have returned a request card indicating a desire to submit a bid.

[26 FR 11732, Dec. 7, 1961]

§ 210.2 Notice of award.

The successful bidder will be notified in writing of the acceptance of his bid. Under construction contracts, this notice may accompany the contract papers which are forwarded for execution. To avoid error, or confusing the notice of award with a notice to proceed, the notice of award will be substantially in the following format:

> You are hereby notified that your bid dated _____ in the sum of $_____ covering _____ is accepted. A formal contract will be prepared for execution. Acceptable performance and payment bonds (if required) must be furnished upon execution of the formal contract. If approval of the contract is required by its express terms, the contract is not fully executed until such approval is obtained.

Under supply contracts a written award mailed (or otherwise furnished) to the successful bidder either on Standard Form 26 or Standard Form 33, results in a binding contract without further action by either party.

[26 FR 11732, Dec. 7, 1961]

§ 210.3 Notice to proceed.

(a) *General.* When the contract specifies the time when the contractor is to proceed with the work under the contract, a notice to proceed will not be required. However, in any case where the contract requires the issuance of a notice to proceed the notice will fix the time for the commencement of the work and also, if appropriate, will fix the time for the completion of the work. The notice to proceed should be issued on a form letter, reproduced on local letterhead paper from a master copy, which will preclude repetitive typing of stereotype data. The notice to proceed will be executed in a sufficient number of copies to meet the contract distribution requirements in paragraph 30–206, Engineer Contract Instructions (ER 1180–1–1), and will bear the contract number in the upper right-hand corner of the notice.

(b) *Contractor's acknowledgment.* When a notice to proceed is issued, the contractor will acknowledge receipt thereof by signing and dating all copies of the acknowledgment and returning all but one copy to the contracting officer.

(c) *Proceeding before approval of bonds.* It is not necessary to delay commencement under the contract pending approval of bonds by The Judge Advocate General. Such action will be at the discretion of the contracting officer. In the event exceptions are taken to the bonds the contractor will immediately take steps to remove such exceptions or submit new bonds.

(d) *Commencing performance.* Contractors in no case will be required to commence performance prior to the commencement date fixed in the contract or in the notice to proceed. If they voluntarily do so and the contract is not ultimately signed, or approved when required, such action is at their own risk and without liability on the part of the Government. Contractors will not be required to commence performance until:

(1) Performance and payment bonds have been furnished, when required;

(2) The award has been approved when approval is required; and

(3) Notice to proceed has been forwarded to the contractor where required.

[26 FR 11732, Dec. 7, 1961]

§ 210.4 Rules of the Corps of Engineers Board of Contract Appeals for cases not subject to the Contract Disputes Act of 1978.

(a) *Preface to rules.* (1) The Corps of Engineers Board of Contract Appeals is the authorized representative of the Chief of Engineers for the purpose of hearing, considering and determining, as fully and finally as he might, appeals by contractors from decisions of contracting officers or their authorized representative or other authorities on disputed questions, taken pursuant to the provision of contracts requiring the determination of such appeals by the Chief of Engineers or his duly authorized representative or Board.

(2) When an appeal is taken pursuant to a disputes clause in a contract which limits appeals to disputes concerning questions of fact, the Board may in its discretion hear, consider and decide all questions of law necessary for the complete adjudication of

the issue. In the consideration of an appeal, should it appear that a claim is involved which is not cognizable under the terms of the contract, the Board may make findings of fact with respect to such a claim without expressing an opinion on the question of liability.

(3) Emphasis is placed upon the sound administration of these rules in specific cases, because it is impracticable to articulate a rule to fit every possible circumstance which may be encountered. These rules will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay.

(4) Preliminary procedures are available to encourage full disclosure of relevant and material facts, and to discourage unwarranted surprise. The parties are expected to cooperate and to voluntarily comply with the intent of such procedures without resort to the Board except on controversial questions. The Board may order exchange of complicated exhibits prior to hearing in order to expedite the hearing.

(5) All time limitations specified for various procedural actions are computed as maximums, and are not to be fully exhausted if the action described can be accomplished in a lesser period. These time limitations are similarly eligible for extension in appropriate circumstances, on good cause shown.

