

§ 4.12

29 CFR Subtitle A (7-1-05 Edition)

(c)(3)(ii) of this section, the Administrator's ruling shall be final, and, in the case of a finding that arm's-length negotiations did not take place, a new wage determination will be issued for the contract. If a hearing is requested, the decision of the Administrator shall be inoperative.

(d) *Referral to the Chief Administrative Law Judge.* The Administrator on his/her own motion, under paragraph (c)(2) of this section or upon a request for a hearing under paragraph (c)(3)(ii) of this section where the Administrator determines that material facts are in dispute, shall by order refer the issue to the Chief Administrative Law Judge for designation of an Administrative Law Judge, who shall conduct such hearings as may be necessary to render a decision solely on the issue of arm's-length negotiations. However, in situations where there is also a question as to whether some or all of the collectively bargained wage rates and/or fringe benefits are substantially at variance (see § 4.10), the referral shall include both issues for resolution in one proceeding. As provided in section 4(a) of the Act, the provisions of sections 4 and 5 of the Walsh-Healey Public Contracts Act (41 U.S.C. 38, 39) shall be applicable to such proceeding, which shall be conducted in accordance with the procedures set forth at 29 CFR part 6.

(e) *Referral to the Administrative Review Board.* When a party requests a hearing under paragraph (c)(3)(ii) of this section and the Administrator determines that no material facts are in dispute, the Administrator shall refer the issue and the record compiled thereon to the Administrative Review Board to render a decision solely on the issue of arm's-length negotiations. Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR part 8.

§ 4.12 Substantial interest proceedings.

(a) *Statutory provision.* Under section 5(a) of the Act, no contract of the United States (or the District of Columbia) shall be awarded to the persons or firms appearing on the list distributed by the Comptroller General giving the names of persons or firms who have been found to have violated the Act

until 3 years have elapsed from the date of publication of the list. Section 5(a) further states that "no contract of the United States shall be awarded * * * to any firm, corporation, partnership, or association in which such persons or firms have a substantial interest * * * ." A finding as to whether persons or firms whose names appear on the debarred bidders list have a substantial interest in any other firm, corporation, partnership, or association may be made through investigation, hearing, or otherwise pursuant to the Secretary's authority under section 4(a) of the Act.

(b) *Ineligibility.* See § 4.188 of this part for the Secretary's rulings and interpretations with respect to substantial interest.

(c)(1) A request for a determination under this section may be made by any interested party, including contractors or prospective contractors, and associations of contractors, representatives of employees, and interested Government agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

(2) The request shall include a statement setting forth in detail why the petitioner believes that a person or firm whose name appears on the debarred bidders list has a substantial interest in any firm, corporation, partnership, or association which is seeking or has been awarded a contract of the United States or the District of Columbia. No particular form is prescribed for the submission of a request under this section.

(d)(1) The Administrator, on his/her own motion or after receipt of a request for a determination, may make a finding on the issue of substantial interest.

(2) If the Administrator determines that there may be a substantial interest, but finds that there is insufficient evidence to render a final ruling thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with paragraph (e) of this section.

(3) If the Administrator finds that no substantial interest exists, or that

there is not sufficient information to warrant the initiation of an investigation, the requesting party, if any, will be so notified and no further action taken.

(4)(i) If the Administrator finds that a substantial interest exists, the person or firm affected will be notified of the Administrator's finding, which shall include the reasons therefor, and such person or firm shall be afforded an opportunity to request that a hearing be held to render a decision on the issue of substantial interest.

(ii) Such person or firm shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.

(iii) If no hearing is requested within the time mentioned in paragraph (d)(4)(ii) of this section, the Administrator's finding shall be final and the Administrator shall so notify the Comptroller General. If a hearing is requested, the decision of the Administrator shall be inoperative unless and until the Administrative Law Judge or the Administrative Review Board issues an order that there is a substantial interest.

(e) *Referral to the Chief Administrative Law Judge.* The Administrator on his/her own motion, or upon a request for a hearing where the Administrator determines that relevant facts are in dispute, shall by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such hearings as may be necessary to render a decision solely on the issue of substantial interest. As provided in section 4(a) of the Act, the provisions of sections 4 and 5 of the Walsh-Healey Public Contracts Act (41 U.S.C. 38, 39) shall be applicable to such proceedings, which shall be conducted in accordance with the procedures set forth at 29 CFR part 6.

(f) *Referral to the Administrative Review Board.* When the person or firm requests a hearing and the Administrator determines that relevant facts are not in dispute, the Administrator will refer the issue and the record compiled

thereon to the Administrative Review Board to render a decision solely on the issue of substantial interest. Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR part 8.

Subpart B—Wage Determination Procedures

§ 4.50 Types of wage and fringe benefit determinations.

The Administrator specifies the minimum monetary wages and fringe benefits to be paid as required under the Act in two types of determinations:

(a) *Prevailing in the locality.* Determinations that set forth minimum monetary wages and fringe benefits determined to be prevailing for various classes of service employees in the locality (sections 2(a)(1) and 2(a)(2) of the Act) after giving "due consideration" to the rates applicable to such service employees if directly hired by the Federal Government (section 2(a)(5) of the Act); and

(b) *Collective Bargaining Agreement—(Successorship).* Determinations that set forth the wage rates and fringe benefits, including accrued and prospective increases, contained in a collective bargaining agreement applicable to the service employees who performed on a predecessor contract in the same locality (sections 4(c) and 2(a)(1) and (2) of the Act).

§ 4.51 Prevailing in the locality determinations.

(a) *Information considered.* The minimum monetary wages and fringe benefits set forth in determinations of the Secretary are based on all available pertinent information as to wage rates and fringe benefits being paid at the time the determination is made. Such information is most frequently derived from area surveys made by the Bureau of Labor Statistics, U.S. Department of Labor, or other Labor Department personnel. Information may also be obtained from Government contracting officers and from other available sources, including employees and their representatives and employers and their associations. The determinations may be based on the wage rates and fringe benefits contained in collective