(d) Education and training

The Administrator may, in consultation with the Director of the Federal Acquisition Institute and the Chief Acquisition Officers Council, establish educational and training requirements for members of the Corps. Education and training carried out pursuant to such requirements shall be paid for from funds available in the acquisition workforce training fund established pursuant to section 433(h)(3) of this title.

(e) Salary

The salary for a member of the Corps shall be paid—

(1) in the case of a member of the Armed Forces, out of funds available to the Armed Force concerned; and

(2) in the case of a Federal employee, out of funds available to the employing agency.

(f) Authority to deploy the Corps

(1) The Director of the Office of Management and Budget shall have the authority, upon request by an executive agency, to determine when members of the Corps shall be deployed, with the concurrence of the head of the agency or agencies employing the members to be deployed.

(2) Nothing in this section shall preclude the Secretary of Defense or the Secretary's designee from deploying members of the Armed Forces or civilian personnel of the Department of Defense in support of a contingency operation as defined in section 101(a)(13) of title 10.

(g) Annual report

(1) In general

The Administrator of General Services shall provide to the Committee on Homeland Security and Governmental Affairs and the Committee on Armed Services of the Senate and the Committee on Oversight and Government Reform and the Committee on Armed Services of the House of Representatives an annual report on the status of the Contingency Contracting Corps as of September 30 of each fiscal year.

(2) Content

At a minimum, each report under paragraph (1) shall include the number of members of the Contingency Contracting Corps, the total cost of operating the program, the number of deployments of members of the program, and the performance of members of the program in deployment.

(Pub. L. 93–400, § 44, as added Pub. L. 110–417, [div. A], title VIII, § 870(a), Oct. 14, 2008, 122 Stat. 4554.)

CHAPTER 8—FEDERAL GRANTS AND COOPERATIVE AGREEMENTS

§§ 501 to 509. Repealed. Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1083

Section 501, Pub. L. 95–224, § 2, Feb. 3, 1978, 92 Stat. 3, set out the Congressional findings and statement of purposes in enacting the Federal Grant and Cooperative Agreement Act of 1977 [this chapter]. Sections 1 and 10(b) of Pub. L. 95–224, setting out the short title provisions and savings provisions respectively of that Act, were set out as notes under this section, and were repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1083. Section 10(d) of Pub. L. 95–224, as amended by Pub. L. 97–162, Apr. 1, 1982, 96 Stat. 23, setting out the excepted transactions provisions of that Act was set out as a note under this section, and was repealed by Pub. L. 97–258, § 5(b), Sept. 13, 1982, 96 Stat. 1083. See sections 6301 and 6307(2) of Title 31, Money and Finance.

Section 502, Pub. L. 95–224, § 3, Feb. 3, 1978, 92 Stat. 4, defined ''State government'', ''local government'', ''other recipient'', ''executive agency'', and ''grant or cooperative agreement''. See section 6302 of Title 31.

Section 503, Pub. L. 95–224, § 4, Feb. 3, 1978, 92 Stat. 4, provided for use of procurement contracts by executive agencies. See section 6303 of Title 31.

Section 504, Pub. L. 95–224, § 5, Feb. 3, 1978, 92 Stat. 4, provided for use of grant agreements by executive agencies. See section 6304 of Title 31.

Section 505, Pub. L. 95–224, § 6, Feb. 3, 1978, 92 Stat. 5, provided for use of cooperative agreements by executive agencies. See section 6305 of Title 31.

Section 506, Pub. L. 95–224, § 7, Feb. 3, 1978, 92 Stat. 5, pertained to required and discretionary authorities. See section 6306 of Title 31.

Section 507, Pub. L. 95–224, § 8, Feb. 3, 1978, 92 Stat. 5, directed Director of Office of Management and Budget to undertake a study to develop a better understanding of alternate means of implementing Federal assistance programs.

Section 508, Pub. L. 95–224, § 9, Feb. 3, 1978, 92 Stat. 6, authorized Director of Office of Management and Budget to issue supplemental interpretive guidelines to promote consistent and efficient use of contracts, grant agreements, and cooperative agreements. See section 6307(1) of Title 31.

Section 509, Pub. L. 95–224, § 10(c), Feb. 3, 1978, 92 Stat. 6, related to use of multiple relationships for different components of jointly funded projects. See section 6308 of Title 31.

CHAPTER 9—CONTRACT DISPUTES

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§ 601. Definitions

As used in this chapter—

(1) the term ''agency head'' means the head and any assistant head of an executive agency, and may ''upon the designation by'' the head of an executive agency include the chief official of any principal division of the agency;

(2) the term ''executive agency'' means an executive department as defined in section 101 of title 5, an independent establishment as defined by section 104 of title 5 (except that it shall not include the Government Accountability Office), a military department as defined by section 102 of title 5, and a wholly owned Government corporation as defined by section 9101(3) of title 31;

(3) the term ''contracting officer'' means any person who, by appointment in accordance with applicable regulations, has the authority to enter into and administer contracts and

make determinations and findings with respect thereto. The term also includes the authorized representative of the contracting officer, acting within the limits of his authority;

(4) the term ''contractor'' means a party to a Government contract other than the Government;

(5) the term ''Administrator'' means the Administrator for Federal Procurement Policy appointed pursuant to the Office of Federal Procurement Policy Act [41 U.S.C. 401 et seq.];

(6) the terms ''agency board'' or ''agency board of contract appeals'' mean—

(A) the Armed Services Board of Contract Appeals established under section 607(a)(1) of this title;

(B) the Civilian Board of Contract Appeals established under section 42 of the Office of Federal Procurement Policy Act [41 U.S.C. 438];

(C) the board of contract appeals of the Tennessee Valley Authority; or

(D) the Postal Service Board of Contract Appeals established under section 607(c) of this title;

(7) the term ''Armed Services Board'' means the Armed Services Board of Contract Appeals established under section 607(a)(1) of this title;

(8) the term ''Civilian Board'' means the Civilian Board of Contract Appeals established under section 42 of the Office of Federal Procurement Policy Act [41 U.S.C. 438]; and

(9) the term ''misrepresentation of fact'' means a false statement of substantive fact, or any conduct which leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

(Pub. L. 95–563, § 2, Nov. 1, 1978, 92 Stat. 2383; Pub. L. 104–106, div. D, title XLIII, § 4322(b)(5), Feb. 10, 1996, 110 Stat. 677; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 109–163, div. A, title VIII, § 847(d)(1), Jan. 6, 2006, 119 Stat. 3393.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this Act'', meaning Pub. L. 95–563, which enacted this chapter, amended section 5108 of Title 5, Government Organization and Employees, section 1346, 1491, 2401, 2414, 2510, and 2517 of Title 28, Judiciary and Judicial Procedure, and section 724a of former Title 31, Money and Finance, and enacted provisions set out as notes under this section. For complete classification of this Act to the Code, see Short Title note below and Tables.

