

§ 43. Walsh-Healey provisions not applicable to certain contracts

Sections 35 to 45 of this title shall not apply to purchases of such materials, supplies, articles, or equipment as may usually be bought in the open market; nor shall they apply to perishables, including dairy, livestock and nursery products, or to agricultural or farm products processed for first sale by the original producers; nor to any contracts made by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof. Nothing in said sections shall be construed to apply to carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line where published tariff rates are in effect or to common carriers subject to the Communications Act of 1934 [47 U.S.C. 151 et seq.].

(June 30, 1936, ch. 881, § 9, 49 Stat. 2039.)

REFERENCES IN TEXT

The Communications Act of 1934, referred to in text, is act June 19, 1934, ch. 652, 48 Stat. 1064, as amended, which is classified principally to chapter 5 (§ 151 et seq.) of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code see section 609 of Title 47 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43a of this title; title 25 section 450j.

§ 43a. Administrative procedure provisions

(a) Applicability

Notwithstanding any provision of section 553 of title 5, subchapter II of chapter 5, and chapter 7, of title 5 shall be applicable in the administration of sections 35 to 39 and 41 to 43 of this title.

(b) Wage determination; administrative review

All wage determinations under section 35(a) of this title shall be made on the record after opportunity for a hearing. Review of any such wage determination, or of the applicability of any such wage determination, may be had within ninety days after such determination is made in the manner provided in chapter 7 of title 5 by any person adversely affected or aggrieved thereby, who shall be deemed to include any supplier of materials, supplies, articles or equipment purchased or to be purchased by the Government from any source, who is in any industry to which such wage determination is applicable.

(c) Judicial review

Notwithstanding the inclusion of any stipulations required by any provision of sections 35 to 45 of this title in any contract subject to said sections, any interested person shall have the right of judicial review of any legal question which might otherwise be raised, including, but not limited to, wage determinations and the interpretation of the terms “locality” and “open market”.

(June 30, 1936, ch. 881, § 10, as added June 30, 1952, ch. 530, title III, § 301, 66 Stat. 308; amended Pub. L. 103-355, title VII, § 7201(2), (3), Oct. 13, 1994, 108 Stat. 3378; Pub. L. 104-106, div. D, title XLIII, § 4321(f)(2), Feb. 10, 1996, 110 Stat. 675.)

CODIFICATION

“Section 553 of title 5”, “subchapter II of chapter 5, and chapter 7, of title 5”, and “chapter 7 of title 5” sub-

stituted for “section 1003 of title 5”, “such Act [meaning the Administrative Procedure Act]”, and “section 1009 of title 5”, respectively, on authority of Pub. L. 89-554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 10 of act June 30, 1936, was renumbered section 12, and is classified to section 44 of this title.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-106, § 4321(f)(2)(A), substituted “section 35(a)” for “section 35(b)”.

Subsec. (c). Pub. L. 104-106, § 4321(f)(2)(B), struck out comma after “‘locality’”.

1994—Subsec. (b). Pub. L. 103-355, § 7201(2), substituted “supplier of materials” for “manufacturer of, or regular dealer in, materials”.

Subsec. (c). Pub. L. 103-355, § 7201(3), struck out “‘regular dealer’, ‘manufacturer’,” before “and ‘open market’”.

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 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.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 section 450j.

§ 43b. Manufacturers and regular dealers

(a) The Secretary of Labor may prescribe in regulations the standards for determining whether a contractor is a manufacturer of or a regular dealer in materials, supplies, articles, or equipment to be manufactured or used in the performance of a contract entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States, for the manufacture or furnishing of materials, supplies, articles, and equipment.

(b) Any interested person shall have the right of judicial review of any legal question regarding the interpretation of the terms “regular dealer” and “manufacturer”, as defined pursuant to subsection (a) of this section.

(June 30, 1936, ch. 881, § 11, as added Pub. L. 103-355, title VII, § 7201(4), Oct. 13, 1994, 108 Stat. 3378; amended Pub. L. 104-106, div. D, title XLIII, § 4321(f)(1)(A), Feb. 10, 1996, 110 Stat. 675.)

PRIOR PROVISIONS

A prior section 11 of act June 30, 1936, was renumbered section 12, and is classified to section 44 of this title.

