

**RULES OF THE  
GOVERNMENT ACCOUNTABILITY OFFICE  
CONTRACT APPEALS BOARD**

**for the  
GOVERNMENT PRINTING OFFICE  
and  
OTHER DESIGNATED AGENCY APPEALS**

**and  
CONTRACT APPEALS BOARDS of the  
CAPITOL PRESERVATION COMMISSION, THE COMMITTEES  
ON APPROPRIATIONS OF THE U.S. SENATE AND THE  
U.S. HOUSE OF REPRESENTATIVES, AND THE  
HOUSE OFFICE BUILDING COMMISSION**

**Washington, D.C.**

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## Preamble

The following rules of procedure are hereby adopted and promulgated pursuant to General Accountability Office Procurement Order No. 0625.1; letter dated September 15, 2005 of the Capitol Preservation Commission and the Committees on Appropriations of the U.S. Senate and the U.S. House of Representatives; and letter dated February 14, 2006 of the House Office Building Commission.

James A. Spangenberg, Chairman

## **RULES OF THE CONTRACT APPEALS BOARD**

These rules are applicable to appeals before the Government Accountability Office Contract Appeals Board for the Government Printing Office, and the Contract Appeals Boards established by the Capitol Preservation Commission and the Committees on Appropriations of the U.S. Senate and the U.S. House of Representatives relating to contracts executed by the Architect of the Capitol for the design and construction of the Capitol Visitor Center and to install an emergency generator at the Longworth House Office Building. These rules also are applicable to appeals before the Contract Appeals Boards, established by the House Office Building Commission, relating to contracts executed by the Architect of the Capitol for the design and construction of the West Refrigeration Plant Expansion Project at the Capitol Power Plant. In addition, the Contract Appeals Boards established from time to time by other Congressional committees or commissions may make these rules applicable to appeals before them.

### **RULE 1**

#### **OFFICES**

The office of the Board shall be at the U.S. Government Accountability Office, 441 G Street, N.W., Washington, D.C. 20548, or in such other place as may from time to time hereafter be assigned for its use. All files and records of the Board shall be kept at such office. All communications, pleadings, and/or documents addressed to the Board shall be addressed or delivered to the Board at the Office of the General Counsel, U.S. Government Accountability Office, 441 G Street, N.W., Room 7182, Washington, D.C. 20548; Telephone: 202-512-3342; Facsimile: 202-512-9749; E-mail: CAB@gao.gov.

### **RULE 2**

#### **BOARD CONSIDERATION**

- a. **Authority** – The Board is authorized to determine issues of law and fact in connection with appeals filed under these rules. When an appeal is filed pursuant to a contracts disputes clause that limits appeals to disputes concerning issues of fact, the Board may nevertheless, in its discretion, hear, consider, and render an opinion on all questions of law necessary for the complete adjudication of the issues raised by an appeal.
- b. **Three Member Panel** – Appeals shall be decided by a panel of three members of the Board appointed by the Chairman of the Board; said panel may or may not include the Chairman of the Board as a member. Hearings on appeals may be held by one or more of the panel members of the Board. Requests for full Board consideration will not be granted.
- c. **Absence or Disability of Chairman** – The activities of the Board shall be performed under the supervision of the Chairman of the Board. In the absence of, or

during the disability of the Chairman, the Senior Member of the Board shall act as the Chairman.

### **RULE 3**

#### **APPEALS-HOW TAKEN**

a. **Form** – An appeal by the contractor from a decision of a contracting officer shall be filed with the Board in the form of a written notice of appeal. The notice shall identify the contract, the contracting officer for the subject dispute, and shall be signed personally by the appellant (the contractor making the appeal) or by his representative or attorney. The complaint referred to in Rule 5 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. A copy of the appeal and complaint shall be provided promptly to the contracting officer.

b. **Docketing** – When a notice of appeal has been received by the Board, it shall be docketed promptly. Notice in writing shall be given to the appellant and the contracting officer, or their counsel, with a copy of these rules.

### **RULE 4**

#### **APPEAL FILE**

a. **Duties of the Contracting Officer** – Within 45 days after receipt of both the notice from the Board that an appeal has been filed and the complaint, or within such other period of time as may be allowed by the Board, the contracting officer shall assemble and transmit to the Board an appeal file consisting of all documents pertinent 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 the letter or letters of claim in response to which the decision was issued;
- (4) All documents on which the contracting officer relied in making the decision, and any correspondence relating thereto;
- (5) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and
- (6) Any additional information considered relevant to the appeal.

