AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

General Counsel shall so advise the employee and no further action on the employee's request shall be taken.

(g) In all instances except those where the Department of Justice has non-concurred in the request, the General Counsel shall forward for decision to the Secretary or his or her designee the employee's request, the recommendation of the head of the employee's principal operating component, the views of the Department of Justice, and the General Counsel's recommendation.

(h) Any payment under this part, either to indemnify a Department employee or to settle a personal damage claim, is contingent upon the availability of appropriated funds of the Department that are permitted by law to be utilized for this purpose.

PART 20—BOARD OF CONTRACT APPEALS

Subpart A—Development of Housing and Urban Development Board of Contract Appeals

Sec.
20.1 Scope of part.
20.2 Establishment of Board.
20.3 Organization and location of the Board.
20.4 Jurisdiction of the Board.
20.5 Board powers.

Subpart B—Rules of the Department of Housing and Urban Development Board of Contract Appeals

20.10 Rules.

PRELIMINARY PROCEDURES

Rules
1. Appeals, how taken.
2. Notice of appeal, contents of.
3. Docketing of appeals.
4. Preparation, content, organization, forwarding, and status of appeal file.
5. Dismissal for lack of jurisdiction.
6. Pleadings.
7. Amendments of pleadings or record.
8. Hearing election and motions.
9. Prehearing briefs.
10. Prehearing of presubmission conference.
11. Submission without a hearing.
12. Optional small claims (expedited) and accelerated procedures. (These procedures are available solely at the election of the appellant.)
12.1 Elections to utilize small claims (expedited) and accelerated procedure.
12.2 The small claims (expedited) procedure.
12.3 The accelerated procedure.
12.4 Motions for reconsideration in Rule 12 cases.
13. Settling the record.
14. Discovery—depositions.
15. Interrogatories to parties, admission of facts, and production and inspection of documents.
16. Filing and service of papers other than subpoenas.

HEARINGS

17. Where and when held.
18. Notice of hearings.
19. Unexcused absence of a party.
20. Hearings: conduct; examination of witnesses.
21. Subpoenas.
22. Copies of papers.
23. Posthearing briefs.
24. Transcript of proceedings.
25. Withdrawal of exhibits.

REPRESENTATION

26. Appellant.
27. Government.

DECISIONS

28. Decisions.

MOTION FOR RECONSIDERATION

29. Motion for reconsideration.

DISMISSALS AND DEFAULTS

30. Dismissal without prejudice.
31. Dismissal or default for failure to prosecute or defend.

REMAND

32. Remand from court.

SANCTIONS

33. Sanctions.

MISCELLANEOUS PROCEDURES

34. Applicability.
35. Time, computation and extensions.
36. Ex parte communications.

AUTHORITY: 41 U.S.C. 601–613; 42 U.S.C. 3535(d).

Subpart A—Department of Housing and Urban Development Board of Contract Appeals

SOURCE: 50 FR 45911, Nov. 5, 1985, unless otherwise noted.

§ 20.1 Scope of part.

This part establishes a Board of Contract Appeals, sets forth its function,

policies and procedures regarding matters to be considered by the Board, and prescribes the rules of the Board.

§20.2 Establishment of Board.

There is established in the Office of the Secretary, the Housing and Urban Development Board of Contract Appeals (''the Board'').

§20.3 Organization and location of the Board.

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

(b) *Organization.* The Board shall be comprised of a Chief Administrative Judge, who shall be the Chair, an Administrative Judge, who shall be the Vice-Chair, and such other Administrative Judges as may be appointed by the Secretary. All members of the Board shall be attorneys at law duly licensed by any State, commonwealth, territory, or the District of Columbia. All members shall be selected and appointed to serve in accordance with section 8(b)(1) of the Contract Disputes Act of 1978 (41 U.S.C. 608(b)(1)). Except as otherwise provided, appeals are assigned to a panel of at least three members who decide the case by a majority vote. The Chair shall assign one member of the panel to preside over the appeal and to conduct necessary conferences and hearings, supervise discovery and the development of the record for the Board, and to make such procedural determinations as are necessary to the proper disposition of the appeal.

