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**PROGRAM MATERIALS**

**Program #36108**

**June 22, 2026**

# **Litigating at Civilian Board of Contract Appeals/Armed Services of Contract Appeals**

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## Litigating at Armed Services and Civilian Board of Contract Appeals



**June 22, 2026**  
By Wojciech Z. Kornacki, Esq.

Lecturer

Not Legal Advice / For Educational Purposes Only

## Agenda

Learn About The Process Of Appealing A Contracting Officer's Final Decision (COFD)

Learn About Key Differences Between Civilian Board Of Contract Appeals (CBCA) And Armed Services Board Of Contract Appeals (ASBCA)

Understand Latest Legal Developments Concerning Claims And Contract Terminations

Best Practices & Strategies

## **Sources**

Contract Disputes Act of 1978 (41 U.S.C. Sections 7101-7109)

Federal Acquisition Regulation

Defense Federal Acquisition Regulation Supplement – Appendix A

Rules of the Civilian Board of Contract Appeals & Federal Rules of Civil Procedure

ASBCA/CBCA Caselaw

ABA Practicing Before the Federal Boards of Contract Appeals

# Armed Services Board of Contract Appeals



<https://www.asbca.mil/>



## Armed Services Board of Contract Appeals

### **Contract Disputes 33.211 Contracting officer's decision.**

(a) When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, the contracting officer shall-

- (1) Review the facts pertinent to the claim;
- (2) Secure assistance from legal and other advisors;
- (3) Coordinate with the contract administration officer or contracting office, as appropriate; and
- (4) Prepare a written decision that shall include-
  - (i) A description of the claim or dispute;
  - (ii) A reference to the pertinent contract terms;
  - (iii) A statement of the factual areas of agreement and disagreement;
  - (iv) A statement of the contracting officer's decision, with supporting rationale;
  - (v) Paragraphs substantially as follows: of 1978 (41 U.S.C. Sections 7101-7109)

## Armed Services Board of Contract Appeals

### Contract Disputes 33.211 Contracting officer's decision (continued)

"This is the final decision of the Contracting Officer. You may appeal this decision to the agency board of contract appeals. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the agency board of contract appeals and provide a copy to the Contracting Officer from whose decision this appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number.

With regard to appeals to the agency board of contract appeals, you may, solely at your election, proceed under the board's-

- (1) Small claim procedure for claims of \$50,000 or less or, in the case of a small business concern (as defined in the Small Business Act and regulations under that Act), \$150,000 or less; or
- (2) Accelerated procedure for claims of \$100,000 or less.

Instead of appealing to the agency board of contract appeals, you may bring an action directly in the United States Court of Federal Claims (except as provided in 41 U.S.C. 7102(d), regarding Maritime Contracts) within 12 months of the date you receive this decision"; and

## Armed Services Board of Contract Appeals

### FAR 33.211 Contracting officer's decision

This is the final decision of the Contracting Officer. You may appeal this decision to the agency board of contract appeals. If you decide to appeal, you must, within **90 days from the date you receive this decision**, mail or otherwise furnish written notice to the agency board of contract appeals and provide a copy to the Contracting Officer from whose decision this appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number

## Armed Services Board of Contract Appeals

### Rule 1. Appeals

(a) Taking an Appeal—For appeals subject to the Contract Disputes Act, notice of an appeal shall be in writing and mailed or otherwise furnished to the Board **within 90 days from the date of receipt of a contracting officer's decision.** The appellant (contractor) should also furnish a copy of the notice of appeal to the contracting officer. For appeals not subject to the Contract Disputes Act, the contractor should refer to the Disputes clause in its contract for the time period in which it must file a notice of appeal.

## Armed Services Board of Contract Appeals

### *Appeal of - Windamir Development, Inc.* **ASBCA No. 63461**

#### *Monetary relief*

Windamir requests more than \$1 million in monetary relief, arising from several alleged causes that Windamir attributes to the government,<sup>16</sup> as well as termination for convenience costs pursuant to Federal Acquisition Regulation 52.249-2.<sup>17</sup> Windamir has not presented to the contracting officer *any* claim for monetary relief; consequently, we do not possess jurisdiction to entertain Windamir's requests for monetary relief, and those requests are dismissed, for lack of jurisdiction. *CDM*

# Armed Services Board of Contract Appeals

## APPENDIX B: FORMS

## Sample Notice of Appeal

[ABC Company's Letterhead]

[Date]

Recorder/Clerk  
[ ] Board of Contract Appeals  
[Address]

RE: Contract No.: [ ]  
Project Name: [ ]

### NOTICE OF APPEAL

Dear Sir or Madam:

ABC Company hereby appeals the decision of the contracting officer dated [ ] (attached) denying its claim for [e.g., equitable adjustment, remission of liquidated damages, breach of contract] under the referenced contract with the Department of [ ]. The amount in dispute is \$[ ].

Sincerely,

[Signature] \_\_\_\_\_  
[James Smith, President]  
[ABC Company]

cc: Contracting Officer

Attachment: Contracting Officer's Final Decision

Not Legal Advice / For Educational Purposes Only

## Armed Services Board of Contract Appeals

### ***Appeal of - The Sithe Group, LLC, dba TSG Industries Under Contract No. W9126G-18-P-0012*** **ASBCA No. 63605**

In this case, USACE sent the COFD via email and certified mail. Here, USACE has provided evidence, via an email return receipt, that TSG (through counsel) received the COFD on **July 29, 2020** (SOF ¶ 19). TSG has also not denied receiving the COFD on this date (*id.*). Therefore, USACE has met the requirements of **FAR 33.211(b)** by providing “objective indicia” of actual physical receipt of the COFD by TSG. *Riley*, 408 F.3d at 1372. Additionally, the COFD contained the required FAR 33.211(a)(4)(v) appeal rights language which notified TSG that they must appeal the decision “within 90 days from the date [the decision is received]” (SOF ¶ 19). Thus, the 90-day window started on July 29, 2020 and TSG was required to file its appeal by October 27, 2020.

TSG filed its notice of appeal on **May 2, 2023**, nearly two and a half years beyond the allowable 90-day timeframe. Unless TSG can provide a valid defense to overcome the 90-day jurisdictional requirement, its appeal will be deemed untimely, and the Board will lack jurisdiction.

# Armed Services Board of Contract Appeals

## Rule 2. Filing Documents

(a) Documents may be filed with the Board by the following methods:

(1) Governmental Postal Service—Documents may be filed via a governmental postal service. Filing occurs when the document, properly addressed and with sufficient postage, is transferred into the custody of the postal service. Contact the Recorder before submitting classified documents.

(2) Courier—Documents may be filed via courier. Filing occurs when the document is delivered to the Board. Contact the Recorder before submitting classified documents.

(3) Electronic Mail—Documents, except appeal files submitted pursuant to Rule 4, hearing exhibits, classified documents, and documents submitted in camera or under a protective order, may be filed via electronic mail (email). Email attachments should be in PDF format and the attachments may not exceed 10 megabytes total. The transmittal email should include the ASBCA docket number(s), if applicable, and the name of the appellant in the “Subject:” line. Filing occurs upon receipt by the Board’s email server. When a document is successfully filed via email, the document should not also be submitted by any other means, unless so directed by the Board. Submit emails to:  
<mailto:asbca.recorder@mail.mil>.

(4) Facsimile Transmission—Documents, except appeal files submitted pursuant to Rule 4, hearing exhibits, classified documents, and documents submitted in camera or under a protective order, may be filed via facsimile (fax) machine. Due to equipment constraints, transmissions over 10 pages should not be made absent Board permission. Filing occurs upon receipt by the Board. When a document is successfully filed via fax, the document should not also be submitted by any other means, unless so directed by the Board.

# Armed Services Board of Contract Appeals

## **Rule 3. Service Upon Other Parties**

Documents may be served personally or by mail, addressed to the party upon whom service is to be made, unless the parties have agreed to an alternate means of service. Subpoenas shall be served as provided in Rule 22.

## **Rule 4. Preparation, Content, Organization, Forwarding, and Status of Appeal File**

(a) Duties of the Government—Within 30 days of notice that an appeal has been filed, the Government shall transmit to the Board and the appellant an appeal file consisting of the documents the Government considers relevant to the appeal, including:

- (1) The decision from which the appeal is taken;
- (2) The contract, including pertinent specifications, amendments, plans, and drawings;
- (3) All correspondence between the parties relevant to the appeal, including any claim in response to which the decision was issued.

## Armed Services Board of Contract Appeals

### Rule 5. Time, Computation, and Extensions

(a) Where practicable, actions should be taken in less time than the time allowed. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time should be in writing and indicate that the other party was contacted to seek its concurrence.

(b) In computing any period of time, the day of the event from which the designated period of time begins to run will not be included, but the last day of the period will be included unless it is a Saturday, Sunday, or a Federal holiday, in which event the period will run to the next business day.

## Armed Services Board of Contract Appeals

### Rule 6. Pleadings

(a) Appellant—Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board a complaint setting forth simple, concise, and direct statements of each of its claims. The complaint shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, if any. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. Should the complaint not be timely received, the appellant's claim and notice of appeal may be deemed to set forth its complaint if, in the opinion of the Board, the issues before the Board are sufficiently defined, and the parties will be notified.

(b) Government—Within 30 days from receipt of the complaint, or the aforesaid notice from the Board, the Government shall file with the Board an answer thereto. The answer shall admit or deny the allegations of the complaint and shall set forth simple, concise, and direct statements of the Government's defenses to each claim asserted by the appellant, including any affirmative defenses. Should the answer not be timely received, the Board may enter a general denial on behalf of the Government, and the parties will be notified.

# Armed Services Board of Contract Appeals

## Rule 7. Motions

(a) Motions Generally—The Board may entertain and rule upon motions and may defer ruling as appropriate. The Board will rule on motions so as to secure, to the fullest extent practicable, the informal, expeditious, and inexpensive resolution of appeals. All motions should be filed as separate documents with an appropriate heading describing the motion. Oral argument on motions is subject to the discretion of the Board.

(b) Jurisdictional Motions—Any motion addressed to the jurisdiction of the Board should be promptly filed. An evidentiary hearing to address disputed jurisdictional facts will be afforded on application of either party or by order of the Board. The Board may defer its decision on the motion pending hearing on the merits. The Board may at any time and on its own initiative raise the issue of its jurisdiction, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

## Armed Services Board of Contract Appeals

### ***Appeal of - Case Healthcare Solutions, Inc. d/b/a Case HCS of Reston, Virginia*** **ASBCA No. 63051**

OPINION BY ADMINISTRATIVE JUDGE WILSON ON THE GOVERNMENT'S  
MOTION TO DISMISS FOR LACK OF JURISDICTION OR, ALTERNATIVELY,  
TO STRIKE COUNT II OF APPELLANT'S COMPLAINT

This appeal involves a contract for Case Healthcare Solutions, Inc. (Case HCS) to provide insurance billing support to the U.S. Army Medical Command (MEDCOM or Army). In Count I of its complaint, Case HCS seeks to recover \$821,835.38 from the Army in allegedly unpaid fees. The Army moves to dismiss this appeal for lack of jurisdiction, arguing that Case HCS did not properly submit a claim pursuant to the requirements of the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109, and the Federal Acquisition Regulation (FAR). Alternatively, the Army moves to strike Count II of Case HCS's complaint—which seeks common law damages to compensate for the Army's failure to pay these fees in a timely manner—on the grounds that it raises a new theory of recovery relying on different operative facts from those presented in Case HCS's initial claim. We deny the Army's motions.

For jurisdictional purposes, our consideration must include determining if the issues are based on a common or related set of operative facts. *See Kiewit Infrastructure West Co. v. United States*, 972 F.3d 1322, 1328 (Fed. Cir. 2020); *Placeway Constr. Corp.*, 920 F.2d at 907. A key to the inquiry is whether the same or related evidence will determine the outcome. *Placeway Constr. Corp.*, 920 F.2d at 907. In making these determinations, we consider more than just the face of the claims but the totality of the circumstances. *See K-Con Bldg. Sys. v. United States*, 778 F.3d 1000, 1006 (Fed. Cir. 2015); *Fid. & Deposit Co. of Md.*, ASBCA No. 63278, 23-1 BCA ¶ 38,341 at 186,179. Here, Count II clearly stems from the same operative facts: government non-payment of Case HCS's claim, albeit for a prolonged period of time (SOF ¶ 10). To require Case HCS to re-submit this issue to the CO seems nonsensical at best, given the fact that the current record shows that the CO has not issued a decision on the December 9, 2019 claim, or any further correspondence of substance as of the date of this decision (SOF ¶ 11). Accordingly, the government's arguments must fail.



## Armed Services Board of Contract Appeals

### ***Appeal of - DSME Construction Co., Ltd.*** **ASBCA No. 63878**

#### OPINION BY ADMINISTRATIVE JUDGE MCILMAIL ON GOVERNMENT'S MOTION TO DISMISS APPEAL

This appeal challenges the government's default termination of a contract for preventative maintenance services at facilities at Camps Humphreys and Yongin, in the Republic of Korea.<sup>1</sup> *DSME Constr. Co.*, ASBCA No. 63878, 24-1 BCA ¶ 38,642 at 187,849 (finding jurisdiction). The parties have chosen to proceed under Board Rule 11, which provides for a decision on the briefs, with no live hearing. The government moves for dismissal of the appeal as a sanction for what it charges is appellant's misuse or careless use of generative artificial intelligence (AI) in providing case citations to the Board.

#### DECISION

Filing briefs without taking the necessary care in their preparation, including reliance upon fictitious opinions or incorrect citations (whether AI-generated or not) risks sanctions; we have recently sanctioned a party for such behavior by striking an offending brief, guided by Rule 11 of the Federal Rules of Civil Procedure. *See Huffman Constr., LLC*, ASBCA Nos. 62591, 62873, 25-1 BCA ¶ 38,932 at 189,484-86. Without addressing whether it used AI to prepare its surreply, appellant admits that its original surreply includes "incorrect case names, erroneous reporter citations, and the misapplication of certain regulatory provisions."<sup>12</sup> Having originally requested only that we strike that surreply, the government now requests (and not in the alternative) that we dismiss the appeal altogether, with prejudice.<sup>13</sup> We decline to do so. The government fails even to address whether appellant's behavior is the kind of contumacious or contemptuous conduct sufficient to justify the drastic sanction of dismissal, "the severest sanction the Board can issue." *See Utility Constr. Co.*, ASBCA No. 57224, 12-2 BCA



## Armed Services Board of Contract Appeals

### ***Appeal of - GE Renewables US, LLC Construction Co., Ltd. of - Case Healthcare Solutions, Inc. d/b/a Case HCS of Reston, Virginia ASBCA No. 63842***

The appellant GE Renewable US, LLC (GE) seeks a declaration that it has the right to pursue a price adjustment under an economic price adjustment clause. The United States Army Corps of Engineers (government) moves to dismiss for failure to state a claim (Motion), arguing that GE has failed to state a sum certain for what is essentially a monetary claim. GE argues that the government forfeited that defense because the litigation had far progressed when it filed the Motion. In the alternative, GE argues that the Motion is meritless because its claim merely raises an issue of contract interpretation that does not require it to state a sum certain.

Because the essence of the dispute is monetary, GE's claim had to state a sum certain. *See ECC Int'l*, 79 F.4th at 1380. However, GE's claim did not state a sum certain (SOF ¶ 3). Therefore, it has failed to state a claim. *See ECC Int'l*, 79 F.4th at 1380.

## Armed Services Board of Contract Appeals

### **Rule 8. Discovery**

(a) General Policy and Protective Orders—The parties are encouraged to engage in voluntary discovery procedures. Within 45 days after the pleadings have been filed, the parties must confer concerning each party's discovery needs, including the scheduling of discovery and the production of electronically stored information. Absent stipulation or a Board order, no discovery may be served prior to this conference. Any motion pertaining to a discovery dispute shall include a statement that the movant has in good faith attempted to resolve the discovery dispute without involvement of the Board. In connection with any discovery procedure, the Board may issue orders to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time, and place for discovery, and provisions for governing the disclosure of information or documents. Any discovery under this Rule shall be subject to the provisions of Rule 16 with respect to sanctions.



## Armed Services Board of Contract Appeals

### ***Appeal of - Quality Trust, Inc.*** **ASBCA No. 62576**

OPINION BY ADMINISTRATIVE JUDGE STINSON  
ON APPELLANT'S MOTION FOR DEFAULT JUDGMENT

Pending before the Board is a motion for default judgment filed by Quality Trust, Inc. (QTI), on August 30, 2022, alleging that the government failed to comply with the requirements of our Order dated June 23, 2022, as well as a second, unspecified Order. Appellant requests that we enter a default judgment against the government for these alleged failures to comply (app. mot. at 1). The government's September 2, 2022, response states that QTI's motion "is an unsupported complaint that the respondent . . . has not adhered to ASBCA Rule 8 discovery requirements and the orders of the Board regarding discovery," and that to the extent "appellant is requesting sanctions under Rule 16, it has not identified any request to which the government did not reply" (gov't resp. at 1).

party seeking issuance of a default judgment, has the burden of proof. QTI's motion for default judgment fails to establish any instance where the government did not respond to notices or correspondence from the Board or comply with our orders. QTI's motion likewise fails to establish that the government's actions in this appeal trigger application of Board Rule 17 for issuance of "an order to show cause why the Board should not act thereon pursuant to Rule 16," or that sanctions pursuant to Board Rule 16, would be appropriate here.



## Armed Services Board of Contract Appeals

### Rule 9. Pre-Hearing or Pre-Submission Conference

The Board may, upon its own initiative, or upon the request of either party, arrange a conference or order the parties to appear before an Administrative Judge or examiner for a conference to address any issue related to the prosecution of the appeal.

### Rule 10. Hearings

(a) Where and When Held—Hearings will be held at such times and places determined by the Board to best serve the interests of the parties and the Board.

(b) Unexcused Absence—The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the evidentiary record will consist solely of the evidence of record at the conclusion of the hearing, except as ordered otherwise by the Board.

(c) Nature of Hearings—Hearings shall be as informal as may be reasonable and appropriate under the circumstances. The parties may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence or in the sound discretion of the presiding Administrative Judge or examiner. The Federal Rules of Evidence are not binding on the Board but may guide the Board's rulings. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

### Rule 11. Submission Without a Hearing

(a) Either party may elect to waive a hearing and to submit its case upon the record. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, declarations, depositions, admissions, answers to interrogatories, and stipulations may be employed in addition to the Rule 4 file if moved and accepted into evidence. Such submissions may be supplemented by briefs. The Board may designate, with notice to the parties, any document to be made part of the record.

(b) As appropriate, the Board may also rely on pleadings, prehearing conference memoranda, orders, briefs, stipulations and other documents contained in the Board's file.

(c) Except as the Board may otherwise order, no evidence will be received after notification by the Board that the record is closed.

(d) The weight to be given to any evidence will rest within the discretion of the Board. The Board may require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

(e) The record will at all reasonable times be available for inspection by the parties at the offices of the Board.

# Armed Services Board of Contract Appeals

## Rule 12. Optional Small Claims (Expedited) and Accelerated Procedures

### 12.1 Elections to Utilize Small Claims (Expedited) and Accelerated Procedures

(a) In appeals where the amount in dispute is \$50,000 or less, or in the case of a small business concern (as defined in the Small Business Act and regulations under that Act),

## Rule 13. Settling the Record in Appeals with a Hearing

(a) The record upon which the Board's decision will be rendered consists of the documents admitted under Rule 4, the documents admitted into evidence as hearing exhibits, together with the hearing transcript. The Board may designate with notice to the parties, any document to be made part of the record.

## Rule 14. Briefs

(a) Pre-Hearing Briefs—The Board may require the parties to submit pre-hearing briefs. If the Board does not require pre-hearing briefs, either party may, upon appropriate and sufficient notice to the other party, furnish a pre-hearing brief to the Board.

(b) Post-Hearing Briefs—Post-hearing briefs may be submitted upon such terms as may be directed by the presiding Administrative Judge or examiner at the conclusion of the hearing.

## Rule 15. Representation

(a) An individual appellant may represent his or her interests before the Board; a corporation may be represented by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country. Anyone representing an appellant shall file a written notice of appearance with the Board.

(b) The Government shall be represented by counsel. Counsel for the Government shall file a written notice of appearance with the Board.

## Armed Services Board of Contract Appeals

### **Rule 16. Sanctions**

If any party fails to obey an order issued by the Board, the Board may impose such sanctions as it considers necessary to the just and expeditious conduct of the appeal.

### **Rule 17. Dismissal or Default for Failure to Prosecute or Defend**

Whenever the record discloses the failure of either party to file documents required by these Rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed with prejudice for failure to prosecute. In the case of a default by the Government, the Board may issue an order to show cause why the Board should not act thereon pursuant to Rule 16. If good cause is not shown, the Board may take appropriate action.

### **Rule 18. Suspensions; Dismissal Without Prejudice**

(a) The Board may suspend the proceedings by agreement of the parties for settlement discussions, or for good cause shown.



## Armed Services Board of Contract Appeals

### ***Appeal of - Soukos Robots Demil USA, Inc.*** **ASBCA No. 63468**

OPINION BY ADMINISTRATIVE JUDGE TAYLOR  
ON GOVERNMENT'S MOTION TO DISMISS FOR FAILURE TO PROSECUTE

On June 17, 2024, the United States Army (Army or government) moved to dismiss this appeal pursuant to Board Rule 17 for failure to prosecute. We grant the government's motion since appellant failed to respond to the motion and the Board's subsequent show cause order.

To date, appellant has not responded to the government's document production request, the government's motion to compel, or the Board's April 12, 2024, and June 26, 2024, Orders. Moreover, appellant failed to respond to the Board's August 14, 2024, Show Cause Order. We conclude that appellant's lack of communication reflects an intention not to continue the prosecution of this appeal. *See Andrews Contracting Services, LLC*, ASBCA No. 61512, 19-1 BCA ¶ 37,241 at 181,280 (Board dismissed the appeal for failure to prosecute when appellant failed to respond to the government's discovery and numerous Board Orders).

# Armed Services Board of Contract Appeals

## Rule 19. Decisions

(a) Decisions of the Board will be made in writing and authenticated copies of the decision will be sent simultaneously to both parties. All orders and decisions, except those as may be required by law to be held confidential, will be available to the public. Decisions of the Board will be made solely upon the record.

## Rule 20. Motion for Reconsideration

A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to grant the motion. The motion must be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion. An opposing party must file any cross-motion for reconsideration within 30 days from its receipt of the motion for reconsideration. Extensions in the period to file a motion will not be granted. Extensions to file a memorandum in support of a timely-filed motion may be granted.

## Rule 21. Remand from Court

Whenever any Court remands an appeal to the Board for further proceedings, each of the parties shall, within 30 days of receipt of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the Court's remand. The Board will consider the reports and enter an order governing the remanded appeal.

## Rule 22. Subpoenas

(a) Voluntary Cooperation—Each party is expected:

## Rule 23. Ex Parte Communications

No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal, submit to the Board or the Board's staff, ex parte, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This Rule does not apply to consultation among Board members or its staff or to ex parte communications concerning the Board's administrative functions or procedures.

## Rule 24. Effective Date

These rules and addendums are applicable to appeals processed under the Contract Disputes Act (CDA), 41 U.S.C. 7101-7109, and other appeals to the extent consistent with law. They apply to all appeals filed on or after the date of final publication in the Federal Register, and to those appeals filed before that date, unless that application is inequitable or unfair.

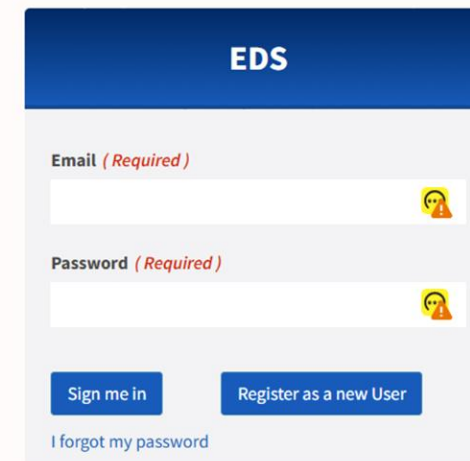
## Civilian Board of Contract Appeals



<https://www.cbca.gov/index.html>

<https://www.eds.cbca.gov/login>

Welcome to CBCA's Electronic Docketing System (EDS)  
Please sign in below or register as a new User.



The image shows the login form for the Electronic Docketing System (EDS). The form has a blue header with the text "EDS". Below the header, there are two input fields: "Email (Required)" and "Password (Required)". Each field has a yellow warning icon to its right. Below the input fields, there are two blue buttons: "Sign me in" and "Register as a new User". At the bottom of the form, there is a link that says "I forgot my password".

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# Civilian Board of Contract Appeals

## **RULE 1 GENERAL INFORMATION; DEFINITIONS**

(a) Scope and purpose. The rules of procedure in this section apply to matters filed with the Board under the Contract Disputes Act (CDA), 41 U.S.C. 7101-7109, under a non-CDA contract that allows for Board review, and under the Equal Access to Justice Act (EAJA), 5 U.S.C. 504 (see Rule 1(b)). The Board may alter the procedures on its own initiative or on request of a party to promote the just, informal, expeditious, and inexpensive resolution of a case.

Business days. The Board's business days are days other than Saturdays, Sundays, Federal holidays, and days on which the Board, for any reason, does not open or is required to close before 4:30 p.m. (Eastern Time).

File; filing. To "file" a document means to submit it to the Board by means authorized by rule or permission of the Clerk. "Filing" types include as permitted: hand deliveries, including by courier, to the Clerk; United States Postal Service (USPS) mail; efilings; upload in EDS; and transfers via a secure file transfer method. Documents filed electronically should usually be in portable document format (PDF). The Board prefers that documents are enabled to allow word searches through text recognition. See the Board's website for additional information on filing documents, including appeal file exhibits. Efilings and EDS uploads received by 11:59:59 p.m. (Eastern Time) are same-day filings. Efilings and EDS uploads received at or after midnight (12:00 a.m. Eastern Time) are next-business day filings. Transfers via a secure file transfer method are received when the Clerk receives the party's notice that a transfer has been made to the portal. The date the Clerk receives the secure file transfer notice is determined by the same timing rules as applied to efilings and EDS uploads. A notice of appeal or application is filed upon the earlier of its receipt by the Clerk or, if mailed through the USPS, the mailing date. A USPS postmark is prima facie evidence of a mailing date.