Within the same time specified above, the contracting officer shall furnish the appellant a copy of each document he or she transmits to the Board, except those in subparagraph (a)(2) above. As to the latter, a list furnished to the appellant indicating specific contractual documents transmitted will suffice. Documents filed under this rule, and any supplements, shall be organized and filed in accordance with Rule 4(c).

b. ***Duties of Appellant*** – Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, or within such other period of time as may be allowed by the Board, the appellant shall transmit to the Board for inclusion in the appeal file any documents not contained therein which are considered relevant to the appeal, and furnish a copy within the same time period specified above to the contracting officer or counsel for the government. Documents filed under this rule, and any supplements, shall be organized and filed in accordance with Rule 4(c).

c. ***Organization of Appeal File*** – Appeal file documents may be originals or true, legible, and complete copies or facsimiles. The file shall be arranged in chronological order, earliest documents first; bound in a 3-ring binder (or binders) or similar loose-leaf binder bound on the left margin except where size or shape makes such binding impracticable; numbered; tabbed; and indexed. Numbering of pages shall be consecutive, in whole arabic numerals (no letters, decimals, or fractions), and continuous from one page to the next, so that the complete file will consist of one set of consecutively numbered pages. Multiple binders shall also be consecutively numbered with references on the outside cover and binding that state the range of page numbers contained therein. Within each binder, tabs shall separate each document; multiple documents shall not be placed behind a single tab, unless each document is separated by a divider. The index shall include the date and a brief description of each document. The Board may, in its discretion or upon request of a party, order an alternative organization of the appeal file. If an alternative organization is permitted, such as by document type or similar grouping, documents within that grouping must be presented in chronological order to the extent possible.

d. ***Status of Documents in Record*** – 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 to consideration of a particular document or documents by filing a written objection as early as practicable but no later than 3 days in advance of a hearing or, if there is no hearing, no later than the closing of the record. The appeal file may be supplemented at any time in advance of the hearing at the request of the Board, or upon the Board's approval at the request of a party. (For supplementation of the record after a hearing, see Rule 17).

e. ***Inspection of Record*** – The notice of appeal, the complaint, the answer, the documents required to be filed therewith pursuant to Rule 4, all papers filed by the parties with the Board pursuant to these rules, and all correspondence exchanged between the Board and the parties or their attorneys shall constitute the appeal file, which shall be available for inspection at the offices of the Board. Prior arrangements for inspection of the file should be made with a member of the Board.



## RULE 5

### PLEADINGS

a. **Complaint** – Within 30 days after receipt of notice from the Board that an appeal has been filed, or within such other period of time as may be allowed by the Board, appellant will file with the Board, if not previously filed with the notice of appeal, a complaint setting forth simple, concise, and direct statements of each of its claims showing that it is entitled to relief; identifying the contract provision or provisions under which relief is claimed; and stating the amount in controversy or an estimate thereof, if known, and/or the relief requested. The complaint shall be limited to those requests for relief which have been presented to and denied by the contracting officer. No technical form is required, but each claim should be separately identified. In the event that the complaint is not filed within the time stated above, the appeal may be dismissed by the Board for lack of prosecution.

b. **Answer** – Within 30 days after receipt of the complaint, or within such other period of time as may be allowed by the Board, the contracting officer or counsel for the government shall prepare and file with the Board an answer thereto. The answer shall set forth simple, concise, and direct statements of the government's defenses to each claim asserted by the appellant. Each defense shall be stated with as much particularity as is practicable. Defenses which go to the jurisdiction of the Board may be included in the answer, or may be raised by motion pursuant to the provisions of Rule 6. Motions in lieu of an answer may be filed only with the permission of the Board.

c. **Amendment of Pleadings** – At any time before a hearing on the merits, or before the closing of the record when a hearing is not held, the Board in its discretion may permit a party to amend its complaint or answer concerning matters that are within the proper scope of the appeal, upon conditions that are just to both parties. The Board, upon its own initiative or upon application by a party, may in its discretion order a party to make a more definite statement of its complaint or answer, or to reply to an answer. When issues within the proper scope of the appeal, but not raised by the complaint and answer, are determined by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the complaint and answer as may be necessary to cause them to conform to the evidence may be made upon motion at any time, but failure to so amend does not affect the result of the hearing of these issues. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the complaint and answer, the Board may allow the pleadings to be amended within the proper scope of the appeal and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to satisfy the Board that the admission of such evidence would prejudice it in maintaining its case or defense upon the merits. The Board may, however, grant a continuance to enable the objecting party to respond to such evidence.