[50 FR 45911, Nov. 5, 1985, as amended at 61 FR 13280, Mar. 26, 1996]

§20.4 Jurisdiction of the Board.

(a) *Contract appeals.* The Board shall consider and determine appeals from decisions of contracting officers under the Contract Disputes Act of 1978 (41 U.S.C. 601–613) relating to contracts entered into by (1) the Department of Housing and Urban Development or (2) any other executive agency when that agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal.

(b) *Other matters.* The Board or its individual members shall have jurisdiction over other matters assigned to it by the Secretary or designee. Determinations in other matters shall have the finality provided by the applicable statute, regulation or agreement.

§20.5 Board powers.

(a) *Board powers.* The Board shall employ support personnel, as needed, and shall have all powers necessary and incident to the proper performance of the duties assigned to it.

(b) *Disqualification.* No Administrative Judge may act for the Board or participate in a decision if, prior to the time the appeal was filed, he or she had participated in the matter in any manner on behalf of an interested party.

Subpart B—Rules of the Department of Housing and Urban Development Board of Contract Appeals

SOURCE: 50 FR 45912, Nov. 5, 1985, unless otherwise noted.

§20.10 Rules.

(a) These rules govern the procedure in all matters before the Department of Housing and Urban Development Board of Contract Appeals, unless otherwise provided by applicable law or regulation. The Federal Rules of Civil Procedure may be applied where procedures are not otherwise provided in these rules. For applications and proceedings involving award of attorney fees and other expenses, the rules set forth in 24 CFR part 14 shall apply.

(b) *Filing Requirements.* A party shall file with the Board one original of any pleading or motion. That party shall simultaneously serve upon the other

party of record one copy of that pleading or motion filed with the Board. Filings may be transmitted to the Board via facsimile. However, the original of any document transmitted to the Board by facsimile shall simultaneously be mailed to the Board.

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

(d) *Equal Access to Justice Act.* The Equal Access to Justice Act provides that agencies which conduct adversary adjudications ''shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency was substantially justified or that special circumstances make an award unjust.'' 5 U.S.C. § 504. Prevailing parties in proceedings before the Board may apply for an award under the Act following the issuance by the Board of its final decision in the appeal.

PRELIMINARY PROCEDURES

Rule 1. Appeals, how taken.

(a) *General.* 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 final written decision of the contracting officer.

(b) *Contracting officer's failure to act-claim of $100,000 or less.* 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 issued the decision, the contractor may file a notice of appeal as provided in paragraph (a) of this section, citing the failure of the contracting officer to issue a decision.

(c) *Contracting officer's failure to act-claim in excess of $100,000.* Where the contractor has submitted a claim in excess of $100,000 to the contracting officer and the contracting officer has failed, within 60 days of submission of the claim, to issue a final written decision, or to advise the contractor of a date when the final written decision will be issued, the contractor may file a notice of appeal as provided in paragraph (a) of this section, citing the failure to issue a decision.

(d) *Unreasonable delay by contracting officer.* A contractor may request the Board to direct a contracting officer to issue a final written decision within a specified period of time, as determined by the Board, in the event of an unreasonable delay on the part of the contracting officer.

(e) *Stay of proceedings.* Upon docketing of appeals filed under paragraph (b) or (c) of this section, the Board may stay further proceedings pending issuance of a final decision by the contracting officer within the period of time determined by the Board.

Rule 2. Notice of appeal, contents of.

A notice of appeal shall indicate that an appeal is being taken and shall identify the contract (by number), the department and agency involved in the dispute, the final written decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal shall be signed by the appellant (the contractor making the appeal), 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. A notice of appeal from a final written decision of a contracting officer involving a claim in excess of $100,000 shall state that certification has been made as required under section 6(c)(1) of the Contract Disputes Act of 1978 [41 U.S.C. 606(c)(1)].