## Civilian Board of Contract Appeals

### RULE 2

#### FILING APPEALS, PETITIONS, AND APPLICATIONS; CONSOLIDATION

(a) Filing an appeal. A notice of appeal shall be:

- (1) In writing;
- (2) Signed by the appellant, the appellant's attorney, or an authorized representative (see Rule 5); and
- (3) Filed with the Board, with a copy to the contracting officer who received or issued the claim or the successor contracting officer. A notice of appeal should include:
  - (i) The name, telephone number, and mailing and email addresses of the appellant and/or its attorney or authorized representative;
  - (ii) The contract number;
  - (iii) The name, telephone number, and mailing and email addresses of the contracting officer who received or issued the claim;
  - (iv) A copy of the claim with any certification; and
  - (v) A copy of the contracting officer's decision on the claim or a statement that the appeal is from a failure to issue a decision ("a deemed denial").

(d) Time limits.

- (1) Under the CDA, a notice of appeal must be filed within 90 calendar days after the date of receipt of a contracting officer's decision on a claim.
- (2) Alternatively, under the CDA, a contractor may appeal when a contracting officer has not issued a decision on a claim within the time allowed by the CDA or the time set by a tribunal acting on a petition.
- (3) Under the CDA, a petition may be filed in the period between:
  - (i) Receipt of notice from a contracting officer, within 60 days after the submission of a claim, that the contracting officer intends to issue a decision on the claim more than 60 days after its submission, and
  - (ii) The due date stated by the contracting officer.
- (4) Under EAJA, an application must be filed within 30 days after the date that the decision in the underlying appeal becomes no longer subject to appeal.

(e) Notice of docketing. Upon receipt of a notice of appeal, a petition, or an application, the Clerk issues a written notice of docketing to all parties.

## Civilian Board of Contract Appeals

### ***VIAKORP CORPORATION v. DEPARTMENT OF VETERANS AFFAIRS*** **CBCA 8606**

Respondent, the Department of Veterans Affairs (VA), contracted with Viakorp Corporation (Viakorp) for kitchen maintenance. The agency subsequently terminated the contract for cause. After Viakorp appealed the termination, VA moved to dismiss the appeal, arguing that Viakorp failed to file its notice of appeal within the ninety-day deadline required by 41 U.S.C. § 7104(a) (2018). Because Viakorp untimely filed its appeal, we grant the motion and dismiss the appeal for lack of jurisdiction.

May 27, 2025, the appeal is still untimely.<sup>2</sup> Ninety days from May 27, 2025, is August 25, 2025. The appeal was filed with the Board on September 25, 2025. The appeal was therefore untimely regardless of whether we calculate the ninety-day period from May 19, 2025, or May 27, 2025. For this reason, we grant VA's motion to dismiss this appeal based on Viakorp's untimely filing of its notice of appeal.<sup>3</sup>

#### Decision

The appeal is **DISMISSED FOR LACK OF JURISDICTION**.

## Civilian Board of Contract Appeals

### RULE 2

#### FILING APPEALS, PETITIONS, AND APPLICATIONS; CONSOLIDATION

(a) Filing an appeal. A notice of appeal shall be:

- (1) In writing;
- (2) Signed by the appellant, the appellant's attorney, or an authorized representative (see Rule 5); and
- (3) Filed with the Board, with a copy to the contracting officer who received or issued the claim or the successor contracting officer. A notice of appeal should include:
  - (i) The name, telephone number, and mailing and email addresses of the appellant and/or its attorney or authorized representative;
  - (ii) The contract number;
  - (iii) The name, telephone number, and mailing and email addresses of the contracting officer who received or issued the claim;
  - (iv) A copy of the claim with any certification; and
  - (v) A copy of the contracting officer's decision on the claim or a statement that the appeal is from a failure to issue a decision ("a deemed denial").

(d) Time limits.

- (1) Under the CDA, a notice of appeal must be filed within 90 calendar days after the date of receipt of a contracting officer's decision on a claim.
- (2) Alternatively, under the CDA, a contractor may appeal when a contracting officer has not issued a decision on a claim within the time allowed by the CDA or the time set by a tribunal acting on a petition.
- (3) Under the CDA, a petition may be filed in the period between:
  - (i) Receipt of notice from a contracting officer, within 60 days after the submission of a claim, that the contracting officer intends to issue a decision on the claim more than 60 days after its submission, and
  - (ii) The due date stated by the contracting officer.
- (4) Under EAJA, an application must be filed within 30 days after the date that the decision in the underlying appeal becomes no longer subject to appeal.

(e) Notice of docketing. Upon receipt of a notice of appeal, a petition, or an application, the Clerk issues a written notice of docketing to all parties.



# Civilian Board of Contract Appeals

## **RULE 3 COMPUTING AND EXTENDING TIME**

(a) Computing time. Consistent with Rule 6 of the Federal Rules of Civil Procedure: In computing any time period, omit the day of the event from which the period begins to run. Omit nonbusiness days only if the period is less than 11 days; otherwise include them. A period must end on a business day. If a computed period would otherwise end on a nonbusiness day, it ends on the next business day.

## **RULE 4 APPEAL FILE**

(a) Filing. Within 30 days after receiving the Board's docketing notice, the respondent shall file and serve all documents relevant to the appeal, including:

- (1) The contracting officer's decision on the claim;
- (2) The contract, including all pertinent specifications, amendments, plans, drawings, and incorporated proposals or parts thereof;
- (3) All correspondence between the parties relevant to the appeal;
- (4) The claim with any certification;
- (5) Relevant affidavits, witness statements, or transcripts of testimony taken before the appeal;
- (6) All documents relied on by the contracting officer to decide the claim; and
- (7) Relevant internal memoranda, reports, and notes.

## **RULE 5 APPEARING; NOTICE OF APPEARANCE**

(a) Appearing before the Board.

- (1) Appellant; petitioner; applicant. An appellant, petitioner, or applicant may appear before the Board through an attorney. An individual appellant, petitioner, or applicant may appear for himself or herself. A corporation, trust, or association may appear by one of its officers. A limited liability corporation, partnership, or joint venture may appear by one of its members. Each individual appearing on behalf of an appellant, petitioner, or applicant must have legal authority to appear.

## **RULE 6 PLEADINGS; AMENDING PLEADINGS**

(a) Complaint. Within 30 days after receiving the notice of docketing, the appellant shall file a complaint with a simple, concise, and direct statement of the factual basis for each claim and the amount in controversy. Alternatively, the appellant or the Board may designate as a complaint the notice of appeal, a claim submission, or any other document containing the information required in a complaint. The Board may in its discretion order a respondent asserting a claim to file a complaint.

(b) Answer. Within 30 days after receiving the complaint or a designation of a complaint, the respondent (or the appellant, if so ordered) shall file an answer stating in simple, concise, and direct terms its responses to the allegations of the complaint and any affirmative defenses it chooses to assert.



# Civilian Board of Contract Appeals

## **RULE 3 COMPUTING AND EXTENDING TIME**

(a) Computing time. Consistent with Rule 6 of the Federal Rules of Civil Procedure: In computing any time period, omit the day of the event from which the period begins to run. Omit nonbusiness days only if the period is less than 11 days; otherwise include them. A period must end on a business day. If a computed period would otherwise end on a nonbusiness day, it ends on the next business day.

## **RULE 4 APPEAL FILE**

(a) Filing. Within 30 days after receiving the Board's docketing notice, the respondent shall file and serve all documents relevant to the appeal, including:

- (1) The contracting officer's decision on the claim;
- (2) The contract, including all pertinent specifications, amendments, plans, drawings, and incorporated proposals or parts thereof;
- (3) All correspondence between the parties relevant to the appeal;
- (4) The claim with any certification;
- (5) Relevant affidavits, witness statements, or transcripts of testimony taken before the appeal;
- (6) All documents relied on by the contracting officer to decide the claim; and
- (7) Relevant internal memoranda, reports, and notes.

## **RULE 5 APPEARING; NOTICE OF APPEARANCE**

(a) Appearing before the Board.

- (1) Appellant; petitioner; applicant. An appellant, petitioner, or applicant may appear before the Board through an attorney. An individual appellant, petitioner, or applicant may appear for himself or herself. A corporation, trust, or association may appear by one of its officers. A limited liability corporation, partnership, or joint venture may appear by one of its members. Each individual appearing on behalf of an appellant, petitioner, or applicant must have legal authority to appear.

## **RULE 6 PLEADINGS; AMENDING PLEADINGS**

(a) Complaint. Within 30 days after receiving the notice of docketing, the appellant shall file a complaint with a simple, concise, and direct statement of the factual basis for each claim and the amount in controversy. Alternatively, the appellant or the Board may designate as a complaint the notice of appeal, a claim submission, or any other document containing the information required in a complaint. The Board may in its discretion order a respondent asserting a claim to file a complaint.

(b) Answer. Within 30 days after receiving the complaint or a designation of a complaint, the respondent (or the appellant, if so ordered) shall file an answer stating in simple, concise, and direct terms its responses to the allegations of the complaint and any affirmative defenses it chooses to assert.

# Civilian Board of Contract Appeals

## **RULE 7 SERVICE OF DOCUMENTS**

A party filing any document not submitted in camera (see Rule 9(d)(2)) shall send a copy to the other party by the same method as used for the filing or by a faster method. EDS automatically serves documents on parties with active EDS accounts to whom the Clerk has granted matter-specific access. For any documents not filed in EDS, including appeal file exhibits, the parties shall serve such documents. Parties shall certify to the Board:

- (a) The method of filing; and
- (b) The recipient's physical address or email address when filing outside of EDS. The Board may consider a document not served or not properly filed if served in a manner inconsistent with this rule.

## **RULE 8 MOTIONS**

(a) Generally. A party may make a motion for a Board action orally on the record in the presence of the other party or in a written filing. A written motion shall be a document titled as a motion and shall state the relief sought and the legal basis (see Rule 23(b)). Except for joint or dispositive motions, all motions shall represent that the movant tried to resolve the motion with the other party before filing. The Board may hold oral argument on a motion.

(b) Jurisdictional motions. A party challenging the Board's jurisdiction should file such a motion promptly.

## Civilian Board of Contract Appeals

### ***YUANMING ZHANG v. GENERAL SERVICES ADMINISTRATION*** **CBCA 8787**

On April 10, 2026, Mr. Zhang filed his emergency motion to compel, seeking to require GSA to produce responses to various document production requests that he had recently served. The requested documents include vehicle maintenance and usage files from another agency, the Department of the Interior’s Fish and Wildlife Service (FWS), which was apparently the user agency of the vehicle that Mr. Zhang purchased. Less than an hour after Mr. Zhang filed his motion to compel, GSA filed its response to the motion, and, less than fifteen minutes after that, Mr. Zhang filed a reply.

Mr. Zhang subsequently provided the Board with a copy of an email that he had sent to GSA counsel on February 12, 2026, in which he had asked GSA to provide him with the following documents:

#### Decision

Mr. Zhang’s motion to compel is **GRANTED**. GSA may have until May 18, 2026, to submit responses to Mr. Zhang’s document production requests, and it shall file any documents produced with the Board as supplements to the Rule 4 appeal file. In preparing its responses, GSA shall work to attempt to obtain the FWS’s cooperation in providing documents from the FWS’s records responsive to Mr. Zhang’s production requests. If GSA is unable to obtain the FWS’s cooperation, GSA shall, no later than May 15, file an affidavit

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<sup>3</sup>

Although GSA suggests that Mr. Zhang could submit a Freedom of Information Act (FOIA) request to the FWS, “the Board process does not require the use of FOIA as a substitute for discovery.” *Shawn Montee, Inc.*, AGBCA 2003-132-1, et al., 07-1 BCA ¶ 33,462, at 165,881 (2006).

## Civilian Board of Contract Appeals

### ***FOUR LLC v. DEPARTMENT OF AGRICULTURE CBCA 8468***

Respondent, the Department of Agriculture, has filed a motion to dismiss this appeal for failure to state a claim, arguing that, as a matter of law, the agency's Digital Infrastructure Services Center (DISC) cannot be held responsible in monetary damages for the actions of another agency, the Federal Emergency Management Agency (FEMA). DISC awarded and managed a task order to appellant, Four LLC (Four), upon behalf of FEMA. Through DISC's task order, Four supplied licenses for a particular brand of software not to DISC, but to FEMA.<sup>1</sup> Four alleges that, through a bilateral modification to the original task order, DISC agreed that, if DISC did not exercise both of the one-year extension options in the task order, the Government would not use the software or replace it with a functional equivalent for the remainder of what would have been the full term (including options) of the task order. DISC did not exercise the second one-year option because FEMA, through its own procurement office, obtained replacement software through another contractor. Four considers FEMA's act of obtaining replacement software a breach of the task order provision.

analyze contract language for ambiguities). Nevertheless, because it is clear that Four's theory of liability is breach of warranty, based upon an alleged contractual agreement creating the warranty, rather than an agency theory, we must deny DISC's motion to dismiss.

#### Decision

For the foregoing reasons, DISC's motion to dismiss for failure to state a claim is **DENIED**.

# Civilian Board of Contract Appeals

## **RULE 9 RECORD; CONTENT AND ACCESS**

(a) Record for decision. The record on which the Board will decide a case includes the following:

- (1) Evidence. Evidence in a case includes:
  - (i) Rule 4 appeal file exhibits other than those to which an objection is

## **RULE 10 ADMISSIBILITY OF EVIDENCE**

The Board may in its discretion receive any evidence to which no party objects. In ruling on evidentiary objections, the Board is guided but not bound by the Federal Rules of Evidence, except that the Board generally admits hearsay unless the Board finds it unreliable.

## **RULE 11 CONFERENCES**

The Board may order a conference of the parties for any purpose. Conferences are usually telephonic and are rarely recorded or transcribed. No one may record a conference by any means without Board approval. If the Board issues a memorandum or order memorializing a conference, a party has 5 days from receipt of the memorandum or order to object in writing to the memorialization.

## **RULE 12 STAYS AND DISMISSALS**

(a) Stays. The Board may stay a case for a specific duration, or until a specific event, for good cause.

(b) Dismissals.

(1) Generally. The Board may dismiss a case or part of a case either on motion of a party or after permitting a response to an order to show cause.

(2) Voluntary dismissal. Subject to Rule 12(b)(3), the Board will dismiss all or part of a case on the terms requested if the appellant, petitioner, or applicant moves for dismissal with prejudice or moves jointly with the respondent for dismissal with or without prejudice.

(3) For lack of jurisdiction. If the Board finds that it lacks jurisdiction to decide all or part of a case, the Board will dismiss without prejudice the case or the part of the case, regardless of the parties' positions on jurisdiction or dismissal.

(4) For failure to prosecute. The Board may dismiss all or part of a case for failure to prosecute.

(5) Prejudice. Except for dismissals for lack of jurisdiction, dismissals are with prejudice unless a Board order or other applicable law provides otherwise.



# Civilian Board of Contract Appeals

## **RULE 13 DISCOVERY GENERALLY**

(a) Methods. Parties may obtain discovery by depositions, interrogatories, requests for production, and requests for admission.

(b) Scope. Unless otherwise ordered, the scope of discovery is the same as under Rule 26(b)(1) of the Federal Rules of Civil Procedure.

(c) Limits. The Board may limit the frequency or extent of discovery for a reason stated in Rule 26(b)(2) of the Federal Rules of Civil Procedure.

## **RULE 14 INTERROGATORIES; REQUESTS FOR PRODUCTION; REQUESTS FOR ADMISSION**

(a) Generally. Interrogatories, requests for production, requests for admission, and responses thereto shall be in writing and served on the other party.

(b) Interrogatories. Interrogatories shall be answered or objected to separately in writing, under signed oath, within 30 days of service. A party may answer an interrogatory

## **RULE 15 DEPOSITIONS**

(a) Generally. Unless otherwise ordered, parties may take depositions after service of the answer. If the parties agree in writing on the deponent, time, place, recording method, and maximum duration of a deposition, no formal deposition notice is needed. The Board may order a deposition on motion under Rule 8 or by subpoena under Rule 16.

(b) Use. Parties may use deposition testimony in a case to the extent that would be permitted by Rule 32(a) of the Federal Rules of Civil Procedure.

## **RULE 16 SUBPOENAS**

(a) Expectation of cooperation in lieu of subpoena. Subpoenas should rarely be necessary, as the Board expects parties to respond cooperatively to discovery requests and to try in good faith to secure the cooperation of third parties who have or may have evidence responsive to discovery requests.



# Civilian Board of Contract Appeals

## **RULE 17 EXHIBITS**

(a) Marking exhibits. Unless otherwise ordered, parties shall, to the fullest extent practicable, submit exhibits for inclusion in the appeal file before a hearing starts under Rule 20 or before the first brief is filed when a case is submitted on the written record under Rule 19. Parties shall mark any exhibits offered in evidence thereafter as sequential additions to the appeal file. Such exhibits shall become part of the appeal file if admitted as evidence.

## **RULE 18 ELECTION OF HEARING OR RECORD SUBMISSION**

(a) Generally. The Board will hold a hearing in a case if the Board must find facts and either party elects a hearing. A party may elect to submit its case for decision on the written record under Rule 19. The presiding judge will set the deadline for an election under this rule.

(b) Hybrid election. A party may elect to submit its case on the written record under Rule 19 and also elect to appear at a hearing, solely to cross-examine the other party's witnesses and to object to evidence offered at the hearing.

## **RULE 19 RECORD SUBMISSION WITHOUT A HEARING**

(a) Generally. If a party elects to submit its case on the record without a hearing, the Board will set a schedule for the parties to complete the evidentiary record and file briefs.

## **RULE 20 SCHEDULING HEARINGS**

(a) Generally. The Board will set the time, place, duration, and subject matter of a hearing in a written order after consulting with the parties.

(b) Subject matter. The Board may schedule for hearing all or some of the claims or issues in a case, or all or some of the claims, issues, or questions of fact or law common to more than one case.

(c) Unexcused absence. If a party fails without good excuse to appear at a hearing of which it received notice under this rule, the Board will deem that party to have elected to submit its case on the record under Rule 19.



# Civilian Board of Contract Appeals

## **RULE 21 HEARING PROCEDURES**

(a) Generally. The Board generally holds hearings in public hearing rooms. Except as necessary under a protective order or in camera procedures, hearings are open to the public. The Board entrusts the conduct of hearings to the discretion of the presiding judge.

## **RULE 22 TRANSCRIPTS**

The Board arranges transcription of hearings, other than hearings under the small claims procedure of Rule 52. The Board may, but generally does not, arrange transcription of conferences or other proceedings. No one may record, either in person or virtually, or transcribe a Board proceeding without the Board's permission. The Board may order or acknowledge corrections to an official transcript. Each party is responsible for obtaining its own copy of a transcript.

## **RULE 23 BRIEFS**

(a) Generally. The Board may order or invite briefs on any issue in a case at any time. Briefs shall be formatted for 8.5 by 11-inch paper, double spaced, with body and footnote text no smaller than 13 point.

(b) Prehearing, post-hearing, and other briefs. Prehearing and post-hearing briefs, briefs filed under Rule 19, and briefs on non-procedural motions shall cite record evidence for factual statements and legal authority for legal arguments.

## **RULE 24 CLOSING THE RECORD**

(a) Closing the evidentiary record. Unless otherwise ordered, the evidence as defined in Rule 9(a)(1) is closed at the end of a hearing under Rule 20 or at the start of merits briefing when a case is submitted on the record under Rule 19.

## **RULE 25 DECISIONS AND SETTLEMENTS**

(a) Decisions. The Board issues decisions in writing, except as allowed by Rule 52. The Board will send a copy of a decision to each party, requesting confirmation of receipt (see Rule 1), and will post the decision on its website. If a decision reserves any part of a case for later proceedings, it is conclusive as to the matters it resolves, except as provided in Rules 26 and 28.



# Civilian Board of Contract Appeals

## **RULE 26 RECONSIDERATION**

(a) Grounds. The Board may on motion reconsider a decision or order for a reason recognized in Rule 59 of the Federal Rules of Civil Procedure. Arguments and evidence previously presented are not grounds for reconsideration.

(b) Time limit for motion. A party may move for reconsideration of a decision or order on an appeal or petition within 30 days after that party receives the decision or order. A party may move for reconsideration of a decision or order on an application within 7 days after receiving the decision or order. The Board does not extend these time limits absent good cause or if the decision has become final as a matter of law.

(c) Effect of motion. A pending reconsideration motion does not affect any obligation to comply with a decision or order.

## **RULE 27 RELIEF FROM DECISION OR ORDER**

(a) Grounds. The Board may grant relief, for a reason recognized in Rule 60 of the Federal Rules of Civil Procedure, from a decision or order that, alone or in conjunction with prior decisions or orders, resolves all of an appeal, petition, or application.

## **RULE 28 FULL BOARD CONSIDERATION**

(a) By motion. The full Board may consider a decision or order when necessary to maintain uniformity of Board decisions or if the matter is exceptionally important. Motions for full Board consideration are disfavored and are decided by a majority of the Board. A party may move for full Board consideration within 10 days after that party receives the decision or order at issue. An order granting full Board consideration will include concurring or dissenting opinions, if any.

## **RULE 29 CLERICAL MISTAKES; HARMLESS ERROR**

(a) Clerical mistakes. The Board may correct clerical mistakes while a case is pending, or within 60 days thereafter if a decision has not been appealed. If a Board decision is appealed, the Board may correct clerical mistakes only by leave of the appellate Court.

## **RULE 30 AWARD OF FEES AND OTHER EXPENSES**

(a) Application for fees and other expenses. A party in an appeal may apply for an award of fees and other expenses as permitted under EAJA or any other provision that may entitle the party to such an award.

## **RULE 31 PAYMENT OF AWARD**

When permitted by law, Board awards under contracts may be paid from the permanent indefinite judgment fund under 31 U.S.C. 1304 and 31 CFR part 256. An EAJA award is paid from funds of the respondent.

## **RULE 32 APPEAL FROM BOARD DECISION**

(a) Notice. A party filing a notice of appeal with the United States Court of Appeals for the Federal Circuit (or with a district court in an admiralty case) shall provide a copy of the notice to the Board.

# Civilian Board of Contract Appeals

## **RULE 33 REMAND FROM APPELLATE COURT**

If a Court remands a case to the Board for further proceedings, each party shall, within 30 days of receipt of the appellate mandate, recommend procedures to comply with the remand order. The Board will then issue an order on further proceedings.

## **RULE 34 EX PARTE COMMUNICATIONS**

No member of the Board or of the Board's staff will communicate with a party about any material issue in a case outside of the presence of the other party, and no one shall attempt such communications on behalf of a party. This rule does not bar such communications about the Board's administrative functions or procedures.

## **RULE 35 STANDARDS OF CONDUCT; SANCTIONS**

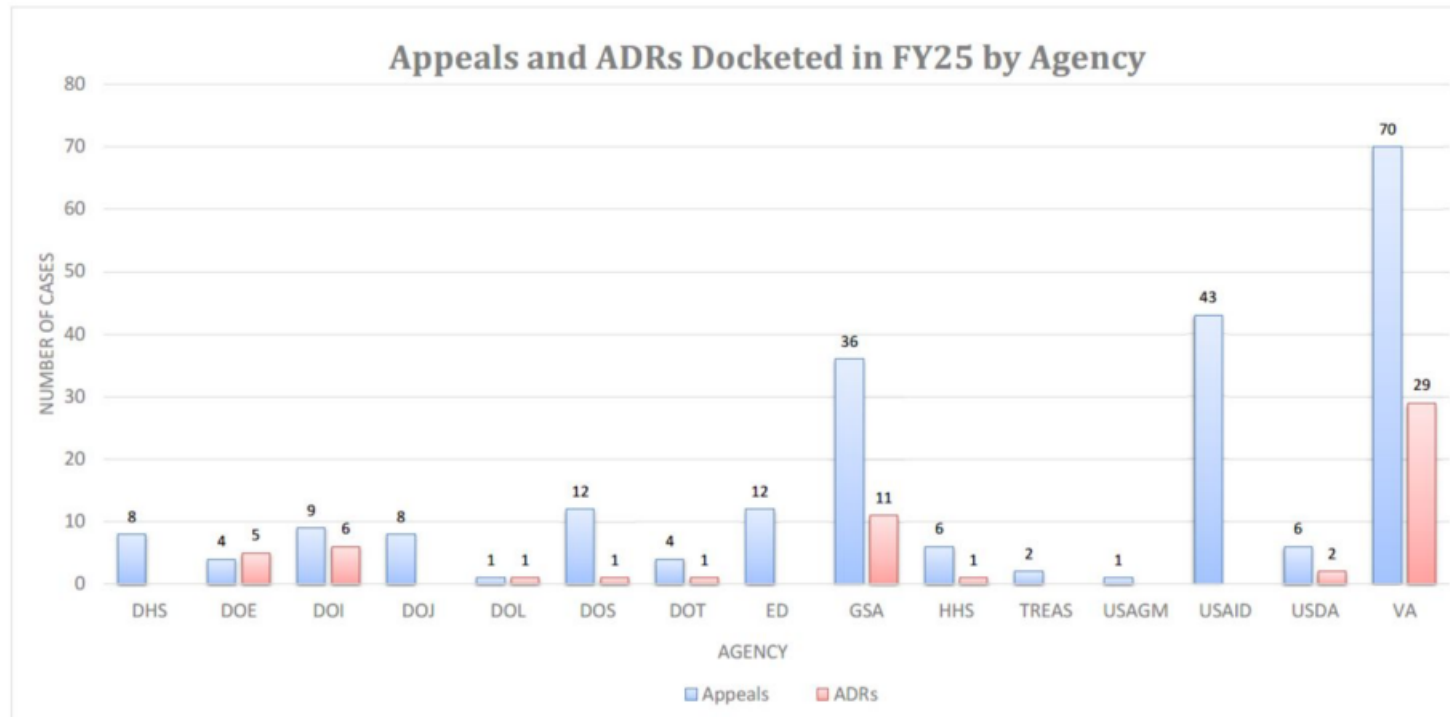
(a) Standards of conduct. All parties and their representatives, attorneys, and any expert or consultant retained by them or their attorneys shall obey directions and orders of the Board and adhere to standards of conduct applicable to such parties and persons. Standards applying to an attorney include the rules of professional conduct and ethics of the jurisdictions in which the attorney is licensed to practice, to the extent that those rules are relevant to conduct affecting the integrity of the Board, its process, or its proceedings.

