

CHAPTER 2. APPEAL PROCEDURES OF THE CONTRACT APPEALS BOARD

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200 APPEALS BY CONTRACTORS

200.1 An appeal by a contractor of a final decision by the director of the Department of Administrative Services, or the director of an independent agency which has entered into an agreement with the Board, whether relating to a contract dispute, debarment, suspension, or a claim for interest penalties, shall commence by the contractor filing with the Board an original and four (4) copies of a notice of appeal.

200.2 The notice of appeal shall be filed:

- (a) In a contract dispute, no later than ninety (90) days after the contractor received the decision of the director, or the time period for the director to issue a decision has expired; or
- (b) In a dispute concerning suspension or debarment, no later than sixty (60) days after the contractor receives the decision of the director to suspend or debar.

200.3 The appellant shall serve a copy of the notice of appeal on the agencies specified in subsection 202.3(a) and (b), and shall furnish the Board with proof of service.

201 NOTICE OF APPEAL

- 201.1 A notice of appeal shall indicate that an appeal is being taken and shall identify the contract in dispute, or the suspension/debarment proceedings; the department or agency involved in the dispute; the decision from which the appeal is taken; the amount in dispute, if any; and shall state that the notice of appeal is timely filed.
- 201.2 The notice of appeal shall be signed by the contractor personally or by an authorized representative or attorney.
- 201.3 The complaint referred to in section 204 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint if it fulfills the requirements of a complaint.

202 DOCKETING OF APPEALS

- 202.1 When a notice of appeal in any form has been received by the Board, it shall be docketed promptly.
- 202.2 The Board shall provide the appellant a written acknowledgement that the notice of appeal has been docketed, the case docket number, and the citation of the publication containing the current rules of the Board. In addition, the Board shall advise the appellant of the identity of the persons furnished the acknowledgement as prescribed in subsection 202.3.
- 202.3 The Board promptly shall send a copy of the acknowledgement to:
 - (a) The director of the Department of Administrative services or the director of the independent agency;
 - (b) The director of the contracting agency, if different than the director in subsection 202.3(a); and
 - (c) The Corporation Counsel or the counsel for the independent agency.
- 202.4 The Board shall notify the contracting agency to file the appeal file as prescribed in section 203.

203 THE APPEAL FILE

- 203.1 Within thirty (30) days of receipt that a notice of appeal has been docketed, the contracting agency shall assemble and transmit to the Board an appeal file consisting of all documents pertinent to the appeal, including:
 - (a) The decision from which the appeal is taken;

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- (b) The contract, including specifications and pertinent amendments, plans, and drawings;
 - (c) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;
 - (d) 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; and
 - (e) Any additional information considered relevant to the appeal.
- 203.2 Within the same thirty (30) day time period, the contracting agency shall furnish the appellant a copy of each document submitted to the Board, except those in subsection 203.1(b) above. As to the latter, a list furnished appellant indicating contractual documents submitted to the Board will suffice.
- 203.3 Within thirty (30) days after receipt of a copy of the appeal file assembled by the contracting agency, the appellant shall transmit to the Board any documents or other tangible things not contained therein which are considered relevant to the appeal, and shall furnish a copy of each document to the attorney representing the contracting agency.
- 203.4 The Board may, at any time during the pendency of the appeal, require either party to supplement the appeal file or record by filing other documents and tangible things.
- 203.5 All exhibits in the appeal file shall be considered, without further action by the parties, a 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 reasonably in advance of a hearing or, if there is no hearing, of closing the record. If an objection is made, the Board shall remove the document from the appeal file and permit the party offering the document to move its admission as evidence.
- 203.6 Documents in the appeal file may be originals or 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.
- 203.7 Original copies of documents may be withdrawn from the appeal file, with the Board's consent, if an acceptable copy is substituted.

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204 COMPLAINT

- 204.1 Within (30) days after receipt of the Board's notice that the appeal has been docketed, the appellant shall file with the Board an original and four (4) copies of a complaint setting forth simple, concise and direct statements of each of its claims.
- 204.2 The appellant shall set forth the basis, with appropriate reference to contract provisions and applicable law, of each claim; the dollar amount claimed, to the extent known; and the relief sought from the Board.
- 204.3 The appellant shall serve a copy of the complaint on the contracting agency's attorney, and provide proof of service to the Board.
- 204.4 This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required.
- 204.5 Should the complaint not be received by the Board within thirty (30) days after receipt of the Board's notice that the appeal has been docketed, 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 its complaint and the contracting agency shall be so notified.