Rule 3. Docketing of appeals.

When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. A written notice of docketing shall be transmitted to the appellant with a copy of these rules, to the contracting officer, and to HUD's Office of General Counsel.

Rule 4. Preparation, content, organization, forwarding, and status of appeal file.

(a) *Duties of contracting officer.* Within 30 days of receipt of notice from the Board that an appeal has been docketed, the contracting officer shall assemble and transmit to the Board (through HUD's Office of General Counsel) three copies of an appeal file consisting of all documents relevant to the appeal, including:

(1) The decision from which the appeal is taken;

(2) The contract including specifications and relevant amendments, plans, and drawings;

(3) All correspondence between the parties relevant to the appeal, including the appellant's letter or letters of claim;

(4) Transcripts of any testimony 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

(5) Any additional information considered relevant to the appeal.

Upon receipt of the appeals file, the Board shall furnish the appellant and HUD's Office of General Counsel with true and exact copies of the appeal file.

(b) *Duties of appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board any documents not contained in the appeal file which are relevant to the appeal, and furnish two copies of these documents to the government trial attorney.

(c) *Organization of appeal file.* Documents in the appeal file may be originals, legible facsimiles, or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) *Unusual documents.* Upon request by either party, the Board may waive the requirement to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party files with the Board a document for which waiver has been granted, he or she shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the party filing the document.

(e) *Status of documents in appeal file.* Documents contained in the appeal file are, without further action by the parties, part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents within 30 days of receipt, unless good cause is shown for later objection. If an objection is made, the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence in accordance with Rules 13 and 20.

(f) *Waiver of filing of documents.* Notwithstanding the foregoing, the filing of the Rule 4 (a) and (b) documents may be dispensed with by the Board either upon request of the appellant in the notice of appeal or thereafter upon stipulation of the parties.

Rule 5. Dismissal for lack of jurisdiction.

Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board may at any time raise the issue of its jurisdiction to proceed with a particular case by an appropriate order, affording the parties an opportunity to be heard on the issue.

Rule 6. Pleadings.

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

(b) *Government.* Within 30 days from receipt of the complaint, the Government shall file an answer with the Board. The answer shall set forth simple, concise and direct statements of Government's defenses to each claim asserted by appellant, including any affirmative defenses available.

Rule 7. Amendments of pleadings or record.

The Board, upon its own initiative or upon application by a party, may order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The Board may, within the proper scope of the appeal, 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, with the permission of the Board, they shall be treated in all respects as if they have been raised in the pleadings. 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 a continuance if necessary to enable it to meet this evidence.

Rule 8. Hearing election and motions.

(a) *Hearing election.* After the filing of the Government's answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it desires a hearing as prescribed in Rules 17 through 25, or whether it

elects to submit its case on the record without a hearing, as prescribed in Rule 11.

(b) *Motions.* (1) The Board may entertain any timely motion for an appropriate order. Application to the Board for an order shall be by motion which, unless made during a hearing, shall be made in writing, shall state with particularity the grounds for the motion and shall set forth the relief or order sought.

(2) The Board may, on its own motion, initiate any action by notice to the parties.

(3) Unless otherwise specified by the Board, a party who receives a motion shall file any answering material within 20 days after the date of receipt of the motion. The Board may require the presentation of briefs or arguments. The Board shall issue a decision on each motion that is appropriate and just to the parties.

(4) Affidavits in support of motions shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit. When a motion is made and supported as provided in this rule, a party opposing the motion who is represented by counsel may not rest upon the mere allegations or denials of his pleading; his response, by affidavits or as otherwise provided in this rule, must show that there is a genuine issue of fact or of law for decision. Should it appear from the affidavits of a party opposing the motion that for reasons stated he cannot present by affidavit facts essential to justify his opposition, the Board may deny the motion or may order a continuance to permit affidavits to be obtained or discovery to be had or may make such order as is just.

Rule 9. Prehearing briefs.

Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth in the pleadings, the Board may require the parties to submit prehearing briefs. If the Board does not require prehearing briefs, either party may upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party.

