CHAPTER 1 CONTRACT APPEALS BOARD: ADMINISTRATION AND PLEADINGS

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100 GENERAL PROVISIONS

100.1 The Board shall function through panels as designated by the Chairperson; Provided, however, that the Board may function through the Chairperson or another law member to the extent provided in chapters 1 and 2 of this title.

100.2 The Chairperson shall assign members to panels of the Board and shall assign cases to panels for hearing and decision.

100.3 The Chairperson may, from time to time, designate another law member of the Board to perform with respect to particular cases any specified functions which by these rules are required or permitted to be performed by the Chairperson alone.

100.4 The Chairperson may designate another law member of the Board to serve as Acting Chairperson who, for the period of such designation, may exercise all authorities and perform all functions which under these rules may be exercised or performed by the Chairperson except that he or she may not designate an acting chairperson.

100.5 The Chairperson, acting alone may take any action which these rules authorize or require the Board to take, and any such action taken by the Chairperson, including the making of orders, shall be deemed the action or order of the Board; Provided, however, that the Chairperson acting alone may not make any decision which constitutes a final disposition of any appeal or part thereof except pursuant to stipulation of the parties.

100.6 Any party adversely affected by any action taken by the Chairperson pursuant to §100.5 who has not stipulated with respect thereto shall be entitled to a reconsideration by the Board, if, within ten (10) days after the Chairperson has transmitted to the party a copy of the order or other notice of the action taken by the Chairperson, the party files with the Board a motion for reconsideration setting forth the grounds therefor. Every motion shall be acted upon by the Board.

100.7 The Office of the Board is in Room 313, Superior Court, Building D, 451 Indiana Street, N.W., Washington, D.C. 20001. The telephone of the Board is (202) 727-6597.

100.8 The Office of the Board shall be open each day, except Saturdays, Sundays, and legal holidays, from 9:00 A.M. to 5:00 P.M.

AUTHORITY: Unless otherwise noted, the authority for the chapter is An Act approved July 1, 1902, 32 *Stat.* 591, ch. 1352, D.C. Code §1-331 (1981), and Part VI C. of Organization Order No. 9 issued July 6, 1968 in C.O. 68-399.

SOURCE: 36 DCRR §§1.2, 1.3, 2.1 and 2.2, DCR Sp. Ed. at 2 (August 30, 1970); as amended by Final Rulemaking published at 30 DCR 4065 (August 12, 1983); as further amended by Final Rulemaking published at 33 DCR 24 (January 3, 1986).

101 OFFICE OF THE CLERK

101.1 The Clerk to the Board shall maintain a docket of all appeals filed with the Board. Each appeal shall be assigned a number in the order of filing. All proceedings in an appeal will be indicated by appropriate docket entries.

101.2 The Clerk to the Board shall maintain a public file of the Rules of the Board, of all final decisions of the Board with the related findings of fact and conclusions of law or opinion, and of all final orders of the Board.

101.3 The files described in §101.2, the docket book, and the calendars of the Board shall be available for public inspection in the offices of the Board.

101.4 Upon request, the Clerk to the Board shall furnish the names and positions of all members of the Board, and of the individuals comprising the panel in any particular case.

SOURCE: 36 DCRR §§2.3, 2.5(b), 2.6, and 1.2(b), DCR Sp. Ed. at 2-5 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24 (January 3, 1986).

102 NOTICE OF APPEAL

102.1 An appeal shall be made by filing, either with the contracting officer from whose decision the appeal is taken or with the Board, an original and five (5) copies of a written notice of appeal. A notice of appeal will not be denied filing because the required number of copies does not accompany the original, but the proceedings provided by §103.1 shall be delayed until the copies have been filed with the Board.

102.2 The notice of appeal shall be filed within the time specified in the contract or prescribed by law; Provided, that if no time is specified or prescribed, within thirty (30) days from the date of the decision or action complained of in the notice of appeal.

102.3 A notice of appeal shall indicate the following information:

(a) That an appeal is intended;

(b) Identification of the contract, preferably by contract number;

(c) The decision or action from which the appeal is taken; and

(d) The name of the person who rendered the decision or took the action from which the appeal is taken.

102.4 The complaint, pursuant to §104, may be filed in lieu of a notice of appeal; Provided, that the complaint shall be filed within the time, and with the same number of copies, required for the notice of appeal.

