

(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 term “agency board” means an agency board of contract appeals established under section 607 of this title; and

(7) 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.)

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

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

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 chapter 20 or 22 of title 46, Appendix, as applicable, to the extent that those chapters are not inconsistent with this chapter.

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

REFERENCES IN TEXT

Chapter 20 of title 46, Appendix, referred to in text, was in the original a reference to the Act of Mar. 9, 1920 (41 Stat. 525, as amended), known as the Suits in Admiralty Act, which is classified generally to chapter 20 (§741 et seq.) of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see Short Title note set out under section 741 of Title 46, Appendix, and Tables.

Chapter 22 of title 46, Appendix, referred to in text, was in the original a reference to the Act of Mar. 3, 1925 (43 Stat. 1112, as amended), known as the Public Vessels Act, which is classified generally to chapter 22 (§781 et seq.) of Title 46, Appendix. For complete classification of this Act to the Code, see Short Title note set out under section 781 of Title 46, Appendix, and Tables.

§ 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 subsection¹ 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.

(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.

¹ So in original. Probably should be "section".