Rule 10. Prehearing or presubmission conference.

(a) *Conference.* Whether the case is to be submitted under Rule 11, or heard under Rules 17 through 25, the Board may upon its own initiative, or upon the application of either party, arrange a telephone conference or call upon the parties to appear before an Administrative Judge for a conference to consider:

(1) Simplification, clarification, or severing of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements and rulings on admissibility of documents, understandings on matters already on record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate discovery;

(4) Limitation of the number of expert witnesses or avoidance of cumulative evidence;

(5) The possibility of agreement disposing of any or all of the issues in dispute; and

(6) Such other matters as may aid in the disposition of the appeal.

(b) *Results of conference.* The Administrative Judge shall make such rulings and orders as may be appropriate to achieve settlement by agreement of the parties or to aid in the disposition of the appeal. The results of the conference, including any rulings and orders, shall be reduced to writing by the Administrative Judge or the conference shall be transcribed. The writing or the transcript shall constitute a part of the record.

Rule 11. Submission without a hearing.

Either party may elect to waive its right to appear at a hearing and to submit its case upon the record before the Board, as settled under Rule 13. Submission of a case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the record. The Board may permit submissions to be supplemented by oral argument, which may be transcribed if requested, and by briefs in accordance with Rule 9 or Rule 23.

Rule 12. Optional small claims (expedited) and accelerated procedures. (These procedures are available solely at the election of the appellant.)

Rule 12.1 Elections to utilize small claims (expedited) and accelerated procedure.

(a) *Election-dispute involving $50,000 or less.* In appeals where the amount in dispute is $50,000 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. The details of this procedure appear in section 12.2 of this Rule.

(b) *Election-dispute involving $100,000 or less.* 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 apellant's election. The details of this procedure appear in section 12.3 of this Rule.

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

(d) *Determination of amount in dispute.* In deciding whether the Small Claims (Expedited) procedure or the Accelerated procedure is applicable to a given appeal, the Board shall determine the amount in dispute.

Rule 12.2 The small claims (expedited) procedure.

(a) *Document submission and prehearing conference.* In cases proceeding under the Small Claims (Expedited) procedure, the following time periods shall apply: (1) Within ten days from the Government's first receipt from either the appellant or the Board of a copy 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 letter or letters of claim, if any; remaining 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 appellant's notice of election, the assigned Administrative Judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (i) Identify and simplify the issues; (ii) establish a simplified procedure appropriate to the particular appeal; (iii) determine whether the appellant wants a hearing, and if so, fix a time and place for the hearing; (iv) require the Government to furnish all the additional documents relevant to the appeal, and (v) establish an expedited schedule for resolution of the appeal.

(b) *Pleadings, discovery and other prehearing activity.* Pleadings, discovery and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow decisions within the 120-day limit. The Board may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 120-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(c) *Decision.* The written decision by the Board in cases processed under the Small Claims (Expedited) procedure will be short and 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 oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the Appeal. Whenever an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of the oral decision (or a copy of the transcript of the hearing) for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

(d) *Effect of decision.* A decision issued under the Small Claims (Expedited) procedure 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.

Rule 12.3 The accelerated procedure.

(a) *Waiver of pleadings, discovery and briefs.* In cases 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.

(b) *Pleadings, discovery, and other prehearing activity.* Pleadings, discovery and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the dates scheduled or, if no hearing is scheduled, to close the record on a date that will allow decision within the 180-day limit. The Board may shorten time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 180-day limit, and may reserve up to 30 days for preparation of the decision.

(c) *Decision.* Written decisions by the Board in cases processed under the Accelerated procedure will normally be short and contain only summary findings of fact and conclusions. In cases where the amount in dispute is $50,000 or less where the Accelerated procedure has been elected and where there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of the oral decision (or a

copy of the transcript of the hearing) for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

Rule 12.4 Motions for reconsideration in Rule 12 cases.