## **RULE 6**

### **MOTIONS AND BRIEFS**

a. **Motions** -- Motions (including, but not limited to, those for dismissal, summary judgment, or partial summary judgment) shall be made in writing, indicate the relief sought and include the grounds therefor, and be filed as soon as practicable after the grounds therefor are known. The Board shall decide all motions before the hearing on the merits unless the Board determines that the motion be deferred pending a hearing on both the merits and the motion. The Board may decide motions on the written submissions without oral argument. Jurisdictional defenses may be raised by motion, and the Board, at any time and on its own initiative, may raise an issue of jurisdiction and decline to proceed with an appeal in which it lacks authority to decide the issues.

b. **Briefs** -- The Board may require the parties to file legal or factual briefs concerning any matter that may aid in the disposition of the appeal. When such briefs are required, the brief shall contain citations to the record and legal authority as appropriate, and follow such other format as may be directed by the Board. Citations to the record must be specific (*i.e.*, to page or bates number, or other similar designation) so that the Board can locate the exact proposition or matter to which the party is referring. Briefs that are not submitted in the required format, or which do not contain citations to the record or legal authority, may be rejected by the Board or returned to the party with the request that the party resubmit the brief with appropriate corrections.

## **RULE 7**

### **COPIES AND SERVICE THEREOF**

Except for the documents provided pursuant to Rule 4, an original and four copies of every pleading, motion, brief, amended filing, or other statement addressed to the Board shall be filed with the Board, and a copy thereof shall be promptly served upon the other party. With regard to the documents provided pursuant to Rule 4, an original and one copy of the documents shall be filed with the Board. Service shall be made by delivering the required document and copies to the Board and to the opposing party or his attorney of record using any of the following methods: (1) personal delivery; (2) overnight delivery by commercial carrier (*e.g.*, UPS or FedEx); (3) delivery by electronic mail with a hard copy to follow by personal delivery or commercial carrier; (4) by facsimile; or (5) such other means as may be authorized by the Board. However, electronic mail may not be used to transmit documents that are provided as part of the Rule 4 file or its supplement. Delivery by regular mail is not permitted unless authorized by the Board. The time and method of service shall be certified by the party making service or his attorney.

## RULE 8

### GENERAL DISCOVERY PROCEDURES

a. ***General Policy and Methods of Discovery*** – The parties are encouraged to engage in voluntary discovery procedures and may obtain discovery by one or more of the following methods: deposition, written interrogatories, requests for admissions, and requests for production of documents or other tangible things.

b. ***Scope of Discovery*** – Except as otherwise limited by order of the Board, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involving the pending appeal, whether it relates to a claim or defense of a party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

c. ***Discovery Plan, Conferences, and Orders*** – Within 30 days of the initial filing of documents in accordance with Rule 4(a), the parties are required to confer and provide a proposed discovery plan, which shall include estimated time frames and proposed dates for completing discovery and when the parties anticipate that a hearing can be scheduled. Upon request of a party or on its own initiative, the Board may at any time hold an informal meeting or telephone conference with the parties to identify the issues for discovery purposes; establish a plan and schedule for discovery; set limitations on discovery; compel compliance with discovery; and issue such orders or determine such other matters as are necessary for the proper management of discovery, including imposing sanctions on the parties as may be appropriate.

d. ***Discovery Limits*** – On motion or on its own initiative, the Board may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, and those methods may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

e. ***Discovery Objections*** – Unless otherwise ordered by the Board, any objection to a discovery request must be filed with the Board within 15 calendar days of receipt of the request. Objections must be filed in writing and state with specificity the grounds therefor. Upon receipt, the Board will establish a schedule for resolving the objections, which may include additional briefing by the parties or oral argument, and will determine the extent upon which discovery will be permitted. A party shall fully respond to any discovery request to which it does not file a timely objection, in accordance with Rule 8(f). The parties are required to make a good faith effort to resolve objections to discovery requests informally prior to seeking relief from the Board.