## Civilian Board of Contract Appeals

	ADR	Appeal	Debt	EAJA	FCIC	FEMA	FMCSA	ISDA	Other	Petition	Rate	RELO	TRAV	Total
On docket at start of fiscal year	20	318*	2	0	0	35	3	16	0	1	0	19	4	418
Docketed	57	222	9	2	0	59	11	14	18	1	0	40	14	447
Resolved	45	165	9	2	0	56	8	9	13	1	0	47	13	368
Decision on merits	0	36	5	2	0	47	2	0	5	0	0	35	9	141
Granted	0	7	1	0	0	5	0	0	0	0	0	8	3	24
Granted-In-Part	0	15	0	2	0	8	2	0	0	0	0	5	0	32
Denied	0	14	4	0	0	34	0	0	5	0	0	22	6	85
Dismissals	0	129	4	0	0	9	6	9	1	1	0	12	4	175
Dismissed (voluntary)	0	114	4	0	0	9	6	9	1	1	0	8	4	156
Dismissed by decision	0	15	0	0	0	0	0	0	0	0	0	4	0	19
ADR Outcome	45	0	0	0	0	0	0	0	7	0	0	0	0	52
Fully Resolved	27	0	0	0	0	0	0	0	1	0	0	0	0	28
Partially Resolved	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Not Resolved	18	0	0	0	0	0	0	0	6	0	0	0	0	24
Pending at close of fiscal year	32	375	2	0	0	38	6	21	5	1	0	12	5	497
Net change in docket	12	57	0	0	0	3	3	5	5	0	0	-7	1	79
Interlocutory Decisions	0	16	0	0	0	0	0	0	0	0	0	0	0	16

\* This report corrects an FY24 reporting error in which 4 appeals were incorrectly reported as being resolved.

## Civilian Board of Contract Appeals



# U.S. Court of Federal Claims

REPORT OF THE U.S. COURT OF FEDERAL CLAIMS  
for the period  
10/1/2024 - 9/30/2025

Nature of suit	PENDING 10/1/24	FILED FY 25	REOPENED FY 25	DISPOSED FY 25	PENDING 9/30/25
Tax	122	177	1	104	196
Contract**	251	116	6	124	249
Civilian Pay	87	30	0	33	84
Military Pay	124	48	1	72	101
Common Carrier	4	0	0	3	1
Copyright/Patent	18	7	1	11	15
Native American	14	3	0	4	13
Oil Spill	0	0	0	0	0
Taking	1061	106	1	105	1063
Contract/Injunction	158	234	3	247	148
CLA Review	0	0	0	0	0
Miscellaneous	163	200	1	251	113
INCC Transfer	0	0	0	0	0
INFO Reward	0	1	0	0	1
Spent Nuclear Fuel	12	6	0	5	13
Unjust Conviction	7	15	0	18	4
<b>TOTAL *</b>	<b>2021</b>	<b>943</b>	<b>14</b>	<b>977</b>	<b>2001</b>

Not Legal Advice / For Educational Purposes Only

# Armed Services and Civilian Board of Contract Appeals

## Best Practices & Strategies

Documents All Issues Before Problems Start

Exercise Your Rights Under the Federal Acquisition Regulation (Monetary or Non-Monetary)

Be Litigation-Ready From Day 1

File a Comprehensive Claim and Request Specific Relief

Check the Rules and File Early

Avoid Motions To Dismiss

Use Rules to Your Advantage

# Armed Services and Civilian Board of Contract Appeals

## Best Practices & Strategies

Armed Services Board of Contract Appeals / Civilian Board of Contract Appeals or Court of Federal Claims?

ASBCA/CBCA	COFC
90 days	1 year
No Filing Fee	\$405 Filing Fee
Designed to be Less Formal	Federal Court – More Formal
Agency Counsel	Department of Justice
Administrative Judge Specializing in CDA Appeals	Federal Judge Appointed by The President
Less Formal Discovery	Discovery In Accordance with The Rules

# Additional Courses:

June 30, 2026  
12:00 p.m. ET

**Export Controls Compliance**



🕒 2026-06-30

The image shows three wooden crates stacked on a wooden deck. The top crate is labeled 'EXPORT'. The background is a soft-focus beach scene with a blue sky and ocean.

July 20, 2026  
12:00 p.m. ET

**Cybersecurity Compliance**



🕒 2026-07-20

The image features a dark background with green digital numbers and symbols falling like rain. A magnifying glass is positioned over the center, focusing on the text 'Cybersecurity Compliance'. A green light source is visible in the upper right corner.

July 30, 2026  
12:00 p.m. ET

**Trade Agreements Acts**




🕒 2026-07-30

The image shows two hands shaking in a firm grip, symbolizing a trade agreement. The background is a blurred cityscape with buildings and a warm, golden light.

August 27, 2026  
12:00 p.m. ET

**Freedom of Information Act and Privacy Act**



🕒 2026-08-27

The image shows a wooden gavel resting on a document titled 'FREEDOM OF INFORMATION ACT'. The background is a warm, orange-toned gradient.

September 28, 2026  
12:00 p.m. ET

**Artificial Intelligence in Federal Contracting:  
Risks, Obligations, and Opportunities**




🕒 2026-09-28

The image depicts a hand holding a glowing blue pen over a laptop keyboard. In the background, there is a computer monitor displaying a line graph and a glowing blue chip, representing artificial intelligence.

October 29, 2026  
12:00 p.m. ET

**Federal Contractor Rights in Intellectual Property**



🕒 2026-10-29

The image shows a document titled 'CONTRACT' and a glowing lightbulb, symbolizing intellectual property and legal rights. The background is a dark blue gradient.

# Thank you!



**Wojciech Kornacki**  
**Government Contract and Compliance Counsel,**  
**Of Counsel**  
**kornackiw@theodrewatson.com | 202.640-3023**



## 33.211 Contracting officer's decision.

(a) When a *claim* by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the *claim* is necessary, the *contracting officer shall*-

- (1) Review the facts pertinent to the *claim*;
- (2) Secure assistance from legal and other advisors;
- (3) Coordinate with the contract administration officer or *contracting office*, as appropriate; and
- (4) Prepare a written decision that *shall* include-
  - (i) A description of the *claim* or dispute;
  - (ii) A reference to the pertinent contract terms;
  - (iii) A statement of the factual areas of agreement and disagreement;
  - (iv) A statement of the *contracting officer's* decision, with supporting rationale;
  - (v) Paragraphs *substantially as follows*:

"This is the final decision of the *Contracting Officer*. You *may* appeal this decision to the agency board of contract appeals. If you decide to appeal, you *must*, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the agency board of contract appeals and provide a copy to the *Contracting Officer* from whose decision this appeal is taken. The notice *shall* indicate that an appeal is intended, reference this decision, and identify the contract by number.

With regard to appeals to the agency board of contract appeals, you *may*, solely at your election, proceed under the board's-

- (1) Small *claim* procedure for *claims* of \$50,000 or less or, in the case of a small business concern (as defined in the Small Business Act and regulations under that Act), \$150,000 or less; or
- (2) Accelerated procedure for *claims* of \$100,000 or less.

Instead of appealing to the agency board of contract appeals, you *may* bring an action directly in the *United States Court of Federal Claims* (except as provided in [41 U.S.C. 7102\(d\)](#), regarding Maritime Contracts) within 12 months of the date you receive this decision"; and

(vi) Demand for payment prepared in accordance with [32.604](#) and [32.605](#) in all cases where the decision results in a finding that the contractor is indebted to the Government.

(b) The *contracting officer shall* furnish a copy of the decision to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt. This requirement *shall* apply to decisions on *claims* initiated by or against the contractor.

(c) The *contracting officer shall* issue the decision within the following statutory time limitations:

- (1) For *claims* of \$100,000 or less, 60 days after receiving a written request from the contractor that

a decision be rendered within that period, or within a reasonable time after receipt of the *claim* if the contractor does not make such a request.

(2) For *claims* over \$100,000, 60 days after receiving a certified *claim*; provided, however, that if a decision will not be issued within 60 days, the *contracting officer shall* notify the contractor, within that period, of the time within which a decision will be issued.

(d) The *contracting officer shall* issue a decision within a reasonable time, taking into account-

(1) The size and complexity of the *claim*;

(2) The adequacy of the contractor's supporting data; and

(3) Any other relevant factors.

(e) The *contracting officer shall* have no obligation to render a final decision on any *claim* exceeding \$100,000 which contains a *defective certification*, 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.

(f) In the event of undue delay by the *contracting officer* in rendering a decision on a *claim*, the contractor *may* request the tribunal concerned to direct the *contracting officer* to issue a decision in a specified time period determined by the tribunal.

(g) Any failure of the *contracting officer* to issue a decision within the required time periods will be deemed a decision by the *contracting officer* denying the *claim* and will authorize the contractor to file an appeal or suit on the *claim*.

(h) The amount determined payable under the decision, less any portion already paid, *should* be paid, if otherwise proper, without awaiting contractor action concerning appeal. Such payment *shall* be without prejudice to the rights of either party.

**Parent topic:** [Subpart 33.2 - Disputes and Appeals](#)



## RULES

*of the*

ARMED SERVICES BOARD

OF CONTRACT APPEALS

*Approved 15 July 1963*  
*Revised 1 May 1969*  
*Revised 1 September 1973*  
*Revised 30 June 1980*  
*Revised 11 May 2011*  
*Revised 21 July 2014*

These rules and addendums are applicable to appeals processed under the Contract Disputes Act (CDA), 41 U.S.C. 7101-7109, and other appeals to the extent consistent with law. They apply to all appeals filed on or after 21 July 2014, and to those appeals filed before that date, unless that application is inequitable or unfair.

# PREFACE

## **I. JURISDICTION FOR CONSIDERING APPEALS**

The Armed Services Board of Contract Appeals (referred to herein as the Board) has jurisdiction to decide any appeal from a final decision of a contracting officer, pursuant to the Contract Disputes Act, 41 U.S.C. 7101-7109, or its Charter, 48 CFR Chap. 2, App. A, Pt. 1, relative to a contract made by the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the National Aeronautics and Space Administration or any other department or agency, as permitted by law.

## **II. LOCATION AND ORGANIZATION OF THE BOARD**

(a) The Board's address is Skyline Six, Room 703, 5109 Leesburg Pike, Falls Church, VA 22041-3208; telephone 703-681-8500 (general), 703-681-8502 (Recorder). The Board's facsimile number is 703-681-8535. The Board's Recorder's email address is [asbca.recorder@mail.mil](mailto:asbca.recorder@mail.mil). The Board's website address is <http://www.asbca.mil>.

(b) The Board consists of a Chairman, two or more Vice Chairmen, and other Members, all of whom are attorneys at law duly licensed by a state, commonwealth, territory, or the District of Columbia. Board Members are designated Administrative Judges.

(c) There are a number of divisions of the Board, established by the Chairman in such manner as to provide for the most effective and expeditious handling of appeals. The Chairman and a Vice Chairman act as members of each division. Hearings may be held by an Administrative Judge or by a duly authorized examiner. Except for appeals processed under the expedited or accelerated procedure (see Rules 12.2(c) and 12.3(c)), the decision of a majority of a division constitutes the decision of the Board, unless the Chairman refers the appeal to the Board's Senior Deciding Group (consisting of the Chairman, Vice Chairmen, all division heads, and the Judge who drafted the decision), in which event a decision of a majority of that group constitutes the decision of the Board. Appeals referred to the Senior Deciding Group are those of unusual difficulty or significant precedential importance, or that have occasioned serious dispute within the normal division decision process.

(d) The Board will to the fullest extent practicable provide informal, expeditious, and inexpensive resolution of disputes.

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# RULES

## Rule 1. Appeals

(a) Taking an Appeal—For appeals subject to the Contract Disputes Act, notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. The appellant (contractor) should also furnish a copy of the notice of appeal to the contracting officer. For appeals not subject to the Contract Disputes Act, the contractor should refer to the Disputes clause in its contract for the time period in which it must file a notice of appeal.

(1) Where the contractor has submitted a claim of \$100,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not provided a decision within that period, or where such a contractor request has not been made and the contracting officer has not issued a decision within a reasonable time, the contractor may file a notice of appeal as provided in paragraph (a) of this Rule, citing the failure of the contracting officer to issue a decision.

(2) Where the contractor has submitted a properly certified claim over \$100,000 to the contracting officer or has submitted a claim that involves no monetary amount, and the contracting officer, within 60 days of receipt of the claim, fails to issue a decision or fails to provide the contractor with a reasonable date by which a decision will be issued, and the contracting officer has failed to issue a decision within a reasonable time, the contractor may file a notice of appeal as provided in paragraph (a) of this Rule, citing the failure of the contracting officer to issue a decision.

(3) A reasonable time shall be determined by taking into account such factors as the size and complexity of the claim and the adequacy of the information provided by the contractor to support the claim.

(4) Where an appeal is before the Board pursuant to paragraph (a)(1) or (a)(2) of this Rule, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board.

(5) In lieu of filing a notice of appeal under paragraph (a)(1) or (a)(2) of this Rule, the contractor may petition the Board to direct the contracting officer to issue a decision in a specified period of time as determined by the Board.

(b) Contents of Notice of Appeal—A notice of appeal shall indicate that an appeal is being taken and should identify the contract by number, the department and/or agency involved in the dispute, the decision from which the appeal is taken, and the amount in dispute, if any. A copy of the contracting officer's final decision, if any, should be attached to the notice of appeal. The notice of appeal should be signed by the appellant or by the

appellant's duly authorized representative or attorney. The complaint referred to in Rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

(c) Docketing of Appeal—When a notice of appeal has been received by the Board, it will be docketed. The Board will provide a written notice of docketing to the appellant and to the Government.

## **Rule 2. Filing Documents**

(a) Documents may be filed with the Board by the following methods:

(1) Governmental Postal Service—Documents may be filed via a governmental postal service. Filing occurs when the document, properly addressed and with sufficient postage, is transferred into the custody of the postal service. Contact the Recorder before submitting classified documents.

(2) Courier—Documents may be filed via courier. Filing occurs when the document is delivered to the Board. Contact the Recorder before submitting classified documents.

(3) Electronic Mail—Documents, except appeal files submitted pursuant to Rule 4, hearing exhibits, classified documents, and documents submitted *in camera* or under a protective order, may be filed via electronic mail (email). Email attachments should be in PDF format and the attachments may not exceed 10 megabytes total. The transmittal email should include the ASBCA docket number(s), if applicable, and the name of the appellant in the "Subject:" line. Filing occurs upon receipt by the Board's email server. When a document is successfully filed via email, the document should not also be submitted by any other means, unless so directed by the Board. Submit emails to: [asbca.recorder@mail.mil](mailto:asbca.recorder@mail.mil).

(4) Facsimile Transmission—Documents, except appeal files submitted pursuant to Rule 4, hearing exhibits, classified documents, and documents submitted *in camera* or under a protective order, may be filed via facsimile (fax) machine. Due to equipment constraints, transmissions over 10 pages should not be made absent Board permission. Filing occurs upon receipt by the Board. When a document is successfully filed via fax, the document should not also be submitted by any other means, unless so directed by the Board.

(b) Copies to Opposing Party—The party filing any document with the Board will send a copy to the opposing party unless the Board directs otherwise, noting on the document filed with the Board that a copy has been so furnished.

### **Rule 3. Service Upon Other Parties**

Documents may be served personally or by mail, addressed to the party upon whom service is to be made, unless the parties have agreed to an alternate means of service. Subpoenas shall be served as provided in Rule 22.

### **Rule 4. Preparation, Content, Organization, Forwarding, and Status of Appeal File**

(a) Duties of the Government—Within 30 days of notice that an appeal has been filed, the Government shall transmit to the Board and the appellant an appeal file consisting of the documents the Government considers relevant to the appeal, including:

- (1) The decision from which the appeal is taken;
- (2) The contract, including pertinent specifications, amendments, plans, and drawings;
- (3) All correspondence between the parties relevant to the appeal, including any claim in response to which the decision was issued.

The Government's appeal file may be supplemented at such times as are fair and reasonable and as ordered by the Board.

(b) Duties of the Appellant—Within 30 days after receipt of a copy of the Government's appeal file, the appellant shall transmit to the Board and the Government any documents not contained therein that the appellant considers relevant to the appeal. Appellant's appeal file may be supplemented at such times as are fair and reasonable and as ordered by the Board.

(c) Organization of Appeal File—Documents in the appeal file may be originals or legible copies, and shall be arranged in chronological order where practicable, tabbed with sequential numbers, and indexed to identify the contents of the file. Any document without internal page numbers shall have page numbers added. All documents must be in English or include an English translation. Documents shall be submitted in 3-ring binders, with spines not wider than 3 inches wide, with labels identifying the name of the appeal, ASBCA number and tab numbers contained in each volume, on the front and spine of each volume. Each volume shall contain an index of the documents contained in the entire Rule 4 submission.

(d) Status of Documents in Appeal File—Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to the admissibility of a particular document reasonably in advance of hearing or, if there is no hearing, of settling the record, or in any case as ordered by the Board. If such objection is made, the Board will constructively remove the document from the appeal file and permit the party offering the

document to move its admission as evidence in accordance with Rules 10, 11, and 13.

### **Rule 5. Time, Computation, and Extensions**

(a) Where practicable, actions should be taken in less time than the time allowed. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time should be in writing and indicate that the other party was contacted to seek its concurrence.

(b) In computing any period of time, the day of the event from which the designated period of time begins to run will not be included, but the last day of the period will be included unless it is a Saturday, Sunday, or a Federal holiday, in which event the period will run to the next business day.

### **Rule 6. Pleadings**

(a) Appellant—Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board a complaint setting forth simple, concise, and direct statements of each of its claims. The complaint shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, if any. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. Should the complaint not be timely received, the appellant's claim and notice of appeal may be deemed to set forth its complaint if, in the opinion of the Board, the issues before the Board are sufficiently defined, and the parties will be notified.

(b) Government—Within 30 days from receipt of the complaint, or the aforesaid notice from the Board, the Government shall file with the Board an answer thereto. The answer shall admit or deny the allegations of the complaint and shall set forth simple, concise, and direct statements of the Government's defenses to each claim asserted by the appellant, including any affirmative defenses. Should the answer not be timely received, the Board may enter a general denial on behalf of the Government, and the parties will be notified.

(c) Foreign Law—A party who intends to raise an issue concerning the law of a foreign country shall give notice in its pleadings or other reasonable written notice. The Board, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rules 10, 11, or 13. The determination of foreign law shall be treated as a ruling on a question of law.

(d) Further Pleadings—The Board upon its own initiative or upon motion may order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The Board may permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be

treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided however, that the objecting party may be granted an opportunity to meet such evidence.

## **Rule 7. Motions**

(a) Motions Generally—The Board may entertain and rule upon motions and may defer ruling as appropriate. The Board will rule on motions so as to secure, to the fullest extent practicable, the informal, expeditious, and inexpensive resolution of appeals. All motions should be filed as separate documents with an appropriate heading describing the motion. Oral argument on motions is subject to the discretion of the Board.

(b) Jurisdictional Motions—Any motion addressed to the jurisdiction of the Board should be promptly filed. An evidentiary hearing to address disputed jurisdictional facts will be afforded on application of either party or by order of the Board. The Board may defer its decision on the motion pending hearing on the merits. The Board may at any time and on its own initiative raise the issue of its jurisdiction, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

(c) Summary Judgment Motions—

(1) To facilitate disposition of such a motion, the parties should adhere to the following procedures. Where the parties agree that disposition by summary judgment or partial summary judgment is appropriate, they may file a stipulation of all material facts necessary for the Board to rule on the motion. Otherwise, the moving party should file with its motion a “Statement of Undisputed Material Facts,” setting forth the claimed undisputed material facts in separate, numbered paragraphs. The non-moving party should file a “Statement of Genuine Issues of Material Fact,” responding to each numbered paragraph proposed, demonstrating, where appropriate, the existence of material facts in dispute and if appropriate propose additional facts. The moving party and the non-moving party should submit a memorandum of law supporting or opposing summary judgment.

(2) In deciding motions for summary judgment, the Board looks to Rule 56 of the Federal Rules of Civil Procedure for guidance. The parties should explicitly state and support by specific evidence all facts and legal arguments necessary to sustain a party’s position. Each party should cite to the record and attach any additional evidence upon which it relies (*e.g.*, affidavits, declarations, excerpts from depositions, answers to interrogatories, admissions). The Board may accept a fact properly proposed and supported by one party as undisputed, unless the opposing party properly responds and establishes that it is in dispute.

(d) Response to Motions—A non-moving party has 30 days from receipt of a motion to file its response, unless a different period is ordered by the Board. A moving party has 30 days from receipt of a non-moving party’s response to file a reply, unless a different period is ordered by the Board.

## **Rule 8. Discovery**

(a) General Policy and Protective Orders—The parties are encouraged to engage in voluntary discovery procedures. Within 45 days after the pleadings have been filed, the parties must confer concerning each party’s discovery needs, including the scheduling of discovery and the production of electronically stored information. Absent stipulation or a Board order, no discovery may be served prior to this conference. Any motion pertaining to a discovery dispute shall include a statement that the movant has in good faith attempted to resolve the discovery dispute without involvement of the Board. In connection with any discovery procedure, the Board may issue orders to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time, and place for discovery, and provisions for governing the disclosure of information or documents. Any discovery under this Rule shall be subject to the provisions of Rule 16 with respect to sanctions.

(b) Depositions—When Permitted—Subject to paragraph (a) of this Rule, a party may take, or the Board may upon motion order the taking of, testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The Board expects the parties to make persons under their control available for deposition. The motion for an order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(1) Depositions—Orders—The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(2) Depositions—Use as Evidence—No testimony taken by deposition shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent can testify at the hearing. The deposition may be used to contradict or impeach the testimony of the deponent given at a hearing. In cases submitted on the record, the Board may receive depositions to supplement the record.

(3) Depositions—Expenses—Each party shall bear its own expenses associated with the taking of any deposition, absent an agreement by the parties or a Board order to the contrary.

(4) Depositions—Subpoenas—Where appropriate, a party may request the issuance of a subpoena under the provisions of Rule 22.

(c) Interrogatories, Requests for Admissions, Requests for Production—Subject to paragraph (a) of this Rule, a party may serve, or the Board may upon motion order:

(1) Written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 45 days after service;

(2) A request for the admission of specified facts and/or of the authenticity of any documents, to be answered or objected to within 45 days after service, the factual statements and/or the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request; and

(3) A request for the production, inspection, and copying of any documents, electronic or otherwise, or objects, not privileged, which reasonably may lead to the discovery of admissible evidence, to be answered or objected to within 45 days after service. The Board may allow a shorter or longer time.

## **Rule 9. Pre-Hearing or Pre-Submission Conference**

The Board may, upon its own initiative, or upon the request of either party, arrange a conference or order the parties to appear before an Administrative Judge or examiner for a conference to address any issue related to the prosecution of the appeal.

## **Rule 10. Hearings**

(a) Where and When Held—Hearings will be held at such times and places determined by the Board to best serve the interests of the parties and the Board.

(b) Unexcused Absence—The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the evidentiary record will consist solely of the evidence of record at the conclusion of the hearing, except as ordered otherwise by the Board.

(c) Nature of Hearings—Hearings shall be as informal as may be reasonable and appropriate under the circumstances. The parties may offer such evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence or in the sound discretion of the presiding Administrative Judge or examiner. The Federal Rules of Evidence are not binding on the Board but may guide the Board's rulings. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(d) Examination of Witnesses—Witnesses will be examined orally under oath or affirmation, unless the presiding Administrative Judge or examiner shall otherwise order. If the testimony of a witness is not given under oath or affirmation, the Board may advise the witness that his or her testimony may be subject to any provision of law imposing penalties for knowingly making false representations in connection with claims.

(e) Interpreters—In appropriate cases, the Board may order that an interpreter be used. An interpreter must be qualified and must be placed under oath or affirmation to give a complete and true translation.

(f) Transcripts—Testimony and argument at hearings will be reported verbatim, unless the Board otherwise orders. The Board will contract for a reporter. No other recordings of the proceedings will be made.

## **Rule 11. Submission Without a Hearing**

(a) Either party may elect to waive a hearing and to submit its case upon the record. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, declarations, depositions, admissions, answers to interrogatories, and stipulations may be employed in addition to the Rule 4 file if moved and accepted into evidence. Such submissions may be supplemented by briefs. The Board may designate, with notice to the parties, any document to be made part of the record.

(b) As appropriate, the Board may also rely on pleadings, prehearing conference memoranda, orders, briefs, stipulations and other documents contained in the Board's file.

(c) Except as the Board may otherwise order, no evidence will be received after notification by the Board that the record is closed.

(d) The weight to be given to any evidence will rest within the discretion of the Board. The Board may require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

(e) The record will at all reasonable times be available for inspection by the parties at the offices of the Board.

## **Rule 12. Optional Small Claims (Expedited) and Accelerated Procedures**

### 12.1 Elections to Utilize Small Claims (Expedited) and Accelerated Procedures

(a) In appeals where the amount in dispute is \$50,000 or less, or in the case of a small business concern (as defined in the Small Business Act and regulations under that Act),

\$150,000 or less, the appellant may elect to have the appeal processed under a Small Claims (Expedited) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in section 12.2 of this Rule. An appellant may elect the Accelerated procedure rather than the Small Claims (Expedited) procedure for any appeal where the amount in dispute is \$50,000 or less.

(b) In appeals where the amount in dispute is \$100,000 or less, the appellant may elect to have the appeal processed under an Accelerated procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in section 12.3 of this Rule.

(c) The appellant's election of either the Small Claims (Expedited) procedure or the Accelerated procedure shall be made by written notice within 60 days after receipt of notice of docketing, unless such period is extended by the Board for good cause. The election, once made, may not be changed or withdrawn except with permission of the Board and for good cause.

(d) The 45-day conference required by Rule 8(a) does not apply to Rule 12 appeals.

## 12.2 Small Claims (Expedited) Procedure

(a) In appeals proceeding under the Small Claims (Expedited) procedure, the following time periods shall apply:

(1) Within 10 days from the Government's receipt of the appellant's notice of election of the Small Claims (Expedited) procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any. Any other documents required under Rule 4 shall be submitted in accordance with times specified in that Rule unless the Board otherwise directs.