The Office of Federal Procurement Policy Act, referred to in par. (5), is Pub. L. 93–400, Aug. 30, 1974, 88 Stat. 796, as amended, which is classified principally to chapter 7 (§ 401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

CODIFICATION

In par. (2), ''section 9101(3) of title 31'' substituted for ''section 846 of title 31, United States Code'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

2006—Par. (2). Pub. L. 109–163, § 847(d)(1)(A), struck out '', the United States Postal Service, and the Postal Rate Commission'' before semicolon at end.

Par. (6). Pub. L. 109–163, § 847(d)(1)(C), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''the term 'agency board' means an agency board of contract appeals established under section 607 of this title; and''.

Pars. (7) to (9). Pub. L. 109–163, § 847(d)(1)(B), (D), added pars. (7) and (8) and redesignated former par. (7) as (9).

2004—Par. (2). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

1996—Pars. (3), (5) to (7). Pub. L. 104–106 substituted ''the term'' for ''The term''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–163 effective 1 year after Jan. 6, 2006, see section 847(g) of Pub. L. 109–163, set out as a note under section 5372a of Title 5, Government Organization and Employees.

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

Section 16 of Pub. L. 95–563 provided that: ''This Act [see Short Title note below] shall apply to contracts entered into one hundred twenty days after the date of enactment [Nov. 1, 1978]. Notwithstanding any provision in a contract made before the effective date of this Act, the contractor may elect to proceed under this Act with respect to any claim pending then before the contracting officer or initiated thereafter.''

SHORT TITLE

Section 1 of Pub. L. 95–563 provided: ''That this Act [enacting this chapter, amending section 5108 of Title 5, Government Organization and Employees, sections 1346, 1491, 2401, 2414, 2510, and 2517 of Title 28, Judiciary and Judicial Procedure, and section 724a of former Title 31, Money and Finance, and enacting provisions set out above] may be cited as the 'Contract Disputes Act of 1978'.''

§ 602. Applicability of law

(a) Executive agency contracts

Unless otherwise specifically provided herein, this chapter applies to any express or implied contract (including those of the nonappropriated fund activities described in sections 1346 and 1491 of title 28) entered into by an executive agency for—

(1) the procurement of property, other than real property in being;

(2) the procurement of services;

(3) the procurement of construction, alteration, repair or maintenance of real property; or,

(4) the disposal of personal property.

(b) Tennessee Valley Authority contracts

With respect to contracts of the Tennessee Valley Authority, the provisions of this chapter shall apply only to those contracts which contain a disputes clause requiring that a contract dispute be resolved through an agency administrative process. Notwithstanding any other provision of this chapter, contracts of the Tennessee Valley Authority for the sale of fertilizer or electric power or related to the conduct or operation of the electric power system shall be excluded from the chapter.

(c) Foreign government or international organization contracts

This chapter does not apply to a contract with a foreign government, or agency thereof, or

international organization, or subsidiary body thereof, if the head of the agency determines that the application of the chapter to the contract would not be in the public interest.

(Pub. L. 95–563, § 3, Nov. 1, 1978, 92 Stat. 2383.)

§ 603. Maritime contracts

Appeals under paragraph (g) of section 607 of this title and suits under section 609 of this title, arising out of maritime contracts, shall be governed by the Act of March 9, 1920, as amended (41 Stat. 525, as amended; 46 U.S.C. 741–752)[1] or the Act of March 3, 1925, as amended (43 Stat. 1112, as amended; 46 U.S.C. 781–790)[1] as applicable, to the extent that those Acts are not inconsistent with this chapter.

(Pub. L. 95–563, § 4, Nov. 1, 1978, 92 Stat. 2384.)

REFERENCES IN TEXT

The Act of March 9, 1920, referred to in text, is act Mar. 9, 1920, ch. 95, 41 Stat. 525, commonly known as the ''Suits in Admiralty Act'', which was classified generally to chapter 20 (§§ 741 to 743, 744 to 752) of former Title 46, Appendix, Shipping, and was repealed and restated in chapter 309 of Title 46, Shipping, by Pub. L. 109–304, §§ 6(c), 19, Oct. 6, 2006, 120 Stat. 1509, 1710. Section 30901 of Title 46 provides that chapter 309 of Title 46 may be cited as the Suits in Admiralty Act. For disposition of sections of former Title 46, Appendix, to Title 46, see Disposition Table preceding section 101 of Title 46.

The Act of March 3, 1925, referred to in text, is act Mar. 3, 1925, ch. 428, 43 Stat. 1112, commonly known as the ''Public Vessels Act'', which was classified generally to chapter 22 (§§ 781 to 790) of former Title 46, Appendix, Shipping, and was repealed and restated in chapter 311 of Title 46, Shipping, by Pub. L. 109–304, §§ 6(c), 19, Oct. 6, 2006, 120 Stat. 1509, 1710. Section 31101 of Title 46 provides that chapter 311 of Title 46 may be cited as the Public Vessels Act. For disposition of sections of former Title 46, Appendix, to Title 46, see Disposition Table preceding section 101 of Title 46.

§ 604. Fraudulent claims

If a contractor is unable to support any part of his claim and it is determined that such inability is attributable to misrepresentation of fact or fraud on the part of the contractor, he shall be liable to the Government for an amount equal to such unsupported part of the claim in addition to all costs to the Government attributable to the cost of reviewing said part of his claim. Liability under this subsection[1] shall be determined within six years of the commission of such misrepresentation of fact or fraud.