f. ***Discovery Responses*** -- Unless otherwise ordered by the Board, a party is required to respond to written interrogatories, requests for admission, and requests for production of documents or other tangible things, within 30 days of receipt.

g. ***Duty to Supplement*** -- A party that has responded to written interrogatories, requests for admission, or requests for production of documents and other tangible things, upon becoming aware of deficiencies or inaccuracies in its original responses, or upon acquiring additional information or additional documents relevant thereto, shall, as quickly as practicable, and as often as necessary, supplement its responses to the requesting party with correct and sufficient additional information and such additional documents as are necessary to give a complete and accurate response to the request.

h. ***Voluntary Cooperation*** -- Each party is expected to cooperate by making available witnesses and evidence under its control when requested by another party, and to secure the voluntary attendance of third-party witnesses and production of evidence by third parties, when practicable.

i. ***Motions to Compel Discovery*** -- A party receiving an objection to a discovery request, or a party which believes that another party's response to a discovery request is incomplete or entirely absent, may file a motion to compel a response, but such motion must include a representation that the moving party has tried in good faith, prior to filing the motion, to resolve the matter informally. The motion to compel shall include a copy of each discovery request at issue and the response, if any.

j. ***Sanctions*** -- If a party fails to appear for deposition, respond to interrogatories or requests for admissions, or respond to a request for production of documents and other tangible things, after being properly served with such discovery request, the party seeking discovery may move the Board to impose sanctions under Rule 9.

## **RULE 9**

### **SANCTIONS**

a. ***Standards*** -- All parties and their representatives, attorneys, and any experts/consultants retained by them or their attorneys, must obey directions and orders prescribed by the Board and adhere to standards of conduct applicable to such parties and persons. As to an attorney, the standards include the rules of professional conduct and ethics of the jurisdictions in which an attorney is licensed to practice, to the extent that those rules are relevant to conduct affecting the integrity of the Board, its process, and its proceedings. The Board will also look to professional guidelines in evaluating an individual's conduct.

b. ***Sanctions*** -- When a party or its representative or attorney or any expert/consultant fails to comply with any direction or order issued by 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. The sanctions may include:

- (1) Taking the facts pertaining to the matter in dispute to be established for the purpose of the appeal in accordance with the contention of the party submitting the discovery request;
- (2) Forbidding challenge of the accuracy of any evidence;
- (3) Refusing to allow the disobedient party to support or pose designated claims or defenses;
- (4) Prohibiting the disobedient party from introducing in evidence designated documents or items of testimony;
- (5) Striking pleadings or parts thereof, or staying further proceedings until the order is obeyed;
- (6) Dismissing the appeal or any part thereof; and/or
- (7) Imposing such other sanctions as the Board deems appropriate.

Prior to imposing sanctions, the Board will provide the offending party with notice and an opportunity to be heard on the issue of whether sanctions should be imposed. The opportunity to be heard does not mean that the party is entitled to a hearing; the opportunity to provide written argument shall satisfy this requirement.

c. ***Disciplinary Proceedings*** – In addition to the above procedures, the Board may discipline individual party representatives, attorneys, and experts/consultants for a violation of any Board order or direction or standard of conduct applicable to such individual where the violation seriously affects the integrity of the Board’s process or proceedings. Sanctions may be public or private, and may include admonishment, disqualification from a particular matter, referral to an appropriate licensing authority, or such other action as circumstances may warrant. The Board, in its discretion, may suspend an individual from appearing before the Board as a party representative, attorney, or expert/consultant if, after affording such individual notice and an opportunity to be heard, a majority of the members of the full Board determines such sanction is warranted. For purposes of this provision, the phrase “full Board” shall mean those members of the Board as of the time of the disciplinary proceedings.