(6) Whenever reference is made to contractor, appellant, contracting officer, respondent and parties, this shall include respective counsel for the parties, as soon as appropriate notices of appearance have been filed with the Board.

(b) *Rule 1, Appeals, how taken.* Notice of an appeal must be in writing and the original, together with two copies, may be filed with the contracting officer from whose decision the appeal is taken. The notice of appeal shall be mailed or otherwise filed within the time specified therefor in the contract or allowed by applicable provision of directive or law.

(c) *Rule 2, Notice of appeal, contents of.* A notice of appeal should indicate that an appeal is thereby intended, and should identify the contract (by number) and the decision from which the appeal is taken. The notice of appeal should be signed personally by the appellant (the contractor making the appeal), or by an officer of the appellant corporation or member of the appellant firm, or by the contractor'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.

(d) *Rule 3, Forwarding of appeals.* When a notice of appeal in any form has been received by the contracting officer, he shall endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days shall forward said notice of appeal, together with a copy of the decision appealed from, to the Board. Following receipt by the Board of the papers described in the next rule (Rule 4), the contractor will be promptly advised of its receipt and that the appeal is then considered docketed, and the contractor will be furnished a copy of these rules.

(e) *Rule 4, Preparation, contents, organization, forwarding and status of appeal file*—(1) *Duties of contracting officer.* Following receipt of a notice of appeal or advice that an appeal has been filed, the contracting officer shall compile and transmit to the Board and the government trial attorney an appeal file consisting of all documents pertinent to the appeal including in particular:

(i) The decision and findings of fact from which the appeal was taken;

(ii) The contract including pertinent amendments, specifications, plans and drawings;

(iii) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which a decision was issued;

(iv) 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;

(v) Such additional information as may be considered material.

The contracting officer shall at the same time furnish to the appellant a copy of each document in the appeal file except those set forth in paragraph (e)(1)(ii) of this section, as to which a

list furnished appellant indicating the specific contractual documents included in the file will suffice, and those set forth in paragraph (e)(4) of this section.

(2) *Supplementation of appeal file.* Within 30 days after receipt of its copy of the appeal file the appellant may supplement the same by furnishing to the Board any document not contained therein which he considers pertinent to the appeal and furnishing two copies of each document to the government trial attorney.

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

(4) *Lengthy documents.* The Board, on motion of a party, may waive the requirement of furnishing to the other party copies of bulky, lengthy or out-of-size documents in the appeal file when a party has shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, he shall notify the other party that the same or a copy is available for inspection at the office of the Board or of the party filing the same.

(5) *Status of documents in appeal file.* Documents in the appeal file are considered as evidence in the case. A party to the appeal may at any time prior to the conclusion of a hearing or in the case of an appeal submitted on the record prior to the date of the notice that the case is ready for decision object to the inclusion of any document in the appeal file. The Administrative Judge hearing the case will rule on the objection as on any other objection to the admission of evidence.

(f) *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, unless the Board determines that its decision on the motion will be deferred pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own motion to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

(g) *Rule 6, Pleadings.* (1) Within 30 days after receipt of notice of docketing of the appeal, as provided in the last sentence of Rule 3, the appellant shall file with the Board an original and two copies of a complaint setting forth simple, concise and direct statements of each of his claims, alleging the basis with appropriate reference to contract provisions for each claim, and the dollar amount claimed. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form or formality is required. Upon receipt thereof, the Recorder of the Board shall serve a copy upon the respondent. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth his complaint and the respondent shall be so notified.

(2) Within 30 days from receipt of said complaint, or the aforesaid notice from the Recorder of the Board, respondent shall prepare and file with the Board an original and two copies of an answer thereto, setting forth simple, concise and direct statements of respondent's defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counter-claims, as appropriate. Upon receipt thereof, the Recorder shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

(h) *Rule 7, Ammendments of pleadings or record.* (1) 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 the complaint or answer, or to reply to an answer.

(2) The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend his pleading upon conditions just to both parties. When issues within the proper

scope of the appeal, but not raised by the pleadings or the documentation described in Rule 4, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings or the rule 4 documentation (which shall be deemed part of the pleadings for this purpose), 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 him to meet such evidence.

