

**REVIEW & RECONSIDERATION
&
APPEALS TO THE ARB
OF
SCA WAGE DETERMINATIONS &
CONFORMANCE ACTIONS**

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APPEALS TO THE ARB

INTRODUCTION TO REVIEW AND RECONSIDERATION OF SCA WAGE DETERMINATIONS

- ◇ Review and reconsideration is the process by which an SCA wage determination or conformance action can be re-examined.
- ◇ Review and reconsideration provides an opportunity for any affected or interested party to request WHD review to evaluate a wage determination issued or conformance action in light of additional information provided and the issues raised.
- ◇ The WHD may decide to issue a new or revised determination or conformance, or affirm the wage determination or conformance action.
- ◇ Review and reconsideration provisions of SCA wage determinations are established by the SCA regulations at 29 C.F.R. § 4.56.
- ◇ Only final rulings of the WHD Administrator – signed by the Administrator (or Acting WHD Administrator) – are subject to appeal to the ARB.

REQUEST PROCEDURES

- ◇ A request for review and reconsideration can be submitted by any affected and/or interested party, including, but not limited to: contracting agencies, contractors or prospective contractors; contractor or employer associations, employees or their representatives; labor unions; or other interested government agencies.
- ◇ The request is usually a letter addressed to the WHD Administrator asking for review and reconsideration.
- ◇ The letter should identify the specific wage determination and, if applicable, the conformance action, in question.
- ◇ The letter must provide supporting evidence that documents why the wage determination, or conformance action, is incorrect.

RELEVANT TIME FRAMES

- ◇ For competitively advertised procurements, requests for reconsideration and review of an SCA wage determination must be submitted before the opening of bids.
- ◇ For negotiated procurements or the exercise of contract options or extensions, such requests must be submitted no later than 10 days before the contract or contract option/extension period begins.
- ◇ The WHD Administrator has 30 days from the date of receipt of the request to issue a decision, or notify the interested party in writing that additional time is necessary.
- ◇ In light of the 30 days that the WHD has to act on such a review and reconsideration request, the WHD recommends that interested parties submit any request for reconsideration and review of an SCA wage determination at least 40 days prior to the bid opening date (in the case of negotiated procurements, or the contract award date).

PROCESSING PROCEDURES AND DECISION-MAKING CRITERIA

If the request provides no supporting evidence or is untimely, the wage determination stands as is, and the WHD advises the interested party of that result in a written reply. Where the request is submitted in a timely manner and supporting evidence is provided as required by the regulations, the WHD will review and evaluate the data submitted.

Analysis of Request and Evidence

1. In addition to the supporting evidence provided by the interested party, the WHD will review:
 - ◇ Data originally used to develop and issue the wage determination.
 - ◇ Any additional relevant data that has since become available.
2. Data submitted as evidence supporting a change in the wage determination or the conformance decision, and additional data described above are reexamined based on the following criteria:
 - ◇ Is the survey or information provided in the review and reconsideration request current?
 - ◇ If the requester submits survey data regarding a wage determination, who conducted the survey and were statistical and analytical techniques used?
 - ◇ Does the survey or information provided cover the appropriate geographic locality of the contract in question?
 - ◇ Is the survey based on a proper sample of the population or universe that can be used to represent what is prevailing in the locality?
 - ◇ Does the survey, or information, provided cover the appropriate occupational classes, i.e., those addressed by the wage determination, or conformance decision, in question? The survey, or information, must be specifically pertinent to the occupations in question.
 - ◇ How does the data used to issue the wage determination, or the information used to make the conformance decision compare to the data submitted by the interested party? Which data result in more relevant and reliable indicators of what is prevailing in-the-locality for purposes of the wage determination in question, or reasonable relationship for purposes of the conformance decision in question?

- ◇ If any additional data have since become available, how does it compare to the data submitted by the interested party and the data used to issue the wage determination or the conformance decision?
 - ◇ Did major differences exist between data submitted as evidence and data used to issue the wage determination or to make a conformance decision? Are there additional data sources that can be and should be used to determine why?
3. Review and reconsideration can result in either an affirmation, revision, or issuance of a new wage determination.
- ◇ If the data submitted as evidence in conjunction with that originally used, and any other relevant data that have since been released suggest that the wage determination was incorrectly developed, the wage determination is revised utilizing these resources as the basis for reissuing a wage determination.
 - ◇ Criteria and statistical techniques used to analyze the review and reconsideration request are the same as those used to develop a wage determination or to make a conformance decision.

APPEALS TO THE ARB

The Administrator's decision can be appealed to the ARB pursuant to the provisions of 29 C.F.R. Part 8: "Practice Before The Administrative Review Board With Regard To Federal Service Contracts."

- ◇ Only final rulings of the WHD Administrator – signed by the Administrator (or Acting Administrator) – are subject to appeal to the ARB.
- ◇ An appeal to the ARB may be submitted within 20 days of the issuance of the Administrator's final ruling that denies a request to make changes in the wage determination or conformance decision in question.
- ◇ The petition must be in writing and contain all necessary information as outlined in 29 C.F.R. § 8.4.
- ◇ The Administrative Review Board (ARB) may not request any federal contracting agency to postpone any contract action because of the filing of a petition.
- ◇ The ARB will not review a wage determination after award, exercise of an option, or extension of a contract unless the following conditions, prescribed by 29 C.F.R. § 8.6, are in effect:
 - ◇◇ A section 4(c) wage determination may be reviewed after award, exercise of option, or extension of a contract if it has been issued as a result of an ALJ finding following a section 4(c) hearing that substantial variance exists or that arm's length negotiations did not take place.
 - ◇◇ Where a petition for review of a wage determination is filed prior to award, exercise of option, or extension of contract, the ARB may review it after the fact if the issue is a significant issue of general applicability. However, in the particular case, the ARB decision will not affect the contract in question after award or exercise of an option or extension.
- ◇ The ARB may decline review of a case, remand it to the Administrator with instructions for obtaining additional evidence or making new or modified findings, or choose to hear the case. There is no deadline for action by the ARB, only that it acts expeditiously, taking into consideration procurement deadlines.