## RULE 10

### DEPOSITIONS

a. ***When Depositions May Be Taken*** – After an appeal has been docketed by the Board and a complaint has been filed, either party may take the testimony of any person by deposition upon oral examination or written questions, for the purpose of discovery or for use as evidence in the appeal proceedings, or for both purposes.

b. ***Time, Place, and Manner of Taking*** -- The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, be governed by order of the Board.

c. ***Limits*** -- The number of depositions taken shall not be limited except as the Board may require to protect a party from annoyance, burden, or harassment.

d. ***Use as Evidence*** -- No testimony taken by deposition shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at the hearing. Depositions will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. However, depositions can always be used to contradict or impeach the testimony of a deponent as a witness. If only a part of a deposition is offered in evidence by a party, an adverse party may require the offering party to introduce any other part which in fairness ought to be considered with the part introduced. In any case, the Board, upon the agreement of the parties, may permit the introduction of relevant portions of depositions as designated by the parties. If no hearing has been conducted and the appeal has been submitted on the record pursuant to Rule 16, the Board, in its discretion, may receive depositions in evidence to supplement the record.

## **RULE 11**

### **INTERROGATORIES**

a. ***When Interrogatories May Be Served*** -- After an appeal has been docketed by the Board and a complaint has been filed, a party may serve on the adverse party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association, by any officer or agent who shall furnish such information as is available to the party.

b. ***Answers*** -- The interrogatories shall be answered separately and fully in writing, signed under oath by the person answering them, and served on the party submitting the interrogatories. Objections to the interrogatories shall be signed by counsel for the party responding to the interrogatories. An interrogatory is not necessarily objectionable merely because an answer to the interrogatory may involve an opinion or contention that relates to fact or the application of law to fact; however, the Board may order that such interrogatory need not be answered until after discovery has been completed or some other event has occurred.

c. ***Scope and Use as Evidence*** -- Interrogatories may relate to any matters which can be inquired into under Rule 10 (Depositions), and the answers may be used to the same extent as provided for the use of the deposition of a party.

d. ***Limits*** -- The number of interrogatories or sets of interrogatories to be served shall not be limited except as the Board may require to protect a party from annoyance, burden, or harassment.

e. ***Option to Produce Business Records*** -- Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon which the interrogatory has been served, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the record(s) from which the answer may be derived or ascertained and to afford the party serving the interrogatory a reasonable opportunity to examine, audit, or inspect such records and to make copies thereof. Such specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the record(s) from which the answer may be ascertained.

## **RULE 12**

### **REQUESTS FOR ADMISSION**

a. ***When Requests for Admission May Be Served*** -- After an appeal has been docketed by the Board and a complaint has been filed, a party may serve on the opposing party a written request for the admission by the latter of the genuineness of any relevant documents described in and exhibited with the request, or of the truth of any relevant matters of fact set forth in the request. Each of the matters for which an admission is requested shall be deemed admitted unless, within the period designated in Rules 8(e) and 8(f) for responding to discovery requests, the party to whom the request is directed serves upon the party requesting the admission either:

(1) A sworn statement denying specifically the matters for which an admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters, or

(2) Written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part.

If written objections to a part of the request are made, the remainder of the request shall be answered within the period designated in Rule 8(f). A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party deny only a part of a qualification of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder.

b. ***Limits*** -- The number of requests for admissions served shall not be limited except as the Board may require to protect a party from annoyance, burden, or harassment.

c. ***Use as Evidence*** -- Any matter admitted is conclusively established for the purpose of the pending action, unless the Board on motion permits withdrawal or amendment of the admission.

## RULE 13

### PRODUCTION OF DOCUMENTS AND OTHER TANGIBLE THINGS

- a. ***When Documents May Be Requested*** – After an appeal has been docketed by the Board and a complaint has been filed, any party may serve on any other party a request (1) to produce and permit the inspection, copying, or photographing of any designated documents (including writings, papers, books, accounts, letters, photographs, drawings, graphs, charts, and other data compilations), objects, and tangible things, not privileged, which are in his or its possession, custody, or control and which are within the scope of discovery as described in Rule 8(b), or (2) to permit entry upon designated land or other property in his or its possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated object or operation thereon which is within the scope of discovery as described in Rule 8(b).
- b. ***Time, Place, and Manner*** – The request shall specify the time, place, and manner of making the inspection and taking the copies and photographs. The Board may make an order that the inspection, copying, measuring, surveying, or photographing shall be limited to certain matters; or the Board may make any other order which justice requires to protect the party from annoyance, burden, or harassment.