(i) *Rule 8, Hearing—election.* (1) Upon receipt of respondent's answer or the notice referred to in the last sentence of Rule 6(b), appellant shall advise the Board whether he desires a hearing, as prescribed in Rules 17 through 25, or whether in the alternative he elects to submit his case on the record without a hearing, as prescribed in Rule 11.

(2) In appropriate cases, the appellant shall also elect whether he desires the optional accelerated procedure prescribed in Rule 12.

(j) *Rule 9, Pre-hearing briefs.* Based on an examination of the documentation described in Rule 4, the pleadings and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may in its discretion require the parties to submit pre-hearing briefs in any case in which a hearing has been elected pursuant to Rule 8. In the absence of a Board requirement therefor, either party may in its discretion, and upon appropriate and sufficient notice to the other party, furnish a pre-hearing brief to the Board. In any case where a pre-hearing 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 as previously arranged.

(k) *Rule 10, Pre-hearing or pre-submission conference.* (1) When the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may, upon its own initiative or upon the application of either party, call upon the parties to appear before an Administrative Judge of the Board for a conference to consider:

(i) The simplification or clarification of the issues;

(ii) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record or similar agreements which will avoid unnecessary proof;

(iii) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;

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

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

(2) The results of the conference shall be reduced to writing by the Administrative Judge in the presence of the parties, and this writing shall thereafter constitute part of the record.

(l) *Rule 11, Submission without a hearing.* Although both parties are entitled to a hearing under these rules, either party may elect to waive a hearing and to submit his case upon the Board record as settled pursuant to Rule 13. Such an election by one party shall not preclude the other party from requesting and obtaining a hearing. Affidavits, depositions, answers to interrogatories and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral arguments, transcribed if requested, and by briefs arranged in accordance with Rule 23.

(m) *Rule 12, Optional accelerated procedure.* (1) In appeals involving $25,000 or less the appellant may elect to have the appeal processed under this rule. The election may be made in the notice of appeal, the complaint or by separate correspondence. In the event of such election the case will be assigned to a single Administrative Judge who will make every effort to render his decision within 30 days of the settlement of the record and without regard to the place of the appeal on the docket. To

assist in expediting decisions the parties should consider waiving pleadings and submitting the case on the record.

(2) In cases involving $5,000 or less where there is a hearing the presiding Administrative Judge may in his discretion at the conclusion of the hearing and after such oral argument as he deems appropriate render oral summary findings of fact, conclusions and a decision on the appeal. The Board will subsequently furnish the parties a typed copy of the decision for record and payment purposes and to establish the date on which the period for filing a motion for reconsideration under Rule 29 commences.

(3) Except as herein modified, these rules otherwise apply in all respects.

(n) *Rule 13, Settling the record.* (1) The record upon which a Board decision is rendered shall consist of the pleadings, the appeal file described in Rule 4, prehearing orders, memoranda of pre-hearing conferences and all evidence admitted by the Board both documentary and oral as appearing in the transcript. The record shall at all reasonable times be available for inspection by the parties at the office of the Board.

(2) A case submitted on the record pursuant to Rule 11 shall be ready for decision when the parties are so notified by the Board. A case which is heard shall be ready for decision upon receipt of the transcript or upon receipt of the briefs when briefs are to be submitted.

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

(o) *Rule 14, Discovery—depositions*—(1) *General policy.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the appeal. The parties are encouraged to engage in voluntary discovery procedures.

(2) *When permitted.* The Board may, upon timely motion filed by a party after the answer has been filed, order the taking of the testimony of any person by deposition upon oral examination or by written questions for the purpose of discovery or for use as evidence or for both.

(3) *Before who taken—time and place.* Depositions shall be taken before a person authorized to administer oaths at the place of examination. The time, place and manner of taking depositions shall be as mutually agreed by the parties or as set forth in the order of the Board.

(4) *Protective orders.* The Board may in connection with the taking of any deposition make any order which justice requires to protect a party from annoyance, embarrassment, oppression or undue burden or expense.