(Pub. L. 95–563, § 5, Nov. 1, 1978, 92 Stat. 2384.)

§ 605. Decision by contracting officer

(a) Contractor claims

All claims by a contractor against the government relating to a contract shall be in writing and shall be submitted to the contracting officer for a decision. All claims by the government against a contractor relating to a contract shall be the subject of a decision by the contracting officer. Each claim by a contractor against the government relating to a contract and each claim by the government against a contractor relating to a contract shall be submitted within 6 years after the accrual of the claim. The preceding sentence does not apply to a claim by the government against a contractor that is based on a claim by the contractor involving fraud. The contracting officer shall issue his decisions in writing, and shall mail or otherwise furnish a copy of the decision to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of his rights as provided in this chapter. Specific findings of fact are not required, but, if made, shall not be binding in any subsequent proceeding. The authority of this subsection shall not extend to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another Federal agency is specifically authorized to administer, settle, or determine. This section shall not authorize any agency head to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(b) Review; performance of contract pending appeal

The contracting officer's decision on the claim shall be final and conclusive and not subject to review by any forum, tribunal, or Government agency, unless an appeal or suit is timely commenced as authorized by this chapter. Nothing in this chapter shall prohibit executive agencies from including a clause in government contracts requiring that pending final decision of an appeal, action, or final settlement, a contractor shall proceed diligently with performance of the contract in accordance with the contracting officer's decision.

(c) Amount of claim; certification; notification; time of issuance; presumption

(1) A contracting officer shall issue a decision on any submitted claim of $100,000 or less within sixty days from his receipt of a written request from the contractor that a decision be rendered within that period. For claims of more than $100,000, the contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of his knowledge and belief, that the amount requested accurately reflects the contract adjustment for which the contractor believes the government is liable, and that the certifier is duly authorized to certify the claim on behalf of the contractor.

(2) A contracting officer shall, within sixty days of receipt of a submitted certified claim over $100,000—

(A) issue a decision; or

(B) notify the contractor of the time within which a decision will be issued.

(3) The decision of a contracting officer on submitted claims shall be issued within a reasonable time, in accordance with regulations promulgated by the agency, taking into account such factors as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the contractor.

(4) A contractor may request the tribunal concerned to direct a contracting officer to issue a decision in a specified period of time, as determined by the tribunal concerned, in the event of undue delay on the part of the contracting officer.

[1] See References in Text note below.

[1] So in original. Probably should be ''section''.

(5) Any failure by the contracting officer to issue a decision on a contract claim within the period required will be deemed to be a decision by the contracting officer denying the claim and will authorize the commencement of the appeal or suit on the claim as otherwise provided in this chapter. However, in the event an appeal or suit is so commenced in the absence of a prior decision by the contracting officer, the tribunal concerned may, at its option, stay the proceedings to obtain a decision on the claim by the contracting officer.

(6) The contracting officer shall have no obligation to render a final decision on any claim of more than $100,000 that is not certified in accordance with paragraph (1) if, within 60 days after receipt of the claim, the contracting officer notifies the contractor in writing of the reasons why any attempted certification was found to be defective. A defect in the certification of a claim shall not deprive a court or an agency board of contract appeals of jurisdiction over that claim. Prior to the entry of a final judgment by a court or a decision by an agency board of contract appeals, the court or agency board shall require a defective certification to be corrected.

(7) The certification required by paragraph (1) may be executed by any person duly authorized to bind the contractor with respect to the claim.

(d) Alternative means of dispute resolution

Notwithstanding any other provision of this chapter, a contractor and a contracting officer may use any alternative means of dispute resolution under subchapter IV of chapter 5 of title 5, or other mutually agreeable procedures, for resolving claims. The contractor shall certify the claim when required to do so as provided under subsection (c)(1) of this section or as otherwise required by law. All provisions of subchapter IV of chapter 5 of title 5 shall apply to such alternative means of dispute resolution.

(e) Termination of authority to engage in alternative means of dispute resolution; savings provision

In any case in which the contracting officer rejects a contractor's request for alternative dispute resolution proceedings, the contracting officer shall provide the contractor with a written explanation, citing one or more of the conditions in section 572(b) of title 5 or such other specific reasons that alternative dispute resolution procedures are inappropriate for the resolution of the dispute. In any case in which a contractor rejects a request of an agency for alternative dispute resolution proceedings, the contractor shall inform the agency in writing of the contractor's specific reasons for rejecting the request.

(Pub. L. 95–563, §6, Nov. 1, 1978, 92 Stat. 2384; Pub. L. 101–552, §6(a), Nov. 15, 1990, 104 Stat. 2745; Pub. L. 102–572, title IX, §907(a)(1), Oct. 29, 1992, 106 Stat. 4518; Pub. L. 103–355, title II, §§2351(a)(1), (b), (e), 2352, Oct. 13, 1994, 108 Stat. 3322; Pub. L. 104–106, div. D, title XLIII, §§4321(a)(6), (7), 4322(b)(6), Feb. 10, 1996, 110 Stat. 671, 677; Pub. L. 104–320, §6, Oct. 19, 1996, 110 Stat. 3871; Pub. L. 105–85, div. A, title X, §1073(g)(3), Nov. 18, 1997, 111 Stat. 1906.)

AMENDMENTS

1997—Subsecs. (d), (e). Pub. L. 105–85 struck out ''(as in effect on September 30, 1995)'' after ''title 5'' wherever appearing.

1996—Subsec. (a). Pub. L. 104–106, §4321(a)(6), made technical correction to Pub. L. 103–355, §2351(a). See 1994 Amendment note below.

Subsec. (d). Pub. L. 104–320, §6(1), substituted ''The contractor shall certify the claim when required to do so as provided under subsection (c)(1) of this section or as otherwise required by law.'' for ''In a case in which such alternative means of dispute resolution or other mutually agreeable procedures are used, the contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of his or her knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable.''

Pub. L. 104–106, §4322(b)(6), inserted ''(as in effect on September 30, 1995)'' after ''title 5'' in two places.

