

## § 22.5

scheduled hearing, or before the record is closed if no hearing is held.

### § 22.5 Pleadings [Rule 5].

(a) *Complaint.* Within 15 days after receipt of the docketing notice from the Board, or within such other period of time as may be established by the Board, the 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 the contracting officer and were either denied or not ruled upon by the contracting officer in accordance with § 22.3 of this part [Rule 3]. 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 established 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 Board's jurisdiction may be included in the answer, or may be raised by motion pursuant to the provisions of § 22.6 of this part [Rule 6]. Motions in lieu of an answer may be filed only with the advance permission of the Board.

(c) *Small claims and accelerated procedures.* When an appellant elects to use the small claims or accelerated procedures described in § 22.22 of this part [Rule 22], the Board may shorten the time for filing the complaint and answer.

(d) *Amendment of pleadings.* At any time before a hearing on the merits, or

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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 as having been raised, 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 appeal or defense on the merits. The Board may, however, grant a continuance to enable the objecting party to respond to such evidence.

### § 22.6 Motions, Briefs, and Other Statements [Rule 6].

(a) *Motions, generally.* Motions shall be made in writing, indicate the relief sought and include the grounds therefor, and be filed with the Board as soon as practicable after the grounds therefor are known and as early as necessary to allow the Board to rule on the motion in advance of a scheduled hearing. Except for motions submitted under paragraph (d) of this section [Rule 6(d)], any party may respond to a motion by submitting a written response to the motion within 10 days of receipt of the motion, and the moving party may reply to the response within 5 days of receipt of the response, except

that the Board, in its discretion, may shorten or lengthen the time for the response and reply based on the nature of the motion, the nature and timing of the case, and the scheduling needs of the Board. The Board may request additional submissions from the parties and may decide motions on the written submissions without oral argument. The Board shall decide all motions before the hearing on the merits unless the Board determines that a ruling be deferred pending a hearing on both the merits and the motion. Jurisdictional and procedural defenses may be raised at any time by motion, but should be raised as soon as the grounds therefor are known; and the Board, at any time and on its own initiative, may raise an issue of jurisdiction and may decline to proceed with an appeal in which it lacks authority to decide the issues. All motions, responses, replies, and additional submissions required by the Board shall be filed in accordance with paragraphs (b) and (c) of this section [Rules 6(b) and 6(c)].

(b) *Briefs and citations.* In addition to submissions required by these rules, 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 or submissions are required (by rule or by the Board), the brief or submission 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 Bates number or other similar designation) so that the Board can locate the exact proposition or matter to which the party is referring. The parties should not expect the Board to search the record for evidence in support of either party's position. Briefs and submissions that are not submitted in the required format, or which do not contain adequate citations to the record or legal authority, may be rejected by the Board or returned to the party with an order that the party resubmit the brief or submission with appropriate revisions.

(c) *Declarations, affidavits, or other statements.* Any declaration, affidavit, or other statement that is submitted to explain the record must, to the max-

imum extent possible, include citations to the record in support of the statement, argument, or analysis made. Citations to the record must be specific (*i.e.*, to Bates number or similar designation). Declarations, affidavits, or other statements containing inadequate citations may be returned to the party with an order that the party resubmit the statement with appropriate revisions.

(d) *Motions for summary judgment—(1) Generally.* Motions for summary judgment or partial summary judgment shall be filed only when a party believes, based on uncontested material facts, that it is entitled to relief, in whole or in part, as a matter of law. Such motions shall be filed as soon as practicable to allow the Board to rule on the motion in advance of a scheduled hearing. In considering a motion, or partial motion, for summary judgment, the Board will consider the pleadings, depositions, answers to interrogatories, admissions of record, and affidavits provided, and will grant such motion if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. In deciding motions for summary judgment, the Board will look to Rule 56 of the Federal Rules of Civil Procedure for guidance.

