

LEASOURCE FINANCIAL SERVICES, INC.

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THINGS YOUR MOTHER NEVER TOLD YOU ABOUT FEDERAL GOVERNMENT LEASING

The United States federal government leases an enormous amount of equipment every year – and it's appetite for leasing continues to grow. Over the past decade, hundreds of federal agencies and departments have discovered and embraced leasing as a way to acquire needed equipment.

Under the Assignment of Claims Act of 1940, as amended, 41 U.S.C. 15, 31 U.S.C. 3727, as implemented by the Federal Acquisition Regulations (FAR), 48 C.F.R. subpart 32.8., a government contractor may release their interest in lease (LTOP or LWOP) payments to a 3rd party by executing an *Instrument of Assignment of Claims*. The 3rd party assignee forwards this with a *Notice of Assignment* to the government and is entitled to receive all future lease payments due under the contract or government purchase order. Payment made by the government and/or the contractor will not discharge their mutual obligations under the contract.

Federal contracting officers don't normally sign a lease. They incorporate terms & conditions of the Federal Acquisition Requirements ("FAR"), inside the purchase order issued to the contractor for goods and services. The Contractor, in turn, executes a Federal Lease Financing Agreement with a Lessor/Assignee that permit the assignment of payments, *but none of the other obligations*, to a 3rd party under the Assignment of Claims Act of 1940, and is paid the full invoice price at the time the government accepts the equipment. By accepting a Purchase Order, the contractor acknowledges responsibility for understanding what all the little numbers mean – numbers that take on significant meaning if certain events take place, such as:

Cancellation for Non-Appropriation

The Government may cancel a contract if funds for subsequent years are not approved. They actually issue a new purchase order every year for the payments due in that fiscal year (October 1 thru September 30) no matter the term of an installment agreement. If a Prime Contract is terminated early, for example, the Government would simply not issue a new Purchase Order for next year's payments and the installment agreement ends on September 30 of the current year irrespective of the remaining number of payments.

Cancellation for Convenience

(FAR 52-249.2)

Under this FAR, the Government has the right to terminate the Order at any time it determines to be in the best interest of the Government. They may not, however, do so to avoid contractual obligations.

Cancellation For Default

(FAR 52.249.8)

The Government may, at its sole discretion, terminate a contract for any default of the contractor including, but not limited to, non-performance of the equipment or by the contractor – even if the contractor is not the original manufacturer.

Cancellation for Non-Appropriations and Cancellation for Convenience are investor risks.

Cancellation for Default is a different matter. In the event of a performance or equipment related default the Lessor has the right to be made whole under terms of the Federal Lease Financing Agreement. It always remains the obligation of the contractor to perform during the contract period. Again, the contractor is merely selling the payment stream due under the government P.O. but none of the other obligations, thus making him responsible over the full term of the lease. Normally the three parties work together to best resolve issues well before an actual default takes place and there are certain limitations placed on the government in this context.

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Who buys Federal leases?

Federal leases have a thin investor pool due to inherent risks already discussed. Although government financial statements are not normally an issue, a perspective Lessor will, at a minimum, want to know the following information prior to purchasing:

- Name of Agency
- Collateral description and cost
- Lease term
- Why the equipment is essential
- What the equipment is replacing (if any) and how old is the equipment being replaced
- Source of funds to make the payments
- Copy of the completed government P.O.

Red Flags!

- Prime Contract whose termination date is shorter than the desired term of a new lease
- Non-essential equipment

Paper Flow

- Contractor/Vendor solicits payment terms from Broker subject to credit
- Contractor responds to government Bid including a lease payment quote
- Government makes award to Contractor and issues them a P.O.
- Contractor provides Lessor a copy of the Government P.O.
- Lessor prepares the necessary documentation for signature
- Executed documents are returned to Lessor
- Transaction is funded upon final Acceptance then funds are wired to the Contractor

For more information call

LEASE HOTLINE

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