102.5 The notice of appeal shall be signed personally by the appellant (contractor appealing) or by an officer of an appellant corporation or member of an appellant partnership, or by the appellant's attorney.

102.6 A notice of appeal shall be considered filed when actually received by the contracting officer or by the Board.

102.7 When a notice of appeal in any form has been received by the contracting officer from whose decision the appeal is taken, he or she shall endorse on the notice of appeal the date and manner of receipt. In the event it has been received by mail the contracting officer shall also endorse the date of mailing as shown by postmark and attach the envelope in which received, and promptly forward the notice of appeal to the Board.

SOURCE: 36 DCRR §§6.1 through 6.5, DCR Sp. Ed. at 9 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24 (January 3, 1986).

103 APPEAL FILE

103.1 Upon receipt of the notice of appeal the Board shall promptly advise the appellant, counsel for the Government, and the contracting officer of its receipt. Within a reasonable time, not to exceed 30 days, thereafter the contracting officer shall compile and transmit to the Board copies of all documents pertinent to the appeal, including the following:

(a) The findings of fact and the decision from which the appeal is taken;

(b) True copies of the contract and pertinent plans, specifications, addenda, amendments, and change orders;

(c) Correspondence between the parties and other data material to the appeal;

(d) Transcripts of any testimony taken, and notes or minutes of with the matter in dispute; and

(e) Any additional information as the contracting officer may consider material, or as may be designated by the Board.

103.2 The documents transmitted to the Board by the contracting officer pursuant to §103.1 shall be known as the Appeal File and shall be available for inspection by the parties at the offices of the Board. Prior arrangements for inspection of the file shall be made with the Clerk to the Board.

103.3 The Appeal File shall not contain confidential intradepartmental or interdepartmental correspondence or documents or information of a classified nature. Material documents of confidential or classified nature shall be forwarded separately to the Assistant Corporation Counsel assigned to represent the Government.

103.4 Any document transmitted to the Board pursuant to §103.1 may, after ten (10) days notice to the parties following filing of photographic copies thereof, be withdrawn by the contracting officer.

103.5 Documents contained in the appeal file shall be considered, without further action by the parties, as part of the record upon which the Board will render its decision, except for those as to which an objection has been sustained. Objections shall be made in advance of the hearing or of settling the record in the event there is no hearing on the appeal.

103.6 Within thirty (30) days after filing by the contracting officer of the Appeal File documents, or within such time as the Board may allow, the appellant may file with the Board for inclusion in the Appeal File, documents relevant to the appeal that have not been submitted by the Government, and furnish a copy of the document to Government counsel.

103.7 The Board may, at any time, on its own initiative request a contracting officer to supplement the appeal file with specified documents and shall in each instance notify the parties. Unless objection is filed with the Board within five (5) days from the date of the notice, objections to the inclusion of the documents in the appeal file and record of the case shall be deemed waived.

103.8 The Board may postpone or dispense with the submission of any or all Appeal File documents.

SOURCE: 36 DCRR §§6.6, 6.7, and 6.9(b), DCR Sp. Ed. at 10, 11 (August 30, 1970); and as amended by Final Rulemaking published at 33 DCR 24 (Janaury 3, 1986).

104 COMPLAINT

104.1 Within thirty (30) days after a notice of appeal has been docketed with the Board, the appellant shall file with the Board an original and three (3) copies of a complaint.

104.2 The complaint shall set forth simple, concise and direct statements of each of appellant's claims showing that he or she is entitled to relief, and statements of the relief to which appellant deems himself or herself entitled including the dollar amount of each claim.

104.3 Each claim shall be separately identified and shall be stated with as much particularity as possible. Documentary evidence in support of claims may be filed as exhibits to the complaint.

104.4 No particular form shall be required. If a complaint is not received within thirty (30) days, the appellant's written claim and notice of appeal may, if in the opinion of the Board the issues are sufficiently defined, be deemed to set forth its complaint. The Government shall be so notified.

104.5 The complaint may be filed in lieu of a notice of appeal as provided in §102.

SOURCE: 36 DCRR §7.1, DCR Sp. Ed. at 11 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 25 (January 3, 1986).

105 ANSWER

105.1 Within thirty (30) days after service of the complaint, counsel for the Government shall file an original and three (3) copies of an answer with the Board, and shall serve a copy upon appellant.

105.2 The answer shall admit or deny the averments of the complaint and shall set forth simple, concise and direct statements of the Government's defense to each claim asserted by appellant. Each defense shall be set forth with as much particularity as is practicable.

