

Appendix E

Rules of Practice Before the Postal Service Board of Contract Appeals

(Reprint of 39 CFR 955)

These rules of practice have been issued by the Judicial Officer as 39 CFR 955, under the authority of 39 U.S.C. 204, 401 and 41 U.S.C. 607, 608. They are reprinted here for the convenience of users of the *Purchasing Manual*.

955.1 Jurisdiction, Procedure, Representation of Parties

PRELIMINARY PROCEDURES

955.2 Appeals, How Taken

955.3 Notice of Appeal, Contents of

955.4 Forwarding of Appeals

955.5 Preparation, Contents, Organization, Forwarding, and Status of
Appeal File

955.6 Dismissal for Lack of Jurisdiction

955.7 Pleadings

955.8 Amendments of Pleadings or Record

955.9 Hearing Election

955.10 Prehearing Briefs

955.11 Prehearing or Presubmission Conference

955.12 Submission Without a Hearing

955.13 Optional Small Claims (Expedited) and Accelerated
Procedures

955.14 Settling the Record

955.15 Discovery—Depositions

955.16 Interrogatories to Parties, Admission of Facts, and Production
and Inspection of Documents

955.17 Service of Papers

HEARINGS

955.18 Where and When Held

955.19 Notice of Hearings

955.20 Unexcused Absence of a Party

955.21 Nature of Hearings

955.22	Examination of Witnesses
955.23	Copies of Papers
955.24	Posthearing Briefs
955.25	Transcript of Proceedings
955.26	Withdrawal of Exhibits

REPRESENTATION

955.27	The Appellant
955.28	The Respondent

DECISIONS

955.29	Decisions
--------	-----------

MOTION FOR RECONSIDERATION

955.30	Motion for Reconsideration
955.31	Dismissal Without Prejudice
955.32	Dismissal for Failure to Prosecute

EX PARTE COMMUNICATIONS

955.33	Ex Parte Communications
--------	-------------------------

SANCTIONS

955.34	Sanctions
--------	-----------

SUBPOENAS

955.35	Subpoenas
--------	-----------

EFFECTIVE DATE AND APPLICABILITY

955.36	Effective Date and Applicability
--------	----------------------------------

955.1 Jurisdiction, procedure, representation of parties.

(a) *Jurisdiction for considering appeals* . The U.S. Postal Service Board of Contract Appeals (Board) shall consider and determine appeals from decisions of contracting officers arising under contracts which contain provisions requiring the determination of appeals by the Postmaster General or his duly authorized representative or board. In addition the Board shall have jurisdiction over other matters assigned to it by the Postmaster General. The Board has authority to determine appeals falling within the scope of its jurisdiction as fully and finally as might the Postmaster General.

(b) *Organization and location of the board.*

- (1) The Board is located in Washington, DC, and its mailing address is 475 L'Enfant Plaza, SW, Washington, DC, 20260-6100.
- (2) The Board consists of the Judicial Officer as Chairman, the Associate Judicial Officer as Vice Chairman, and the Administrative Judges of the Postal Service. All members of the Board shall be attorneys at law duly licensed by any state,

commonwealth, territory, or the District of Columbia. In general the appeals are assigned to a panel of at least three members of the Board. The decision of a majority of the panel constitutes the decision of the Board.

- (c) *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 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.
- (d) *Board of contract appeals procedure.*
 - (1) *Rules.* Appeals referred to the Board are handled in accordance with the rules of the Board.
 - (2) *Administration and interpretation of rules.* 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.
 - (3) *Preliminary procedures.* Preliminary procedures are available to encourage full disclosure of relevant and material facts, and to discourage unwarranted surprise.
 - (4) *Time, computation, and extensions*
 - (i) 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.
 - (ii) Except as otherwise provided by law, in computing any period of time prescribed by these rules or by any order of the Board, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday in which event the period shall run to the end of the next business day.
 - (iii) Requests for extensions of time from either party shall be made in writing stating good cause therefor.

(5) *Place of filings.* Unless the Board otherwise directs, all notices of appeal, pleadings and other communications shall be filed with the Recorder of the Board at its offices in the

UNITED STATES POSTAL SERVICE HEADQUARTERS BUILDING
475 LENFANT PLAZA SW
WASHINGTON DC 20260-6120

(e) *Representation of parties.* 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.

PRELIMINARY PROCEDURES

955.2 **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 must be mailed or otherwise filed within the time specified therefor in the contract or allowed by applicable provision of directive or law.

955.3 **Notice of appeal, contents of.**

A notice of appeal should indicate that an appeal is thereby intended, and should identify the contract (by number), the department and agency or bureau cognizant of 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 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 ¶955.7 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.

955.4 **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 to the Board. Following receipt by the Board of the original notice of an appeal (whether through the contracting officer or otherwise), the contractor and contracting officer will be promptly advised of its receipt and the contractor will be furnished a copy of these rules.

