

## DEFECTIVE ASSIGNMENT OF CLAIMS ON A CONTRACT

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The Assignment of Claims Act of 1940 (31 U.S.C. § 3727 & 41 U.S.C. § 6305), provides a financing mechanism somewhat similar to the “invoice factoring” used in commercial contracts. (In commercial contracts, in order to get immediate cash when invoices are not paid timely, a business may sell its accounts receivable to a third party or factor, usually at a discount.) The Assignment of Claims Act, as implemented in FAR Subpart 32.8, permits companies to assign money that is due under the contract if the following conditions are met:

(a) The contract specifies payments aggregating \$1,000 or more; (b) The assignment is made to a bank, trust company, or other financing institution, including any Federal lending agency; (c) The contract does not prohibit the assignment; (d) Unless otherwise expressly permitted in the contract, the assignment-

(1) Covers all unpaid amounts payable under the contract; (2) Is made only to one party, except that any assignment may be made to one party as agent or trustee for two or more parties participating in the financing of the contract; and (3) Is not subject to further assignment.

(e) The assignee sends a written notice of assignment together with a true copy of the assignment instrument to the- (1) Contracting officer or the agency head; (2) Surety on any bond applicable to the contract; and (3) Disbursing officer designated in the contract to make payment.

*Allied Meridian Funding LLC v. Dept of Agriculture*, CBCA 6893, March 18, 2021, is an example of how a contractor or assignee under the Act and the FAR can make a defective assignment and not accomplish their objectives.

On August 29, 2016, the Department of Agriculture awarded Genesis Management Group a contract to provide staffing services. Genesis executed an assignment of “all moneys due or to become due to Allied Meridian Funding” on October 10, 2016. However, the document was not notarized until December 1, 2016. Further, the Contracting Officer was given no notice, actual or constructive until December 1, 2016, when, on December 2, 2016, he modified the contract to incorporate the assignment of claims.

Allied submitted a claim for \$86,840, for all invoices financed by it between October 10, 2016 and December 2, 2016. The Board denied the entire claim, agreeing that the Department of Agriculture had properly paid Genesis until December 2, 2016, because there had been no notification, as required by FAR 32.802(e) (requiring the assignee to “file written notice of the assignment and a true copy of the instrument of assignment with... the contracting officer or head of the officer’s department or agency [and others]”). The Board noted that the Government will not recognize an assignment until the assignee files written notice, and a true copy of the instrument of assignment with the contracting officer, among others. Allied was out of luck, unless it could obtain repayment from Genesis.

Takeaway: Meeting the requirements of the Assignment of Claims Act and its regulation at FAR Subpart 32.8 is not a difficult thing to do. FAR 32.805(e) even provides a sample format for the notice of assignment, and reminds the writer of that format of the persons who must receive a copy. All the assignee needs to do is read and comply with this straightforward regulation. The transmission of an assignment should be made by Registered or Certified Mail, or by a carrier that provides a receipt, or even email, provided that the sender receives a return email confirming receipt.

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