105.3 If no answer is timely filed, the Board may enter a general denial on behalf of the Government, and the appellant shall be so notified.

SOURCE: 36 DCRR §7.2, DCR Sp. Ed. at 12 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 26 (January 3, 1986).

106 AMENDMENT OF PLEADINGS

106.1 The Board upon its own initiative or upon application by a party may, in its discretion, order or permit a party to make a more definite statement of its complaint or answer, or to reply to an answer.

106.2 A party may, within the proper scope of the appeal, amend his pleadings only by written consent of the adverse party or with the permssion of the Board.

106.3 A party may plead in response to an amended pleading within twenty (20) days after service of the amended pleading.

106.4 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, they shall be treated in all respects as if they had been raised in the pleadings. An amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after decision, but failure so to amend does not affect the result of the trial of those issues.

106.5 If evidence is objected to at the hearing on the ground that it is not within the issues made by the pleadings, 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 appeal will be subserved thereby and the objecting party fails to satisfy the Board that the admission of the evidence would prejudice him or her in maintaining his or her appeal or defense on the merits.

106.6 The Board may grant a continuance to enable the objecting party to meet the evidence which is the subject of objection in §106.5.

SOURCE: 36 DCRR §§7.3, and 7.4, DCR Sp. Ed. at 12 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 26 (January 3, 1986).

107 MOTIONS AND STIPULATIONS

107.1 A motion may be filed for any relief or action of the Board for which no other pleading is available. Dispositive motions, such as motions to dismiss for lack of jurisdiction or failure to state a claim upon which relief can be granted, or for failure to prosecute, or motions for summary relief (analogous to summary judgment) may properly be made before the Board.

107.2 Every motion, unless made during a hearing, shall be in writing. Oral motions made during hearings shall, if directed by the Board or the Chairperson, be reduced to writing and filed within the time specified in the direction.

107.3 Every motion shall contain a brief statement of the facts on which it is based or the reasons for the relief sought, shall cite the authority under which it is believed that the Board is empowered to grant the relief sought, and shall state the specific points of law and authorities to support the motion.

107.4 Any party upon whom a motion has been served may, within ten (10) days thereof, file a written opposition to the motion which shall include the specific points of law and authorities in support thereof.

107.5 The Board may permit hearing or oral argument on written motions, and may require additional submissions from either or both of the parties.

107.6 Hearings on motions filed prior to a hearing on the merits may, in the discretion of the Board, be deferred until the hearing on the merits. Decisions on these motions may be deferred until the hearing on the merits or until after the hearing on the merits, or may be incorporated in the decision on the merits.

107.7 The question of the lack of jurisdiction of the Board as to an entire appeal, a portion thereof, or as to any particular issue, may be raised by motion to dismiss which shall be filed, if possible, prior to notice of hearing on the merits, but the question of lack of jurisdiction may be raised at any time by any of the parties or by the Board on its own initiative.

107.8 The parties may, by stipulation in writing filed with the Board, agree upon the facts or any portion thereof involved in the appeal. The parties may also stipulate the testimony that would be given by a witness if the witness were present. The Board shall not be bound by any such stipulation and, in its discretion, may require additional evidence of any matter covered by stipulation.

SOURCE: 36 DCRR §§7.5, 7.6, and 7.7, DCR Sp. Ed. at 13 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 26 (January 3, 1986).

108 FORM OF PLEADINGS

108.1 Every pleading shall contain a caption setting forth the name of the Board, the title of the appeal, including address of appellant and the number of the contract involved, and the docket number, as follows:

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

APPEAL OF:

(Name of appellant)	)
(Address of appellant)	)
	)**CAB NO.**
Under Contract No.	)

108.2 Under the caption shall be placed a statement of the nature of the pleading and the relief, if any, sought.

108.3 All pleadings shall have numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances. A paragraph may be referred to by number in all succeeding pleadings. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading. Exhibits to a pleading shall be considered a part thereof for all purposes.

108.4 The original of any pleading shall be signed in ink by the party or his or her attorney and shall show the office and post office address of the person signing. All copies filed shall be fully conformed thereto. The signature for a partnership or corporation not represented by an attorney shall be by a person named in §112.1.