(2) Within 15 days after the Board has acknowledged receipt of the appellant's notice of election, the assigned Administrative Judge should take the following actions, if feasible, in a pre-hearing conference:

- (i) Identify and simplify the issues;
- (ii) Establish a simplified procedure, including discovery, appropriate to the particular appeal involved;
- (iii) Determine whether either party elects a hearing, and if so, fix a time and place therefor; and

(iv) Establish an expedited schedule for the timely resolution of the appeal.

(b) Pleadings, discovery, and other prehearing activity will be allowed only as consistent with the requirement to conduct a hearing, or if no hearing is elected, to close the record on a date that will allow the timely issuance of the decision. The Board may shorten time periods prescribed or allowed under these Rules as necessary to enable the Board to decide the appeal within the 120-day period.

(c) Written decisions by the Board in appeals processed under the Small Claims (Expedited) procedure will be short and will contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge. If there has been a hearing, the Administrative Judge presiding at the hearing may at the conclusion of the hearing and after entertaining such oral argument as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties an authenticated copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under Rule 20.

(d) A decision under Rule 12.2 shall have no value as precedent, and in the absence of fraud, shall be final and conclusive and may not be appealed or set aside.

### 12.3 Accelerated Procedure

(a) In appeals proceeding under the Accelerated procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board may shorten time periods prescribed or allowed under these Rules as necessary to enable the Board to decide the appeal within the 180-day period.

(b) Within 30 days after the Board has acknowledged receipt of the appellant's notice of election, the assigned Administrative Judge should take the following actions, if feasible, in a pre-hearing conference:

- (1) Identify and simplify the issues;
- (2) Establish a simplified procedure, including discovery, appropriate to the particular appeal involved;
- (3) Determine whether either party elects a hearing, and if so, fix a time and place therefor; and
- (4) Establish an accelerated schedule for the timely resolution of the appeal.

(c) Written decisions by the Board in appeals processed under the Accelerated procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge with the concurrence of a Vice Chairman, or by a majority among these two and the Chairman in case of disagreement.

#### 12.4 Motions for Reconsideration in Rule 12 Appeals

Motions for reconsideration of appeals decided under either the Small Claims (Expedited) procedure or the Accelerated procedure need not be decided within the original 120-day or 180-day limit, but all such motions will be processed and decided promptly so as to be consistent with the intent of this Rule.

### **Rule 13. Settling the Record in Appeals with a Hearing**

(a) The record upon which the Board's decision will be rendered consists of the documents admitted under Rule 4, the documents admitted into evidence as hearing exhibits, together with the hearing transcript. The Board may designate with notice to the parties, any document to be made part of the record.

(b) As appropriate, the Board may also rely on pleadings, pre-hearing conference memoranda, orders, briefs, stipulations, and other documents contained in the Board's file.

(c) Except as the Board may otherwise order, no evidence will be received after completion of an oral hearing.

(d) The weight to be given to any evidence will rest within the discretion of the Board. The Board may require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

(e) The record will at all reasonable times be available for inspection by the parties at the offices of the Board.

### **Rule 14. Briefs**

(a) Pre-Hearing Briefs—The Board may require the parties to submit pre-hearing briefs. If the Board does not require pre-hearing briefs, either party may, upon appropriate and sufficient notice to the other party, furnish a pre-hearing brief to the Board.

(b) Post-Hearing Briefs—Post-hearing briefs may be submitted upon such terms as may be directed by the presiding Administrative Judge or examiner at the conclusion of the hearing.

## **Rule 15. Representation**

(a) An individual appellant may represent his or her interests before the Board; a corporation may be represented by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country. Anyone representing an appellant shall file a written notice of appearance with the Board.

(b) The Government shall be represented by counsel. Counsel for the Government shall file a written notice of appearance with the Board.

## **Rule 16. Sanctions**

If any party fails to obey an order issued by the Board, the Board may impose such sanctions as it considers necessary to the just and expeditious conduct of the appeal.

## **Rule 17. Dismissal or Default for Failure to Prosecute or Defend**

Whenever the record discloses the failure of either party to file documents required by these Rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed with prejudice for failure to prosecute. In the case of a default by the Government, the Board may issue an order to show cause why the Board should not act thereon pursuant to Rule 16. If good cause is not shown, the Board may take appropriate action.

## **Rule 18. Suspensions; Dismissal Without Prejudice**

(a) The Board may suspend the proceedings by agreement of the parties for settlement discussions, or for good cause shown.

(b) In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may dismiss such appeals from its docket for a period of time without prejudice to their restoration. Unless either party or the Board moves to reinstate the appeal within the time period set forth in the dismissal order, or if no time period is set forth, within one year from the date of the dismissal order, the dismissal shall be deemed to be with prejudice.

## **Rule 19. Decisions**

(a) Decisions of the Board will be made in writing and authenticated copies of the decision will be sent simultaneously to both parties. All orders and decisions, except those as may be required by law to be held confidential, will be available to the public. Decisions of the Board will be made solely upon the record.

(b) Any monetary award shall be promptly paid.

(c) In awards that may be paid from the Judgment Fund, 31 U.S.C. 1304, the Recorder will forward the required forms to each party with the decision. If the parties do not contemplate an appeal or motion for reconsideration, they will execute the forms indicating that no judicial review will be sought. The Government agency will forward the required forms with a copy of the decision to the Department of the Treasury for certification of payment.

(d) When the parties settle an appeal in favor of the appellant, they may file with the Board a stipulation setting forth the amount of the settlement due to the appellant. By joint motion, the parties may request that the Board issue a decision in the nature of a consent judgment, awarding the stipulated amount to the appellant. These decisions will be processed in accordance with paragraph (c) of this Rule.

(e) After a decision has become final the Board may, upon request of a party and after notice to the other party, grant the withdrawal of original exhibits, or any part thereof. The Board may require the substitution of true copies of exhibits or any part thereof as a condition of granting permission for such withdrawal.

## **Rule 20. Motion for Reconsideration**

A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to grant the motion. The motion must be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion. An opposing party must file any cross-motion for reconsideration within 30 days from its receipt of the motion for reconsideration. Extensions in the period to file a motion will not be granted. Extensions to file a memorandum in support of a timely-filed motion may be granted.

## **Rule 21. Remand from Court**

Whenever any Court remands an appeal to the Board for further proceedings, each of the parties shall, within 30 days of receipt of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the Court's remand. The

Board will consider the reports and enter an order governing the remanded appeal.

## **Rule 22. Subpoenas**

(a) Voluntary Cooperation—Each party is expected:

(1) To cooperate and make available witnesses and evidence under its control as requested by the other party without issuance of a subpoena, and

(2) To secure voluntary attendance of desired third-party witnesses and production of desired third-party books, records, documents, or tangible things whenever possible.

(b) General—Upon written request of either party, or on his or her own initiative, an Administrative Judge may issue a subpoena requiring:

(1) Testimony at a deposition—The deposing of a witness in the city or county where the witness resides or is employed or transacts business in person, or at another location convenient for the witness that is specifically determined by the Board;

(2) Testimony at a hearing—The attendance of a witness for the purpose of taking testimony at a hearing; and

(3) Production of books and records—The production by the witness at the deposition or hearing of books and records (including electronically stored information and other tangible things) designated in the subpoena.

(c) Request for Subpoena—

(1) A request for subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought; or

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

(2) The Board may honor a request for subpoena not made within the time limitations set forth in paragraph (c)(1) of this Rule.

(3) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and records sought. The Board may require resubmission of a request that does not provide this information.

(d) Requests to Quash or Modify—Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may quash or modify the subpoena if it is unreasonable or oppressive or for other good cause shown, or require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy of the request has been served upon the opposing party.

(e) Form of Subpoena—

(1) Every subpoena shall state the name of the Board and the caption of the appeal, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and records at a time and place therein specified. In issuing a subpoena to a requesting party, the Administrative Judge will sign the subpoena, enter the name of the witness and may otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781.

(f) Service—

(1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served in any state, commonwealth, territory, or the District of Columbia. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law. However, where the subpoena is issued on behalf of the Government, payment need not be tendered in advance of attendance.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking such evidence as the Board deems appropriate.

(g) Contumacy or Refusal to Obey a Subpoena—In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board may apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board to give testimony or produce evidence or both. Any failure of any such person to obey the order of

the Court may be punished by the Court as a contempt thereof.

**Rule 23. Ex Parte Communications**

No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal, submit to the Board or the Board's staff, ex parte, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This Rule does not apply to consultation among Board members or its staff or to ex parte communications concerning the Board's administrative functions or procedures.

**Rule 24. Effective Date**

These rules and addendums are applicable to appeals processed under the Contract Disputes Act (CDA), 41 U.S.C. 7101-7109, and other appeals to the extent consistent with law. They apply to all appeals filed on or after the date of final publication in the Federal Register, and to those appeals filed before that date, unless that application is inequitable or unfair.

## ADDENDUM I

### EQUAL ACCESS TO JUSTICE ACT PROCEDURES

*Revised 21 July 2014*

(a) Definitions—

For the purpose of these procedures:

- (1) "Equal Access to Justice Act," or "EAJA," means 5 U.S.C. 504, as amended;
- (2) "Board" means the Armed Services Board of Contract Appeals; and
- (3) "Contract Disputes Act" means the Contract Disputes Act, 41 U.S.C. 7101-7109 (CDA).

(b) Scope of procedures—These procedures are intended to assist the parties in the processing of EAJA applications for award of fees and other expenses incurred in connection with appeals pursuant to the CDA.

(c) Eligibility of applicants—

(1) To be eligible for an EAJA award, an applicant must be a party appellant that has prevailed in a CDA appeal before the Board and must be one of the following:

(i) An individual with a net worth which did not exceed \$2,000,000 at the time the appeal was filed; or

(ii) Any owner of an unincorporated business, or any partnership, corporation, association, unit of local Government, or organization, the net worth of which does not exceed \$7,000,000 and which does not have more than 500 employees; except:

(A) Certain charitable organizations or cooperative associations; and

(B) For the purposes of 5 U.S.C. 504(a)(4), a small entity as defined in 5 U.S.C. 601, need not comply with any net worth requirement (see 5 U.S.C. 504(b)(1)(B)).

(2) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the underlying CDA appeal was filed with the Board.

(d) Standards of awards—A prevailing eligible applicant shall receive an award of fees and expenses incurred in connection with a CDA appeal, unless the position of the Government over which the applicant prevailed was substantially justified, or if special circumstances make the award unjust.

(e) Allowable fees and other expenses—

(1) Fees and other expenses must be reasonable. Awards will be based upon the prevailing market rates, subject to paragraph (e)(2) of this section, for the kind and quality of services furnished by attorneys, agents, and expert witnesses.

(2) No award for the fee of an attorney or agent may exceed \$125 per hour. No expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the agency involved.

(3) The reasonable cost of any study, analysis, engineering report, test, or project, prepared on behalf of a party may be awarded, to the extent that the study or other matter was necessary in connection with the appeal and the charge for the service does not exceed the prevailing rate for similar services.

(f) Time for filing of applications— An application may be filed after an appellant has prevailed in the CDA appeal within 30 days after the Board's disposition of the appeal has become final.

(g) Application contents—

(1) An EAJA application shall comply with each of the following:

(i) Show that the applicant is a prevailing party;

(ii) Show that the applicant is eligible to receive an award;

(iii) Allege that the position of the government was not substantially justified;

and

(iv) Show the amount of fees and other expenses sought, including an itemized statement thereof.

(2) An original and one copy of the application and exhibits should be filed with the Board. The applicant will forward one copy to the Government.

(3) When a compliant application has been timely filed, the Board, in order to obtain more detailed information, may require supplementation of the application.

(h) Net worth exhibit—Each applicant for which a determination of net worth is required under the EAJA should provide with its application a detailed net worth exhibit showing the net worth of the applicant when the CDA appeal was filed. The exhibit may be in any form convenient to the applicant that provides full disclosure of assets, liabilities, and net worth.

(i) Fees and other expenses exhibit—The application should be accompanied by a detailed fees and other expenses exhibit fully documenting the fees and other expenses, including the cost of any study, analysis, engineering report, test, or project, for which an award is sought. The date and a description of all services rendered or costs incurred should be indicated. A separate itemized statement should be submitted for each professional firm or individual whose services are covered by the application showing the hours spent in connection with the CDA appeal by each individual, a description of the particular services performed by specific date, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The Board may require the applicant to provide vouchers, receipts, or other substantiation for any expenses sought.

(j) Answer to application—

(1) Within 30 days after receipt by the Government of an application, the Government may file an answer. Unless the Government requests an extension of time for filing or files a statement of intent to negotiate under paragraph (2) below, failure to file an answer within the 30-day period may be treated by the Board at its discretion as a general denial to the application on behalf of the Government.

(2) If the Government and the applicant believe that the matters raised in the application can be resolved by mutual agreement, they may jointly file a statement of intent to negotiate a settlement. Filing of this statement will extend the time for filing an answer for an additional 30 days. Further extensions may be requested by the parties.

(3) The answer will explain in detail any objections to the award requested and identify the facts relied upon in support of the Government's position.

(4) An original and one copy of the answer should be filed with the Board. The Government will forward one copy to the applicant.

(k) Reply—Within 15 days after receipt of an answer, the applicant may file a reply. An original and one copy of the reply will be filed with the Board. The applicant will forward one copy to the Government.

(l) Award proceedings—

(1) The Board may enter an order prescribing the procedure to be followed or take such other action as may be deemed appropriate under the EAJA. Further proceedings will be held only when necessary for full and fair resolution of the issues arising from the application.

(2) A request that the Board order further proceedings under this paragraph will describe the disputed issues, explain why the additional proceedings are deemed necessary to resolve the issues and specifically identify any information sought and its relationship to the disputed issues.

(m) Evidence—

(1) Decisions on the merits—When a CDA appeal is decided on the merits, other than by a consent judgment, the record relating to whether the Government's position under the EAJA was substantially justified will be limited to the record in the CDA appeal. Evidence relevant to other issues in the award proceeding may be submitted.

(2) Other dispositions—When a CDA appeal is settled, or decided by a consent judgment, either party in proceedings under the EAJA may, for good cause shown, supplement the record established in the CDA appeal with affidavits and other supporting evidence relating to whether the position of the agency was substantially justified or other issues in the award proceeding.

(n) Decision—Decisions under the EAJA will be rendered by the Administrative Judge or a majority of the judges who would have participated in a motion for reconsideration of the underlying CDA appeal. The decision of the Board will include written findings and conclusions and the basis therefor. The Board's decision on an application for fees and other expenses under the EAJA will be the final administrative decision regarding the EAJA application.

(o) Motions for reconsideration—Either party may file a motion for reconsideration. Motions for reconsideration must be filed within 30 days of receipt of the Board's EAJA decision. Extensions in the period to file a motion will not be granted. Extensions to file a memorandum in support of a timely filed motion may be granted.

(p) Payment of Awards—The Board's EAJA awards will be paid directly by the contracting agency over which the applicant prevailed in the underlying CDA appeal.

## **ADDENDUM II**

### **ALTERNATIVE METHODS OF DISPUTE RESOLUTION**

*Revised 21 July 2014*

1. The Contract Disputes Act (CDA), 41 U.S.C. 7105(g)(1), states that boards of contract appeals "shall ... to the fullest extent practicable provide informal, expeditious, and inexpensive resolution of disputes". Resolution of a dispute at the earliest stage feasible, by the fastest and least expensive method possible, benefits both parties. To that end, the parties are encouraged to consider Alternative Dispute Resolution (ADR) procedures for pre-claim and pre-final decision matters, as well as appeals pending before the Board. The Board may also conduct ADRs for any Federal agency. However, if the matter is not pending before the Board under its CDA jurisdiction, any settlement may not be paid out of the Judgment Fund.

2. The ADR methods described in this Addendum are intended to suggest techniques that have worked in the past. Any appropriate method that brings the parties together in settlement, or partial settlement, of their disputes is a good method. The ADR methods listed are not intended to preclude the parties' use of other ADR techniques that do not require the Board's participation, such as settlement negotiations, fact-finding conferences or procedures, mediation, or minitrials not involving use of the Board's personnel. Any method, or combination of methods, including one that will result in a binding decision, may be selected by the parties without regard to the dollar amount in dispute.

3. The parties must jointly request ADR procedures at the Board. The request must be approved by the Board. The Board may also schedule a conference to explore the desirability and selection of an ADR method and related procedures. If an ADR involving the Board's participation is requested and approved by the Board, a Neutral will be appointed. If an Administrative Judge has already been assigned to an appeal, the same judge will normally be assigned to be the Neutral in an ADR. If an Administrative Judge has not yet been assigned to the appeal, or if the subject of the ADR is a matter pending before the contracting officer prior to any appeal, the Board will appoint an Administrative Judge to be the Neutral. In such instances, as well as situations in which the parties prefer that an assigned Administrative Judge not be appointed to serve as the Neutral, the parties may submit a list of at least three preferred Administrative Judges and the Board will endeavor to accommodate their preferences.

4. To facilitate full, frank and open discussion and presentations, any Neutral who has participated in a non-binding ADR procedure that has failed to resolve the underlying dispute will be recused from further participation in the matter unless the parties expressly agree otherwise in writing and the Board concurs. Further, the recused Neutral will not discuss the merits of the dispute or substantive matters involved in the ADR

proceedings with other Board personnel.

5. Written material prepared specifically for use in an ADR proceeding, oral presentations made at an ADR proceeding, and all discussions in connection with such proceedings between the parties and the Neutral are confidential and, unless otherwise specifically agreed by the parties, inadmissible as evidence in any pending or future Board proceeding involving the parties or matter in dispute. However, evidence otherwise admissible before the Board is not rendered inadmissible because of its use in the ADR proceeding.

6. The ADR method and the procedures and requirements implementing the ADR method will be prescribed by the written agreement of the parties and approved by the Board. ADR methods can be used successfully at any stage of the litigation.

7. The following are examples of ADR methods commonly used at the Board:

(a) Nonbinding—

Mediations: A Neutral is an Administrative Judge who will not normally hear or have any formal or informal decision-making authority in the matter and who is appointed for the purpose of facilitating settlement. In many circumstances, settlement can be fostered by a frank, in-depth discussion of the strengths and weaknesses of each party's position with the Neutral. The agenda for meetings with the Neutral will be flexible to accommodate the requirements of the case. To further the settlement effort, the Neutral may meet with the parties either jointly or individually. A Neutral's recommendations are not binding on the parties. When this method is selected, the ADR agreement must contain a provision in which the parties and counsel agree not to subpoena the Neutral in any legal action or administrative proceeding of any kind to produce any notes or documents related to the ADR proceeding or to testify concerning any such notes or documents or concerning his/her thoughts or impressions.

(b) Binding—

Summary Proceeding With Binding Decision: A summary proceeding with binding decision is a procedure whereby the resolution of the appeal is expedited and the parties try their appeal informally before an Administrative Judge. A binding "bench" decision may be issued upon conclusion of the proceeding, or a binding summary written decision will be issued by the judge no later than ten days following the later of conclusion of the proceeding or receipt of a transcript. The parties must agree in the ADR agreement that all decisions, rulings, and orders by the Board under this method shall be final, conclusive, not appealable, and may not be set aside, except for fraud. All such decisions, rulings, and orders will have no precedential value. Pre-hearing, hearing, and post-hearing procedures and rules applicable to appeals generally will be modified or

eliminated to expedite resolution of the appeal.

(c) Other Agreed Methods—

The parties and the Board may agree upon other informal methods, binding or nonbinding that are structured and tailored to suit the requirements of the individual case.

8. The above-listed ADR procedures are intended to shorten and simplify the Board's more formalized procedures. Generally, if the parties resolve their dispute by agreement, they benefit in terms of cost and time savings and maintenance or restoration of amicable relations. The Board will not view the parties' participation in ADR proceedings as a sign of weakness. Any method adopted for dispute resolution depends upon both parties having a firm, good faith commitment to resolve their differences. Absent such intention, the best structured dispute resolution procedure is unlikely to be successful.

**APPENDIX – STANDARDIZED PLEADING FORMAT**

AUTHOR’S NAME & ORGANIZATION  
ADDRESS  
(AREA CODE) PHONE NUMBER

[day] [month] [year]

Recorder  
Armed Services Board of Contract Appeals  
Skyline Six, Room 703  
5109 Leesburg Pike  
Falls Church, Virginia 22041-3208

Re: ASBCA No. [ ]  
Appeal of [Appellant’s Name]  
Under Contract No. [ ]

TITLE OF PLEADING

[TEXT OF PLEADING]

/s/  
Author’s Name  
Title

cc: w/encl to:  
opposing party  
address

*Your adoption of the above standard format will assist the Board in its efforts to deal efficiently with incoming correspondence and pleadings.*

*Particular attention should be directed towards:*

- 1. the caption, which includes (a) the ASBCA number, (b) the appellant’s name, (c) the contract number, and (d) a descriptive title of the filing (e.g., complaint);*
- 2. furnishing copies of correspondence to the opposing party and indicating compliance with this requirement (“cc: w/encl.” will generally suffice); and*
- 3. providing the author’s phone number on all correspondence to assist in clarifying potential confusion and complying with Board Rule 15 concerning representation of appellant.*

*The Board appreciates your cooperation.*

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of - )  
 )  
Quality Trust, Inc. ) ASBCA No. 62576  
 )  
Under Contract No. FA2517-19-P-A083 )

APPEARANCE FOR THE APPELLANT: Mr. Lawrence M. Ruiz  
President

APPEARANCES FOR THE GOVERNMENT: Jeffrey P. Hildebrant, Esq.  
Deputy Chief Trial Attorney  
Lt Col Keric D. Clanahan, USAF  
Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE STINSON  
ON APPELLANT’S MOTION FOR DEFAULT JUDGMENT

Pending before the Board is a motion for default judgment filed by Quality Trust, Inc. (QTI), on August 30, 2022, alleging that the government failed to comply with the requirements of our Order dated June 23, 2022, as well as a second, unspecified Order. Appellant requests that we enter a default judgment against the government for these alleged failures to comply (app. mot. at 1). The government’s September 2, 2022, response states that QTI’s motion “is an unsupported complaint that the respondent . . . has not adhered to ASBCA Rule 8 discovery requirements and the orders of the Board regarding discovery,” and that to the extent “appellant is requesting sanctions under Rule 16, it has not identified any request to which the government did not reply” (gov’t resp. at 1).

On September 23, 2022, QTI filed its reply, entitled “MOTION FOR CONTEMPT OF COURT, SUMMARY JUDGMENT, OR DIRECTED VERDICT,” in which appellant essentially restated arguments presented in its motion for default, and sought additional relief, including its request that the Board enter judgment as a matter of law pursuant to FED. R. CIV. P. 50.<sup>1</sup> On September 27, 2022, the government filed a reply to appellant’s September 23, 2022, filing, stating that the government has complied with Board orders, appropriately responded to appellant’s discovery requests, and that appellant has presented no evidence the government acted in such a way as to warrant a

<sup>1</sup> In its September 23, 2022, filing, QTI alleges the government failed “to comply with (3) court orders within reasonable time” (app. reply at 2). However, QTI’s September 23, 2022, filing does not specifically identify the third Order with which the government allegedly did not comply.

finding of contempt, or that appellant is entitled to entry of summary judgment, directed verdict, or judgment as a matter of law (gov't reply at 1-3).

## BACKGROUND

QTI's motion for default judgment alleges that our June 23, 2022, Order, "directed the respondent to submit a status report every 30 days for the next three months, to see whether additional discovery is necessary," and that "[i]f additional discovery was needed, the parties were to provide a general description of that discovery, and in the event more time is needed for the appellant, then a Supplemental Status Report can be sent in requesting more time" (app. mot. at 1). QTI misstates both the content and requirements of our June 23, 2022 Order. Indeed, in an earlier status report filed by QTI on July 21, 2022, appellant made a similar argument regarding our June 23, 2022 Order, misstating both the content and requirements of the that Order.

By Order dated July 25, 2022, we responded to QTI's July 21, 2022 status report, stating that our June 23, 2022 Order, "dealt with possible settlement, and directed the government, on behalf of both parties, or the parties separately, to file reports every 30 days setting forth the status of settlement negotiations." We noted that the June 23, 2022 Order, did not provide, as suggested by appellant, that "[i]f additional discovery was needed, the parties were to provide a general description of that discovery, and in the event more time is needed for the appellant, then a Supplemental Status Report can be sent in requesting more time." QTI's motion for default makes no mention of this clarification set forth in our July 25, 2022 Order. The government's response to appellant's motion for default judgment states that the government "has strictly adhered to the requirement [of the June 23, 2022 Order] that the government file a joint or unilateral status report every 30 days setting forth the details of any progress towards settlement," with "[t]he last such report, filed unilaterally by the government on August 8, 2022" (gov't resp. at 1).<sup>2</sup>

QTI's motion for default judgment also argues that the government failed to respond to certain discovery requests. Specifically, appellant states:

The appellant had sent in interrogatories for the respondent to simply put a yes or no answer, or an Admit or Deny similar to the Air Forces request that we honored in good faith. By way of two Orders issued by the Honorable Judge David B. Stinson, with the last Order requesting the Respondent to answered [sic] back before the August 8th due

<sup>2</sup> On September 21, 2022, the government filed an additional report regarding the status of settlement negotiations, stating that "[t]he parties unfortunately remain at an impasse and the government does not foresee a negotiated solution."

date to the board. Accordingly the Air Force, in spite of the Appellants pleas and the Board, they finally answer back with a negative response in lieu of giving us a simple yes or no answer or a Deny or Admit. The Appellant kindly answered the Respondents Interrogatories in this matter, why could they not simply answer back treating their neighbor as they treat themselves.

(App. mot. at 1)

Presumably, appellant is referencing our July 25, 2022 Order, wherein we also discussed outstanding discovery issues. In that Order, we noted that QTI previously had submitted a May 7, 2022, document entitled “Appellant’s Request for Admission Answers,” which appeared to be an updated version of an earlier request for admissions by appellant, that the government previously had answered.<sup>3</sup> In that document, appellant stated, “[w]ith the passing of time, and exchange of three trial attorneys and a second Judge assigned, the appellant kindly request: that you reiterate your position and assist by simply putting an ADMIT or DENY RESPONSE BY EACH UNDERLINED ADMIT OR DENY . . . .” Our July 25, 2022 Order, instructed that “[t]o the extent the government has not responded to appellant’s request dated May 7, 2022, the government is ORDERED to submit a response no later than August 8, 2022.”