Motions for Reconsideration of cases 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 shall be processed and decided rapidly to fulfill the intent of this Rule.

Rule 13. Settling the record.

(a) *Contents of record.* The record upon which the Board's decision will be rendered consists of the documents in the appeal file furnished under Rule 4 or 12 (unless removed by the Board) and the following items, if any: Pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories admitted into evidence, admissions, stipulations, transcripts of conferences and hearings, exhibits admitted into evidence, posthearing briefs, orders of the Board, and documents which the Board has specifically designated to be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(b) *Closing of record.* Except as the Board may otherwise order, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) *Weight of evidence.* The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

Rule 14. Discovery—depositions.

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any discovery procedure under this rule or rule 15, the Board may make any order required 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 protecting the secrecy of confidential information or documents.

(b) *When depositions permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party, 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.

(c) *Orders on depositions.* 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.

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

(e) *Expenses.* Each party shall bear its own expenses associated with the taking of any depositions.

Rule 15. Interrogatories to parties, admission of facts, and production and inspection of documents.

After an appeal has been docketed and complaint filed with the Board, a party may serve on the other party: (a) Written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 30 days; (b) a request for the admission of specified facts or the authenticity of any documents, to be answered or objected to within 30 days after service; the factual statements and the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request; and (c) a request for the production, inspection and copying of any documents or objects not privileged, which reasonably may lead to the discovery of admissible evidence.

Rule 16. Filing and service of papers other than subpoenas.

Papers shall be considered filed with the Board when mailed or otherwise furnished to the Board. Papers shall be served upon parties personally or by mail, addressed to the party upon whom service is to be made. Timely filing and service by facsimile transmission (telecopier) is permissible provided that the original telecopied document is promptly mailed or served thereafter in the manner specified by this rule. Except as provided in rule 4(a), the party filing any paper with the Board shall simultaneously serve a copy of the paper upon the opposing party, and shall file a certificate of service with the Board indicating that a copy has been so served. Subpoenas shall be served as provided in rule 21.

HEARINGS

Rule 17. Where and when held.

Hearings will be held at places determined by the Board to best serve the interest of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, Rule 12 requirements, the convenience of the parties, the requirement for just and inexpensive determination of appeals without necessary delay, and other pertinent factors. On request or motion by either party and for good cause, the Board may adjust the date of a hearing.

Rule 18. Notice of hearings.

Parties shall be given not less than 20 days notice of the time and place for hearing, unless otherwise agreed. The notice of hearing shall be sent by certified mail (return receipt requested).

Rule 19. Unexcused absence of a party.

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. Notwithstanding the provisions of Rule 31, in the event of an unexcused absence: (a) The appeal will be dismissed with prejudice for want of prosecution; or (b) the hearing will proceed and the case will be regarded as submitted on the record by the absent party.

Rule 20. Hearings: conduct; examination of witnesses.

(a) *Conduct of hearings.* Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and the Government may offer such evidence as would be admissible under the Federal Rules of Evidence or as otherwise determined to be reliable and relevant by the presiding Administrative Judge. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. 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.

(b) *Examination of witnesses.* Oral testimony before the Board shall generally be given under oath or affirmation. However, if the testimony of a witness is not given under oath or affirmation, the Board shall advise the witness that his statements may be subject to the provisions of title 18 U.S.C., sections 287 and 1001, and any other provision 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.

Rule 21. Subpoenas.

(a) *General.* Upon written request of either party filed with the Board or on the Administrative Judge's initiative, the Administrative Judge to whom a case is assigned or who is otherwise designated by the Chairman may issue a subpoena requiring:

(1) Testimony at a deposition—the deposing of a witness in the city or county where he or she resides, 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 papers—the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) *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, papers, documents, or tangible things whenever possible.