Subsec. (e). Pub. L. 104–320, §6(2), struck out first sentence which read as follows: ''The authority of agencies to engage in alternative means of dispute resolution proceedings under subsection (d) of this section shall cease to be effective on October 1, 1999, except that such authority shall continue in effect with respect to then pending dispute resolution proceedings which, in the judgment of the agencies that are parties to such proceedings, require such continuation, until such proceedings terminate.''

Pub. L. 104–106, §4322(b)(6), inserted ''(as in effect on September 30, 1995)'' after ''title 5''.

Pub. L. 104–106, §4321(a)(7), made technical amendment to Pub. L. 103–355, §2352(b). See 1994 Amendment note below.

1994—Subsec. (a). Pub. L. 103–355, §2351(a)(1), as amended by Pub. L. 104–106, §4321(a)(6), inserted after second sentence ''Each claim by a contractor against the government relating to a contract and each claim by the government against a contractor relating to a contract shall be submitted within 6 years after the accrual of the claim. The preceding sentence does not apply to a claim by the government against a contractor that is based on a claim by the contractor involving fraud.''

Subsec. (c). Pub. L. 103–355, §2351(b), substituted ''$100,000'' for ''$50,000'' wherever appearing.

Subsec. (c)(4). Pub. L. 103–355, §2351(e), substituted ''tribunal concerned'' for ''agency board of contract appeals'' and ''tribunal concerned,'' for ''board,''.

Subsec. (e). Pub. L. 103–355, §2352(b), as amended by Pub. L. 104–106, §4321(a)(7), inserted after first sentence ''In any case in which the contracting officer rejects a contractor's request for alternative dispute resolution proceedings, the contracting officer shall provide the contractor with a written explanation, citing one or more of the conditions in section 572(b) of title 5 or such other specific reasons that alternative dispute resolution procedures are inappropriate for the resolution of the dispute. In any case in which a contractor rejects a request of an agency for alternative dispute resolution proceedings, the contractor shall inform the agency in writing of the contractor's specific reasons for rejecting the request.''

Pub. L. 103–355, §2352(a), substituted ''October 1, 1999'' for ''October 1, 1995''.

1992—Subsec. (c)(1). Pub. L. 102–572, §907(a)(1)(A), struck out ''and'' after ''belief,'' and inserted before period at end '', and that the certifier is duly authorized to certify the claim on behalf of the contractor''.

Subsec. (c)(6), (7). Pub. L. 102–572, §907(a)(1)(B), added pars. (6) and (7).

1990—Subsecs. (d), (e). Pub. L. 101–552 added subsecs. (d) and (e).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 4321(a) of Pub. L. 104–106 provided that the amendment made by that section is effective as of Oct. 13, 1994, and as if included in Pub. L. 103–355 as enacted.

For effective date and applicability of amendment by section 4322(b)(6) of 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.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 907(a)(2) of Pub. L. 102–572 provided that: ''The amendment made by paragraph (1)(B) [amending this section] shall be effective with respect to all claims filed before, on, or after the date of the enactment of this Act [Oct. 29, 1992], except for those claims which, before such date of enactment, have been the subject of an appeal to an agency board of contract appeals or a suit in the United States Claims Court.''

Section 907(a)(4) of Pub. L. 102–572 provided that: ''The amendments made by paragraph (1)(A) [amending this section] shall be effective with respect to certifications executed more than 60 days after the effective date of amendments to the Federal Acquisition Regulation implementing the amendments made by paragraph (1)(A) with respect to the certification of claims.'' [For effective date of implementing regulations, see 59 F.R. 11368, Mar. 10, 1994.]

EFFECT OF CONTRACT PROVISIONS PROVIDING FOR SUBMISSION OF CLAIMS EARLIER THAN SIX YEARS AFTER ACCRUAL

Section 2351(a)(2) of Pub. L. 103–355 provided that: ''Notwithstanding the third sentence of section 6(a) of the Contract Disputes Act of 1978 [41 U.S.C. 605(a)], as added by paragraph (1), if a contract in existence on the date of the enactment of this Act [Oct. 13, 1994] requires that a claim referred to in that sentence be submitted earlier than 6 years after the accrual of the claim, then the claim shall be submitted within the period required by the contract. The preceding sentence does not apply to a claim by the Federal Government against a contractor that is based on a claim by the contractor involving fraud.''

§ 606. Contractor's right of appeal to board of contract appeals

Within ninety days from the date of receipt of a contracting officer's decision under section 605 of this title, the contractor may appeal such decision to an agency board of contract appeals, as provided in section 607 of this title.

(Pub. L. 95–563, § 7, Nov. 1, 1978, 92 Stat. 2385.)

§ 607. Agency boards of contract appeals

(a) Establishment; consultation; Tennessee Valley Authority

(1) An Armed Services Board of Contract Appeals may be established within the Department of Defense when the Secretary of Defense, after consultation with the Administrator, determines from a workload study that the volume of contract claims justifies the establishment of a full-time agency board of at least three members who shall have no other inconsistent duties. Workload studies will be updated at least once every three years and submitted to the Administrator.

(2) The Board of Directors of the Tennessee Valley Authority may establish a board of contract appeals for the Authority of an indeterminate number of members.

(b) Appointment of members; chairman; compensation

(1) The members of the Armed Services Board of Contract Appeals shall be selected and appointed to serve in the same manner as administrative law judges appointed pursuant to section 3105 of title 5, with an additional requirement that such members shall have had not fewer than five years' experience in public contract law. Full-time members of such Board serving as such on the effective date of this chapter shall be considered qualified. The chairman and vice chairman of such Board shall be designated by the Secretary of Defense from members so appointed. Compensation for the chairman, the vice chairman, and all other members of such Board shall be determined under section 5372a of title 5.

(2) The Board of Directors of the Tennessee Valley Authority shall establish criteria for the appointment of members to its agency board of contract appeals established in subsection (a)(2) of this section, and shall designate a chairman of such board. The chairman and all other members of such board shall receive compensation, at the daily equivalent of the rates determined under section 5372a of title 5, for each day they are engaged in the actual performance of their duties as members of the board.