In its motion for default judgment, QTI admits that the government responded to appellant’s May 7, 2022, request, stating that “they finally answer back with a negative response in lieu of giving us a simple yes or no answer or a Deny or Admit” (app. mot. at 1). The government responds likewise, stating that it “submitted its final discovery response to the appellant - a revised response to the appellant’s May 7, 2022 Request for Admissions - via email on August 8, 2022” (gov’t resp. at 2). The government argues, however, that “appellant’s allegation that the government gave a ‘negative response in lieu of giving us a simple yes or no answer or a Deny or Admit’ does not identify what request was made or the ‘negative response’ from the government to which appellant is referring” (gov’t resp. at 1).<sup>4</sup> In its September 27, 2022 reply, the government explained

<sup>3</sup> QTI previously had filed a “Motion for Discovery,” dated April 20, 2022, and by Order dated April 25, 2022, appellant was ordered to provide additional information “[t]o assist the Board in understanding the specific information requested (and whether that information previously was requested by appellant).” Appellant was given until May 9, 2022, to provide that additional information. Other than submit its restated request for admissions, appellant’s May 7, 2022, submission did not respond directly to any of the requests for clarification set forth in our April 25, 2022 Order.

<sup>4</sup> The government also notes that, “[o]n July 20, 2022, the government provided the appellant via email eleven documents the government presumed the appellant

further that “the request for admission appellant submitted to the government is not prepared in a manner that lends itself to simple affirmative or negative answers,” that “most questions were very detailed and quite lengthy, generally requiring answers one would expect of traditional interrogatories,” and “[w]here the government could answer with a simple “yes or no answer, or an Admit or Deny,” it did so, but, where necessary, “provided additional narrative to carefully explain why it must deny a statement made by the appellant or clarify what exactly it was admitting” (gov’t reply at 2).

### DECISION

Board Rule 17, entitled “Dismissal or Default for Failure to Prosecute or Defend,” provides that “[w]henver the record discloses the failure of either party to file documents required by these Rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may . . . [i]n the case of a default by the Government . . . issue an order to show cause why the Board should not act thereon pursuant to Rule 16. If good cause is not shown, the Board may take appropriate action.” Board Rule 16 provides “[i]f any party fails to obey an order issued by the Board, the Board may impose such sanctions as it considers necessary to the just and expeditious conduct of the appeal.”

This Board recognizes that “[t]he sanction of the entry of a default judgment in favor of appellant is the severest sanction the Board can issue against the government,” and that “[s]uch a sanction should be reserved for situations in which contumacious or contemptuous conduct is shown.” *Thorpe Seeop Corp.*, ASBCA No. 58961, 14-1 BCA ¶ 35,541 at 174,167 (citations omitted). QTI has failed to demonstrate in any way that the government failed to respond to Orders of this Board, let alone engaged in “contumacious or contemptuous conduct.” Notwithstanding QTI’s assertion to the contrary, the government properly responded to our June 23, 2022 Order, submitting the requisite monthly reports discussing the status of settlement negotiations. The government likewise properly responded to our July 25, 2022 Order, submitting a response to QTI’s May 7, 2022, restated request for admission answers. Although QTI complains about the sufficiency of the government’s August 8, 2022, response to QTI’s restated request for admissions, appellant’s motion for default judgment provides no specifics regarding the alleged insufficiency of the government’s response. Under these circumstances, entry of a default judgment against the government is in no way appropriate here.

requested in its Motion for Discovery dated April 20, 2022, to which the appellant failed to provide clarification in accordance with the Board order dated April 25, 2022” (gov’t resp. at 2).

Regarding appellant’s September 23, 2022, request for issuance of a directed verdict or judgment as a matter of law, we note that our rules do not address those motions. Appellant cites FED. R. CIV. P. 50 as support for the issuance of judgment as a matter of law. “Although we look to the Federal Rules of Civil Procedure for guidance, as an administrative tribunal, we are not bound by them.” *BAE Systems Land & Armaments L.P.*, ASBCA Nos. 62703, 62704, 21-1 BCA ¶ 37,936 at 184,247 (citations omitted). FED. R. CIV. P. 50 has no application to the circumstances of this appeal, as the rule expressly concerns requests for judgment as a matter of law in the context of a trial by jury. FED. R. CIV. P. 50(A)(2). As we explained previously in our April 26, 2022 Order setting pre-hearing deadlines, “as an administrative tribunal, this Board does not utilize a jury to decide issues of fact. Rather, the Board, as the finder of fact, decides both issues of fact and law. *CANVS Corp.*, ASBCA No. 57784, 18-1 BCA ¶ 37,156 at 180,894 (“[a]s the finder of fact, the Board is responsible for evaluating the credibility, persuasiveness, and weight accorded to conflicting evidence in the record”).”

Even assuming FED. R. CIV. P. 50 somehow has application to this appeal, the rule requires that the motion requesting relief “specify the judgment sought and the law and facts that entitle the movant to judgment.” QTI’s filing does not meet these requirements, as it is aimed at alleged procedural failures of the government to comply with Orders of this Board, which is an argument we already have found lacks merit. The same is true regarding QTI’s request for an order of contempt against the government or issuance of summary judgment in favor of appellant – QTI’s pleadings fail to establish in any way entitlement to either remedy.

We are mindful of “the long-held principle that pleadings drafted by *pro se* litigants are generally held to ‘less stringent standards’ than pleadings filed by trained attorneys.” *Steffen v. United States*, 995 F.3d 1377, 1380 (Fed. Cir. 2021) (quoting *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972)); *GLJ, Inc.*, ASBCA No. 62964, 22-1 BCA ¶ 38,121 at 185,184. Although the Board accords *pro se* litigants leeway administratively, we still must apply the same legal standards to all parties. *Atlantic Maint. Co.*, ASBCA No. 40454, 96-2 BCA ¶ 28,472 at 142,195. QTI, as the moving party seeking issuance of a default judgment, has the burden of proof. QTI’s motion for default judgment fails to establish any instance where the government did not respond to notices or correspondence from the Board or comply with our orders. QTI’s motion likewise fails to establish that the government’s actions in this appeal trigger application of Board Rule 17 for issuance of “an order to show cause why the Board should not act thereon pursuant to Rule 16,” or that sanctions pursuant to Board Rule 16, would be appropriate here.

CONCLUSION

Appellant's motion for default judgment is denied. Also denied are appellant's additional request for an order of contempt against the government, issuance of summary judgment in favor of appellant, and judgment as a matter of law pursuant to FED. R. CIV. P. 50.


Dated: October 11, 2022



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DAVID B. STINSON  
Administrative Judge  
Armed Services Board  
of Contract Appeals


I concur



---

RICHARD SHACKLEFORD  
Administrative Judge  
Acting Chairman  
Armed Services Board  
of Contract Appeals

I concur



---

J. REID PROUTY  
Administrative Judge  
Vice Chairman  
Armed Services Board  
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 62576, Appeal of Quality Trust, Inc., rendered in conformance with the Board's Charter.

Dated: October 12, 2022



---

PAULLA K. GATES-LEWIS  
Recorder, Armed Services  
Board of Contract Appeals

**United States  
Civilian Board of Contract Appeals**



**Rules of Procedure**

**February 27, 2026**

**RULES OF PROCEDURE  
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UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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**RULES OF PROCEDURE OF THE  
CIVILIAN BOARD OF CONTRACT APPEALS**

**OVERVIEW**

(a) Scope. These rules address different types of matters brought before the Board. The rules in each section apply only to matters brought under that section unless otherwise specified. Board judges also preside in matters not covered by these rules.

(b) Effective date. Unless otherwise provided, these rules govern cases filed with the Board on or after February 27, 2026, and all further proceedings in cases then pending, unless the Board decides that using these rules in a case pending on their effective date would be inequitable or infeasible.

(c) Use of Electronic Docketing System (EDS). Some, but not all, of the matters covered by these rules require parties to submit certain filings in EDS (see Rule 1(b)). The matters requiring filing in EDS are set forth in these rules and are posted on the Board's website: <https://www.cbca.gov>.

# CONTRACT DISPUTES

## PART I – CONTRACT DISPUTES CASES

### RULE 1

#### GENERAL INFORMATION; DEFINITIONS

(a) Scope and purpose. The rules of procedure in this section apply to matters filed with the Board under the Contract Disputes Act (CDA), 41 U.S.C. 7101-7109, under a non-CDA contract that allows for Board review, and under the Equal Access to Justice Act (EAJA), 5 U.S.C. 504 (see Rule 1(b)). The Board may alter the procedures on its own initiative or on request of a party to promote the just, informal, expeditious, and inexpensive resolution of a case.

(b) Definitions.

Appeal; appellant. “Appeal” means a contract dispute filed with the Board under the CDA or under a non-CDA contract that allows for Board review. An “appellant” is the contractor filing an appeal.

Appeal file. “Appeal file” means the submissions to the Board under Rule 4.

Application; applicant. “Application” means a submission to the Board under Rule 30 of a request for an award of fees and other expenses under EAJA or another provision authorizing such an award. An “applicant” is a party filing an application.

Attorney. “Attorney” means a person licensed to practice law in a state, commonwealth, or territory of the United States or in the District of Columbia.

Board judge; judge. “Board judge” or “judge” means a member of the Board.

Business days. The Board’s business days are days other than Saturdays, Sundays, Federal holidays, and days on which the Board, for any reason, does not open or is required to close before 4:30 p.m. (Eastern Time).

Case. “Case” means an appeal, petition, or application.

Clerk of the Board. The “Clerk” of the Board receives filings, docket cases, and prepares official correspondence for the Board.

Efile; efile. To “efile” a document means to submit it to the Board by emailing it to [cbca.efile@cbca.gov](mailto:cbca.efile@cbca.gov), as allowed by rule or permission of the Clerk. A document so filed is an “efiling.” Protected material shall not be efiled unless a Board judge has entered a protective order. Classified material cannot be efiled. Efile occurs upon receipt by the Board’s email server. Parties shall review the Board’s website for filing format, size, and other requirements.

Electronic storage medium. “Electronic storage medium” includes, but is not limited to, hard disks, compact discs (CDs), Universal Serial Bus (USB) flash drives, and digital versatile discs (DVDs).

Electronically stored information. “Electronically stored information” means information created, manipulated, communicated, stored, and best used in digital form with computer hardware and software.

Electronic Docketing System (EDS). “EDS” is the Board’s automated system by which the parties may upload and access documents electronically. The Board posts EDS instructions and manuals on its website. Parties shall review the website for filing format, size, and other requirements.

Equal Access to Justice Act (EAJA), 5 U.S.C. 504. This statute governs applications for awards of fees and other expenses in certain CDA cases.

File; filing. To “file” a document means to submit it to the Board by means authorized by rule or permission of the Clerk. “Filing” types include as permitted: hand deliveries, including by courier, to the Clerk; United States Postal Service (USPS) mail; efilings; upload in EDS; and transfers via a secure file transfer method. Documents filed electronically should usually be in portable document format (PDF). The Board prefers that documents are enabled to allow word searches through text recognition. See the Board’s website for additional information on filing documents, including appeal file exhibits. Efilings and EDS uploads received by 11:59:59 p.m. (Eastern Time) are same-day filings. Efilings and EDS uploads received at or after midnight (12:00 a.m. Eastern Time) are next-business day filings. Transfers via a secure file transfer method are received when the Clerk receives the party’s notice that a transfer has been made to the portal. The date the Clerk receives the secure file transfer notice is determined by the same timing rules as applied to efilings and EDS uploads. A notice of appeal or application is filed upon the earlier of its receipt by the Clerk or, if mailed through the USPS, the mailing date. A USPS postmark is prima facie evidence of a mailing date.

Party. “Party” means an appellant, applicant, petitioner, or respondent.

Petition; petitioner. “Petition” means a request that the Board direct a contracting officer to issue a written decision on a claim. A “petitioner” is a party submitting a petition.

Receipt. The Board deems a party’s “receipt” of a document to occur upon the earlier of the sending party’s emailing of the document to the receiving party’s email address of record (without notice of delivery failure) or the receiving party’s possession of a document sent by other means.

Respondent. A “respondent” is the government agency whose decision, action, or inaction is the subject of an appeal, petition, or application.

Secure file transfer method. Secure file transfer methods allow for the secure transfer of files between systems. The requirements for transferring documents to the Board via a secure file transfer method are posted on the Board’s website.

Upload. To “upload” a document means to submit it successfully through EDS.

(c) Construction. The Board construes these rules to promote the just, informal, expeditious, and inexpensive resolution of every case. The Board may apply principles of

the Federal Rules of Civil Procedure (28 U.S.C. App.) to resolve issues not covered by these rules.

(d) Panels. The Board assigns each case to a panel of three judges, one of whom presides. The presiding judge sets the case schedule, oversees discovery, and conducts conferences, hearings, and other proceedings. The presiding judge may, without participation by other panel members:

(1) Decide any appeal under the small claims procedure of Rule 52, any nondispositive motion, or any petition; and

(2) Dismiss a case as permitted by Rule 12(c). Rule 53(c) provides the composition of panel members required for decisions under the Board's accelerated procedure. The Board decides all other matters by majority vote of a panel unless the full Board decides a matter under Rule 28. Only panel and full Board decisions are precedential.

(e) Location and addresses. The Board's physical and mailing address is 1800 M Street NW, 6th Floor, Washington, DC 20036. The Clerk's telephone number is (202) 606-8800. The Clerk's email address for efilings is [cbca.efile@cbca.gov](mailto:cbca.efile@cbca.gov). The Clerk's email address for purposes other than efilings is [cbcaclerk@cbca.gov](mailto:cbcaclerk@cbca.gov).

(f) Clerk's office. The Clerk's office is open to the public and for physical deliveries from 8:00 a.m. to 4:30 p.m. (Eastern Time) on business days (see Rule 1 (b)).

## **RULE 2**

### **FILING APPEALS, PETITIONS, AND APPLICATIONS; CONSOLIDATION**

(a) Filing an appeal. A notice of appeal shall be:

(1) In writing;

(2) Signed by the appellant, the appellant's attorney, or an authorized representative (see Rule 5); and

(3) Filed with the Board, with a copy to the contracting officer who received or issued the claim or the successor contracting officer. A notice of appeal should include:

(i) The name, telephone number, and mailing and email addresses of the appellant and/or its attorney or authorized representative;

(ii) The contract number;

(iii) The name, telephone number, and mailing and email addresses of the contracting officer who received or issued the claim;

(iv) A copy of the claim with any certification; and

(v) A copy of the contracting officer's decision on the claim or a statement that the appeal is from a failure to issue a decision ("a deemed denial").

- (b) Filing a petition. A petition shall be:
- (1) In writing;
  - (2) Signed by the petitioner, the petitioner's attorney, or an authorized representative (see Rule 5); and
  - (3) Filed with the Board, with a copy to the contracting officer who received the claim or the successor contracting officer. A petition shall ask the Board to order the contracting officer to issue a decision and should include:
    - (i) The name, telephone number, and mailing and email addresses of the petitioner and/or its attorney or authorized representative;
    - (ii) The contract number;
    - (iii) The name of the contracting officer who received the claim, with that person's telephone number, mailing address, and email address; and
    - (iv) A copy of the claim with any certification.
- (c) Filing an EAJA application. See Rule 30.
- (d) Time limits.
- (1) Under the CDA, a notice of appeal must be filed within 90 calendar days after the date of receipt of a contracting officer's decision on a claim.
  - (2) Alternatively, under the CDA, a contractor may appeal when a contracting officer has not issued a decision on a claim within the time allowed by the CDA or the time set by a tribunal acting on a petition.
  - (3) Under the CDA, a petition may be filed in the period between:
    - (i) Receipt of notice from a contracting officer, within 60 days after the submission of a claim, that the contracting officer intends to issue a decision on the claim more than 60 days after its submission, and
    - (ii) The due date stated by the contracting officer.
  - (4) Under EAJA, an application must be filed within 30 days after the date that the decision in the underlying appeal becomes no longer subject to appeal.
- (e) Notice of docketing. Upon receipt of a notice of appeal, a petition, or an application, the Clerk issues a written notice of docketing to all parties.
- (f) Consolidation. The Board may consolidate cases wholly or in part if they involve common questions of law or fact.

### **RULE 3 COMPUTING AND EXTENDING TIME**

- (a) Computing time. Consistent with Rule 6 of the Federal Rules of Civil Procedure: In computing any time period, omit the day of the event from which the period

begins to run. Omit nonbusiness days only if the period is less than 11 days; otherwise include them. A period must end on a business day. If a computed period would otherwise end on a nonbusiness day, it ends on the next business day.

(b) Extensions. Parties should act sooner than required whenever practicable. However, the Board extends time when appropriate. A motion for an extension shall be in writing and shall state the other party's position on the motion or describe the movant's effort to learn the other party's position. The Board cannot extend statutory deadlines.

#### **RULE 4 APPEAL FILE**

(a) Filing. Within 30 days after receiving the Board's docketing notice, the respondent shall file and serve all documents relevant to the appeal, including:

- (1) The contracting officer's decision on the claim;
- (2) The contract, including all pertinent specifications, amendments, plans, drawings, and incorporated proposals or parts thereof;
- (3) All correspondence between the parties relevant to the appeal;
- (4) The claim with any certification;
- (5) Relevant affidavits, witness statements, or transcripts of testimony taken before the appeal;
- (6) All documents relied on by the contracting officer to decide the claim; and
- (7) Relevant internal memoranda, reports, and notes.

(b) Submission and assembly of appeal file.

(1) Appeal file exhibits may be efiled (see the Board's website for size requirements), transferred via a secure file transfer method, or submitted on electronic storage medium. Appeal file exhibits may not be filed in EDS.

(2) Appeal file exhibits shall be in .pdf format or will be rejected. The appeal file index and each exhibit shall be separate documents with no subfolders or embedded documents.

(3) Appeal file exhibits shall be complete, legible, arranged in chronological order, numbered, and indexed. Parties shall avoid filing duplicative exhibits and shall number exhibits continuously and consecutively from one filing to the next, so that a complete appeal file consists of one set of consecutively numbered exhibits.

(4) Parties shall number the pages of each exhibit consecutively, unless an exhibit is already paginated in another logical manner.

(5) The appeal file index shall describe each exhibit by date and content.

(6) Parties may file documents in camera only by permission of the Board.

(7) Parties shall include in the appeal file all documents relevant to the merits of the case.

(c) Supplementing. Within the time set by the Board in an appeal, a party may file non-duplicative documents relevant to the claim, organized as instructed in Rule 4(b), starting with the next available exhibit number.

(d) Submission by order. The Board may order a party to supplement the appeal file, including by filing an exhibit in another format.

(e) Status of exhibits. The Board considers appeal file exhibits part of the record for decision under Rule 9(a) unless a party objects to an exhibit within the time set by the Board and the Board sustains the objection.

(f) Other procedures. The Board may postpone or waive the filing of an appeal file.

## **RULE 5 APPEARING; NOTICE OF APPEARANCE**

(a) Appearing before the Board.

(1) Appellant; petitioner; applicant. An appellant, petitioner, or applicant may appear before the Board through an attorney. An individual appellant, petitioner, or applicant may appear for himself or herself. A corporation, trust, or association may appear by one of its officers. A limited liability corporation, partnership, or joint venture may appear by one of its members. Each individual appearing on behalf of an appellant, petitioner, or applicant must have legal authority to appear.

(2) Respondent. A respondent may appear before the Board through an attorney or, if allowed by the agency, by the contracting officer or the contracting officer's authorized representative.

(3) Others. The Board may permit a special or limited appearance of or for a nonparty, such as an amicus curiae.

(b) Notice of appearance. The Board deems the person who signed a notice of appeal, petition, or application to have appeared for the appellant, petitioner, or applicant. The Board deems the head of the respondent's litigation office to have appeared for the respondent unless otherwise notified. Other participating attorneys shall file notices of appearance including all of the information required by the sample notice of appearance posted on the Board's website. Attorneys representing parties before the Board shall list their bar numbers or other identifying data for each state bar to which they are admitted.

(c) Appellant, applicant, and petitioner withdrawals of appearance.

(1) A representative of an appellant, applicant, or petitioner who has filed a notice of appearance, or is deemed to have done so under Rule 5(b), and wishes to withdraw from a case must file a motion identifying by name, telephone number, mailing address, and

email address the person who will assume responsibility for representing the party in question. The motion must state grounds for withdrawal, unless the motion represents that the party in question will meet the existing case schedule.

(2) If an appellant, applicant, or petitioner wishes to withdraw a representative who is unable or unwilling to file a motion to withdraw, the party may file a motion to remove the individual as a representative. The party must provide notice to the individual, who will have fourteen days to show cause why the motion should not be granted. The Board will consider the motion only if at least one remaining or replacement representative has entered an appearance in accordance with Rules 5(a) and (b).

(d) Respondent withdrawals of appearance. A respondent may withdraw or substitute an attorney or representative at any time by filing a notice of withdrawal and/or substitution of the attorney or representative that is signed by a remaining attorney or representative or a newly designated attorney or representative.

## **RULE 6**

### **PLEADINGS; AMENDING PLEADINGS**

(a) Complaint. Within 30 days after receiving the notice of docketing, the appellant shall file a complaint with a simple, concise, and direct statement of the factual basis for each claim and the amount in controversy. Alternatively, the appellant or the Board may designate as a complaint the notice of appeal, a claim submission, or any other document containing the information required in a complaint. The Board may in its discretion order a respondent asserting a claim to file a complaint.

(b) Answer. Within 30 days after receiving the complaint or a designation of a complaint, the respondent (or the appellant, if so ordered) shall file an answer stating in simple, concise, and direct terms its responses to the allegations of the complaint and any affirmative defenses it chooses to assert.

(c) Amendments. A party may amend a pleading once, before a responsive pleading is filed, with permission of the other party. Amending a pleading restarts the time to respond, if any. The Board may allow a party to amend a pleading in other circumstances.

(d) Motion in lieu of answer. The Board may allow a party to file a dispositive motion or to move for a more definite statement in lieu of filing an answer.

## **RULE 7**

### **SERVICE OF DOCUMENTS**

A party filing any document not submitted in camera (see Rule 9(d)(2)) shall send a copy to the other party by the same method as used for the filing or by a faster method. EDS automatically serves documents on parties with active EDS accounts to whom the Clerk has granted matter-specific access. For any documents not filed in EDS, including appeal file exhibits, the parties shall serve such documents. Parties shall certify to the Board:

(a) The method of filing; and

(b) The recipient's physical address or email address when filing outside of EDS. The Board may consider a document not served or not properly filed if served in a manner inconsistent with this rule.

## **RULE 8**

### **MOTIONS**

(a) Generally. A party may make a motion for a Board action orally on the record in the presence of the other party or in a written filing. A written motion shall be a document titled as a motion and shall state the relief sought and the legal basis (see Rule 23(b)). Except for joint or dispositive motions, all motions shall represent that the movant tried to resolve the motion with the other party before filing. The Board may hold oral argument on a motion.

(b) Jurisdictional motions. A party challenging the Board's jurisdiction should file such a motion promptly.

(c) Procedural motions. A party may move for an extension of time (Rule 3(b)). The Board may in its discretion consider motions on other procedural matters. A procedural motion shall state the other party's position on the motion or describe the movant's effort to learn the other party's position.

(d) Discovery motions. See Rule 13(e).

(e) Motions to dismiss for failure to state a claim. A party may move to dismiss all or part of a claim for failure to state grounds on which the Board could grant relief. In deciding such motions, the Board looks to Rule 12(b)(6) of the Federal Rules of Civil Procedure for guidance.

(f) Summary judgment motions.

(1) Generally. A party may move for summary judgment on all or part of a claim or defense if the party believes in good faith it is entitled to judgment as a matter of law based on undisputed material facts. In deciding motions for summary judgment, the Board looks to Rule 56 of the Federal Rules of Civil Procedure for guidance.

(2) Additional filings with briefs.

(i) Statement of undisputed material facts. The movant shall file with its brief a separate document titled, “Statement of Undisputed Material Facts.” This document shall set forth in numbered paragraphs all facts necessary to support the motion. Undisputed material facts shall be supported by citations to appeal file exhibits, admissions in pleadings, and/or evidence filed with the brief. The Board may disregard factual assertions not made in conformity with this rule.

(ii) Statement of genuine issues. The opposing party shall file with its brief a separate document titled, “Statement of Genuine Issues.” This document shall respond in correspondingly numbered paragraphs to the Statement of Undisputed Material Facts by admitting, denying, or admitting with qualification the facts stated. Factual disputes may be shown by citing appeal file exhibits, admissions in pleadings, and/or evidence filed with either brief. The Board may treat as undisputed a fact presented in conformity with Rule 8(f)(2)(i) that the opposing party admits, ignores, or denies without adequate support and/or explanation.

(g) Briefing. A party may file a brief in opposition to a motion under Rule 26, Rule 27, Rule 28, or Rule 29 only by permission of the Board. Unless otherwise ordered, a brief in opposition to any other nonprocedural motion is due 30 days after receipt of the motion, and a movant’s reply brief is due 15 days after receipt of an opposition brief. A nonmovant may file a surreply only by permission of the Board. Unless otherwise ordered, a brief in opposition to a procedural motion is due 5 days after receipt of the motion, and there shall be no reply.

(h) Effect of pending motion. Unless otherwise stated in these rules, the filing of a motion does not affect a party’s obligations under the Board’s rules or orders.

## **RULE 9 RECORD; CONTENT AND ACCESS**

(a) Record for decision. The record on which the Board will decide a case includes the following:

(1) Evidence. Evidence in a case includes:

(i) Rule 4 appeal file exhibits other than those to which an objection is sustained;

(ii) Other documents or parts thereof admitted as evidence;

- (iii) Tangible things admitted as evidence;
  - (iv) Transcripts or recordings of testimony before the Board; and
  - (v) Factual stipulations and factual admissions.
- (2) Other material. The Board may also rely on to decide a case:
- (i) The notice of appeal, petition, or application;
  - (ii) The complaint, answer, and amendments thereto;
  - (iii) Motions and briefs on motions;
  - (iv) Other briefs;
  - (v) Illustrative aids; and
  - (vi) Anything else the Board may expressly admit or take notice of.

(b) Other contents of case file. The Board's administrative record may be broader than the record for decision. Material in the Board's case file that is not listed in Rule 9(a) is part of the administrative record but is not part of the record for decision.

(c) Enlarging or reopening the record. The Board may enlarge or reopen the record for decision on terms fair to the parties.

(d) Protected and in camera submissions. The Board may limit access to specified material in a record for decision.