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

(6) *Expenses.* Each party shall bear its own expenses associated with taking of any deposition.

(p) *Rule 15, Interrogatories; inspection of documents; admission of facts.* (1) The Board may upon a timely motion filed by either party after the filing of the answer permit a party to serve written interrogatories upon the opposing party, order a party to produce and permit inspection and copying or photographing of designated documents or permit the service on a party of a request for the admission of facts. The Board in its order shall establish the date for responding to the motion.

(2) The Board may issue protective orders as in the case of depositions.

(q) *Rule 16, Service of papers.* Service of papers in all proceedings pending before the Board may be made personally, or by mailing the same in a sealed envelope, registered, or certified, postage prepaid, addressed to the party upon whom service shall be made and the date of delivery as shown by return

receipt shall be the date of service. Waiver of the service of any papers may be noted thereon or on a copy thereof or on a separate paper, signed by the parties and filed with the Board.

(r) *Rule 17, Hearings—Where and when held.* Hearings will ordinarily be held in Washington, D.C., except that, upon request reasonably made and upon good cause shown, the Board may in its discretion set the hearing at another location. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals and other pertinent factors. On request or motion by either party and upon good cause shown, the Board may in its discretion advance a hearing.

(s) *Rule 18, Notice of hearings.* The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will give due regard to the desires of the parties, and to the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearings shall be promptly acknowledged by the parties.

(t) *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. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

(u) *Rule 20, Nature of hearings.* Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and respondent may offer at a hearing on the merits such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the presiding Administrative Judge in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. Letters or copies thereof, affidavits and other evidence not ordinarily admissible under the generally accepted rules of evidence may be admitted in the discretion of the presiding Administrative Judge. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board, taking into consideration all the circumstances of the particular case. 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 in any case require evidence in addition to that offered by the parties.

(v) *Rule 21, Examination of witnesses.* Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated or the presiding administrative Judge shall otherwise order. If the testimony of a witness is not given under oath the Board may, if it seems expedient, warn the witness that his 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.

(w) *Rule 22, Copies of papers.* When books, records, papers or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

(x) *Rule 23, Post hearing briefs*—(1) *General.* Briefs must be compact, concise, logically arranged and free from burdensome, irrelevant, immaterial and scandalous matter. Briefs not complying with this rule may be disregarded by the Board.

(2) *Time of submittal.* Briefs, including reply briefs, shall be submitted at such times and upon such terms as may be agreed to by the parties and the presiding Administrative Judge at the conclusion of the hearing.

(3) *Length of briefs.* Except by permission of the Board on motion, principal briefs shall not exceed 100 8½″ by 11″ pages typewritten double space exclusive of any table of contents and table of statutes, regulations and cases cited. Reply briefs shall not exceed 20 such pages.

(y) *Rule 24, Transcript of proceedings.* Testimony and argument at hearings

shall be reported verbatim, unless the Board otherwise orders. Transcripts of the proceedings shall be supplied to the parties at such rates as may be fixed by contract between the Board and the reporter. If the proceedings are reported by an employee of the Government, the appellant may receive transcripts upon payment to the Government at the same rates as those set by contract between the Board and the independent reporter.

(z) *Rule 25, Withdrawal of exhibits.* After a decision has become final the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

(aa) *Rule 26, Representation—The appellant.* An individual appellant may appear before the Board in person, a corporation by an officer thereof, a partnership or joint venture by a member thereof, or any of these by an attorney at law duly licensed in any state, Commonwealth, Territory or in the District of Columbia.

(bb) *Rule 27, Representation—The respondent.* Government counsel shall be designated to represent the interests of the Government before the Board. They shall file notice of appearance with the Board, and notice thereof will be given appellant or his attorney in the form specified by the Board from time to time. Whenever at any time it appears that appellant and Government counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal in order to permit reconsideration by the contracting officer: *Provided, however,* That if the Board is advised thereafter 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.

(cc) *Rule 28, Decisions.* Decisions of the Board will be made in writing and authenticated copies thereof will 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, D.C.