Another prior section 11 of act June 30, 1936, was renumbered section 13, and is classified to section 45 of this title.

AMENDMENTS

1996—Pub. L. 104-106 transferred section in original so as to appear after section 43a of this title.

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

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 251 of this title.

§ 44. Separability of Walsh-Healey provisions

If any provision of sections 35 to 45 of this title, or the application thereof to any persons or circumstances, is held invalid, the remainder of said sections, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

(June 30, 1936, ch. 881, § 12, formerly § 10, 49 Stat. 2039; renumbered § 11, June 30, 1952, ch. 530, title III, § 301, 66 Stat. 308; renumbered § 12, Pub. L. 104-106, div. D, title XLIII, § 4321(f)(1)(B), Feb. 10, 1996, 110 Stat. 675.)

PRIOR PROVISIONS

A prior section 12 of act June 30, 1936, was renumbered section 13, and is classified to section 45 of this title.

Another prior section 12 of act June 30, 1936, was renumbered section 14, and is set out as a Short Title note under section 35 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 section 450j.

§ 45. Effective date of Walsh-Healey provisions; exception as to representations with respect to minimum wages

Sections 35 to 45 of this title shall apply to all contracts entered into pursuant to invitations for bids issued on or after ninety days from June 30, 1936: *Provided, however,* That the provisions requiring the inclusion of representations with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

(June 30, 1936, ch. 881, § 13, formerly § 11, 49 Stat. 2039; renumbered § 12, June 30, 1952, ch. 530, title III, § 301, 66 Stat. 308; renumbered § 13, Pub. L. 104-106, div. D, title XLIII, § 4321(f)(1)(B), Feb. 10, 1996, 110 Stat. 675.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 38, 39, 40, 41, 42, 43, 43a, 44, 356 of this title; title 10 section 2304; title 25 section 450j; title 39 section 410.

§ 46. Committee for Purchase From People Who Are Blind or Severely Disabled**(a) Establishment**

There is established a committee to be known as the Committee for Purchase From People Who Are Blind or Severely Disabled (hereafter in sections 46 to 48c of this title referred to as the "Committee"). The Committee shall be composed of fifteen members appointed as follows:

(1) The President shall appoint as a member one officer or employee from each of the following: The Department of Agriculture, the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Department of Health and Human Services, the Department of Commerce,

the Department of Veterans Affairs, the Department of Justice, the Department of Labor, and the General Services Administration. The head of each such department and agency shall nominate one officer or employee in his department or agency for appointment under this paragraph.

(2)(A) The President shall appoint one member from persons who are not officers or employees of the Government and who are conversant with the problems incident to the employment of the blind.

(B) The President shall appoint one member from persons who are not officers or employees of the Government and who are conversant with the problems incident to the employment of other severely handicapped individuals.

(C) The President shall appoint one member from persons who are not officers or employees of the Government and who represent blind individuals employed in qualified nonprofit agencies for the blind.

(D) The President shall appoint one member from persons who are not officers or employees of the Government and who represent severely handicapped individuals (other than blind individuals) employed in qualified nonprofit agencies for other severely handicapped individuals.

(b) Vacancy

A vacancy in the membership of the Committee shall be filled in the manner in which the original appointment was made.

(c) Chairman

The members of the Committee shall elect one of their number to be Chairman.

(d) Terms

(1) Except as provided in paragraphs (2), (3), and (4), members appointed under paragraph (2) of subsection (a) of this section shall be appointed for terms of five years. Any member appointed to the Committee under such paragraph may be reappointed to the Committee if he meets the qualifications prescribed by that paragraph.

(2) Of the members first appointed under paragraph (2) of subsection (a) of this section—

(A) one shall be appointed for a term of three years,

(B) one shall be appointed for a term of four years, and

(C) one shall be appointed for a term of five years,

as designated by the President at the time of appointment.

(3) Any member appointed under paragraph (2) of subsection (a) of this section to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member appointed under such paragraph may serve after the expiration of his term until his successor has taken office.

(4) The member first appointed under paragraph (2)(B) of subsection (a) of this section shall be appointed for a term of three years.

(e) Pay and travel expenses

(1) Except as provided in paragraph (2), members of the Committee shall each be entitled to receive the daily equivalent of the annual rate