(c) Postal Service Board of Contract Appeals

There is established an agency board of contract appeals to be known as the ''Postal Service Board of Contract Appeals''. Such board shall have jurisdiction to decide any appeal from a decision of a contracting officer of the United States Postal Service or the Postal Regulatory Commission relative to a contract made by either agency. Such board shall consist of judges appointed by the Postmaster General who shall meet the qualifications of and serve in the same manner as members of the Civilian Board of Contract Appeals. This chapter shall apply to contract disputes before the Postal Service Board of Contract Appeals in the same manner as they apply to contract disputes before the Civilian Board.

(d) Jurisdiction

The Armed Services Board shall have jurisdiction to decide any appeal from a decision of a contracting officer of the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, or the National Aeronautics and Space Administration relative to a contract made by that department or agency. The Civilian Board shall have jurisdiction to decide any appeal from a decision of a contracting officer of any executive agency (other than the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the National Aeronautics and Space Administration, the United States Postal Service, the Postal Regulatory Commission, or the Tennessee Valley Authority) relative to a contract made by that agency. Each other agency board shall have jurisdiction to decide any appeal from a decision of a contracting officer relative to a contract made by its agency. In exercising this jurisdiction, the agency board is authorized to

grant any relief that would be available to a litigant asserting a contract claim in the United States Court of Federal Claims.

(e) Decisions

An agency board shall provide to the fullest extent practicable, informal, expeditious, and inexpensive resolution of disputes, and shall issue a decision in writing or take other appropriate action on each appeal submitted, and shall mail or otherwise furnish a copy of the decision to the contractor and the contracting officer.

(f) Accelerated appeal disposition

The rules of each agency board shall include a procedure for the accelerated disposition of any appeal from a decision of a contracting officer where the amount in dispute is $100,000 or less. The accelerated procedure shall be applicable at the sole election of only the contractor. Appeals under the accelerated procedure shall be resolved, whenever possible, within one hundred and eighty days from the date the contractor elects to utilize such procedure.

(g) Review

(1) The decision of an agency board of contract appeals shall be final, except that—

(A) a contractor may appeal such a decision to the United States Court of Appeals for the Federal Circuit within one hundred twenty days after the date of receipt of a copy of such decision, or

(B) the agency head, if he determines that an appeal should be taken, and with the prior approval of the Attorney General, transmits the decision of the board of contract appeals to the Court of Appeals for the Federal Circuit for judicial review under section 1295 of title 28, within one hundred and twenty days from the date of the agency's receipt of a copy of the board's decision.

(2) Notwithstanding the provisions of paragraph (1), the decision of the board of contract appeals of the Tennessee Valley Authority shall be final, except that—

(A) a contractor may appeal such a decision to a United States district court pursuant to the provisions of section 1337 of title 28, within one hundred twenty days after the date of receipt of a copy of such decision, or

(B) The Tennessee Valley Authority may appeal the decision to a United States district court pursuant to the provisions of section 1337 of title 28, within one hundred twenty days after the date of the decision in any case.

(3) An award by an arbitrator under this chapter shall be reviewed pursuant to sections 9 through 13 of title 9, except that the court may set aside or limit any award that is found to violate limitations imposed by Federal statute.

(Pub. L. 95–563, §8, Nov. 1, 1978, 92 Stat. 2385; Pub. L. 97–164, title I, §§156, 160(a)(15), Apr. 2, 1982, 96 Stat. 47, 48; Pub. L. 101–509, title V, §529 [title I, §104(d)(4)], Nov. 5, 1990, 104 Stat. 1427, 1447; Pub. L. 101–552, §6(b), Nov. 15, 1990, 104 Stat. 2746; Pub. L. 103–355, title II, §2351(c), Oct. 13, 1994, 108 Stat. 3322; Pub. L. 109–163, div. A, title VIII, §847(d)(2)–(4), Jan. 6, 2006, 119 Stat. 3393, 3394; Pub. L. 109–435, title VI, §604(f), Dec. 20, 2006, 120 Stat. 3242.)

REFERENCES IN TEXT

For the effective date of this chapter, referred to in subsec. (b)(1), see section 16 of Pub. L. 95–563, set out as an Effective Date note under section 601 of this title.

CODIFICATION

In subsec. (b)(1), ''administrative law judges'' substituted for ''hearing examiners'' on authority of section 3 of Pub. L. 95–251, Mar. 27, 1978, 92 Stat. 184, which is set out as a note under section 3105 of Title 5, Government Organization and Employees.

AMENDMENTS

2006—Subsec. (a)(1). Pub. L. 109–163, §847(d)(3)(A), substituted ''An Armed Services Board of Contract Appeals'' for ''Except as provided in paragraph (2) an agency board of contract appeals'' and ''the Department of Defense when the Secretary of Defense'' for ''an executive agency when the agency head''.

Subsec. (b)(1). Pub. L. 109–163, §847(d)(3)(B), substituted ''The members of the Armed Services Board of Contract Appeals'' for ''Except as provided in paragraph (2), the members of agency boards'' in first sentence, ''such Board'' for ''agency boards'' in second sentence, ''such Board'' for ''each board'' and ''the Secretary of Defense'' for ''the agency head'' in third sentence, and ''such Board'' for ''an agency board'' in fourth sentence.

Subsec. (c). Pub. L. 109–435 substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

Pub. L. 109–163, §847(d)(2)(B), added subsec. (c) and struck out heading and text of former subsec. (c). Text read as follows: ''If the volume of contract claims is not sufficient to justify an agency board under subsection (a) of this section or if he otherwise considers it appropriate, any agency head shall arrange for appeals from decisions by contracting officers of his agency to be decided by a board of contract appeals of another executive agency. In the event an agency head is unable to make such an arrangement with another agency, he shall submit the case to the Administrator for placement with an agency board. The provisions of this subsection shall not apply to the Tennessee Valley Authority.''

Subsec. (d). Pub. L. 109–435 substituted ''Postal Regulatory Commission'' for ''Postal Rate Commission''.

Pub. L. 109–163, §847(d)(2)(A)(ii), substituted ''Court of Federal Claims'' for ''Claims Court''.

Pub. L. 109–163, §847(d)(2)(A)(i), substituted three sentences relating to the jurisdiction of the Armed Services Board, the Civilian Board, and other agency boards for ''Each agency board shall have jurisdiction to decide any appeal from a decision of a contracting officer (1) relative to a contract made by its agency, and (2) relative to a contract made by any other agency when such agency or the Administrator has designated the agency board to decide the appeal.''

