

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Secretary****24 CFR Part 20**

[Docket No. FR-4013-F-01]

RIN 2501-AC16

Board of Contract Appeals Rule Revisions

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises HUD's Board of Contract Appeals regulations in 24 CFR part 20 to increase certain monetary amounts that are required by the Federal Acquisition Streamlining Act of 1994.

EFFECTIVE DATE: April 25, 1996.

FOR FURTHER INFORMATION CONTACT:

David T. Anderson, Chairman, HUD Board of Contract Appeals, Room 2131, U.S. Department of Housing and Urban Development, Washington, DC 20410-0001; telephone (202) 927-5110. (This number is not a toll-free number.) For hearing- or speech-impaired persons, this number may be accessed via TTY by contacting the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:**Amendments Made by This Rule**

This final rule revises the rules of the Department of Housing and Urban Development Board of Contract Appeals. The revisions to Rule 1, 2, 12.1 and Rule 12.3, increasing certain monetary amounts, are required by the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355, approved October 13, 1994), which amended the Contract Disputes Act of 1978, 41 U.S.C. 601-613. Rule 6 has been revised in the interests of judicial efficiency and fairness, holding the Government to the same obligation with respect to filings as the Appellant. Finally, Section 20.3 of the Board Rules has been revised to note changes in the Board's physical location and facsimile number, and to note the availability of alternative dispute resolution procedures and the applicability of the Equal Access to Justice Act.

Justification for Final Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. However, part 10 provides for exceptions from that general rule where the Department finds good cause to omit advance notice and public

comment is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). The Department finds that good cause exists to publish this rule for effect without first soliciting public comment because the statutory provisions are self-executing and prior public comment is unnecessary. The rule only updates the current regulations to comply with the Federal Acquisition Streamlining Act of 1994.

Other Matters**Environmental Impact**

An environmental finding under section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321-4347) and 24 CFR Part 50 is categorically excluded under § 50.20(k) because this rule only revises internal administrative procedures of the Department.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule only revises the Department's Board of Contract Appeals rules.

Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this final rule will not have a potential, direct, significant impact on family formation, maintenance, and general well-being; therefore, it is not subject to review under this order.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this final rule will not have significant federalism implications and thus are not subject to review under the order. This final rule will not interfere with or preempt State or local government functions.

List of Subjects in 24 CFR Part 20

Administrative practice and procedure, Government contracts, Organization and functions (Government agencies).

Accordingly, 24 CFR part 20 is amended as follows:

PART 20—BOARD OF CONTRACT APPEALS

1. The authority citation for part 20 has been revised to read as follows:

Authority: 41 U.S.C. 601-613; 42 U.S.C. 3535(d).

2. In § 20.3, paragraph (a) is revised to read as follows:

§ 20.3 Organization and location of the Board.

(a) *Location.* The Board's mailing address is: Board of Contract Appeals, U.S. Department of Housing and Urban Development, Room 2131, 451 Seventh Street, S.W., Washington, D.C. 20410-0001. For items requiring non-postal delivery, the Board is located in Room 3229, 1201 Constitution Ave., N.W. 20001. The telephone number of the Board is (202) 927-5110. (This is not a toll-free number.) For learning- or speech-impaired persons, this number may be accessed via TTY by contacting the Federal Information Relay Service at 1-800-877-8339. The facsimile number is (202) 927-6257.

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3. Section 20.10 is amended by:
a. Designating the undesignated paragraph as paragraph (a); and
b. Adding new paragraphs (b), (c) and (d), as follows:

§ 20.10 Rules.

(a) * * *

(b) *Filing Requirements.* A party shall file with the Board one original of any pleading or motion. That party shall simultaneously serve upon the other party of record one copy of that pleading or motion filed with the Board. Filings may be transmitted to the Board via facsimile. However, the original of any document transmitted to the Board by facsimile shall simultaneously be mailed to the Board.

(c) *Alternative Disputes Resolution.* The Administrative Dispute Resolution Act authorizes and encourages Federal agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes. With the mutual consent of the parties, the Board may assist in the resolution of disputes by Alternative Dispute Resolution (ADR) procedures. The utilization of ADR procedures shall not relieve the parties from the filing requirements or other orders of the Board relating to a contract appeal duly docketed before the Board.

(d) *Equal Access to Justice Act.* The Equal Access to Justice Act provides that agencies which conduct adversary adjudications "shall award, to a prevailing party other than the United States, fees and other expenses incurred

by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency was substantially justified or that special circumstances make an award unjust." 5 U.S.C. § 504. Prevailing parties in proceedings before the Board may apply for an award under the Act following the issuance by the Board of its final decision in the appeal.

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Rule 1 [Amended]

4. In paragraphs (b) and (c) of Rule 1. "Appeals, how taken." of § 20.10, "\$50,000" is revised to read "\$100,000" wherever it appears.

Rule 2 [Amended]

5. In the last sentence of Rule 2 "Notice of appeal, contents of." of § 20.10, "\$50,000" is revised to read "\$100,000."

Rule 6 [Amended]

6. In paragraph (b) of Rule 6. "Pleadings." of § 20.10, the last sentence of paragraph (b) is removed.

Rule 12.1 [Amended]

7. In paragraph (a) of Rule 12.1. "Elections to utilize small claims (expedited) and accelerated procedures." of § 20.10, "\$10,000" is revised to read "\$50,000" wherever it

appears and in paragraph (b) "\$50,000" is revised to read "\$100,000" wherever it appears.

Rule 12.3 [Amended]

8. In paragraph (c) of Rule 12.3. "The accelerated procedure." of § 20.10, "\$10,000" is revised to read "\$50,000" wherever it appears.

Dated: March 7, 1996.

Henry G. Cisneros,

Secretary.

[FR Doc. 96-7089 Filed 3-25-96; 8:45 am]

BILLING CODE 4210-32-P