

§4.101

Board. In those cases where an executive agency, other than the Department of the Interior, has designated the Board to adjudicate its contract appeals, the term, "Department Counsel," shall mean Government Counsel assigned to represent such agency.

(3) *Interpretation of these rules.* These rules will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay.

(4) *Decisions on questions of law.* When an appeal is taken pursuant to a disputes clause in a contract which limits appeals to disputes concerning questions of fact, the Board will, nevertheless, consider and decide all questions of law necessary for the complete adjudication of the issues.

(f) *Ex parte communications.* No member of the Board or 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, without the knowledge and consent of the adverse party, regarding any matter at issue in that appeal. This provision does not apply to consultation among Board members or to ex parte communications concerning the Board's administrative functions or procedures.

(g) *Sanctions.* If any party fails or refuses to obey an order issued by the Board, the Board may make such order in regard to the failure as it considers necessary to the just and expeditious conduct of the appeal.

[46 FR 57499, Nov. 24, 1981, as amended at 50 FR 8325, Mar. 1, 1985; 67 FR 4368, Jan. 30, 2002]

PREHEARING PROCEDURE RULES

§4.101 Who may appeal.

Any contractor may appeal to the Board from decisions of contracting officers of any bureau or office of the Department of the Interior, or of any other agency with respect to which the Board exercises contract appeals jurisdiction, on disputed questions under contract provisions requiring the determination of such appeals by the head of the agency or his duly authorized representative or Board.

43 CFR Subtitle A (10-1-02 Edition)

§4.102 Appeals—how taken.

(a) *Notice of appeal.* Notice of an appeal must be in writing (a suggested form of notice appears as appendix I to subpart C herein following §4.128). The original, together with two copies, may be filed with the Board or the contracting officer from whose decision the appeal is taken. The notice of appeal must be mailed or otherwise filed within 90 days from the date of receipt of the contracting officer's decision, if the appeal is subject to the Contract Disputes Act of 1978; otherwise, within the time specified therefor in the contract.

(b) *Contents of notice of appeal.* A notice of appeal should indicate that an appeal is thereby intended, and should identify the contract (by number), the Department's bureau or office involved in the dispute, 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 authorized 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 §4.107 may be filed with the notice of appeal, or the contractor may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

(c) *Failure of CO to issue decision on claims of \$50,000 or less.* Where the contractor has submitted a claim of \$50,000 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 complied, 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. (See §4.100(a)(2).)

(d) *Failure of CO to issue decision on claims in excess of \$50,000.* Where the contractor has submitted a claim in excess of \$50,000 to the contracting officer and the contracting officer has failed to issue a decision within a reasonable time, the contractor may file a notice of appeal as provided in paragraph (a) of this section, citing the failure to issue a decision. (See §4.100(a)(2).)

(e) *Optional stay of proceeding.* Upon docketing of appeals filed pursuant to

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paragraphs (c) or (d) of this section, the Board may at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board. (See § 4.100(a)(2).)

§ 4.103 Forwarding and docketing of appeals.

(a) *Forwarding of appeal.* When a notice of appeal in any form has been received by the contracting officer, he shall endorse thereon the date of mailing (or the date of receipt, if the notice was otherwise conveyed) and within 5 days shall forward said notice of appeal to the Board by certified mail. He shall also promptly notify the Department's Office of the Solicitor, in accordance with instructions of the Solicitor, that the appeal has been received in order that a Department counsel may be appointed.

(b) *Docketing of appeals.* When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writing of the fact of docketing, together with a copy of these rules, shall be mailed promptly by certified mail to the appellant. Also, a copy of such notice, together with a copy of the notice of appeal if not originally filed with the contracting officer, shall be mailed promptly by certified mail to the contracting officer. Such notice shall acknowledge receipt of the appeal and advise appellant of the appeal number assigned to the appeal.

§ 4.104 Preparation, organization, transmittal, and status of appeal file.

(a) *Preparation and transmittal of appeal file.* Following receipt of a notice of appeal, or advice that an appeal has been docketed, the contracting officer shall promptly, and in any event within 30 days, compile and transmit to the Board the appeal file which shall consist of copies of all documents pertinent to the appeal. Within the same time period the contracting officer shall also prepare and transmit a copy of the appeal file to the Department counsel and a copy to the appellant or appellant's counsel. (However, the obligations of this subparagraph are sub-

ject to the provisions of paragraph (e) of this section.)

(b) *Composition of appeal file.* The appeal file shall include the following:

(1) The findings of fact and decision from which the appeal is taken, and the letter or letters or other documents of claim in response to which the decision was issued;

(2) The contract, and pertinent plans, drawings, specifications, amendments, and change orders;

(3) All correspondence between the parties pertinent to the appeal; and

(4) Such additional information as may be considered pertinent and material.

(c) *Organization of appeal file.* Documents in the appeal file may be originals, 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, and bound. Any single document consisting of three or more pages shall be numbered sequentially for convenient reference at the hearing and in the preparation of briefs.

(d) *Opportunity for appellant to supplement appeal file.* The appellant shall be afforded the opportunity of supplementing the appeal file with such documentation as may be deemed pertinent to the appeal. The appellant shall be obligated, however, to furnish to Department counsel a copy of any document by which the appeal file is supplemented.

(e) *Burdensome documents.* The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file if 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 offices of the Board or of the party filing the same.