(1) Protective orders. The Board may limit access to specified material in a record for decision if the Board finds good cause to treat the material as privileged, confidential, or otherwise sensitive.

(2) In camera submissions. The Board may allow a party to submit a document solely for the Board's review in camera if:

- (i) The party submits the document to explain a discovery dispute;
- (ii) The Board denies a motion for protective order, and the movant asks that the record include a document that the party would have used in the case with a protective order, for possible later review of the Board's denial; or
- (iii) Good cause exists to find that in camera review may limit or prevent needless harm to a party, witness, or other person.

(3) Status in record. A document submitted and accepted under a protective order or in camera is part of the record for decision. If the Board's decision is judicially reviewed, the Board will endeavor to preserve the protected or in camera nature of the document to the extent consistent with judicial review.

(e) Access. Parties may access case records in EDS. The Clerk may refer non-parties seeking case records to the parties or Board staff, as appropriate.

**RULE 10**  
**ADMISSIBILITY OF EVIDENCE**

The Board may in its discretion receive any evidence to which no party objects. In ruling on evidentiary objections, the Board is guided but not bound by the Federal Rules of Evidence, except that the Board generally admits hearsay unless the Board finds it unreliable.

**RULE 11**  
**CONFERENCES**

The Board may order a conference of the parties for any purpose. Conferences are usually telephonic and are rarely recorded or transcribed. No one may record a conference by any means without Board approval. If the Board issues a memorandum or order memorializing a conference, a party has 5 days from receipt of the memorandum or order to object in writing to the memorialization.

**RULE 12**  
**STAYS AND DISMISSALS**

(a) Stays. The Board may stay a case for a specific duration, or until a specific event, for good cause.

(b) Dismissals.

(1) Generally. The Board may dismiss a case or part of a case either on motion of a party or after permitting a response to an order to show cause.

(2) Voluntary dismissal. Subject to Rule 12(b)(3), the Board will dismiss all or part of a case on the terms requested if the appellant, petitioner, or applicant moves for dismissal with prejudice or moves jointly with the respondent for dismissal with or without prejudice.

(3) For lack of jurisdiction. If the Board finds that it lacks jurisdiction to decide all or part of a case, the Board will dismiss without prejudice the case or the part of the case, regardless of the parties' positions on jurisdiction or dismissal.

(4) For failure to prosecute. The Board may dismiss all or part of a case for failure to prosecute.

(5) Prejudice. Except for dismissals for lack of jurisdiction, dismissals are with prejudice unless a Board order or other applicable law provides otherwise.

(c) Dismissal orders and decisions. The presiding judge acting alone may stay a case or grant voluntary dismissal with or without prejudice. A panel or the full Board may dismiss a case on other grounds.

(d) Admonition. Dismissal of a party's case without prejudice does not necessarily mean that the party may later refile the case at the Board or in another forum under the jurisdictional and procedural laws applicable to the case.

### **RULE 13 DISCOVERY GENERALLY**

(a) Methods. Parties may obtain discovery by depositions, interrogatories, requests for production, and requests for admission.

(b) Scope. Unless otherwise ordered, the scope of discovery is the same as under Rule 26(b)(1) of the Federal Rules of Civil Procedure.

(c) Limits. The Board may limit the frequency or extent of discovery for a reason stated in Rule 26(b)(2) of the Federal Rules of Civil Procedure.

(d) Timing. The Board encourages parties to agree on a discovery plan that the Board may adopt in a scheduling order. The Board may modify an agreed discovery plan.

(e) Disputes.

(1) Objections. A party objecting to a written discovery request must make the objection in writing no later than the date that its response to the discovery request is due.

(2) Duty to cooperate. Parties shall try in good faith to resolve objections to discovery requests without involving the Board. The Board may impose an appropriate sanction under Rule 35 on a party that does not meet its discovery obligations.

(3) Motions to compel. A party may move to compel a response or a supplemental response to a discovery request. The movant shall attach to its motion a copy of each discovery request and response at issue, and shall represent in the motion that the movant complied with Rule 13(e)(2).

(f) Subpoenas. A party may request a subpoena under Rule 16.

### **RULE 14 INTERROGATORIES; REQUESTS FOR PRODUCTION; REQUESTS FOR ADMISSION**

(a) Generally. Interrogatories, requests for production, requests for admission, and responses thereto shall be in writing and served on the other party.

(b) Interrogatories. Interrogatories shall be answered or objected to separately in writing, under signed oath, within 30 days of service. A party may answer an interrogatory

by specifying records from which the answer may be derived or ascertained when that response would be allowed under Rule 33(d) of the Federal Rules of Civil Procedure.

(c) Requests for production. Responses and objections to requests for production, inspection, and/or copying of documents, electronically stored information, or tangible things are due within 30 days of service of the requests and shall state when and how the responding party will make responsive material available.

(d) Requests for admission.

(1) Content. A party may serve requests for admission that would be proper under Rule 36(a)(1) of the Federal Rules of Civil Procedure.

(2) Responses and failure to respond. Responses and objections shall comply with Rule 36(a)(4) and (5) of the Federal Rules of Civil Procedure. If the served party does not respond within 30 days of service of a request, the Board may on motion deem a matter admitted and conclusively established solely for the pending case.

(3) Relief from admission. The Board may allow a party to withdraw or amend an admission for good cause.

(e) Altering time to respond. The parties may agree to alter deadlines to respond to discovery requests. The Board may alter the deadlines to meet the needs of a case.

(f) Supplementing and correcting responses. A party must supplement or correct a response to a discovery request if and when this action would be required by Rule 26(e)(1) of the Federal Rules of Civil Procedure.

## **RULE 15 DEPOSITIONS**

(a) Generally. Unless otherwise ordered, parties may take depositions after service of the answer. If the parties agree in writing on the deponent, time, place, recording method, and maximum duration of a deposition, no formal deposition notice is needed. The Board may order a deposition on motion under Rule 8 or by subpoena under Rule 16.

(b) Use. Parties may use deposition testimony in a case to the extent that would be permitted by Rule 32(a) of the Federal Rules of Civil Procedure.

(c) To perpetuate testimony. If the Board has decided a case, and either the time to appeal has not expired or an appeal has been taken, the Board may for good cause grant leave to take a deposition as if the case were still before the Board in order to preserve testimony for possible further proceedings before the Board.

## **RULE 16 SUBPOENAS**

(a) Expectation of cooperation in lieu of subpoena. Subpoenas should rarely be necessary, as the Board expects parties to respond cooperatively to discovery requests and to try in good faith to secure the cooperation of third parties who have or may have evidence responsive to discovery requests.

(b) Generally. The Board may issue a subpoena for a purpose for which a United States district court may issue a subpoena under Rule 45(a)(1) of the Federal Rules of Civil Procedure. Parties and the Board shall take all reasonable steps to avoid imposing an undue burden on a person subject to a subpoena.

(c) How requested; form. A party may ask the Board to issue a subpoena by motion under Rule 8, substantially before the proposed compliance date. The movant shall attach to its motion a completed subpoena form for signing by a Board judge, and shall explain in the motion why the proposed subpoena scope is reasonable and how the evidence sought is relevant to the case.

(d) Production cost. The Board's policy is to require a requesting party to advance a subpoenaed person the reasonable cost of producing subpoenaed material.

(e) Service. The requesting party shall serve a subpoena and provide proof of service as would be required by Rule 45(b) of the Federal Rules of Civil Procedure.

(f) Motion to quash or modify. On or before the date specified for compliance, a subpoenaed person may file a motion to quash or modify the subpoena for a reason stated in Rule 45(d)(3) of the Federal Rules of Civil Procedure. The Board may rule on the motion any time after the party that served the subpoena receives the motion.

(g) Enforcement. As necessary, the Board may ask the Attorney General of the United States to petition a United States district court to enforce a Board subpoena.

(h) Letter rogatory in lieu of subpoena. If a person to be subpoenaed resides in a foreign country, the Board may facilitate the issuance of a letter rogatory to the person by the United States Department of State under 28 U.S.C. 1781-1784.

## **RULE 17 EXHIBITS**

(a) Marking exhibits. Unless otherwise ordered, parties shall, to the fullest extent practicable, submit exhibits for inclusion in the appeal file before a hearing starts under Rule 20 or before the first brief is filed when a case is submitted on the written record under Rule 19. Parties shall mark any exhibits offered in evidence thereafter as sequential additions to the appeal file. Such exhibits shall become part of the appeal file if admitted as evidence.

(b) Copies. The Board expects all document exhibits to be true, complete, and legible copies rather than originals. The Board may order a party to substitute a better copy or to make an original document available for inspection.

(c) Withdrawal. The Board may allow a party to withdraw an exhibit from the appeal file and the record for decision on terms fair to the other party.

(d) Disposition. Unless the Board advises the parties of another deadline, the Board may discard physical (non-electronic) exhibits in its possession 90 days after the time to appeal the Board's decision in the case expires.

## **RULE 18 ELECTION OF HEARING OR RECORD SUBMISSION**

(a) Generally. The Board will hold a hearing in a case if the Board must find facts and either party elects a hearing. A party may elect to submit its case for decision on the written record under Rule 19. The presiding judge will set the deadline for an election under this rule.

(b) Hybrid election. A party may elect to submit its case on the written record under Rule 19 and also elect to appear at a hearing, solely to cross-examine the other party's witnesses and to object to evidence offered at the hearing.

## **RULE 19 RECORD SUBMISSION WITHOUT A HEARING**

(a) Generally. If a party elects to submit its case on the record without a hearing, the Board will set a schedule for the parties to complete the evidentiary record and file briefs.

(b) Evidence and objections. When a party elects submission on the record without a hearing, that party may submit material for inclusion in the record no later than the date the party files its initial brief. Unless otherwise ordered, the other party may object to the

admission of such material as evidence within 5 days after receiving the submission. If one party elects a hearing and the other party elects record submission (or makes a hybrid election under Rule 18(b)), the evidentiary record shall close at the end of the hearing. The Board may rule on objections either before or in its decision.

(c) Briefs and argument. The Board may receive briefs and/or oral argument on a record submission. If one party elects a hearing and the other party elects record submission, the first brief of the party submitting its case on the record shall be due no later than the start of the hearing.

## **RULE 20 SCHEDULING HEARINGS**

(a) Generally. The Board will set the time, place, duration, and subject matter of a hearing in a written order after consulting with the parties.

(b) Subject matter. The Board may schedule for hearing all or some of the claims or issues in a case, or all or some of the claims, issues, or questions of fact or law common to more than one case.

(c) Unexcused absence. If a party fails without good excuse to appear at a hearing of which it received notice under this rule, the Board will deem that party to have elected to submit its case on the record under Rule 19.

## **RULE 21 HEARING PROCEDURES**

(a) Generally. The Board generally holds hearings in public hearing rooms. Except as necessary under a protective order or in camera procedures, hearings are open to the public. The Board entrusts the conduct of hearings to the discretion of the presiding judge.

(b) Witnesses, evidence, other exhibits. A party that intends to offer testimony, other evidence, or other material for the record at a hearing shall arrange for the witness, evidence, or other material to be present in the hearing room. The Board may in its discretion allow testimony by telephone or video.

(c) Exclusion of witnesses. The Board may exclude witnesses from a hearing, other than one designated representative for each party or a person authorized by statute to be present, so that witnesses are not influenced by the testimony of other witnesses.

(d) Sworn testimony. Hearing witnesses shall testify under oath or affirmation. If a person called as a witness refuses to so swear or affirm, the Board may receive the person's testimony under penalty of making a materially false statement in a Federal proceeding under 18 U.S.C. 1001. Alternatively, the Board may disallow the testimony and may draw inferences from the person's refusal to swear or affirm.

## **RULE 22 TRANSCRIPTS**

The Board arranges transcription of hearings, other than hearings under the small claims procedure of Rule 52. The Board may, but generally does not, arrange transcription of conferences or other proceedings. No one may record, either in person or virtually, or transcribe a Board proceeding without the Board's permission. The Board may order or acknowledge corrections to an official transcript. Each party is responsible for obtaining its own copy of a transcript.

## **RULE 23 BRIEFS**

(a) Generally. The Board may order or invite briefs on any issue in a case at any time. Briefs shall be formatted for 8.5 by 11-inch paper, double spaced, with body and footnote text no smaller than 13 point.

(b) Prehearing, post-hearing, and other briefs. Prehearing and post-hearing briefs, briefs filed under Rule 19, and briefs on non-procedural motions shall cite record evidence for factual statements and legal authority for legal arguments.

## **RULE 24 CLOSING THE RECORD**

(a) Closing the evidentiary record. Unless otherwise ordered, the evidence as defined in Rule 9(a)(1) is closed at the end of a hearing under Rule 20 or at the start of merits briefing when a case is submitted on the record under Rule 19.

(b) Closing the record for decision. Unless otherwise ordered, the record for decision as defined in Rule 9(a) is closed when the Board receives the final scheduled brief on the matters to be decided.

**RULE 25**  
**DECISIONS AND SETTLEMENTS**

(a) Decisions. The Board issues decisions in writing, except as allowed by Rule 52. The Board will send a copy of a decision to each party, requesting confirmation of receipt (see Rule 1), and will post the decision on its website. If a decision reserves any part of a case for later proceedings, it is conclusive as to the matters it resolves, except as provided in Rules 26 and 28.

(b) Settlements. Parties may settle a case by stipulating to the amount of an award. The Board may issue a decision awarding the stipulated amount if:

- (1) The Board is satisfied that it has jurisdiction; and
- (2) The stipulation states that no party will seek reconsideration of, seek relief from, or appeal the Board's decision.

**RULE 26**  
**RECONSIDERATION**

(a) Grounds. The Board may on motion reconsider a decision or order for a reason recognized in Rule 59 of the Federal Rules of Civil Procedure. Arguments and evidence previously presented are not grounds for reconsideration.

(b) Time limit for motion. A party may move for reconsideration of a decision or order on an appeal or petition within 30 days after that party receives the decision or order. A party may move for reconsideration of a decision or order on an application within 7 days after receiving the decision or order. The Board does not extend these time limits absent good cause or if the decision has become final as a matter of law.

(c) Effect of motion. A pending reconsideration motion does not affect any obligation to comply with a decision or order.

**RULE 27**  
**RELIEF FROM DECISION OR ORDER**

(a) Grounds. The Board may grant relief, for a reason recognized in Rule 60 of the Federal Rules of Civil Procedure, from a decision or order that, alone or in conjunction with prior decisions or orders, resolves all of an appeal, petition, or application.

(b) Time limit for motion. A party may move for relief under this rule within 120 days after that party receives the decision or order at issue.

(c) Effect of motion. A pending motion for relief under this rule does not affect any obligation to comply with a decision or order.

## **RULE 28**

### **FULL BOARD CONSIDERATION**

(a) By motion. The full Board may consider a decision or order when necessary to maintain uniformity of Board decisions or if the matter is exceptionally important. Motions for full Board consideration are disfavored and are decided by a majority of the Board. A party may move for full Board consideration within 10 days after that party receives the decision or order at issue. An order granting full Board consideration will include concurring or dissenting opinions, if any.

(b) By Board initiative. A majority of the Board may initiate full Board consideration of any matter in a case, up to 10 days after a judge or panel issues a decision or order on that matter. The full Board will inform the parties by order of the matter or matters to be considered. The order will include concurring or dissenting opinions, if any.

(c) Full Board decision. The full Board decides matters by majority vote. A full Board decision will include concurring or dissenting opinions, if any.

(d) Effect of motion. A pending motion for full Board consideration does not affect any obligation to comply with a decision or order.

## **RULE 29**

### **CLERICAL MISTAKES; HARMLESS ERROR**

(a) Clerical mistakes. The Board may correct clerical mistakes while a case is pending, or within 60 days thereafter if a decision has not been appealed. If a Board decision is appealed, the Board may correct clerical mistakes only by leave of the appellate Court.

(b) Harmless error. The Board disregards errors that do not affect a substantive right of a party. No error in a ruling, order, or decision of the Board will be grounds for a new hearing or for vacating, reconsidering, modifying, or otherwise disturbing a decision or order unless refusing to correct the error will prejudice a party or work a substantial injustice.

**RULE 30**  
**AWARD OF FEES AND OTHER EXPENSES**

(a) Application for fees and other expenses. A party in an appeal may apply for an award of fees and other expenses as permitted under EAJA or any other provision that may entitle the party to such an award.

(b) Time for filing. A party may file an application for fees and other expenses only after the time to seek appellate review of a Board decision has expired. A party may file an application within 30 calendar days after that date.

(c) Application requirements. An application for fees and other expenses shall:

- (1) Specify the applicant, appeal, and amount sought;
- (2) Explain why the applicant is legally eligible for an award;
- (3) Provide a schedule of fees and expenses with supporting documentation;
- (4) Be signed by the applicant or a person appearing for the applicant, with a declaration under penalty of perjury that the information in the application is correct;
- (5) Provide evidence of the applicant's small business status or net worth; and
- (6) Justify any request for attorney fees exceeding the statutory rate.

(d) Proceedings.

- (1) Within 30 days after receiving an application, the respondent may file an answer with any objections to the award requested, supported by facts and legal analysis.
- (2) The Board may order further proceedings if necessary for a full and fair resolution of issues arising from an application.

(e) Decision. The Board will issue a written decision on an application.

**RULE 31**  
**PAYMENT OF AWARD**

When permitted by law, Board awards under contracts may be paid from the permanent indefinite judgment fund under 31 U.S.C. 1304 and 31 CFR part 256. An EAJA award is paid from funds of the respondent.

**RULE 32**  
**APPEAL FROM BOARD DECISION**

(a) Notice. A party filing a notice of appeal with the United States Court of Appeals for the Federal Circuit (or with a district court in an admiralty case) shall provide a copy of the notice to the Board.

(b) Record on review. The record on appellate review is the record for decision under Rule 9(a) and any other material in a case file that the appellate Court may require.

(c) Certified list. The Clerk will provide the clerk of the appellate Court a certified list as required by the Court's rules.

(d) Inspection or copying of record. The Clerk will make a record on appeal available for inspection and copying in accordance with the rules of the appellate Court.

### **RULE 33**

#### **REMAND FROM APPELLATE COURT**

If a Court remands a case to the Board for further proceedings, each party shall, within 30 days of receipt of the appellate mandate, recommend procedures to comply with the remand order. The Board will then issue an order on further proceedings.

### **RULE 34**

#### **EX PARTE COMMUNICATIONS**

No member of the Board or of the Board's staff will communicate with a party about any material issue in a case outside of the presence of the other party, and no one shall attempt such communications on behalf of a party. This rule does not bar such communications about the Board's administrative functions or procedures.

### **RULE 35**

#### **STANDARDS OF CONDUCT; SANCTIONS**

(a) Standards of conduct. All parties and their representatives, attorneys, and any expert or consultant retained by them or their attorneys shall obey directions and orders of the Board and adhere to standards of conduct applicable to such parties and persons. Standards applying to an attorney include the rules of professional conduct and ethics of the jurisdictions in which the attorney is licensed to practice, to the extent that those rules are relevant to conduct affecting the integrity of the Board, its process, or its proceedings.

(b) Sanctions. If a party or its representative, attorney, expert, or consultant fails to comply with any direction or order of the Board (including an order to provide or permit discovery) or engages in misconduct affecting the Board, its process, or its proceedings, the Board may make such orders as are just, including the imposition of appropriate sanctions. Sanctions may include, but are not limited to:

(1) Taking the facts pertaining to the matter in dispute to be established for the purpose of the case in accordance with the contention of the party who is not at fault;

- (2) Forbidding the challenge of the accuracy of any evidence;
- (3) Refusing to allow the party to support or oppose designated claims or defenses;
- (4) Prohibiting the party from introducing into evidence designated claims or defenses;
- (5) Striking pleadings or parts thereof, or staying further proceedings until the order is obeyed;
- (6) Dismissing the case or any part thereof;
- (7) Enforcing the protective order and disciplining individuals subject to such order for violation thereof, including disqualifying a party's representative, attorney, expert, or consultant from further participation in the case;
- (8) Drawing evidentiary inferences adverse to the party; or
- (9) Imposing such other sanctions as the Board deems appropriate.

(c) Denial of access to protected material. The Board may in its discretion deny access to protected material to any person found to have previously violated a protective order, regardless of who issued the order.

(d) Disciplinary proceedings.

(1) Sanctions. The Board may discipline individual party representatives, attorneys, experts, or consultants for violating any Board order, direction, or standard of conduct if the violation seriously affects the integrity of the Board, its process, or its proceedings. Sanctions may be public or private, and may include admonishment, reprimand, disqualification from a particular matter, referral to an appropriate licensing authority, or other action that circumstances may warrant.

(2) Suspension. The Board may suspend an individual from appearing before the Board as a party representative, attorney, expert, or consultant, if, after affording such individual notice and opportunity to be heard, a majority of the members of the full Board determine such a sanction is warranted.

## **PART II – EXPEDITED PROCEEDINGS**

### **RULE 51 ALTERNATIVE PROCEDURES**

An appellant in an eligible case may elect the small claims procedure under Rule 52 or the accelerated procedure under Rule 53. Parties may jointly elect alternative dispute resolution under Rule 54.

**RULE 52**  
**SMALL CLAIMS PROCEDURE**

(a) Election. The small claims procedure is available solely at an appellant's election and is limited to appeals in which there is a monetary amount in dispute and the requirements for expedited disposition set forth in the Contract Disputes Act, 41 U.S.C. 7106(b), are met. An appellant may elect the small claims procedure up to 30 days after receiving the respondent's answer.

(b) Procedure. The respondent may object to an election, on the grounds that Rule 52(a) is not satisfied, within 10 days after receiving the election. If the small claims procedure is used, the Board will set a schedule for timely resolution of the appeal. The schedule may restrict or eliminate pleadings, discovery, and other prehearing activities.

(c) Decision. The presiding judge may issue a decision in summary form. A decision is final and conclusive, shall not be set aside except for fraud, and is not precedential. If possible, the Board will resolve the appeal within 120 days after the appellant elects the small claims procedure. The Board may extend the appeal schedule if an appellant does not adhere to the established schedule.

**RULE 53**  
**ACCELERATED PROCEDURE**

(a) Election. The accelerated procedure is available solely at an appellant's election and is limited to appeals in which there is a monetary amount in dispute and the requirements for accelerated disposition set forth in the Contract Disputes Act, 41 U.S.C. 7106(a), are met. The appellant may elect the accelerated procedure up to 30 days after receiving the respondent's answer.

(b) Procedure. The respondent may object to an election, on the grounds that Rule 53(a) is not satisfied, within 10 days after receiving the election. If the accelerated procedure is used, the Board will set a schedule for timely resolution of the appeal. The schedule may restrict or eliminate pleadings, discovery, and other prehearing activities.

(c) Decision. The presiding judge may issue a decision with the concurrence of at least one panel member. If the presiding judge and a panel member disagree, the full panel will decide the appeal. If possible, the Board will resolve the appeal within 180 days after the appellant elects the accelerated procedure. The Board may extend the appeal schedule if an appellant does not adhere to the established schedule.

**RULE 54**  
**ALTERNATIVE DISPUTE RESOLUTION**

(a) Availability. The CDA requires boards of contract appeals to provide to the fullest extent practicable informal, expeditious, and inexpensive resolution of disputes. Resolution of a dispute at the earliest stage feasible, by the fastest and least expensive method possible, benefits both parties. The Board provides alternative dispute resolution (ADR) services for pre-claim and pre-final decision matters, as well as appeals pending before the Board. The Board may also conduct ADR proceedings for any Federal agency. The use of ADR proceedings does not toll any statutory time limits.

(b) Procedures for requesting ADR. Parties may jointly ask the Board Chair to appoint a judge as an ADR Neutral. The parties may request a particular judge or judges, to include the presiding judge. To facilitate full, frank, and open participation, a Neutral will not discuss the substance of the case or the parties' conduct in ADR with other Board personnel, and a Neutral who participates in a nonbinding ADR procedure that does not resolve the dispute is recused from further participation in the matter unless the parties agree otherwise in writing and the Board concurs.

(c) Confidentiality. Written material prepared for use in ADR, oral presentations made in ADR, and all discussions between the parties and the Neutral are confidential, subject to 5 U.S.C. 574, and, unless otherwise specifically agreed by the parties, inadmissible as evidence in any Board proceeding, although evidence otherwise admissible before the Board is not rendered inadmissible merely because of its use in ADR.

(d) ADR agreement. Parties shall agree in writing to an ADR method and the procedures and requirements for implementing it. The ADR agreement shall provide that the parties and counsel will not subpoena the Neutral in any legal action or administrative proceeding of any kind to provide documents or testimony relating to the ADR.

(e) Types of ADR. Parties and the Board may agree on any type of binding or nonbinding ADR suited to a dispute.

## **CROP INSURANCE CASES**

### **RULE 201 SCOPE**

These procedures govern the Board's resolution of disputes between insurance companies and the Department of Agriculture's Risk Management Agency (RMA) involving actions of the Federal Crop Insurance Corporation (FCIC). Prior to the creation of this Board, the Department of Agriculture Board of Contract Appeals resolved these disputes pursuant to statute, 7 U.S.C. 1501 et seq. (the Federal Crop Insurance Act), and regulations, 7 CFR 24.4(b) and 400.169. The Board has this authority to resolve these disputes under the Contract Disputes Act, 41 U.S.C. 7105(b)(4)(B).

### **RULE 202 RULES FOR CROP INSURANCE CASES**

The rules of procedure for these cases are the same as the rules of procedure for Contract Disputes Act appeals with these exceptions:

(a) Rule 1(b) (Definitions).

(1) The term "appeal" means a dispute between an insurance company that is a party to a Standard Reinsurance Agreement (or other reinsurance agreement) and the RMA, and the term "appellant" means the insurance company filing an appeal.

(2) The terms "petition" and "petitioner" do not apply to FCIC cases.

(3) Unless otherwise authorized by the Clerk, parties shall efile all submissions in accordance with Rule 1(b) ("efile; efile").

(b) Rule 1(d) (Panels). The procedures in Rule 1(d) regarding small claims under Rule 52 and accelerated procedures under Rule 53 do not apply.

