

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 32 and 52

[FAR Case 94-764]

RIN 9000-AG36

Federal Acquisition Regulation;
Contract Financing

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

ACTION: Extension of comment period and notice of public meeting.

SUMMARY: This notice is issued to familiarize the public with the status of the rulemaking effort on FAR Case 94-764, Contract Financing, which implements the Federal Acquisition Streamlining Act of 1994 (FASA), to extend the period for public comment, and to provide notice of a public meeting. The Contract Financing drafting team has made some refinements to the proposed rule that was published in the March 15, 1995, **Federal Register**. The revised coverage has been mailed to the public commenters on FAR Case 94-764 and copies may be obtained by other interested parties.

DATES: *Comment Date:* Comments should be submitted to the FAR Secretariat at the address shown below on or before July 31, 1995.

Meeting Date: The meeting will be held at 1:00 p.m. on July 17, 1995.

ADDRESSES: A copy of the revised coverage may be obtained by calling the FAR Secretariat at 202-501-4755. Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets NW., Room 4037, Washington, DC 20405.

The public meeting will be held at: Office of Personnel Management, 1900 E Street NW., Room 1350, Washington, DC.

Please cite FAR case 94-764 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. John Galbraith, Contract Financing/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 FAR case 94-764.

SUPPLEMENTARY INFORMATION:

A. Background

On March 15, 1995, a proposed rule was published in the **Federal Register** (60 FR 14156). The proposed rule afforded the public a 60-day comment period. During that time, 21 organizations submitted more than 263 comments. A public meeting was also held on this rule on April 28, 1995. Based upon comments received, the financing drafting team has refined the coverage. The FAR Council wants to afford the public and Federal agencies the opportunity to comment on the refinements to the proposed rule. Accordingly, a copy of the revised coverage has been mailed to previous public commenters on FAR case 94-764. Other interested parties may obtain a copy by contacting the FAR Secretariat.

B. Case Summary

FAR Case 94-764 implements Sections 2001 and 2051 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355), which substantially changed the statutory authorities for Government financing of contracts. Subsections 2001(f) and 2051(e) provide specific authority for Government financing of purchases of commercial items, and subsections 2001(b) and 2051(b) substantially revised the authority for Government financing of purchases of non-commercial items.

Subsections 2001(f) and 2051(e) provide specific authority for Government financing of purchases of commercial items. These sections amended 10 U.S.C. 2307 and 41 U.S.C. 255 by adding a new paragraph, Conditions for Payments for Commercial Items, to each. These paragraphs authorize the Government to provide contract financing with certain limitations:

- The financing must be in the best interest of the Government;
- The financing cannot exceed 15 percent until some performance of work under the contract;
- The terms and conditions must be appropriate or customary in the commercial marketplace.

The above statutory provisions also remove from financing of commercial purchases certain restrictions applicable to financing of non-commercial purchases by other provisions of 10 U.S.C. 2307 and 41 U.S.C. 255. Subsections 2001(b) and 2051(b) amend the authority for Government financing of non-commercial purchases by authorizing financing on the basis of certain classes of measures of performance.

To implement these changes, the DOD, NASA, and GSA propose to amend the FAR by revising Subparts 32.0, 32.1, 32.4, and 32.5; by adding new Subparts 32.2 and 32.10; and by adding new clauses to 52.232. The statutory changes create a fundamental distinction between financing of purchases of commercial and non-commercial items. As a result, the subparts of Part 32, Contract Financing, fall into three logical categories:

- Subparts applicable to both commercial and non-commercial financing;
- Subparts applicable to only commercial financing; and
- Subparts applicable to only non-commercial financing.

C. Summary of Changes

The following are highlights of changes that have been made to the proposed rule as a result of the written comments received during the comment period and other issues that were raised at the public hearing held on April 28, 1995:

- Simplify rule—The team significantly rewrote, clarified and shortened the coverage on financing of commercial item contracts.
- Complexity of process—The team eliminated or made optional many of the complex requirements that had applied to both contracting officers and to contractors.
- Access to records—The team eliminated the government's access to records for contract financing of commercial items.
- Certification—The team eliminated the certification requirement that had applied to requests for payments under the commercial financing clause.
- Reduction of commercial financing—The team revised the clause to eliminate its authority for the Government to take back previously provided finance payments under certain conditions.
- Market research—The team made market research optional for commercial financing.
- Contractor financial condition as adequate security—The team restructured the policy on security for commercial item financing to promote reliance on a healthy contractor's financial condition in place of hard assets as security.
- Financing rate—The team increased the maximum permissible financing rate for performance based financing from 75% to 90%.
- Payment of financing under dispute—The team added new coverage permitting performance-based financing payments to be paid under certain

circumstances, even though prior events had been delayed.

- Payment of financing under government caused delay—The team added specific authority to renegotiate performance-based financing to mitigate the effects of government caused delay.

D. Presentations at the Public Meeting

To allow the public to present its views on the refinements to this proposed rule, a public meeting will be held at the Office of Personnel Management on July 17, 1995. Persons or organizations wishing to make presentations will be allowed 10 minutes to present their views, provided they notify the FAR Secretariat at (202) 501-4745 and provide an advance copy of their remarks not later than July 14, 1995.

Dated: July 3, 1995.

Jeremy Olson,

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

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