205 ANSWER

- 205.1 Within thirty (30) days from receipt of the complaint, or the notice specified in subsection 204.5, the contracting agency shall file with the Board an original and four (4) copies of an answer thereto.
- 205.2 The contracting agency shall serve a copy of the answer on the appellant, or its attorney, and provide proof of service to the Board.
- 205.3 The answer shall set forth simple, concise and direct statements of the contracting agency's defenses to each claim asserted by the appellant, including any affirmative defenses or counterclaims available.
- 205.4 In lieu of answering, the contracting agency may file a dispositive motion. If the motion is filed and denied by the Board, in whole or in part, the answer shall be filed no later than thirty (30) days after the contracting agency receives the Board's ruling on the motion.
- 205.5 If no answer or motion is received from the contracting agency within thirty (30) days, the Board may, in its discretion, enter a general denial to the appeal, and the appellant shall

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be so notified, or the Board may consider the failure to answer as an admission of the claims of the appellant.

206 SUPPLEMENTAL PLEADINGS

206.1 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.

207 AMENDMENT OF PLEADINGS

207.1 The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties.

207.2 When issues within the proper scope of the appeal have not been raised by the pleadings but 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 in the pleadings. In these instances, motions to amend the pleadings to conform to the proof may be made 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 the evidence.

208 ELECTION OF PROCEDURE

208.1 After the complaint, answer, appeal file and any supplemental pleading have been filed, each party shall inform the Board whether it desires a hearing, as prescribed by section 211, or whether it desires to submit its case on the record without a hearing, as prescribed by section 209.

209 SUBMISSION ON THE RECORD

209.1 Both parties may elect to waive a fact-finding hearing and to submit the case on the record.

209.2 Submission of the case without a hearing shall not relieve the parties from proving the facts supporting their allegations and defenses.

209.3 Either party may apply to the Board to supplement the record by filing affidavits, depositions, admissions, answers to interrogatories, and stipulations.

209.4 The Board may permit the record to be supplemented by oral

argument and briefs.

210 PREHEARING PROCEDURES

210.1 The Board may, upon its own initiative, or upon application of either party, arrange for a telephone conference or direct the parties to appear before the Board at a specified time and place, prior to or during the course of a hearing, to consider the following:

- (a) Settlement of part or all of the dispute;
- (b) The simplification of issues;
- (c) The necessity or desirability of amending the pleadings;
- (d) The possibility of obtaining admissions of fact and stipulations concerning the use of documents to avoid unnecessary proof;
- (e) The limitation of the number of witnesses;
- (f) The possibility of prior mutual exchange of prepared testimony and exhibits between the parties;
- (g) A schedule for the completion of discovery, if discovery is deemed necessary, and has not been completed; and
- (h) Any other matters that may aid in shortening the hearing on the merits and in the disposition of the appeal.

210.2 The Board shall make an order or memorandum which shall recite the action taken at the conference. This order or memorandum, when filed, shall be a part of the record in the appeal and shall control the subsequent course of the appeal unless modified by the Board.

210.3 The Board may, on its initiative or upon application of either party, order the parties to file prehearing briefs explaining and analyzing the legal issues in any case.

210.4 Pleadings, discovery, and other prehearing activity shall 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 in a reasonable time. The Board, at its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules.

211 HEARINGS

211.1 The Board shall provide the parties at least seven (7) days notice of the time and place of a hearing, but the notice may

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be waived by the parties.

- 211.2 All hearings on the merits shall be open to the public.
- 211.3 Questions concerning the admissibility of evidence and other matters that may arise in the course of the hearing shall be ruled upon by the designated administrative judge, or, if necessary, by a majority vote of the designated panel. A decision upon the merits, or a final disposition of any appeal or part thereof, shall be by majority vote of the designated panel.
- 211.4 Witnesses at hearings shall be examined orally under oath or affirmation, which shall be administered by the designated administrative judge or any member of the assigned panel. Any member of the panel may question any witness at any time during or after examination or cross-examination by the parties.
- 211.5 An official reporter selected by the District shall make an official transcript of the proceedings at hearings on the merits. After the close of a hearing this transcript, together with any exhibits, briefs, or other documents filed in the proceeding, shall be filed with the Board and become a part of the record.
- 211.6 The official reporter shall transmit copies of the transcript to the Board and the contracting agency. Copies of the official transcript shall be supplied to other parties by the official reporter at rates determined between the official reporter and the parties.
- 211.7 Motions to correct an official transcript shall be filed with the Board within fifteen (15) days after the receipt of the last portion of the transcript, and shall certify the date when the last portion of the transcript was received by the maker of the motion.

212 POSTHEARING BRIEFS

- 212.1 An original and four (4) copies of posthearing briefs shall be submitted as directed by the Board at the conclusion of the hearing.
- 212.2 Briefs and any memoranda of law shall be typewritten on white bond 8 1/2 x 11 inch paper and shall be double spaced except for quotations.
- 212.3 Briefs shall contain, in the following order, a short procedural history of the case, a table of contents, a table of authorities cited, a concise summary of argument, proposed findings of fact with citations to those places in the record where supporting evidence can be found, proposed conclusions of

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law with citations to supporting legal authorities, and the relief desired by the party.

