due under [the] contract shall not be subject to reduction or set-off.”

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby designate all other departments and agencies of the United States as subject to this provision. Furthermore, I hereby delegate to the Secretaries of Defense and Energy, the Administrator of General Services, and the heads of all other departments and agencies, the authority under section 2451 of the Act to make determinations of need for their respective agency’s contracts, subject to such further guidance as issued by the Office of Federal Procurement Policy.

The authority delegated by this memorandum may be further delegated within the departments and agencies.

This memorandum shall be published in the Federal Register.

WILLIAM J. CLINTON.

NON-APPLICABILITY OF NATIONAL EMERGENCIES ACT

The provisions of the National Emergencies Act (Pub. L. 94–412, Sept. 14, 1976, 90 Stat. 1255) not applicable to the powers and authorities conferred by this section and actions taken hereunder, see section 1651 of Title 50, War and National Defense.

MONEYS DUE UNDER LETTERS OF COMMITMENT ISSUED IN CONNECTION WITH DISPOSITION OF SURPLUS AGRICULTURAL COMMODITIES

Moneys due under letters of commitment issued against funds or guaranties of funds supplied by Commodity Credit Corporation in connection with disposition of surplus agricultural commodities to foreign countries, as assignable under the Assignment of Claims Act of 1940, which constitutes this section and former section 203 of Title 31, Money and Finance, see section 1702 of Title 7, Agriculture.

§ 16. Repealed. Oct. 21, 1941, ch. 452, 55 Stat. 743

Section, R.S. §3744; acts June 15, 1917, ch. 29, 40 Stat. 198; Feb. 4, 1929, ch. 146, 45 Stat. 1147, related to requirement that contracts made by Secretaries of War, Navy, and Interior be in writing, and that copies thereof be filed in returns office of Department of the Interior.

§§ 16a to 16d. Omitted

CODIFICATION

Section 16a, act Jan. 12, 1927, ch. 27, 44 Stat. 936, authorized purchases by Department of the Interior without compliance with section 16 of this title.

Section 16b, acts Apr. 17, 1936, ch. 233, 49 Stat. 1226; May 18, 1937, ch. 223, 50 Stat. 181; May 17, 1938, ch. 236, 52 Stat. 393; June 16, 1939, ch. 208, 53 Stat. 834; June 18, 1940, ch. 396, 54 Stat. 474, authorized purchases by Botanic Garden without compliance with section 16 of this title.

Section 16c, act May 13, 1926, ch. 294, 44 Stat. 547, authorized purchases by Architect of Capitol without compliance with section 16 of this title.

Section 16d, act Aug. 4, 1939, ch. 418, §13, 53 Stat. 1197, authorized purchases by Bureau of Reclamation without compliance with section 16 of this title.

§§ 17 to 19. Repealed. Oct. 21, 1941, ch. 452, 55 Stat. 743

Section 17, R.S. §3745, provided that an affidavit be affixed to the return of contract required by section 16 of this title.

Section 18, R.S. §3746, provided punishment for failure to make returns of contracts as required by sections 16 and 17 of this title.

Section 19, R.S. §3747, imposed duty on Secretaries of War, Navy, and Interior to furnish officers with letters of instruction relating to their duties under sections 17 and 18, contract forms, and affidavits, to insure uniformity.