## RULE 14

### PRE-HEARING CONFERENCES, BRIEFS, AND MOTIONS

- a. ***Status and Pre-Hearing Conferences*** – At any time during the appeal, the Board, upon its own initiative or upon the request of one of the parties, may call upon the parties or their attorneys or representatives to appear before the Board, or one or more members thereof, for a status conference to consider whatever matters are necessary to aid in the disposition of the appeal. Such matters may include, for example, the simplification or clarification of issues, the necessity or desirability of amendments to the pleadings, and agreements and rulings to facilitate discovery. At the conclusion of discovery, the Board may hold a pre-hearing conference in any appeal to be heard pursuant to Rule 15 to consider the possibility of obtaining stipulations, admissions, agreements on documents, or similar agreements that will avoid unnecessary proof; the possibility of agreement disposing all or any of the issues in dispute; the presentation of witnesses (including expert witnesses) or evidence at the hearing; the scheduling of pre-hearing briefs and motions; and such other matters as may aid in the conduct of the hearing and disposition of the appeal.
- b. ***Orders*** – The Board shall make an order which recites the action taken at the conference(s) such as amendments allowed to the pleadings, agreements made by the parties as to any matters considered, and any directives of the Board to aid in the disposition of the appeal. An order may require each party to submit a list identifying each witness proposed to be called, the general substance of the testimony to be offered by each witness, and the nature of other evidence proposed to be offered. An order may also, in the discretion of the Board, require the parties to submit pre-hearing briefs in any



appeal to be heard pursuant to Rule 15, and establish a schedule for filing pre-hearing motions. All orders of the Board shall become part of the record.

c. ***Pre-Hearing Briefs*** -- Pre-hearing briefs, when required by the Board, shall be submitted at least 7 days prior to a hearing on the merits, unless such other time is established by the Board, and shall be filed in accordance with Rule 6.

d. ***Pre-Hearing Motions*** -- Pre-hearing motions may be filed concerning the admissibility of evidence or witnesses, and such other matters as may aid in the conduct of the hearing or the disposition of the appeal. Such motions shall be submitted at least 3 days in advance of the hearing, unless such other time is established by the Board, and shall be filed in accordance with Rule 6.

## **RULE 15**

### **HEARINGS**

a. ***Hearings, When Requested*** -- The appellant or the government, upon request, will be accorded a full and complete hearing on the merits, which may be held by one or more of the panel members of the Board. Hearings will be held at 441 G Street, N.W., Washington, D.C., unless it is otherwise ordered by the Board. The Board will consider a request for a hearing at another location if compelling reasons are timely presented.

b. ***Notice of Hearing*** -- The appellant and government counsel will be given at least 15 days notice of the time and place of a hearing on the merits, provided that the parties may, with the approval of the Board, waive notice and fix a mutually satisfactory time. Continuances will not be granted except upon written request and for good cause.

c. ***Nature of Hearing*** -- Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and respondent may offer the testimony of witnesses, who shall be subject to cross-examination by the opposing party, and such relevant evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence, subject, however, to the sound discretion of the presiding Board member in supervising the extent and manner of presentation of such evidence. In general, admissibility will depend on relevancy and materiality. Evidence which may not be admissible under the Federal Rules of Evidence may be admitted in the discretion of the presiding Board member. The weight to be attached to evidence and credibility to be accorded witnesses will be determined by the Board, in its discretion. Stipulations of fact agreed upon by the parties must be in writing and filed with the Board, and may be regarded and used in evidence at the hearing. The parties may also stipulate the testimony that would be given by a witness if the witness were present. The Board may at any time during the hearing require evidence or argument in addition to that put forth by the parties.

d. ***Examination of Witnesses*** -- Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated or the Board shall otherwise order. If the testimony of a witness is not given under oath, the Board may

warn the witness that his or her statements may be subject to the provisions of Title 18, United States Code, Sections 287 and 1001, and any other provisions of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

e. ***Availability of Witnesses, Documents, and Other Tangible Things*** -- It is the responsibility of a party desiring to call any witness, or to use any document or other tangible thing as an exhibit in the course of a hearing, to ensure that whoever it wishes to call and whatever it wishes to use is available at the hearing.