(dd) *Rule 29, Motions 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 from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

(ee) *Rule 30, Dismissal without prejudice.* In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any such case where the suspension has continued, or it appears that it will continue, for an inordinate length of time, the Board may in its discretion dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed.

(ff) *Rule 31, Dismissal for failure to prosecute.* Whenever a record discloses the failure of the appellant to file documents required by these rules, respond to notice or correspondence from the Board, comply with orders of the Board or otherwise to indicate an intention to continue the prosecution of an appeal filed, the Board may issue an order requiring appellant to show cause within thirty days why the appeal should not be dismissed for lack of prosecution. If the appellant shall fail to show such cause, the appeal may be dismissed with prejudice.

(gg) *Rule 32, Ex Parte communications.* No Administrative Judge or member of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to ex parte communications concerning the Board's administrative functions or procedures.

(hh) *Rule 33, Effective date and applicability.* These revised rules shall take effect on January 14, 1975. They govern all proceedings in appeals after they take effect and also all further proceedings in appeals then pending, except to the extent that in the opinion of the Board, their application in a particular appeal pending when the Rules take effect would not be feasible or would work an injustice, in which event the former procedure applies.

[Regs., Jan. 7, 1975, DAEN]

[40 FR 2582, Jan. 14, 1975, as amended at 45 FR 19202, Mar. 24, 1980]

§ 210.5 Rules of the Corps of Engineers Board of Contract Appeals for cases subject to the Contract Disputes Act of 1978.

(a) *Preface to rules*—(1) *Jurisdiction for considering appeals.* The Corps of Engineers Board of Contract Appeals (referred to herein as the ''Board'') shall consider and determine appeals from decisions of contracting officers pursuant to the Contract Disputes Act of 1978 (Pub. L. 95–563, 41 U.S.C. 601–613) relating to: (i) Civil Works Contracts of the Corps of Engineers, (ii) contracts made by any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal, or (iii) with the approval of the Chief of Engineers, contracts made by any other agency when such agency has designated the Board to decide the appeal.

(2) *Location and organization of the Board.* (i) The Board's address is Room 4108, Pulaski Building, 20 Massachusetts Avenue, NW., Washington, DC 20314, telephone (202) 272–0369.

(ii) The Board consists of a chairman, vice chairman, and other members, all of whom are attorneys at law duly licensed by a state, commonwealth, territory, or the District of Columbia. In general, the appeals are assigned to a panel of at least three members who decide the case by a majority vote. Board members are designated Administrative Judges.

(3) *Applicability of the Contract Disputes Act of 1978.* (i) If a contract with an executive agency was awarded before 1 March 1979, and if the contracting officer's final decision was issued 1 March 1979 or thereafter, the contractor may elect to proceed under the Contract Disputes Act of 1978.

(ii) If a contract with an executive agency was awarded on 1 March 1979 or thereafter, the Contract Disputes Act is automatically applicable.

(iii) All other appeals are not subject to the Contract Disputes Act of 1978 and are controlled by the Board's rules published 14 January 1975 (33 CFR 210.4).

(iv) If the Contract Disputes Act is applicable to the appeal, the contractor can elect an accelerated procedure if the disputed amount is $50,000 or less. If the disputed amount is $10,000 or less the contractor has a further right to elect a small claims (expedited) procedure. Both of these procedures are described in Rule 12. Particular note should be made of the 180 day limit on processing accelerated procedure cases and the 120 day limit on processing small claims (expedited) procedure cases.

(4) *General guidelines.* (i) Emphasis is placed upon the sound administration of these rules in specific cases, because it is impracticable to articulate a rule to fit every possible circumstance which may be encountered. These rules will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay.

(ii) Preliminary procedures are available to encourage full disclosure of relevant and material facts, and to discourage unwarranted surprise. The parties are expected to cooperate and to voluntarily comply with the intent of such procedures without resort to the Board except on controversial questions. The Board expects the parties to exchange complicated exhibits prior to hearing in order to expedite the hearing.

(iii) Whenever reference is made to contractor, appellant, contracting officer, respondent, and parties, this shall include respective counsel for the parties as soon as appropriate notices of appearance have been filed with the Board.

(b) *Rule 1, Appeals, how taken.* (1) Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of