Subsec. (h). Pub. L. 109–163, §847(d)(4), struck out subsec. (h) which related to procedural guidelines.

Subsec. (i). Pub. L. 109–163, §847(d)(4), struck out subsec. (i) which required all agency boards of three or more full time members, except that of the Tennessee Valley Authority, within one hundred and twenty days after Nov. 1, 1978, to develop workload studies for approval by the agency head specified in subsec. (a)(1).

1994—Subsec. (f). Pub. L. 103–355 substituted ''$100,000'' for ''$50,000''.

1990—Subsec. (b)(1). Pub. L. 101–509, §529 [title I, §104(d)(4)(A)], substituted ''Compensation for the chairman, the vice chairman, and all other members of an agency board shall be determined under section 5372a of title 5.'' for ''The chairman of each agency board shall receive compensation at a rate equal to that paid a GS–18 under the General Schedule contained in section 5332, of title 5, the vice chairman shall receive compensation at a rate equal to that paid a GS–17 under such General Schedule, and all other members shall receive compensation at a rate equal to that paid a GS–16 under such General Schedule. Such positions shall be in

addition to the number of positions which may be placed in GS–16, GS–17, and GS–18 of such General Schedule under existing law.''

Subsec. (b)(2). Pub. L. 101–509, § 529 [title I, § 104(d)(4)(B)], substituted ''The chairman and all other members of such board shall receive compensation, at the daily equivalent of the rates determined under section 5372a of title 5, for each day they are engaged in the actual performance of their duties as members of the board.'' for ''The chairman of such board shall receive compensation at a rate equal to the daily rate paid a GS–18 under the General Schedule contained in section 5332, of title 5, for each day he is engaged in the actual performance of his duties as a member of such board. All other members of such board shall receive compensation at a rate equal to the daily rate paid a GS–16 under such General Schedule for each day they are engaged in the actual performance of their duties as members of such board.''

Subsec. (g)(3). Pub. L. 101–552 added par. (3).

1982—Subsec. (d). Pub. L. 97–164, § 160(a)(15), substituted ''United States Claims Court'' for ''Court of Claims''.

Subsec. (g)(1)(A). Pub. L. 97–164, § 156(1), substituted ''United States Court of Appeals for the Federal Circuit'' for ''Court of Claims''.

Subsec. (g)(1)(B). Pub. L. 97–164, § 156(2), substituted ''Court of Appeals for the Federal Circuit for judicial review under section 1295 of title 28'' for ''United States Court of Claims for judicial review, under section 2510 of title 28''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–163 effective 1 year after Jan. 6, 2006, see section 847(g) of Pub. L. 109–163, set out as a note under section 5372a of Title 5, Government Organization and Employees.

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.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, § 305] of Pub. L. 101–509, set out as a note under section 5301 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

BOARDS OF CONTRACT APPEALS; TRANSFERS; TERMINATION; REFERENCES

Pub. L. 109–163, div. A, title VIII, § 847(b), (c), (e), Jan. 6, 2006, 119 Stat. 3392, 3394, provided that:

''(b) TRANSFERS.—The personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available in connection with the functions vested by law in the agency boards of contract appeals established pursuant to section 8 of the Contract Disputes Act of 1978 (41 U.S.C. 607) (as in effect on the day before the effective date described in subsection (g) [see Effective Date of 2006 Amendment note above]) other than the Armed Services Board of Contract Appeals, the board of contract appeals of the Tennessee Valley Authority, and the Postal Service Board of Contract Appeals shall be transferred to the Civilian Board of Contract Appeals for appropriate allocation by the Chairman of that Board.

''(c) TERMINATION OF BOARDS OF CONTRACT APPEALS.—

''(1) TERMINATION.—Effective on the effective date described in subsection (g), the agency boards of contract appeals established pursuant to section 8 of the Contract Disputes Act of 1978 (41 U.S.C. 607) (as in effect on the day before such effective date), other than the Armed Services Board of Contract Appeals, the board of contract appeals of the Tennessee Valley Authority, and the Postal Service Board of Contract Appeals, shall terminate.

''(2) SAVINGS PROVISION.—(A) This section [enacting section 438 of this title, amending this section, section 601 of this title, and section 5372a of Title 5, Government Organization and Employees, and enacting provisions set out as a note under section 5372a of Title 5] and the amendments made by this section shall not affect any proceedings pending on the effective date described in subsection (g) before any agency board of contract appeals terminated by paragraph (1).

''(B) In the case of any such proceedings pending before an agency board of contract appeals other than the Armed Services Board of Contract Appeals or the board of contract appeals of the Tennessee Valley Authority, the proceedings shall be continued by the Civilian Board of Contract Appeals, and orders which were issued in any such proceeding by the agency board shall continue in effect until modified, terminated, superseded, or revoked by the Civilian Board of Contract Appeals, by a court of competent jurisdiction, or by operation of law.

''(e) REFERENCES.—Any reference to an agency board of contract appeals other than the Armed Services Board of Contract Appeals, the board of contract appeals of the Tennessee Valley Authority, or the Postal Service Board of Contract Appeals in any provision of law or in any rule, regulation, or other paper of the United States shall be treated as referring to the Civilian Board of Contract Appeals established under section 42 of the Office of Federal Procurement Policy Act [41 U.S.C. 438].''

§ 608. Small claims

(a) Accelerated disposition of appeals

The rules of each agency board shall include a procedure for the expedited disposition of any appeal from a decision of a contracting officer where the amount in dispute is $50,000 or less or, in the case of a small business concern (as defined in the Small Business Act [15 U.S.C. 631 et seq.] and regulations under that Act), $150,000 or less. The small claims procedure shall be applicable at the sole election of the contractor.

(b) Simplified rules of procedure

The small claims procedure shall provide for simplified rules of procedure to facilitate the decision of any appeal thereunder. Such appeals may be decided by a single member of the agency board with such concurrences as may be provided by rule or regulation.

(c) Time of decision

Appeals under the small claims procedure shall be resolved, whenever possible, within one hundred twenty days from the date on which the contractor elects to utilize such procedure.