(c) *Requests for subpoenas.* (1) A request for a 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;

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

In its discretion the Board may honor requests for subpoenas not made within these time limitations.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(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 (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) 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; issuance.* (1) Every subpoena shall state the name of the Board and the title 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 papers at the time and place

specified in the subpoena. In issuing a subpoena to a requesting party, the Administrative Judge shall sign the subpoena and may, in his discretion, enter the name of the witness and 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 county, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(f) *Service.* (1) The party requesting issuance of a subpoena shall be responsible for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served (i) by sending a copy of the subpoena by certified mail (return receipt requested) to the last known address of the party named in the subpoena, or (ii) by personal delivery of a copy of the subpoena to the party named in the subpoena, 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 shall include the tender of 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, money payments 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 for the costs of service of the subpoena.

(g) *Contumacy or refusal to obey 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 will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member of the Board to give testimony or produce evidence or both.

Rule 22. Copies of papers.

When books, records, papers, or documents have been received in evidence, a true copy of this evidence or a copy of any material or relevant part of this evidence may be substituted during or at the conclusion of the hearing.

Rule 23. Posthearing briefs.

The presiding Administrative Judge may order the parties to submit post hearing briefs to the Board.

Rule 24. Transcript of proceedings.

Testimony and argument at hearings shall be reported *verbatim*, unless the Board otherwise orders. Extra transcripts or copies of the proceedings in the possession of the board may be supplied to the parties. Otherwise, the parties may obtain transcripts or copies of the proceedings from the hearing reporter.

Rule 25. Withdrawal of exhibits.

After a decision has become final the Board may, upon request and after notice to the other party, permit the withdrawal of original exhibits, or any part of original exhibits by the party entitled to the exhibits. The subsitution of true copies of exhibits or any part of exhibits may be required by the Board as a condition of granting permission for the withdrawal.

REPRESENTATION

Rule 26. Appellant.

An individual appellant may appear before the Board in person; a corporation by one of its duly authorized officers; and a partnership or joint venture by one of its duly authorized 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. An attorney representing an appellant shall file a written notice of appearance with the Board.

Rule 27. Government.

Government counsel may, in accordance with their authority, represent the interests of the Government before the Board. They shall file notices of appearance with the Board. This notice of appearance will be given appellant or appellant's attorney in the form specified by the Board from time to time. Whenever an appellant and the Government are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal. However, if the Board is advised by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar without loss of position.

DECISIONS

Rule 28. Decisions.

Decisions of the Board shall be made in writing. Copies of the decision shall be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board in Washington, DC. Decisions of the Board shall be made solely upon the record, as described in Rule 13. Oral decisions shall be rendered in accordance with Rules 12.2(c) and 12.3(c).

MOTION FOR RECONSIDERATION

Rule 29. Motion for reconsideration.

A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall 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.

DISMISSALS AND DEFAULTS

Rule 30. Dismissal without prejudice.

In certain cases, appeals docketed before the Board are required to be placed in a suspended status and the Board is unable to proceed with disposition 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 without prejudice to their restoration to the docket when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be considered to be with prejudice.

Rule 31. Dismissal or default for failure to prosecute or defend.

Whenever a 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 such a default by the appellant, issue an order to show cause why the appeal should not be dismissed with prejudice or, in the case of a default by the Government, issue an order to show cause why the Board should not act under Rule 33. If good cause is not shown, the Board may take appropriate action.

REMAND

Rule 32. Remand from court.

Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of the remand, submit a report to the Board recommending procedures to be followed to comply with the court's order. The Board shall consider any timely filed reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, these orders shall conform to these rules.

SANCTIONS

Rule 33. Sanctions.

If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct or dismissal of the appeal.

MISCELLANEOUS PROCEDURES

Rule 34. Applicability.

These rules shall apply to all appeals relating to contracts entered into on or after March 1, 1979, and, to appeals relating to earlier contracts, with respect to claims pending before the contracting officer on March 1, 1979 or initiated thereafter, if the contractor elects to proceed under the Act.

Rule 35. Time, computation, and extensions.

(a) *General.* Where possible, procedural actions should be taken in less time than the maximum time allowed. Where appropriate and justified, extensions of time shall be granted. All requests for extensions of time shall be in writing and shall be filed before the due date, unless excused.