f. ***Issues not Raised by the Pleadings*** -- If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may nevertheless be admitted by the Board, in its discretion, if it is within the proper scope of the appeal. If such evidence is admitted, the pleadings may be amended to conform to the evidence. The Board may also grant the objecting party a continuance to enable it to respond to the evidence.

g. ***Delay by the Parties*** -- If the Board determines that the hearing is being unreasonably delayed by the failure of a party to produce evidence, or by the undue prolongation of the presentation of evidence, it may, by written order or by ruling from the bench, prescribe a time or times within which the presentation of evidence must be concluded, establish time limits on the direct or cross-examination of witnesses, and enforce such order or ruling by appropriate sanctions.

h. ***Exhibits*** -- Unless otherwise directed by the Board, each party shall prepare (jointly or individually) hearing exhibit books for use during the hearing, and shall provide such books to the Board and opposing counsel at least 3 days before the hearing commences. The books should consist of documents (or relevant excerpts from documents) placed in a 3-ring binder or similar loose-leaf binder bound on the left margin, separated by numbered tabs, with an index of the documents in the front of each binder. The front page of each document also should be marked with the corresponding Rule 4 file citation if applicable. Documents not contained within the hearing books shall be marked by the Board during the hearing. Documents contained in the hearing book that are not admitted into evidence during the hearing will not become part of the record unless already part of the Rule 4 file, or requested by the presenting party and permitted by the Board.

i. ***Copies*** -- Copies of documents may be offered and received into evidence as exhibits, provided that they are of equal legibility and quality as the originals, and such copies shall have the same force and effect as if they were the originals. If the Board so directs, the party offering a copy of a document as an exhibit shall have the original available at the hearing for examination by the Board and any other party. When the original of a document has been received in evidence, an accurate copy thereof may be substituted in evidence for the original by leave of the Board at any time.

j. ***Absence of Parties or Counsel*** -- The unexcused absence of a party or his authorized representative at the time and place set for the hearing will not be occasion for delay. In such event, the hearing will proceed and the case will be regarded as submitted by the absent party unless he appears before the conclusion of the hearing and offers additional evidence.

k. ***Post-Hearing Briefs*** -- The Board may require the submission of post-hearing briefs. In such case, briefs shall be filed within 30 days after receipt of the transcript of the hearing, and reply briefs shall be filed within 15 days after receipt of the initial post-hearing briefs, unless such other time period has been established by the Board. Post-hearing briefs shall otherwise be filed in accordance with the requirements of Rule 6.

## **RULE 16**

### **SUBMISSION ON THE RECORD WITHOUT A HEARING**

a. ***General Requirements*** -- Either party may elect to waive a hearing and to submit a case upon the record before the board by so advising the Board in writing. Submission of a case without a hearing does not relieve the parties from the necessity of proving the facts supporting their claims or defenses. In the event that only one party waives a hearing and submits its case on the record, the Board may proceed with a hearing attended by the remaining parties.

b. ***Conference in Lieu of Hearing*** -- If neither side desires a hearing, either party may request that a conference be held in lieu of a hearing with one or more members of the panel designated to decide the appeal, and such request may be granted at the discretion of the Board. The purpose of the conference is not to serve for introduction of new matter, but to permit explanations and argument of matters of record. If any new matter is introduced at the conference by either party, consideration of the appeal will be deferred until the opposing party has been apprised thereof and has had an opportunity to reply. Both parties will be afforded the right to be present at any such conference.

c. ***Briefs*** -- The Board, at its discretion, may order a party that submits its case on the record without a hearing to submit a written brief or memorandum of law within such period of time as the Board allows. The Board may also order parties to submit reply briefs. Briefs will be filed in accordance with the requirements of Rule 6.

## **RULE 17**

### **CLOSING THE RECORD**

a. ***Closing the Record*** -- The record will be closed at the conclusion of a hearing or, if no hearing is held, on a date announced by the Board by written notice.

b. ***Supplementation of the Record After the Record is Closed*** -- Except as the Board may otherwise order in its discretion, no evidence shall be received after the

record is closed. However, at any time subsequent to a hearing on the merits or the closing of the record, and prior to a decision of the appeal by the Board, at the request of a party or upon its own initiative, the Board may reopen the record for the purpose of receiving newly discovered evidence, or for such other reason as may appear to the Board to be sufficient and just.