(d) Finality of decision

A decision against the Government or the contractor reached under the small claims proce-

dure shall be final and conclusive and shall not be set aside except in cases of fraud.

(e) Effect of decision

Administrative determinations and final decisions under this section shall have no value as precedent for future cases under this chapter.

(f) Review of requisite amount in controversy

The Administrator is authorized to review at least every three years, beginning with the third year after November 1, 1978, the dollar amount defined in subsection (a) of this section as a small claim, and based upon economic indexes selected by the Administrator adjust that level accordingly.

(Pub. L. 95–563, § 9, Nov. 1, 1978, 92 Stat. 2387; Pub. L. 103–355, title II, § 2351(d), Oct. 13, 1994, 108 Stat. 3322; Pub. L. 109–364, div. A, title VIII, § 857, Oct. 17, 2006, 120 Stat. 2349.)

REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (a), is Pub. L. 85–536, § 2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§ 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–364 inserted ''or, in the case of a small business concern (as defined in the Small Business Act and regulations under that Act), $150,000 or less'' after ''$50,000 or less''.

1994—Subsec. (a). Pub. L. 103–355 substituted ''$50,000'' for ''$10,000''.

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.

§ 609. Judicial review of board decisions

(a) Actions in United States Court of Federal Claims; district court actions; time for filing

(1) Except as provided in paragraph (2), and in lieu of appealing the decision of the contracting officer under section 605 of this title to an agency board, a contractor may bring an action directly on the claim in the United States Court of Federal Claims, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(2) In the case of an action against the Tennessee Valley Authority, the contractor may only bring an action directly on the claim in a United States district court pursuant to section 1337 of title 28, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(3) Any action under paragraph (1) or (2) shall be filed within twelve months from the date of the receipt by the contractor of the decision of the contracting officer concerning the claim, and shall proceed de novo in accordance with the rules of the appropriate court.

(b) Finality of board decision

In the event of an appeal by a contractor or the Government from a decision of any agency board pursuant to section 607 of this title, notwithstanding any contract provision, regulation, or rules of law to the contrary, the decision of the agency board on any question of law shall not be final or conclusive, but the decision on any question of fact shall be final and conclusive and shall not be set aside unless the decision is fraudulent, or arbitrary, or capricious, or so grossly erroneous as to necessarily imply bad faith, or if such decision is not supported by substantial evidence.

(c) Remand or retention of case

In any appeal by a contractor or the Government from a decision of an agency board pursuant to section 607 of this title, the court may render an opinion and judgement and remand the case for further action by the agency board or by the executive agency as appropriate, with such direction as the court considers just and proper.

(d) Consolidation

If two or more suits arising from one contract are filed in the United States Court of Federal Claims and one or more agency boards, for the convenience of parties or witnesses or in the interest of justice, the United States Court of Federal Claims may order the consolidation of such suits in that court or transfer any suits to or among the agency boards involved.

(e) Judgments as to fewer than all claims

In any suit filed pursuant to this chapter involving two or more claims, counterclaims, cross-claims, or third-party claims, and where a portion of one such claim can be divided for purposes of decision or judgment, and in any such suit where multiple parties are involved, the court, whenever such action is appropriate, may enter a judgment as to one or more but fewer than all of the claims, portions thereof, or parties.

(f) Advisory opinions

(1) Whenever an action involving an issue described in paragraph (2) is pending in a district court of the United States, the district court may request a board of contract appeals to provide the court with an advisory opinion on the matters of contract interpretation at issue.

(2) An issue referred to in paragraph (1) is any issue that could be the proper subject of a final decision of a contracting officer appealable under this chapter.

(3) A district court shall direct any request under paragraph (1) to the board of contract appeals having jurisdiction under this chapter to adjudicate appeals of contract claims under the contract or contracts being interpreted by the court.

(4) After receiving a request for an advisory opinion under paragraph (1), a board of contract appeals shall provide the advisory opinion in a timely manner to the district court making the request.

(Pub. L. 95–563, § 10, Nov. 1, 1978, 92 Stat. 2388; Pub. L. 97–164, title I, §§ 157, 160(a)(15), 161(10), Apr. 2, 1982, 96 Stat. 47–49; Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 103–355, title II, § 2354, Oct. 13, 1994, 108 Stat. 3323.)

AMENDMENTS

1994—Subsec. (f). Pub. L. 103–355 added subsec. (f).

1992—Subsecs. (a)(1), (d). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' wherever appearing.

1982—Subsec. (a)(1). Pub. L. 97–164, § 161(10), substituted ''Claims Court'' for ''Court of Claims''.

Subsec. (c). Pub. L. 97–164, § 157, struck out '', or, in its discretion and in lieu of remand it may retain the case and take such additional evidence or action as may be necessary for final disposition of the case'' after ''with such direction as the court considers just and proper''.

Subsec. (d). Pub. L. 97–164, § 160(a)(15), substituted ''United States Claims Court'' for ''Court of Claims'' in two places.

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.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–164 effective Oct. 1, 1982, see section 402 of Pub. L. 97–164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

§ 610. Subpena, discovery, and deposition

A member of an agency board of contract appeals may administer oaths to witnesses, authorize depositions and discovery proceedings, and require by subpena the attendance of witnesses, and production of books and papers, for the taking of testimony or evidence by deposition or in the hearing of an appeal by the agency board. In case of contumacy or refusal to obey a subpena by a person who resides, is found, or transacts business within the jurisdiction of a United States district court, the court, upon application of the agency board through the Attorney General; or upon application by the board of contract appeals of the Tennessee Valley Authority, shall have jurisdiction to issue the person an order requiring him to appear before the agency board or a member thereof, to produce evidence or to give testimony, or both. Any failure of any such person to obey the order of the court may be punished by the court as a contempt thereof.

(Pub. L. 95–563, § 11, Nov. 1, 1978, 92 Stat. 2388.)

§ 611. Interest

Interest on amounts found due contractors on claims shall be paid to the contractor from the date the contracting officer receives the claim pursuant to section 605(a) of this title from the contractor until payment thereof. The interest provided for in this section shall be paid at the rate established by the Secretary of the Treasury pursuant to Public Law 92–41 (85 Stat. 97) for the Renegotiation Board.

