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41 USC Sec. 607

02/01/2010

-EXPCITE-

TITLE 41 - PUBLIC CONTRACTS

CHAPTER 9 - CONTRACT DISPUTES

-HEAD-

Sec. 607. Agency boards of contract appeals

-STATUTE-

(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.

-SOURCE-

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

-REFTEXT-

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.

-COD-

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.

-MISC1-

AMENDMENTS

2006 - Subsec. (a)(1). Pub. L. 109-163, Sec. 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, Sec. 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, Sec. 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, Sec. 847(d)(2)(A)(ii), substituted "Court of Federal Claims" for "Claims Court".

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

Subsec. (i). Pub. L. 109-163, Sec. 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, Sec. 529 [title I, Sec. 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, Sec. 529 [title I, Sec. 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, Sec. 160(a)(15), substituted "United States Claims Court" for "Court of Claims".

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

Subsec. (g)(1)(B). Pub. L. 97-164, Sec. 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, Sec. 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, Sec. 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]."