(c) Rule 2(a) (Filing an appeal). In place of Rule 2(a), substitute the following: A notice of appeal shall be in writing and signed by the appellant or by the appellant's attorney or authorized representative. If the appeal is from a determination by the Deputy Administrator of Insurance Services regarding an action alleged not to be in accordance with the provisions of a Standard Reinsurance Agreement (or other reinsurance agreement) or if the appeal is from a determination by the Deputy Administrator of Compliance concerning a determination regarding a compliance matter, the notice of appeal should describe the determination in enough detail to enable the Board to differentiate that decision from any other. The appellant can satisfy this requirement by attaching to the notice of appeal a copy of the Deputy Administrator's determination. If an appeal is taken from the failure of the Deputy Administrator to make a timely determination, the notice of appeal should describe

in detail the matter that the Deputy Administrator has failed to determine. The appellant can satisfy this requirement by attaching to the notice of appeal a copy of the written request for a determination it sent to the Deputy Administrator. The notice of appeal shall also contain:

(1) The name, telephone number, and mailing and email addresses of the appellant and/or its attorney or authorized representative; and

(2) The name, telephone number, and mailing and email addresses of the Deputy Administrator who received or issued the claim. The appellant shall provide the Deputy Administrator a copy of the notice of appeal and attachments.

(d) Rule 2(b) (Filing a petition). Rule 2(b) does not apply to FCIC cases.

(e) Rule 2(d) (Time limits).

(1) In place of Rule 2(d)(1), substitute the following: An appeal from a determination of a Deputy Administrator shall be filed no later than 90 calendar days after the date the appellant receives that determination. The Board is authorized to resolve only those appeals that are timely filed.

(2) In place of Rule 2(d)(2), substitute the following: An appeal may be filed with the Board if the Deputy Administrator fails or refuses to issue a determination within 90 days after the appellant submits a request for a determination.

(3) Rule 2(d)(3) does not apply to FCIC cases.

(f) Rule 4 (Appeal file). In place of Rule 4(a), substitute the following: Within 30 days after receiving the Board's docketing notice, the respondent shall file and serve all documents relevant to the appeal, including:

(1) The determination of the Deputy Administrator that is the subject of the dispute;

(2) The reinsurance agreement (with amendments or modifications) at issue in the dispute;

(3) Pertinent correspondence between the parties that is relevant to the dispute, including prior administrative determinations and related submissions;

(4) Documents and other tangible materials on which the Deputy Administrator relied in making the underlying determination; and

(5) Any additional material pertinent to the authority of the Board or the resolution of the dispute.

(g) Rule 5 (Appearing; notice of appearance). In Rule 5(a)(2), replace "contracting officer or the contracting officer's authorized representative" with "Deputy Administrator."

(h) Rule 7 (Service of documents). The second sentence of Rule 7 does not apply to FCIC cases.

(i) Rule 16 (Subpoenas). Rules 16 (b) through (h) do not apply. Instead, upon the written request of any party filed with the Clerk of the Board, or upon the initiative of a judge, a judge is authorized by delegation from the Secretary of Agriculture to request the appropriate United States Attorney to apply to the appropriate United States District Court for the issuance of subpoenas pursuant to 5 U.S.C. 304.

(j) Rule 25 (Decisions and settlements). In Rule 25(a), the phrase, “except as allowed by Rule 52,” does not apply to FCIC cases.

(k) Rule 32 (Appeal from Board decision). In place of Rules 32 (a) through (c), substitute the following:

(1) Finality of Board decision. A decision of the Board is a final administrative decision.

(2) Appeal permitted. An appellant may file suit in the appropriate United States District Court to challenge the Board’s decision. An appellant filing such a suit shall provide the Board with a copy of the complaint.

(l) Rule 51 (Alternative procedures). Rule 51 does not apply to FCIC cases, except for the availability of alternative dispute resolution under Rule 54.

(m) Rule 52 (Small claims procedure). Rule 52 does not apply to FCIC cases.

(n) Rule 53 (Accelerated procedure). Rule 53 does not apply to FCIC cases.

## TRANSPORTATION RATE CASES

### RULE 301 SCOPE

(a) Authority. 31 U.S.C. 3726(i)(1) provides that a carrier or freight forwarder may request the Administrator of General Services to review an action taken by the Audit Division of the General Services Administration's Office of Transportation and Property Management (the Audit Division). The Administrator has redelegated those functions to the Civilian Board of Contract Appeals.

(b) Type of claim; review of claim. These procedures apply to the review of claims made by a carrier or freight forwarder pursuant to 31 U.S.C. 3726(i)(1). The Board will issue the final agency decision on a claim based on the information submitted by the claimant, the Audit Division, and the department or agency (the agency) for which the services were provided. The burden is on the claimant to establish the timeliness of its claim, the liability of the agency, and the claimant's right to payment.

(c) Filing method and computation of time. Unless otherwise authorized by the Clerk, parties shall efile all submissions in accordance with Rule 1(b) ("efile; efilings"). Time periods are computed in accordance with Rule 3(a). See Rule 1(b) ("business days"). Efilings received by 11:59:59 p.m. (Eastern Time) are same-day filings. Efilings received at or after midnight (12:00 a.m. Eastern Time) are next-business day filings.

(d) Location and hours. See Rule 1(e) for the Board's location, telephone number, and email address and Rule 1(f) for the Clerk's office hours.

### RULE 302 FILING CLAIMS

(a) Form. A claim must be in writing and signed by the claimant or by the claimant's attorney or authorized representative. No particular form is required. The request should describe the basis for the claim and state the amount sought. The request should also include:

- (1) The name, address, telephone number, and email address of the claimant;
- (2) The Government bill of lading or Government transportation request number;
- (3) The claimant's bill number;
- (4) The Government voucher number and date of payment;
- (5) The Audit Division claim number;

- (6) The agency for which the services were provided and, if known, the name, address, telephone number, and email address of the agency's contact person; and
- (7) Any other identifying information.

(b) When claim is considered filed. A claim is filed when it is received by the Clerk of the Board.

(c) Notice of docketing. The Clerk of the Board shall docket the claim and promptly provide a written notice of docketing to the claimant, the Director of the Audit Division, and the agency for which the services were provided. The notice of docketing will identify the judge to whom the claim has been assigned.

(d) Service of copy. The claimant shall provide the Audit Division and the agency identified in paragraph (a)(6) of this rule copies of all material provided to the Board. The claimant shall indicate that copies have been provided to the Audit Division and the agency.

### **RULE 303 RESPONSES TO CLAIM**

(a) Content of responses. Within 30 calendar days, the Audit Division and the agency for which the services were provided shall each submit to the Board:

- (1) A simple, concise, and direct statement of its response to the claim;
- (2) Citations to applicable statutes, regulations, and cases; and
- (3) Any additional information deemed necessary to the Board's review of the claim.

(b) Service of copy. Submissions to the Board shall indicate that a copy has been provided to the claimant and to the Audit Division or the agency, as appropriate. To expedite proceedings, if either the Audit Division or the agency will not file a response (e.g., it believes its reasons for denying the claim were sufficiently explained in the material filed by the claimant), it should notify the Board, the claimant, and the Audit Division or the agency, as appropriate, that it does not intend to file a response.

### **RULE 304 REPLY TO THE AUDIT DIVISION AND AGENCY RESPONSES**

A claimant may file a reply to the Audit Division and agency responses within 30 calendar days after receiving the responses. The claimant shall provide a copy of the response to the Audit Division and the agency. To expedite proceedings, if the claimant does not wish to respond, the claimant should so notify the Board, the Audit Division, and the agency.

**RULE 305  
PROCEEDINGS**

(a) Requests for additional time. The claimant, the Audit Division, or the agency may request additional time to make any filing.

(b) Conferences. The judge will not engage in ex parte communications involving the underlying facts or merits of the claim. The judge may hold a conference with the claimant, the Audit Division, and the agency at any time, for any purpose. The judge may provide the participants a memorandum reflecting the results of a conference.

(c) Submissions. The judge may require the submission of additional information at any time. The claimant, the Audit Division, or the agency may request an opportunity to make additional submissions; however, no such submission may be made unless authorized by the judge.

**RULE 306  
DECISIONS**

The judge will issue a written decision based upon the record, which includes submissions by the claimant, the Audit Division, and the agency, and information provided during conferences. The Board will provide the claimant, the Audit Division, and the agency a copy of the decision. In addition, all Board decisions are posted weekly on the Board's website.

**RULE 307  
RECONSIDERATION OF BOARD DECISION**

The claimant, the Audit Division, or the agency may request reconsideration. A request must be received by the Board within 30 calendar days after the date the decision was issued. The request should state the reasons why the Board should consider the request. Mere disagreement with a decision or re-argument of points already made is not a sufficient ground for reconsideration.

**RULE 308  
PAYMENT OF SUCCESSFUL CLAIMS**

The agency for which the services were provided shall pay amounts the Board determines are due the claimant.

## TRAVEL AND RELOCATION EXPENSES CASES

### RULE 401 SCOPE

(a) Authority. These procedures govern the Board’s resolution of claims by Federal civilian employees for certain travel or relocation expenses. 31 U.S.C. 3702 vests the authority to settle these claims in the Administrator of General Services, who has redelegated that function to the Civilian Board of Contract Appeals. The requirements contained in 31 U.S.C. 3702, including limitations on the time within which claims may be filed, apply to the Board’s review of these claims.

(b) Types of claims. These procedures apply to the review of two types of claims made against the United States by federal civilian employees:

- (1) Claims for reimbursement of expenses incurred while on official temporary duty travel; and
- (2) Claims for reimbursement of expenses incurred in connection with relocation to a new duty station.

(c) Review of claims. Any claim for entitlement to travel or relocation expenses must first be filed with the claimant’s own department or agency (the agency). The agency shall initially adjudicate the claim. A claimant disagreeing with the agency’s determination may request review of the claim by the Board. The burden is on the claimant to establish the timeliness of the claim, the liability of the agency, and the claimant’s right to payment. The Board will issue the final decision on a claim based on the information submitted by the claimant and the agency.

(d) Filing method and computation of time. Unless otherwise authorized by the Clerk, parties shall efile all submissions in accordance with Rule 1(b) (“efile; efilings”). Time periods are computed in accordance with Rule 3(a). See Rule 1(b) (“business days”). Efilings received by 11:59:59 p.m. (Eastern Time) are same-day filings. Efilings received at or after midnight (12:00 a.m. Eastern Time) are next-business day filings.

(e) Location and hours. See Rule 1(e) for the Board’s location, telephone number, and email address and Rule 1(f) for the Clerk’s office hours.

**RULE 402**  
**FILING CLAIMS**

- (a) Filing claims. A claim may be sent to the Board in either of the following ways:
- (1) Claim filed by claimant. A claim shall be in writing and must be signed by the claimant or by the claimant's attorney or authorized representative. No particular form is required. The request should describe the basis for the claim and state the amount sought. The request should also include:
    - (i) The name, address, telephone number, and email address of the claimant;
    - (ii) The name, address, telephone number, and email address of the agency employee who denied the claim;
    - (iii) A copy of the denial of the claim; and
    - (iv) Any other information which the claimant believes the Board should consider.
  - (2) Claim forwarded by agency on behalf of claimant. If an agency has denied a claim for travel or relocation expenses, it may, at the claimant's request, forward the claim to the Board. The agency shall include the information required by paragraph (a)(1) of this rule and by Rule 403.
  - (3) Where claims are filed. Claims should be filed with the Clerk of the Board. See Rule 401(d) for filing methods and requirements.

(b) Notice of docketing. The Clerk of the Board shall docket the request for review and promptly provide a written notice of docketing to the claimant and the agency. The notice of docketing will identify the judge to whom the claim has been assigned.

(c) Service of copy. The claimant shall provide the agency employee identified in paragraph (a)(1)(ii) of this rule, or the individual otherwise identified by the agency to handle the claim, copies of all material provided to the Board. If an agency forwards a claim to the Board, it shall, at the same time, provide the claimant a copy of all material sent to the Board.

**RULE 403**  
**RESPONSE TO CLAIM**

- (a) Content of response. When a claim has been filed with the Board by a claimant, within 30 calendar days after docketing by the Board, the agency shall submit to the Board:
- (1) A simple, concise, and direct statement of its response to the claim;
  - (2) Citations to applicable statutes, regulations, and cases; and
  - (3) Any additional information the agency considers necessary to the Board's review of the claim.

(b) Service of copy. The agency shall provide claimant a copy of these submissions. To expedite proceedings, if the agency believes its reasons for denying the claim were sufficiently explained in the material filed by the claimant, it should notify the Board and the claimant that it does not intend to file a response.

#### **RULE 404 REPLY TO AGENCY RESPONSE**

A claimant may file a reply to the agency response within 30 calendar days after receiving the response. If the claim has been forwarded by the agency, the claimant shall have 30 calendar days from the time the claim is docketed by the Board to reply. To expedite proceedings, if the claimant does not wish to reply, the claimant should so notify the Board and the agency.

#### **RULE 405 PROCEEDINGS**

(a) Requests for additional time. The claimant or the agency may request additional time to make any filing.

(b) Conferences. The judge will not engage in ex parte communications involving the underlying facts or merits of the claim. The judge may hold a conference with the claimant and the agency contact, at any time, for any purpose. The judge may provide the participants a memorandum reflecting the results of a conference.

(c) Additional submissions. The judge may require the submission of additional information at any time.

#### **RULE 406 DECISIONS**

The judge will issue a written decision based upon the record, which includes submissions by the claimant and the agency, and information provided during conferences. The Board will provide the claimant and the agency a copy of the decision. In addition, all Board decisions are posted weekly on the Board's website. Published decisions will identify only first names of claimants and the first initial of their surnames.

**RULE 407**  
**RECONSIDERATION OF BOARD DECISION**

The claimant or the agency may request reconsideration. A request must be received by the Board within 30 calendar days after the date the decision was issued. The request should state the reasons why the Board should consider the request. Mere disagreement with a decision or re-argument of points already made is not a sufficient ground for reconsideration.

**RULE 408**  
**PAYMENT OF SUCCESSFUL CLAIMS**

The agency shall pay amounts the Board determines are due the claimant.

## DECISIONS AUTHORIZED UNDER 31 U.S.C. 3529

### RULE 501 SCOPE

These procedures govern the Board's issuance of decisions, upon the request of an agency disbursing or certifying official, or agency head, on questions involving payment of travel or relocation expenses; these decisions were formerly issued by the Comptroller General under 31 U.S.C. 3529. Section 204 of the General Accounting Office Act of 1996, Pub. L. 104-316, transfers the authority to issue these decisions to the Director of the Office of Management and Budget and authorizes the Director to delegate the authority to perform this function to another agency or agencies. The Director has delegated the authority to issue these decisions to the Administrator of General Services, who has redelegated that function to the Civilian Board of Contract Appeals.

### RULE 502 REQUEST FOR DECISION

(a) Request for decision.

(1) A disbursing or certifying official of an agency, or the head of an agency, may request from the Board a decision (referred to as a "Section 3529 decision") on a question involving a payment the disbursing official or head of agency will make, or a voucher presented to a certifying official for certification, which concerns the following type of claim made against the United States by a federal civilian employee:

(i) A claim for reimbursement of expenses incurred while on official temporary duty travel; and

(ii) A claim for reimbursement of expenses incurred in connection with relocation to a new duty station.

(2) A request for a Section 3529 decision must be in writing and refer to a specific payment or voucher, though no particular form is required. The request may not seek general legal advice and should:

(i) Explain why the official is seeking a Section 3529 decision, rather than taking action on his or her own regarding the matter;

(ii) State the question presented and include citations to applicable statutes, regulations, and cases;

(iii) Include:

(A) The name, address, telephone number, and email address of the official making the request;

(B) The name, address, telephone number, and email address of the employee affected by the specific payment or voucher; and

(C) Any other information the official believes the Board should consider.

(iv) Unless otherwise authorized by the Clerk, parties shall efile all submissions in accordance with Rule 1(b) (“efile; efilings”). Time periods are computed in accordance with Rule 3(a). Efilings received by 11:59:59 p.m. (Eastern Time) are same-day filings. Efilings received at or after midnight (12:00 a.m. Eastern Time) are next-business day filings. See Rule 1(b) (“business days”); Rule 1(e) (“Location and addresses”); and Rule 1(f) (“Clerk’s office”).

(b) Notice of docketing. The Clerk of the Board will docket the request for a Section 3529 decision and promptly provide a written notice of docketing to the official and the affected employee. The notice of docketing will identify the judge to whom the request has been assigned.

(c) Service of copy. The official submitting a request for a Section 3529 decision shall provide the affected employee copies of all material provided to the Board. All submissions to the Board shall indicate that a copy has been provided to the affected employee and the method of service.

### **RULE 503 ADDITIONAL SUBMISSIONS**

If the affected employee wishes to submit any additional information to the Board, he or she must submit such information within 30 calendar days after receiving the copy of the request for decision and supporting material. See Rule 502(a)(2)(iv) for filing requirements. To expedite proceedings, if the employee does not wish to make an additional submission, the employee should so notify the Board and the agency.

### **RULE 504 PROCEEDINGS**

(a) Requests for additional time. The agency or the affected employee may request additional time to make any filing.

(b) Conferences. The judge will not engage in ex parte communications involving the underlying facts or merits of the request. The judge may hold a conference with the agency and the affected employee, at any time, for any purpose. The judge may provide the participants a memorandum reflecting the results of a conference.

(c) Additional submissions. The judge may require the submission of additional information at any time.

**RULE 505  
DECISIONS**

The judge will issue a written decision based upon the record, which includes submissions by the agency and the affected employee, and information provided during conferences. The Board will provide a copy of the decision to the agency and affected employee. In addition, all Board decisions are posted weekly on the Board's website. Published decisions will identify only first names of claimants and the first initial of their surnames.

**RULE 506  
RECONSIDERATION OF BOARD DECISION**

The agency or the affected employee may request reconsideration. A request must be received by the Board within 30 calendar days after the date the decision was issued. The request should state the reasons why the Board should consider the request. Mere disagreement with a decision or re-argument of points already made is not a sufficient ground for reconsideration.

## **FEMA ARBITRATIONS UNDER 42 U.S.C. § 5189a(d)**

### **RULE 601 SCOPE**

These rules establish procedures for arbitration by the Board at the request of an applicant for public assistance from the Federal Emergency Management Agency (FEMA) for a disaster that occurred after January 1, 2016.

### **RULE 602 AUTHORITY**

The Board is authorized by section 423 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5189a(d), to arbitrate disputes between applicants and FEMA as to eligibility for public assistance (or repayment of past public assistance). Minimum dispute amounts are set forth in 42 U.S.C. 5189a(d).

### **RULE 603 PURPOSE**

Under the Stafford Act, the Board acts for the United States Government to resolve public assistance eligibility and repayment disputes by arbitration, a speedy and flexible method of impartial dispute resolution. An arbitration decision under these rules is the final action by the Executive Branch in a dispute. These rules facilitate the creation of an arbitration record sufficient to allow the Board to issue a prompt, just, and reasoned decision. Time periods are computed in accordance with Rule 3(a).

### **RULE 604 ARBITRATION REQUEST**

(a) Requesting arbitration. An applicant for public assistance may request arbitration by following applicable FEMA guidance implementing section 423 of the Stafford Act. Upon the Board's receipt of an arbitration request, the Clerk issues a notice of docketing to all parties.

(b) Definitions. The following terms in Board Rule 1(b) apply to arbitrations under this section: "Board judge; judge," "business days," "Clerk of the Board," "efile; efileing," "electronic storage medium," "Electronic Docketing System (EDS)," "file; filing," "receipt," "secure file transfer method," and "upload." See Rule 604(d) for authorized filing methods.

(c) Contacting the Board. For the Board's location, telephone number, email address, and the Clerk's office hours, see Rules 1(e)-(f).

(d) Electronic filing. Applicants shall file arbitration requests with the Board in EDS unless the Clerk has granted permission to efile the request. Voluminous attachments to the arbitration request may be efiled, transferred via a secure file transfer method, or submitted on electronic storage medium and must be filed under one of these methods if the size, format, and other requirements for submission in EDS cannot be met. EDS generates electronic receipts for arbitration requests.

## **RULE 605**

### **FILINGS; EXHIBITS; PARTIES; REPRESENTATION; SERVICE**

(a) Filing methods. Parties shall file all documents in EDS unless the Clerk has granted permission to efile the documents. See Rule 604(d) when filing voluminous attachments.

(b) Exhibits. When filing exhibits, the Board prefers that parties:

- (1) Provide an exhibit index;
- (2) Consecutively number exhibits;
- (3) Place the exhibit number at the beginning of each exhibit's file name;
- (4) Identify the exhibit name and number on the first page of each exhibit;
- (5) Submit each exhibit as a separate document with no subfolders or embedded documents; and
- (6) Number the pages of each exhibit consecutively, unless the exhibit is already paginated in another logical manner. Exhibits shall be in .pdf format. The Board prefers that documents are enabled to allow word searches through text recognition. Parties shall cite to exhibits in their filings, including in the arbitration request and FEMA's response.

(c) Parties and representatives. The parties to an arbitration are the applicant, the grantee (if not the applicant), and FEMA. Each party shall have one primary representative. This person need not be an attorney but must be authorized by law, formal delegation, or permission of the arbitrators to speak and act for the party in the arbitration. Unless otherwise advised, the Board deems the person who signed the arbitration request to be the applicant's primary representative. Any other primary representative or other party representative shall promptly file a notice of appearance complying with Rule 5(b).

(d) Service and certification. Service of documents to other parties shall be by the same method as used for the filing or by a faster method. EDS automatically serves documents on parties with active EDS accounts to whom the Clerk has granted

matter-specific access. For any documents, including exhibits, not filed in EDS, the parties shall serve such documents. Parties shall certify to the Board:

- (1) The method of filing; and
- (2) The recipient's physical or email address when filing outside of EDS. The

Board may consider a document not served or properly filed if served in a manner inconsistent with this rule.

### **RULE 606 ARBITRATORS; PANELS; COSTS**

The Board assigns three judges as the panel of arbitrators for each request. A single arbitrator may act on behalf of a panel under Rules 607 and 611. A full panel issues any decision under Rule 613. The Board arbitrates at no cost to the parties, who bear their own costs of participation.

### **RULE 607 INITIAL CONFERENCE**

The panel will hold a telephonic scheduling conference with all parties as soon as practicable, ordinarily within 14 calendar days after the Clerk docketed an arbitration request. Each primary party representative shall participate in the conference. At least one panel member will preside. The panel will promptly issue to the parties a written summary of the conference and the schedule. A party has 5 calendar days from receipt of the panel's conference summary to file any objection to it. The panel may hold and summarize other conferences as necessary.

### **RULE 608 EVIDENCE; TIMING**

No party is required to provide additional evidence. An applicant or grantee may, but need not, supplement materials it previously provided to FEMA regarding the dispute. A party may elect to present additional evidence, i.e., documents, things, or testimony tending to make a factual contention appear more or less likely to be true. Any briefs or other documents prepared for the arbitration, including recordings and transcriptions thereof, are confidential. If a party so elects, the panel will to the extent practicable allow a response. FEMA shall file its response to an arbitration request within 30 calendar days after receiving the docketing notice. A panel may not exclude as untimely evidence proffered before arbitration closes under Rule 613. A panel may consider the timing or surprise nature of evidence when assessing the significance, credibility, or probative value of the evidence.

**RULE 609**  
**OTHER MATERIALS CONSIDERED; EX PARTE COMMUNICATIONS**

Written or oral arguments or statements of experts as to how a panel should understand evidence or apply the law are not evidence but may be presented as scheduled by the panel and may be subject to page, word, or time limits. By the close of arbitration under Rule 613, parties should provide the panel with everything it needs to make a decision. Documents written by a party for the panel shall comply with the rules in this part and with Rule 23. No member of a panel or of the Board's staff will communicate with a party about any material issue in arbitration outside of the presence of the other party or parties, and no one shall attempt such communications on behalf of a party.

**RULE 610**  
**MOTIONS**

Motions are strictly limited and should ordinarily be made orally during the initial conference under Rule 607. A later motion may be filed. A party may make a procedural motion, such as to extend time. An applicant may move for voluntary dismissal. No party may move for:

(a) A prehearing merits decision (e.g., summary judgment or dismissal for failure to state a claim); or

(b) An involuntary prehearing dismissal other than on the merits, except on the grounds that an arbitration request is untimely. A panel ordinarily issues one decision per arbitration.

**RULE 611**  
**HEARING: IN PERSON, VIRTUAL, HYBRID,**  
**AND/OR ON THE WRITTEN RECORD**

Parties may conclude an arbitration by presenting their positions in a hearing. A hearing may be:

(a) In person;

(b) Virtual;

(c) Hybrid (in person and virtual);

(d) If agreed by all parties, on the written record; or

(e) A combination of a hearing on the written record and another hearing type. The panel will begin a hearing within 60 calendar days after the initial conference under Rule 607 unless the Board Chair approves a later date. Unless agreed by the parties and the panel, all panel members will attend an in-person, virtual, or hybrid hearing sited in Washington, D.C. A single panel member may conduct an in-person or hybrid hearing sited outside Washington, D.C. Hearing procedures are at the panel's discretion with the goal of promptly, justly, and finally resolving the dispute, and need not involve traditional witness examination or cross-examination. Parties should not offer fact witnesses to read legal materials or to make legal arguments. Statements of fact in a hearing need not be sworn but are made subject to penalty for violation of 18 U.S.C. 1001. Hearings are confidential and not public and may not be recorded by any means without the Board's permission. The Board may have a hearing transcribed for the panel's use. If a transcript is made, a party may purchase a copy from the court reporter or transcription service and has 7 calendar days after a copy is available to file proposed corrections.

## **RULE 612 STREAMLINED PROCEDURES**

The Board encourages parties to focus on providing only the information a panel needs to resolve an eligibility or repayment dispute. Examples of streamlining may include without limitation:

- (a) Electing not to supplement the materials already provided to FEMA, if (or to the extent) the existing record adequately frames the dispute;
- (b) Relying when possible on documents over other types of evidence;
- (c) Simplifying in person, virtual, or hybrid hearings by filing in advance written testimony, reports, or opening statements by some witnesses or party representatives;
- (d) Refraining from objecting to evidence without good cause; and
- (e) Omitting duplicative and immaterial evidence and arguments.

## **RULE 613 DECISION; FINALITY**

The panel will advise the parties when the arbitration is closed. The panel will resolve a dispute within 60 calendar days thereafter unless the panel advises the parties that the Board Chair approves a later date. The panel's decision may be issued in writing or orally with transcription. A decision is primarily for the parties, is not precedential, and should

concisely resolve the dispute. The decision of a panel majority is the final administrative action on the arbitrated dispute and is judicially reviewable only to the limited extent provided by the Federal Arbitration Act (9 U.S.C. 10). Within 30 calendar days after issuing a decision, a panel may correct clerical, typographical, technical, or arithmetic errors. A panel may not reconsider the merits of its decision resolving an eligibility or repayment dispute.