(Pub. L. 95–563, § 12, Nov. 1, 1978, 92 Stat. 2389.)

REFERENCES IN TEXT

Provisions of Public Law 92–41, referred to in text, which authorized the Secretary of the Treasury to fix interest rates for the Renegotiation Board, were contained in section 2(a)(3) of Pub. L. 92–41, which was classified to section 1215(b)(2) of Title 50, Appendix, War and National Defense, and was omitted from the Code. See note preceding section 1211 of Title 50, Appendix.

INTEREST DUE ON CLAIMS WITH DEFECTIVE CERTIFICATIONS

Pub. L. 102–572, title IX, § 907(a)(3), Oct. 29, 1992, 106 Stat. 4518, provided that: ''If any interest is due under section 12 of the Contract Disputes Act of 1978 [41 U.S.C. 611] on a claim for which the certification under section 6(c)(1) [41 U.S.C. 605(c)(1)] is, on or after the date of the enactment of this Act [Oct. 29, 1992], found to be defective shall be paid from the later of the date on which the contracting officer initially received the claim or the date of the enactment of this Act.''

§ 612. Payment of claims

(a) Judgments

Any judgment against the United States on a claim under this chapter shall be paid promptly in accordance with the procedures provided by section 1304 of title 31.

(b) Monetary awards

Any monetary award to a contractor by an agency board of contract appeals shall be paid promptly in accordance with the procedures contained in subsection (a) of this section.

(c) Reimbursement

Payments made pursuant to subsections (a) and (b) of this section shall be reimbursed to the fund provided by section 1304 of title 31 by the agency whose appropriations were used for the contract out of available funds or by obtaining additional appropriations for such purposes.

(d) Tennessee Valley Authority

(1) Notwithstanding the provisions of subsection (a) through (c) of this section, any judgment against the Tennessee Valley Authority on a claim under this chapter shall be paid promptly in accordance with the provisions of section 831h(b) of title 16.

(2) Notwithstanding the provisions of subsection (a) through (c), any monetary award to a contractor by the board of contract appeals for the Tennessee Valley Authority shall be paid in accordance with the provisions of section 831h(b) of title 16.

(Pub. L. 95–563, § 13, Nov. 1, 1978, 92 Stat. 2389; Pub. L. 104–106, div. D, title XLIII, § 4322(b)(7), Feb. 10, 1996, 110 Stat. 677.)

AMENDMENTS

1996—Subsecs. (a), (c). Pub. L. 104–106 substituted ''section 1304 of title 31'' for ''section 1302 of the Act of July 27, 1956, (70 Stat. 694, as amended; 31 U.S.C. 724a)''.

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.

§ 613. Separability

If any provision of this chapter, or the application of such provision to any persons or circumstances, is held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

(Pub. L. 95–563, § 15, Nov. 1, 1978, 92 Stat. 2391.)

CHAPTER 10—DRUG-FREE WORKPLACE

Sec.
701. Drug-free workplace requirements for Federal contractors.
702. Drug-free workplace requirements for Federal grant recipients.
703. Employee sanctions and remedies.
704. Waiver.
705. Regulations.
706. Definitions.
707. Construction of chapter.

§ 701. Drug-free workplace requirements for Federal contractors

(a) Drug-free workplace requirement

(1) Requirement for persons other than individuals

No person, other than an individual, shall be considered a responsible source, under the meaning of such term as defined in section 403(8) of this title, for the purposes of being awarded a contract for the procurement of any property or services of a value greater than the simplified acquisition threshold (as defined in section 403(11) of this title) by any Federal agency, other than a contract for the procurement of commercial items (as defined in section 403(12) of this title), unless such person agrees to provide a drug-free workplace by—

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(B) establishing a drug-free awareness program to inform employees about—

(i) the dangers of drug abuse in the workplace;

(ii) the person's policy of maintaining a drug-free workplace;

(iii) any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) the penalties that may be imposed upon employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of such contract be given a copy of the statement required by subparagraph (A);

(D) notifying the employee in the statement required by subparagraph (A), that as a condition of employment on such contract, the employee will—

(i) abide by the terms of the statement; and

(ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;

(E) notifying the contracting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of such conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 703 of this title; and

(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A), (B), (C), (D), (E), and (F).

(2) Requirement for individuals

No Federal agency shall enter into a contract with an individual unless such individual agrees that the individual will not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.

(b) Suspension, termination, or debarment of contractor

(1) Grounds for suspension, termination, or debarment

Each contract awarded by a Federal agency shall be subject to suspension of payments under the contract or termination of the contract, or both, and the contractor thereunder or the individual who entered the contract with the Federal agency, as applicable, shall be subject to suspension or debarment in accordance with the requirements of this section if the head of the agency determines that—

(A) the contractor violates the requirements of subparagraph (A), (B), (C), (D), (E), or (F) of subsection (a)(1) of this section; or

(B) such a number of employees of such contractor have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace as required by subsection (a) of this section.

(2) Conduct of suspension, termination, and debarment proceedings

(A) If a contracting officer determines, in writing, that cause for suspension of payments, termination, or suspension or debarment exists, an appropriate action shall be initiated by a contracting officer of the agency, to be conducted by the agency concerned in accordance with the Federal Acquisition Regulation and applicable agency procedures.

(B) The Federal Acquisition Regulation shall be revised to include rules for conducting suspension and debarment proceedings under this subsection, including rules providing notice, opportunity to respond in writing or in person, and such other procedures as may be necessary to provide a full and fair proceeding to a contractor or individual in such proceeding.

(3) Effect of debarment

Upon issuance of any final decision under this subsection requiring debarment of a contractor or individual, such contractor or individual shall be ineligible for award of any contract by any Federal agency, and for participation in any future procurement by any Federal agency, for a period specified in the decision, not to exceed 5 years.

(Pub. L. 100–690, title V, § 5152, Nov. 18, 1988, 102 Stat. 4304; Pub. L. 103–355, title IV, § 4104(d), title VIII, § 8301(f), Oct. 13, 1994, 108 Stat. 3342, 3397; Pub. L. 104–106, div. D, title XLIII, §§ 4301(a)(3), 4321(i)(13), Feb. 10, 1996, 110 Stat. 656, 677.)