213 RECORD

213.1 The record of the appeal shall include the complaint, answer, appeal file, all motions and other submissions filed by the parties with the Board pursuant to these rules; all correspondence exchanged between the Board and the parties or their attorney; transcripts made of hearings before the Board; all exhibits and other evidence admitted to the record; and all findings, decisions, opinions, and orders of the Board.

214 DECISIONS

214.1 All decisions shall be in writing and based solely on the record as prescribed in subsection 213.1.

214.2 With each decision finally disposing of an appeal or any part thereof, the Board shall file separate findings of fact and conclusions of law unless the findings of fact and conclusions of law appear therein.

214.3 A copy of the decision shall be transmitted by the Board to each party or his or her attorney.

215 OPTIONAL SMALL CLAIMS (EXPEDITED) PROCEDURES

215.1 In an appeal where the amount in dispute is ten thousand dollars (\$10,000) or less, the appellant may elect to have the appeal adjudicated under the small claims procedure set forth in this section, or the accelerated procedure in section 216.

215.2 Whenever possible, decisions under the small claims procedure will be rendered within ninety (90) days after the Board receives written notice of the appellant's election. The election shall be stated in the notice of appeal, except that the Board for good cause may permit the election to be made after the notice of appeal is filed. Once the election is made, it may not be withdrawn except with the permission of the Board for good cause shown.

215.3 The following time periods shall apply for cases proceeding as a small claims appeal unless otherwise ordered by the Board:

- (a) Within ten (10) days of receipt of notice of the appellant's election, the respondent shall submit to the Board a copy of the contract, the contracting agency's final decision, and the appellant's claim letter or letters; other documents from the appeal file prescribed

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in subsection 203.1 shall be submitted as the Board directs.

(b) Within fifteen (15) days after the Board has received the appellant's election, the designated administrative judge shall take the following action in an informal meeting or a telephone conference with the parties:

- (1) Formulate and simplify the issues;
- (2) Establish a simplified procedure appropriate to the appeal;
- (3) Determine whether either party wants a hearing and, if so, fix a time and place;
- (4) Require the respondent to furnish any additional documents relevant to the appeal; and
- (5) Establish an expedited schedule for resolution of the appeal.

215.4 Pleadings, discovery, and other prehearing activity shall 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 90-day limit. The Board, at its discretion, 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 time limit.

215.5 Written decisions by the Board in cases adjudicated under the small claims (expedited) procedure shall be short and may contain abbreviated findings of fact and conclusions of law. The decisions shall be rendered for the Board by a single administrative judge. A decision under the small claims procedure shall have no precedential value in future cases before the Board.

215.6 In a case where a small claims procedure has been elected and in which there has been a hearing, the administrative judge presiding at the hearing may, in the judge's discretion, at the conclusion of the hearing and after entertaining any oral arguments as deemed appropriate, render on the record oral findings of fact, conclusions of law, and a decision of the appeal.

215.7 Whenever an oral decision is rendered pursuant to Section 215.6, the Board shall subsequently furnish the parties with a written copy of the oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration or a judicial appeal.

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216 OPTIONAL ACCELERATED PROCEDURES

- 216.1 In appeals where the amount in dispute is fifty thousand dollars (\$50,000) or less, the appellant may elect to have the appeal adjudicated under the accelerated procedure set forth in this section.
- 216.2 Decisions under the accelerated procedure shall be rendered within one hundred and eighty (180) days from the date the Board receives notice that the appellant has elected to utilize the accelerated procedure.
- 216.3 The appellant's election of the accelerated procedure shall be exercised by written notice within sixty (60) days after receipt of notice of docketing the appeal. The election, once exercised, may not be withdrawn, except with the permission of the Board for good cause shown.
- 216.4 In a case proceeding as an accelerated appeal, the Board shall encourage the parties to waive or limit pleadings, discovery, and briefs to the maximum possible extent consistent with the adequate presentation of their factual and legal positions.
- 216.5 Within thirty (30) days of receiving appellant's election of accelerated procedure, the respondent shall file an answer as prescribed by section 205 and the appeal file as prescribed by subsection 203.1.
- 216.6 Within forty five (45) days of receiving appellant's election of the accelerated procedure, the Board shall convene an informal meeting, or a telephone conference, with the parties and shall proceed with the case as described in subsection 215.3(b).
- 216.7 The Board shall permit discovery by the parties consistent with its requirement to decide their case under the time limit imposed by subsection 216.2

299 DEFINITIONS

- 299.1 The meaning ascribed to the definitions appearing in 399.1 of chapter 3 of this title shall apply to the terms in this chapter.