## ADMINISTRATIVE FALSE CLAIMS ACT REFERRALS

### RULE 701 SCOPE

These rules establish procedures for any matter referred to a member of the Board under the Administrative False Claims Act (AFCA), 31 U.S.C. 3803(d).

### RULE 702 AUTHORITY

The Board is authorized to issue these rules under section 5203(g)(3) of the National Defense Authorization Act for Fiscal Year 2025 (P.L. 118-159), 31 U.S.C 3801 note, and the Contract Disputes Act (CDA), 41 U.S.C. 7105(e)(1)(E).

### RULE 703 RULES FOR AFCA REFERRALS

The rules of procedure for referrals under the AFCA are the same as the rules of procedure for CDA cases, including the definitions, with the following exceptions:

(a) Rule 1.

(1) Rule 1(a) does not apply.

(2) The definitions in Rule 1(b) of “appeal; appellant,” “appeal file,” “application; applicant,” “Board judge; judge,” “case,” “party,” “petition; petitioner,” and “respondent” do not apply.

(3) The following definitions apply:

Case. “Case” means a matter involving one or more alleged false claims or statements by a “person” as defined in the AFCA that is referred to a member of the Board under the AFCA.

Complainant. “Complainant” means an agency or agency component whose authorized official refers a case to a Board member under the AFCA.

Evidence file. “Evidence file” means the submissions to the Board under Rule 703(c).

Party. “Party” means a complainant or a respondent.

Respondent. “Respondent” means a person or entity alleged by a complainant to have made one or more false claims or statements.

(4) In place of Rule 1(d), substitute the following. One Board member will preside in each referred case. The presiding Board member will set a schedule, oversee any discovery, conduct conferences, hearings, and other proceedings, and decide the merits.

References to “the Board” in the rules of procedure for CDA cases shall, as appropriate in context, mean the presiding Board member, whose rulings are not precedential.

(b) Rule 2. In place of Rule 2, substitute the following. A complainant may as authorized by law refer a case by transmitting to the Board Chair, through the Clerk:

- (1) the complaint;
- (2) a copy of the notice of referral that was mailed or delivered to the respondent pursuant to the AFCA; and
- (3) the answer, if any. If there is no answer, a referral may include a motion for a default decision. The Clerk will promptly notify the parties of the Board Chair’s acceptance or non-acceptance of a referred case.

(c) Rule 4. In place of Rule 4, substitute the following. As directed by the presiding Board member, the parties shall submit an electronic evidence file organized substantially like an electronic appeal file under Rule 4(b) for CDA cases. The evidence file shall include without limitation any exculpatory information under 31 U.S.C. 3803(e)(2). Evidence file exhibits are part of the record of a case under Rule 9(a) unless a party objects to an exhibit within the time set by the presiding Board member and the presiding Board member sustains the objection.

(d) Rule 5. In place of Rule 5(a), substitute the following. A complainant may appear in a case through an attorney. A respondent may appear through an attorney or, if an individual, may appear for himself or herself. A corporation, trust, or association may appear by one of its officers. A limited liability corporation, partnership, or joint venture may appear by one of its members. Each individual appearing on behalf of a party must have legal authority to appear. An attorney appearing in a case shall file a notice of appearance complying with Rule 5(b).

(e) Rule 6. In place of Rule 6, substitute the following. The complaint and the answer (if the complainant received one) shall accompany a referral. The presiding Board member may accept amended or supplemental pleadings as is consistent with due process.

(f) Rule 9. In Rule 9(a)(1)(i), replace “Rule 4 appeal file” with “Rule 703(c) evidence file.” Rule 9(a)(2)(i) does not apply.

(g) Rule 10. In place of Rule 10, substitute the following. The presiding Board member may in his or her discretion receive any evidence to which no party objects and will apply the Federal Rules of Evidence to resolve objections to the admissibility of evidence bearing on proof of fraud or falsity.

(h) Rule 12. In place of Rule 12, substitute the following. The presiding Board member may dismiss a case without reaching the merits:

(1) For lack of jurisdiction, or

(2) At the request of the complainant and with the approval of the Board Chair.

The presiding Board member may stay a case as is consistent with due process.

(i) Rule 17. In Rule 17(a), replace “appeal file” with “evidence file.”

(j) Rule 18. In Rule 18, replace “judge” with “Board member.”

(k) Rule 21. In Rule 21(a), replace “judge” with “Board member.”

(l) Rule 25. In Rule 25(a), replace the second sentence with the following. The Board will send a copy of a decision to each party, requesting confirmation of receipt (see Rule 1), and will post on its website a decision that resolves all or part of a case on the merits.

(m) Rules 28, 31, 51-53. Rules 28, 31, and 51 through 53 do not apply.



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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RESPONDENT'S MOTION TO DISMISS FOR FAILURE  
TO STATE A CLAIM DENIED: December 18, 2025

CBCA 8468

FOUR LLC,

Appellant,

v.

DEPARTMENT OF AGRICULTURE,

Respondent.

Alexander B. Hastings of Morgan, Lewis & Bockius LLP, Washington, DC; and Clinton Small of Morgan, Lewis & Bockius LLP, Chicago, IL, counsel for Appellant.

Elin Dugan, Office of the General Counsel, Department of Agriculture, San Francisco, CA; and Michelle Weiner, Office of the General Counsel, Department of Agriculture, Charlotte, NC, counsel for Respondent.

Before Board Judges **LESTER**, **KANG**, and **NEWSOM**.

**LESTER**, Board Judge.

Respondent, the Department of Agriculture, has filed a motion to dismiss this appeal for failure to state a claim, arguing that, as a matter of law, the agency's Digital Infrastructure Services Center (DISC) cannot be held responsible in monetary damages for the actions of another agency, the Federal Emergency Management Agency (FEMA). DISC awarded and managed a task order to appellant, Four LLC (Four), upon behalf of FEMA. Through DISC's task order, Four supplied licenses for a particular brand of software not to DISC, but

to FEMA.<sup>1</sup> Four alleges that, through a bilateral modification to the original task order, DISC agreed that, if DISC did not exercise both of the one-year extension options in the task order, the Government would not use the software or replace it with a functional equivalent for the remainder of what would have been the full term (including options) of the task order. DISC did not exercise the second one-year option because FEMA, through its own procurement office, obtained replacement software through another contractor. Four considers FEMA's act of obtaining replacement software a breach of the task order provision.

Although the parties dispute whether they actually agreed to add the provision described above to the task order and dispute the meaning of the language used in it, those issues are not currently before us. The only issue that DISC presents in its motion to dismiss is whether, as a matter of law (and assuming that the provision was added to its task order), it may be held liable in damages for FEMA's actions, arguing that it was not serving as FEMA's "agent" in a manner that would impose liability under an agency theory. Contrary to DISC's position, however, Four is not asserting entitlement under an agency theory. It is seeking damages for a breach of contract. The law is clear that, although an agency like DISC is not normally responsible for the actions of another agency, an agency can, through contract, assume financial responsibility for another's actions by warranting that a future event, even if under the control of the other agency, will or will not happen. In so doing, it assumes the risk of improper action by the other agency and of liability for resultant damage. As a result, we must deny DISC's motion to dismiss, without prejudice to DISC's ability to seek summary judgment after the record is more fully developed regarding its liability for FEMA's actions. In so deciding, we are not holding that the provision was, in fact, a part of the task order or that the provision's language created a warranty by DISC about what actions FEMA would take. We hold only that, in its complaint, Four has set forth allegations of an actionable breach of warranty by DISC.

## Background

### I. The Task Order

The statement of facts set forth below are based upon the allegations that Four set forth in its complaint filed July 25, 2025, except as otherwise noted.

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<sup>1</sup> It does not appear that the existing record explains why DISC, rather than FEMA's own procurement office, issued a task order to obtain software for FEMA's, rather than its own, use.

On or about July 26, 2019, DISC posted a request for quotes on the National Aeronautics and Space Administration's Solutions for Enterprise-Wide Procurement Government-Wide Acquisition Contract website (SEWP V)<sup>2</sup> seeking quotes from established authorized resellers of licenses of a specific software developed by Splunk Enterprise (the Splunk software) to supply such licenses to FEMA, rather than DISC, for a base year with options for two one-year extensions. Appeal File, Exhibit 1.

Four submitted quote no. 121585001 on July 31, 2019, identifying the prices at which it would supply FEMA with Splunk software licenses in the base year and in each of the two option years. Complaint, Exhibit D. In its quote, Four asked DISC to include in any task order that it issued the following provision prohibiting DISC from obtaining replacement software if DISC declined to exercise either of the two option years:

Government agrees that Four LLC's quote will be incorporated into and made a part of any resultant order and warrants that the use of the products is essential to its proper, efficient, and economic operation for the entire quoted period of performance; it will use its best efforts to obtain appropriations of the necessary funds to meet its obligations under the order for all payments contained therein. Should an order expire due to non-renewal or termination for convenience, the government agrees to cease use and not replace the products acquired under the order with functionally similar products for a [sic] the longer of the remainder of the full order term or a period of one year following such event. Products are provided as a single asset and priced based on the volume of the full three-year term. Partial renewal or termination is not allowed; order must be renewed in full to obtain the proposed pricing.

Complaint, Exhibit D; *see* Complaint ¶ 6. Four alleges that it was necessary to have a guarantee that DISC would order three years of access to the Splunk software to allow Four to "offer [DISC] a discounted rate." Complaint ¶ 7.

The task order that DISC issued to Four for the Splunk software on August 7, 2019 (*see* Complaint ¶ 4), did not contain the language that Four had requested, but it listed item numbers corresponding to the base year, the first option year, and the second option year in

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<sup>2</sup> According to the SEWP V website, "[t]he SEWP Program enables NASA and all Federal Agencies to efficiently and effectively acquire mission critical Information Technology, Communication and Audio Visual (ITC/AV) solutions and services via a suite of contracts encompassing a diversity of business sizes and offerings." <https://www.sewp.nasa.gov/> (last visited Dec. 17, 2025).

a manner consistent with the structure and pricing of the quote. *Id.* ¶ 8; *see* Complaint, Exhibit B. Nevertheless, according to Four, the task order was amended through modification P00003 on July 8, 2020, to incorporate the quote as part of DISC’s exercise of the first option. Complaint ¶ 5. The language of modification P00003 read as follows:

Modification #3 incorporates the following changes:

- 1) Exercise option year 1 in the amount of \$654,057.76.
- 2) The attached quote and statement of work is incorporated into the award.

All other terms and conditions remain the same[.]

Complaint, Exhibit C. In the copy of modification P00003 that Four attached to its complaint, and in the copy of the modification that DISC included in the Rule 4 appeal file, the quote is *not* attached to or a part of the modification. *See id.*; Appeal File, Exhibit 9. Instead, the pricing terms from the quote are typed into the modification, and a printed copy of a statement of work is attached, but the modification itself does not reference or otherwise reflect the language from the quote relating to DISC’s obligation not to use or replace the Splunk software during the full term of the task order if DISC did not exercise both options.

During the performance of the first option year, DISC informed Four that DISC would not exercise the second option year unless Four agreed to provide fewer software licenses than required under the task order and at a reduced price. Complaint ¶ 10. Four refused DISC’s request, and DISC did not exercise the second option year. *Id.* ¶ 11.

The DISC contracting officer subsequently “informed Four that FEMA had found a different vendor to provide not just a ‘functionally similar’ product, but the Splunk software itself.” Complaint ¶ 12. Four viewed FEMA’s actions as a breach of its task order, which, according to Four, “expressly prohibited [DISC] from terminating the Task Order only to obtain identical replacement software from a different vendor before the conclusion of the Task Order’s second option year.” *Id.* ¶ 13.

Four alleges that, on September 7, 2021, Four’s president, Jeffrey Nolan, informed the contracting officer during a telephonic conference that “because [DISC] was procuring the [Splunk] Software on FEMA’s behalf, the Task Order’s terms remained binding, and those terms prohibited [DISC] from declining to renew the Task Order solely to acquire the same software from a different vendor.” Complaint ¶ 14; Complaint, Exhibit A ¶ 6. Four further alleges that “the [DISC] Contracting Officer acknowledged and agreed with Mr. Nolan’s explanation” but still declined to exercise the second option year. Complaint

¶ 15. The contracting officer explained that FEMA had decided to buy the (same) Splunk software on its own (through FEMA’s own contracting process) without DISC’s involvement. Complaint, Exhibit A ¶ 6.

## II. Four’s Certified Claim and Appeal

On February 3, 2025, Four submitted a certified claim to the DISC contracting officer, seeking damages in the amount of \$654,057.75 for DISC’s breach of “its promise not to obtain replacement software during the Prohibition Period,” its breach of the duty of good faith and fair dealing, and its misrepresentation that it would not obtain replacement software. On June 24, 2025, Four filed a notice of appeal with the Board based upon the contracting officer’s “deemed denial” of Four’s claim, which the Clerk of the Board docketed as CBCA 8468.

In its complaint, filed July 25, 2025, Four alleged that DISC breached the task order “by (1) conditioning the exercise of Option Year 2 on Four’s agreement to reduce the number of licenses; (2) declining to exercise Option Year 2 when Four refused those terms; and (3) procuring the same Software from a different vendor during the Prohibition Period, in direct violation of the Term.” Complaint ¶ 20. On August 25, 2025, DISC filed a motion to dismiss this appeal for failure to state a claim, arguing that, as a matter of law, DISC could not be held responsible for actions that a separate agency took and that DISC had no power to control FEMA’s conduct. As an addendum to its motion, DISC also filed an answer to Four’s complaint. DISC responded to the motion to dismiss on September 25, 2025, and DISC filed a reply brief on October 30, 2025.

## Discussion

### I. Standard of Review

The Board recently described the standard that the Board must apply in reviewing a motion to dismiss for failure to state a claim as follows:

Dismissal “for failure to state a claim upon which relief can be granted is appropriate when the facts asserted by the [appellant] do not entitle [it] to a legal remedy.” *Boyle v. United States*, 200 F.3d 1369, 1372 (Fed. Cir. 2000). “The [tribunal’s] task in considering a motion to dismiss for failure to state a claim is not to determine whether [an appellant] will ultimately prevail, but ‘whether the claimant is entitled to offer evidence to support the claims.’” *Integheartly Wheelchair Van Services, LLC v. Department of Veterans Affairs*, CBCA 7318, 22-1 BCA ¶ 38,156, at 185,311 (quoting *J. Cardenas & Sons*

*Farming, Inc. v. United States*, 88 Fed. Cl. 153, 160-61 (2003) (quoting *Chapman Law Firm Co. v. Greenleaf Construction Co.*, 490 F.3d 934, 938 (Fed. Cir. 2007))). In considering a dismissal for failure to state a claim, “we must assume all well-pled factual allegations are true and indulge in all reasonable inferences in favor of the nonmovant.” *Anaheim Gardens v. United States*, 444 F.3d 1309, 1314-15 (Fed. Cir. 2006) (quoting *Gould, Inc. v. United States*, 935 F.2d 1271, 1274 (Fed. Cir. 1991)). Dismissal is appropriate only “if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” *Id.* at 1315. “If no relief could be granted, . . . dismissal [is] proper.” *Id.*; see *Blackstone Consulting, Inc. v. General Services Administration*, CBCA 718, 08-1 BCA ¶ 33,770, at 167,160.

*Texas Industrial Security, Inc. v. General Services Administration*, CBCA 8467, slip op. at 5 (Nov. 28, 2025).

## II. Four’s Ability to Allege a Breach of Warranty

The sole basis of DISC’s motion to dismiss is its belief that, because it was not acting as FEMA’s agent or as a joint actor in connection with FEMA’s purchase of the software from a different vendor, it cannot be held liable for FEMA’s actions. DISC represents that “[c]ourts have repeatedly held that ‘[o]ne federal agency will not be charged with the knowledge of, or responsibility for, another merely because they are both part of the same government.’” Respondent’s Motion to Dismiss at 2 (quoting *Tifa Limited*, Docket No. I.F. & R.-II-547-C, 1999 WL 549374, at \*19 (Office of the Env’t Prot. Agency Adm’r July 7, 1999) but citing *Town of Kure Beach, North Carolina v. United States*, 168 Ct. Cl. 597 (1964)). DISC asserts that, “in claims requiring interagency knowledge or attribution of conduct[,] . . . such imputation is only permitted where there is a special relationship, such as a joint enterprise, a duty to share information, or express control, none of which were alleged or exist here.” *Id.* (citing *J.A. Jones Construction Co. v. United States*, 390 F.2d 886 (Ct. Cl. 1968) and *In re “Agent Orange” Product Liability Litigation*, 597 F. Supp. 740 (E.D.N.Y. 1984), *aff’d*, 818 F.2d 145 (2d Cir. 1987)). It argues that, because DISC had no involvement in or control over FEMA’s decisions or conduct and that DISC’s relationship with FEMA “was limited to DISC acting as a procurement conduit,” Four cannot show that DISC and FEMA “operated as joint actors with any duty to share information,” which “fails to state a claim upon which relief can be granted.” *Id.* at 2-3. It alleges that Four’s “failure to plead control, authority, or ratification *dooms* attempts to bind one party to another’s conduct under an agency theory.” *Id.* at 2 (citing *Bilek v. Federal Insurance Co.*, 8 F.4th 581, 586-88 (7th Cir. 2021)).

The problem with DISC's motion is that, contrary to DISC's position, Four is not asserting liability "under an agency theory." It is not claiming, and need not claim, that FEMA and DISC were joint actors or that DISC is responsible for FEMA's actions as FEMA's "agent." Four is asserting liability under a breach of contract theory, arguing that, in the task order to which the parties voluntarily agreed, DISC expressly warranted that, if DISC did not exercise both options in the task order and FEMA obtained substitute software during the unexercised option period, DISC would pay damages to Four.

"[A] warranty is an assurance by one party to an agreement of the existence of a fact upon which the other party may rely; it is intended precisely to relieve the promisee of any duty to ascertain the facts for himself. Thus, a warranty amounts to a promise to indemnify the promisee for any loss if the fact warranted proves untrue." *Dale Construction Co. v. United States*, 168 Ct. Cl. 692, 699 (1964). "An express warranty, more specifically, arises by 'express contract language regarding future events . . . which entitles the contractor to rely upon the occurrence or nonoccurrence of the event in pricing the contract.'" *Walter Dawgie Ski Corp. v. United States*, 30 Fed. Cl. 115, 126 (1993) (quoting John Cibinic, Jr. & Ralph C. Nash, Jr., *Administration of Government Contracts* 179 (2d ed. 1986)). "For a warranty to exist there must be either an affirmation of fact or a promise which relates to performance under the contract." *American Ship Building Co. v. United States*, 654 F.2d 75, 78 (Ct. Cl. 1981).

We need not delve here into the rules surrounding how to determine whether a representation in a contract constitutes a warranty or whether the language at issue here actually created a warranty—those issues are not the focus of DISC's motion to dismiss, and those questions are not currently before us. The sole focus of DISC's motion is its belief that it can become liable for actions that another federal agency takes *only* if DISC had some type of control over the other agency's actions or if the agencies are jointly acting together in a manner that damages a contractor. DISC's argument is in direct conflict with well-established precedent.

The Government's ability to create a warranty that would require it to pay damages for conduct for which it would not otherwise be liable or for conduct or behavior over which it has no control is well-settled. For example, there is a long line of cases in which courts have held that, despite the fact that the Government is immune from liability for actions that it undertakes in its sovereign capacity, an agency can agree, through contract, to compensate a contractor if a sovereign act is undertaken. "It has long been established that while the United States cannot be held liable directly or indirectly for public acts which it performs as a sovereign, the Government can agree in a contract that if it does exercise a sovereign power, it will pay the other contracting party the amount by which its costs are increased by the Government's sovereign act, and that this agreement can be implied as well as

expressed.” *D&L Construction Co. v. United States*, 402 F.2d 990, 999 (Ct. Cl. 1968); *see Gerhardt F. Mayne Co. v. United States*, 76 F. Supp. 811, 815 (Ct. Cl. 1948) (“[The Government] cannot enter into a binding agreement that it will not exercise a sovereign power, but it can say, if it does, it will pay you the amount by which your costs are increased thereby.”); *Sunswick Corp. of Delaware v. United States*, 75 F. Supp. 221, 228 (Ct. Cl. 1948) (“We know of no reason why the Government may not by the terms of its contract bind itself for the consequences of some act on its behalf which, but for the contract, would be nonactionable as an act of the sovereign.”). The Court of Appeals for the Federal Circuit in *Hughes Communications Galaxy, Inc. v. United States*, 998 F.2d 953 (Fed. Cir. 1993), discussed how an agency can create an obligation to pay damages for taking actions that, but for the existence of a contract provision requiring compensation, the Government could not be held financially liable:

[T]he present case simply involves the question of how liability for certain contingencies was allocated by the contract. In its contractual capacity, the government executes countless agreements with private entities to receive and provide services, goods and supplies. These contracts routinely include provisions shifting financial responsibility to the government for events which might occur in the future. That some of these events may be triggered by sovereign government action does not render the relevant contractual provisions any less binding than those which contemplate third party acts, inclement weather and other *force majeure*.

*Id.* at 958-59.

The Government can make that same type of warranty, obligating itself to pay compensation for its breach, for actions or inaction by a third party over which the Government has no control. “It is also settled that although the Government is not liable for damages resulting from the action of third parties, it may be held liable if it extended to the contractor a warranty which was breached.” *D&L Construction*, 402 F.2d at 999 (citing *Dale Construction*, 168 Ct. Cl. at 699). The Court of Claims in *Dale Construction* explained how a government agency, through contract, could warrant that a third party (there, a municipality) would turn off water at a construction site by a particular time, even though the agency had no control over the municipality’s behavior, and pay damages to the contractor if the third party did not do so:

It is in this context that the record clearly establishes that the post engineer [who timely requested that the municipality turn off the water valve] was not at fault in this incident; hence the Government may be held liable in damages only if the circumstances show that it extended a warranty to the contractor

which was breached. *In essence a warranty is an assurance by one party to an agreement of the existence of a fact upon which the other party may rely; it is intended precisely to relieve the promisee of any duty to ascertain the facts for himself. Thus, a warranty amounts to a promise to indemnify the promisee for any loss if the fact warranted proves untrue.* The facts here appear to fall squarely within this concept. In assuming responsibility to have the water supply turned off and assuring the contractor that this had been done, the post engineer, in effect, gave plaintiff an unqualified assurance upon which the latter was entitled to and did actually rely; further, that assurance plainly was intended by the parties to relieve the contractor of any obligation to ascertain the facts for itself. Plaintiff is, therefore, reasonably entitled to recover \$822.54—the amount of loss it suffered when the assurance on which it relied turned out to be incorrect.

*Id.* at 699 (emphasis added).

The United States Supreme Court in *United States v. Winstar Corp.*, 518 U.S. 839 (1996), applied this same rationale to contractual warranties addressing acts of Congress in finding that, if a government agency has bound itself in contracts with savings and loan associations to pay damages if Congress changed regulatory rules in a manner that caused the savings and loan associations to incur financial losses, those contractual agreements would be enforceable and would place on the Government the financial burden of compensating the associations if Congress took action inconsistent with the warranty:

The mere fact that the Government’s contracting agencies (like the Bank Board and FSLIC) could not themselves preclude Congress from changing the regulatory rules does not, of course, stand in the way of concluding that those agencies assumed the risk of such change, for determining the consequences of legal change was the point of the agreements. *It is, after all, not uncommon for a contracting party to assume the risk of an event he cannot control, even when that party is an agent of the Government.*

*Id.* at 908 (emphasis added).

These same warranty concepts apply to an agency’s agreement to assume financial responsibility through a promise that another federal agency will not take some action and to compensate the contractor if the other agency violates the warranty in a manner that causes the contractor to suffer damage. As the Supreme Court in *Winstar* specifically noted, “[a] common example of such an agreement is mandated by Federal Acquisition Regulation 52.222-43, which requires Government entities entering into certain fixed price service

contracts to include a price adjustment clause shifting to the Government [and to the agency issuing the contract] responsibility for cost increases resulting from [the contractor's] compliance with Department of Labor wage and fringe benefit determinations." *Winstar*, 518 U.S. at 909 n.58 (citing 48 CFR 52.222-43 (1995)). Similarly, the Federal Circuit in *Hills Materials Co. v. Rice*, 982 F.2d 514 (Fed. Cir. 1992), held that, pursuant to standard FAR clauses in the contract at issue there, the Department of the Air Force had contractually agreed to accept financial responsibility if another federal agency, the Occupational Safety and Health Administration (OSHA), changed certain OSHA regulations in a manner that negatively impacted the contractor. *See id.* at 516-17 & n.2 (finding that the sovereign acts doctrine "does not prevent the government as contractor from affirmatively assuming responsibility for specific sovereign acts" that another federal agency might undertake).

Accordingly, we reject DISC's argument that a federal agency can never be financially responsible in damages for the actions of another federal agency over which it has no control unless one is acting as the other's "agent." An agency can, through contract, create the very type of warranty that Four alleges was created here. In rejecting DISC's argument, we do not make any judgment on whether the language upon which Four relies does, in fact, create a warranty. Further proceedings will be needed to determine whether the disputed clause is even a part of the task order at all, a question that is not clear from the existing record and is disputed. If the disputed clause is part of the task order, there may be ambiguities in the language, and the Board will need to determine whether ambiguities exist; whether, if so, they are patent or latent; and whether, under the doctrine of *contra proferentum*, the ambiguity would be held against Four as the drafter of the provision. *See Fort Vancouver Plywood Co. v. United States*, 860 F.2d 409, 413-14 (Fed. Cir. 1988) (discussing how to analyze contract language for ambiguities). Nevertheless, because it is clear that Four's theory of liability is breach of warranty, based upon an alleged contractual agreement creating the warranty, rather than an agency theory, we must deny DISC's motion to dismiss.

### Decision

For the foregoing reasons, DISC's motion to dismiss for failure to state a claim is **DENIED**.

Harold D. Lester, Jr.  
HAROLD D. LESTER, JR.  
Board Judge

We concur:

*Jonathan L. Kang*  
JONATHAN L. KANG  
Board Judge

*Elizabeth W. Newsom*  
ELIZABETH W. NEWSOM  
Board Judge