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

Rule 36. Ex parte communications.

(a) *Definition.* An ex parte communication is any communication with a member of the Board, direct or indirect, oral or written, concerning the merits of matters in issue of any pending proceeding which is made by a party in the absence of any other party. Ex parte communications do not include communications where:

(1) The purpose and content of the communication have been disclosed in advance or simultaneously to all parties;

(2) The communication is a request for information concerning the status of the case; or

(3) The communication involves the Board's administrative functions or procedures.

(b) *Prohibition of ex parte communications.* Ex parte communications are prohibited.

(c) *Procedure after receipt of ex parte communications.* Any member of the Board who receives an ex parte communication that the member of the Board knows or has reason to believe is unauthorized shall promptly place the communication, or its substance, in all files and shall furnish copies to all parties.

Unauthorized ex parte communications shall not be taken into consideration in deciding any matter in issue.

[50 FR 45912, Nov. 5, 1985, as amended at 52 FR 27130, July 17, 1987; 57 FR 20201, May 12, 1992; 61 FR 13280–13281, Mar. 26, 1996]

PART 24—GOVERNMENT DEBARMENT AND SUSPENSION AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Subpart A—General

Sec.
24.100 Purpose.
24.105 Definitions.
24.110 Coverage.
24.115 Policy.

Subpart B—Effect of Action

24.200 Debarment or suspension.
24.205 Ineligible persons.
24.210 Voluntary exclusion.
24.215 Exception provision.
24.220 Continuation of covered transactions.
24.225 Failure to adhere to restrictions.

Subpart C—Debarment

24.300 General.
24.305 Causes for debarment.
24.310 Procedures.
24.311 Investigation and referral.
24.312 Notice of proposed debarment.
24.313 Opportunity to contest proposed debarment.
24.314 Debarring official's decision.
24.315 Settlement and voluntary exclusion.
24.320 Period of debarment.
24.325 Scope of debarment.

Subpart D—Suspension

24.400 General.
24.405 Causes for suspension.
24.410 Procedures.
24.411 Notice of suspension.
24.412 Opportunity to contest suspension.
24.413 Suspending official's decision.
24.415 Period of suspension.
24.420 Scope of suspension.

Subpart E—Responsibilities of GSA, Agency and Participants

24.500 GSA responsibilities.
24.505 HUD responsibilities.
24.510 Participants' responsibilities.

Subpart F—Drug-Free Workplace Requirements (Grants)

24.600 Purpose.
24.605 Definitions.
24.610 Coverage.
24.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
24.620 Effect of violation.
24.625 Exception provision.
24.630 Certification requirements and procedures.
24.635 Reporting of and employee sanctions for convictions of criminal drug offenses.

Subpart G—Limited Denial of Participation

24.700 General.
24.705 Causes for a limited denial of participation.
24.710 Period and scope of a limited denial of participation.
24.711 Notice of limited denial of participation.
24.712 Conference.
24.713 Opportunity to contest the limited denial of participation.
24.714 Reporting of limited denial of participation.

AUTHORITY: 41 U.S.C. 701 *et seq.*; 42 U.S.C. 3535(d); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 54 FR 34131, 3 CFR, 1989 Comp., p. 235.

SOURCE: 53 FR 19182 and 19204, May 26, 1988, unless otherwise noted.

CROSS REFERENCE: See also Office of Management and Budget notice published at 55 FR 21679, May 25, 1990, and 60 FR 33036, June 26, 1995.

Subpart A—General

§24.100 Purpose.

(a) Executive Order (E.O.) 12549 provides that, to the extent permitted by law, Executive departments and agencies shall participate in a governmentwide system for nonprocurement debarment and suspension. A person who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities. Debarment or suspension of a participant in a program by one agency shall have governmentwide effect.

(b) These regulations implement section 3 of E.O. 12549 and the guidelines promulgated by the Office of Management and Budget under section 6 of the E.O. by:

(1) Prescribing the programs and activities that are covered by the governmentwide system;