## **RULE 18**

### **FINDINGS AND DECISIONS OF THE BOARD**

All proceedings shall be concluded and appeals disposed of as expeditiously as possible, commensurate with sound adjudicatory procedure. The findings and decision in each appeal shall be made by the members of the panel which considered that appeal based on the entire record, and the findings and decision of the majority thereof shall constitute the findings and decision of the Board. The absence or withdrawal of one member of the panel which considered that appeal shall not invalidate the proceedings, and the decision of the remaining panel members shall constitute the decision of the Board. All decisions and findings of the Board shall be made in writing and authenticated copies thereof shall be forwarded to the parties or their counsel, and to the Chairman or Chairmen of the Commission, Commissions and/or Committee by which the Board was appointed.

## **RULE 19**

### **MISTAKES AND CORRECTIONS**

a. ***To Decisions and Orders*** – Clerical mistakes in decisions or orders of the Board may be corrected at any time on the Board’s own initiative or upon motion of a party, except that if an appeal has been filed with another tribunal, such mistakes may be corrected only with leave of that tribunal.

b. ***To the Official Transcript*** – Corrections to an official transcript of a hearing will be made only when they involve errors affecting its substance. The Board may order such corrections on motion or on its own initiative, and only after notice to the parties giving them an opportunity to object. Such corrections will ordinarily be made either by hand with pen and ink or by the appending of an errata sheet, or the Board may require that the reporter provide substitute or additional pages.

## **RULE 20**

### **MOTION FOR RECONSIDERATION**

A motion for reconsideration, if filed by either party, shall set forth specifically the ground or grounds relied upon to sustain the motion, and shall be filed within 30 days of receipt of a copy of the Board’s decision. A motion pending under this rule does not affect the finality of a decision or suspend its operation.

## **RULE 21**

### **SUSPENSION OF PROCEEDINGS**

At any time, the Board may suspend the proceedings by agreement of the parties for settlement discussions, or for good cause shown.

## **RULE 22**

### **ALTERNATIVE DISPUTE RESOLUTION**

The Board considers Alternative Dispute Resolution (ADR) to be an efficient way to timely resolve many contract disputes, and therefore encourages the parties to use ADR as their primary means to resolve their contract dispute. ADR with Board participation is available at the initiative of the Board or upon the joint motion of both parties. Guidelines, procedures, and requirements for implementing ADR will be prescribed by agreement of the parties and the Board. Ordinarily, ADR will be performed by a Board member, designated by the Chairman of the Board, that is not one of the three panel members deciding the dispute.

## **RULE 23**

### **REPRESENTATION OF PARTIES**

a. ***The Appellant*** – Any appellant may appear before the Board by an attorney duly licensed in any State, Commonwealth, Territory, or in the District of Columbia. An individual appellant may appear before the Board in person; a corporation may be represented by an officer thereof; a partnership or joint venture may be represented by a member thereof. Under special circumstances, the Board may authorize a contractor to appear by a duly authorized representative other than those mentioned herein for the purposes of that appeal only.

b. ***The Respondent*** – The respondent may appear before the Board by an attorney duly licensed in any State, Commonwealth, Territory, or in the District of Columbia. Such attorney shall be designated with authority to represent the government's interests before the Board. Alternatively, if not otherwise prohibited, the respondent may appear by the contracting officer or the contracting officer's authorized representative.

c. ***Notice of Appearance*** – An attorney or other duly authorized representative representing a party before the Board shall file a notice of appearance. Such notice shall provide the person's name, address, direct dial telephone number, fax number, and electronic mail address. If multiple attorneys or law firms represent a party, the contact information for each attorney shall be provided to the Board. In such instances, the party shall designate a single attorney or individual as the primary point of contact for the party. Notices of appearance shall be filed at the commencement of the appeal and shall be updated as necessary during the appeal.

## **RULE 24**

### **EX PARTE COMMUNICATIONS**

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

## **RULE 25**

### **TIME**

In computing any period of time described in these rules, "days" refer to calendar days. The first day from which the period begins to run is not counted, and when the last day of the period is Saturday, Sunday, or a federal holiday, the period extends to the next day that is not a Saturday, Sunday, or a federal holiday.

## **RULE 26**

### **APPLICABILITY OF RULES**

These rules shall be effective as of April 10, 2006, and shall apply to all appeals pending on that date or thereafter filed.