108.5 The signature of an attorney constitutes a certificate by the attorney that the attorney has read the pleading; that the attorney is authorized to file it; that to the best of the attorney's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

108.6 Pleadings shall be on opaque, white paper, approximately 8 to 8-1/2 inches wide by 10-1/2 to 11 inches long, unfolded, without back or cover, fastened at the top, with top and left hand margins not less than 1-1/4 inch, and other margins not less than 1 inch. Pica size typewriting is preferred.

108.7 Unless otherwise provided by chapters 1 and 2 of this title, every pleading or other document or paper required or permitted to be filed with the Board shall be accompanied by three (3) copies.

SOURCE: 36 DCRR §§3.1 through 3.5, DCR Sp. Ed. at 5 (August 30, 1970).

109 SERVICE AND FILING OF PLEADINGS

109.1 Filing required by chapters 1 and 2 of this title may be accomplished personally or by mail, but the time of filing by mail shall be the time of actual receipt by the addressee. Personal filing shall be accomplished as follows:

(a) With the Contract Appeals Board, D.C., by delivery to the Chairperson of the Board, to his or her secretary, or to the Clerk to the Board; or

(b) With the contracting officer, by delivery to the contracting officer, to his or her secretary, or to his or her deputy.

109.2 Service of any pleading or other paper may be made by delivering in person or by depositing in the United States Mail, properly addressed, with first-class postage prepaid, one copy thereof to each party.

109.3 Delivery of service in person to a partnership shall be by delivery to any partner.

109.4 Delivery of service in person to an association or corporation shall be by delivery to any officer thereof.

109.5 When any party has appeared by attorney, service upon the attorney shall be deemed service upon that party. The method of service shall be stated in the certificate of service described in §110.3.

109.6 The date of service is the date of personal delivery or the date of deposit in the mail.

109.7 In the case of service by the Clerk to the Board upon any officer or employee of the Government by means of departmental mail or messenger service, the date of service shall be deemed to be the next day, excluding Saturdays, Sundays and legal holidays, after the date of the Clerk's letter of transmittal.

SOURCE: 36 DCRR §§4.3 and 4.4, DCR Sp. Ed. at 6 (August 30, 1970).

110 CERTIFICATE OF SERVICE

110.1 Every pleading or other paper filed with the Board, except a notice of appeal, complaint, or notice of appearance, shall be served by the filing party and shall include the certificate of service required by §110.3.

110.2 In lieu of the service required by §110.1 a party may at the timeof filing, tender one extra copy of the pleading or other paper for each other party together with a written request that service be by the Clerk to the Board, and that pleading or other paper shall be accepted for filing and be filed. The Clerk to the Board shall then serve the extra copies upon the other parties.

110.3 Except when service is to be made by the Clerk to the Board as provided in this chapter, every paper required by §§110.1 - 110.2 to be served shall, when filed with the Board, include a certificate of service upon all other parties. The certificate of service shall contain the following information:

(a) The name and address of each person served;

(b) The manner and date of service; and

(c) The signature of the person who made the service.

110.4 Any pleading or other paper not bearing the certificate of service required by §110.3 may be refused filing.

SOURCE: 36 DCRR §§4.2 and 3.6, DCR Sp. Ed. at 5 and 6 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 26 (January 3, 1986).

111 COMPUTATION OF TIME

111.1 In computing any period of time prescribed or allowed by these rules, by order of the Board, by the contract involved or by any applicable law, the day of the act, event, or default after which the designated period of time begins to run is not to be included.

111.2 The last day of each period computed pursuant to §111.1 is to be included unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a holiday.

111.3 When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation.

111.4 A half-holiday shall be considered as other days and not as a holiday.

111.5 When by these rules or by a notice given thereunder or by order of the Board an act is required or allowed to be done at or within a specified time, the Board for cause shown may, at any time in its discretion, do the following:

(a) With or without motion or notice order the period enlarged if a request is made before the expiration of the period originally prescribed or as extended by a previous order; or

(b) Upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect.

111.6 Subsection 1.5 shall not apply to time limitations specified in contracts.

111.7 Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after the service of a notice or other paper upon him or her and the notice or paper is served by mail, three (3) days shall be added to the prescribed period; Provided, however, that the provisions of this subsection shall not apply to the filing provisions of §109.1.

SOURCE: 36 DCRR §§4.5, 4.6 and 4.7, DCR Sp. Ed. at 7 (August 30, 1970).