(2) *Requirements.* Where both parties agree that disposition by summary judgment or partial summary judgment is appropriate, they shall file a stipulation of all material facts necessary for the Board to rule on the motion. Otherwise, the moving party shall file with its motion a "Statement of Undisputed Material Facts" setting forth the claimed undisputed material facts in separately numbered paragraphs, each of which shall be supported by citations to the § 22.4 [Rule 4] file or other evidence establishing the facts. The non-moving party shall file a "Statement of Genuine Issues of Material Facts," responding to each numbered paragraph, demonstrating the existence of genuine issues of material facts where appropriate, and including for each fact citations to the § 22.4 [Rule 4] file or other evidence in support. A fact properly proposed by one party may be accepted by the Board as undisputed unless the opposing party

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properly responds and establishes that the fact is in dispute. An opposing party may not rely on mere allegations or denials in its pleadings to demonstrate the existence of a genuine issue of material fact. Either party may rely on affidavits, depositions, answers to interrogatories, or admissions of record to establish the existence of, or to dispute, a material fact. The moving party and non-moving party each shall submit a memorandum of law supporting or opposing summary judgment, and the moving party may file a reply to the non-moving party's opposition of the motion.

(3) *Time.* Generally, the non-moving party shall file its opposition to a motion for summary judgment or partial summary judgment within 20 days of receipt of the motion, and the moving party's reply is due within 10 days of receipt of the opposition, except that the Board, in its discretion, may shorten or lengthen the time for opposition and reply based on the nature of the motion, the nature and timing of the case, and the scheduling needs of the Board.

(4) *Citations.* All motions for summary judgment, oppositions to such motions, briefs, and statements in support of the motions or opposition to the motions shall be filed in conformance with paragraphs (b) and (c) of this section [Rules 6(b) and 6(c)].

### § 22.7 Copies and Service Thereof [Rule 7].

(a) *Rule 4 file.* For documents provided pursuant to § 22.4 of this part [Rule 4], the original and one copy shall be provided to the Board, and one copy shall be provided to each party. Documents shall be provided by hand delivery, express or priority mail, or approved commercial carrier (e.g., UPS or FedEx); first class and parcel post mail are not permitted unless authorized by the Board.

(b) *Other submissions filed with the Board.* Except as otherwise authorized by the Board, all correspondence and submissions, other than documents provided pursuant to § 22.4 of this part [Rule 4] and appeals filed under § 22.3(c) of this part [Rule 3(c)], shall be provided to the Board by e-mail at *cab@gao.gov*, with a courtesy copy of

the submission provided by e-mail to each of the members of the Board. All e-mails to *cab@gao.gov* must identify the case name and docket number in the subject line of the e-mail. In addition, unless the Board directs otherwise, the original plus 3 copies of the e-mailed submission also shall be provided to the Board by hand delivery, express or priority mail, or approved commercial carrier (e.g., UPS or FedEx) within 2 business days of the e-mailed filing (except that the original and one copy are required for appeals involving small claims or using accelerated procedures). Delivery to the Board by first class or parcel post mail is not permitted. However, the Board may at any time modify the number of copies required or authorize alternative methods of delivery to the Board.

(c) *Service on parties.* All correspondence and submissions to the Board must be provided to all other parties using the same method of service as used for the Board, or an equal or more expeditious method of service. Except for documents provided pursuant to § 22.4 of this part [Rule 4], e-mail service is preferred. However, where the parties agree to other methods of service, such other methods of service to parties are permitted.

(d) *Proof of service.* A party sending a document to the Board must represent to the Board that a copy has been sent to the other parties, identify the date on which service was made, and identify the method of delivery used. This may be done by certificate of service, by notation of a photostatic copy (cc:), or by any other means that can reasonably be expected to show the Board that the other party has been provided a copy, the date on which the copy was provided, and the method of delivery used to provide the copy. Proof of service must be provided to the Board at the time of filing. If proof of service is not provided, the Board may decline to consider the document in the appeal.

### § 22.8 General Discovery Procedures [Rule 8].

(a) *General policy and methods of discovery.* The parties are encouraged to engage in voluntary discovery procedures and may obtain discovery by one