112 APPEARANCE AND REPRESENTATION

112.1 In any proceeding before the Board an individual, receiver, trustee, or official may appear in his or her own behalf; a member of a partnership may represent the

partnership; an officer of a corporation or association may represent the corporation or association; and an officer or employee of the District of Columbia, the United States or a State or of a governmental agency may represent the government or agency.

112.2 A party may be represented in any proceeding by an attorney at law admitted to practice before the District of Columbia Court of Appeals or before the highest court of the State where he or she resides.

112.3 Each individual appearing before or transacting business with the Board in a representative capacity pursuant to the provisions of §§112.1 and 112.2, may be required to establish his or her authority to act in that capacity.

112.4 Each person, including an Assistant Corporation Counsel, representing a party in a case pending before the Board shall file with the Board a written Notice of Appearance on a form supplied by the Board bearing the following information:

(a) The signature of the representative;

(b) The typed or printed name of the representative;

(c) The business address and telephone number of the representative; and

(d) The name of the party for whom the appearance is made.

112.5 Each Notice of Appearance shall become a part of the record.

SOURCE: 36 DCRR §§5.1. 5.2, 5.3 and 5.4(a), DCR Sp. Ed. at 8 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 26 (January 3, 1986).

EDITOR'S NOTE: Reference in §112.2 to the United States District Court for the District of Columbia was changed to the "District of Columbia Court of Appeals" in conformance with the District of Columbia Court Reorganization Act of 1970, D.C. Code §§11-2501 (1981).

113 DISMISSALS AND SUSPENSIONS

113.1 An appellant may, at any time, request dismissal of his or her appeal, and the Board may in its discretion grant or deny the request, and enter an appropriate order.

113.2 If an appellant fails to prosecute or to comply with the requirements of chapters 1 and 2 of this title, the Board may issue an order to show cause why the appeal should not be dismissed. If good cause is not shown the Board may dismiss the appeal or take other appropriate action.

113.3 At any time during the proceedings before the Board, either the appellant or the Government may, with the consent of the other party, file with the Board a motion that the subject matter of the appeal be remanded to the Contracting Officer for reconsideration of the decision from which the appeal was taken. The Board shall then enter an order for the remand and shall dismiss the appeal.

113.4 Upon notification from the parties, the Board may, in its discretion, enter an order dismissing the appeal and remanding the matter to the Contracting Officer.

113.5 The dismissal and remand of §§113.3 and 113.4 shall be without prejudice to the restoration of the appeal should the Contracting Officer fail to reconsider his or her decision, or fail to comply with the terms of the settlement agreement, or in the event appellant wishes to appeal the new decision of the Contracting officer.

113.6 The Board may suspend the proceedings by agreement of counsel for settlement discussions, or for good cause shown. 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.

113.7 Where the suspension has continued, or may continue, for an inordinate length of time, the Board may, in its discretion, dismiss the appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three (3) years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

SOURCE: Final Rulemaking published at 33 DCR 24, 27 (January 3, 1986).

199 DEFINITIONS

199.1 When used in this chapter, the following words and terms shall have the meanings ascribed:

Appellant - the person seeking relief from the Board, and who is generally a contractor with the Government.

Appeal File - the contract, plans, specifications, decision of the contracting officer appealed from, and all other documents transmitted to the Board by the contracting officer pursuant to §103.

Board - a panel of the Contract Appeals Board or alternatively, unless the context indicates otherwise, the Chairman or another law member acting alone pursuant to §§100.2 through 100.6.

Chairperson - the Chairman of the Board as defined in the Charter.

Charter - Part VI of Organization Order No. 9 of June 6, 1968, issued pursuant to Reorganization Plan No. 3 of 1967, as amended.

Contracting Officer - any officer or other authority whose decision may be reviewed by the Board under its charter.

Government - the District of Columbia, the Armory Board, and any other body politic, municipal organization or governmental body whose contractual disputes may be reviewed by the Board pursuant to its Charter.

Law Member - an active or retired Assistant Corporation Counsel who has been designated by the Corporation Counsel or an attorney appointed by the Mayor as a member of the Board.

Party - either the appellant or the government.

Person - an individual, partnership, corporation, association, body politic, municipal organization, governmental body, receiver, trustee, and any official acting in his official capacity.

Pleading - complaints, answers, replies, all amendments and supplements thereto, and motions.

SOURCE: 36 DCRR §1.1, DCR Sp. Ed. at 1 and 2 (August 30, 1970); as amended by Final Rulemaking published at 33 DCR 24, 28 (January 3, 1986).