955.5 **Preparation, contents, organization, forwarding, and status of appeal file.**

(a) *Duties of Contracting Officer.* Within 30 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board through Postal Ser-

vice counsel an appeal file consisting of all documents pertinent to the appeal, including:

- (1) the decision and findings of fact from which appeal is taken;
- (2) the contract including specifications and pertinent amendments, plans and drawings;
- (3) all correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which decision was issued;
- (4) 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
- (5) any additional information considered pertinent.

Within the same time above specified Postal Service counsel shall furnish the appellant a copy of each document he transmits to the Board, except those stated in paragraph (a)(2) of this section, as to which a list furnished appellant indicating specific contractual documents transmitted will suffice, and those stated in paragraph (d) below.

- (b) *Duties of the Appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall supplement the same by transmitting to the Board any documents not contained therein which he considers pertinent to the appeal, furnishing two copies of such documents to the Government trial attorney.
- (c) *Organization of appeal file.* Documents in the appeal file may be originals or legible facsimile 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.
- (d) *Lengthy 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 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 offices of the Board or of the party filing same.
- (e) *Status of documents in appeal file.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision, unless a party objects to the consideration of a particular document in advance of hearing or of settling the record in the

event there is no hearing on the appeal. If objection to a document is made, the Board will rule upon its admissibility into the record as evidence in accordance with ¶955.14 and ¶955.21.

955.6 **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.

955.7 **Pleadings.**

- (a) *Appellant.* Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and one copy 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 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.
- (b) *Respondent.* Within 30 days from receipt of said complaint, or the aforesaid notice from the Board, respondent shall prepare and file with the Board an original and one copy 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 Board 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.

955.8 **Amendments of pleadings or record.**

- (a) 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.
- (b) The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend his pleading upon condi-

tions just to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings or the documentation described in ¶955.5, 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 documentation required pursuant to ¶955.5 (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.

955.9 Hearing election.

Upon receipt of respondent's answer or the notice referred to in the last sentence of ¶955.7(b), appellant shall advise whether he desires a hearing as prescribed in ¶955.18 through ¶955.26, or whether, in the alternative, he elects to submit his case on the record without a hearing, as prescribed in ¶955.12. In appropriate cases, the appellant shall also elect whether he desires the optional small claims (expedited) procedure or the accelerated procedure prescribed in ¶955.13.

955.10 Prehearing briefs.

Based on an examination of the documentation described in ¶955.5, 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 prehearing briefs in any case in which a hearing has been elected pursuant to ¶955.9. 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 prehearing brief to the Board. In any case where a prehearing 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.

955.11 Prehearing or presubmission conference.

Whether the case is to be submitted pursuant to ¶955.12, or heard pursuant to ¶955.18 through 955.26, the Board may, upon its own initiative or upon the application of either party, call upon the parties to appear before a Board Member for a conference to consider:

- (a) the simplification or clarification of the issues;
- (b) the possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

- (c) the limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;
- (d) the possibility of agreement disposing of all or any of the issues in dispute; and
- (e) such other matters as may aid in the disposition of the appeal.

The results of the conference shall be reduced to writing by the Board Member and this writing shall thereafter constitute part of the record.

955.12 Submission without a hearing.

Either party may elect to waive a hearing and to submit his case upon the record before the Board, as settled pursuant to ¶955.14. Submission of the case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, 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 argument (transcribed if requested), and by briefs arranged in accordance with ¶955.24.

OPTIONAL SMALL CLAIMS (EXPEDITED) AND ACCELERATED PROCEDURES

955.13 Optional small claims (expedited) and accelerated procedures.

- (a) These procedures are available solely at the election of the appellant.
- (b) Elections to Utilize SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures.
 - (1) In appeals where the amount in dispute is \$50,000 or less, the appellant may elect to have the appeal processed under a SMALL CLAIMS (EXPEDITED) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in paragraph (c) of this section. An appellant may elect the ACCELERATED procedure rather than the SMALL CLAIMS (EXPEDITED) procedure for any appeal eligible for the SMALL CLAIMS (EXPEDITED) procedure.
 - (2) In appeals where the amount in dispute is \$100,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring the decision of the appeal, whenever possible, within 180 days after the Board

receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in paragraph (d) of this section.

- (3) The appellant's election of either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure may be made either in his notice of appeal or by other written notice at any time thereafter.
- (4) In deciding whether the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure is applicable to a given appeal the Board shall determine the amount in dispute by adding the amount claimed by the appellant against the respondent to the amount claimed by respondent against the appellant. If either party making a claim against the other party does not otherwise state in writing the amount of its claim, the amount claimed by such party shall be the maximum amount which such party represents in writing to the Board that it can reasonably expect to recover against the other.

(c) The SMALL CLAIMS (EXPEDITED) Procedure.

- (1) This procedure shall apply only to appeals where the amount in dispute is \$50,000 or less as to which the appellant has elected the SMALL CLAIMS (EXPEDITED) procedure.
- (2) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the following time periods shall apply: (1) within ten days from the respondent's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the respondent shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; (2) within 5 days after the Board has acknowledged receipt of the notice of election, either party desiring an oral hearing shall so inform the Board. If either party requests an oral hearing the Board shall promptly schedule such a hearing for a mutually convenient time consistent with administrative due process and the 120-day limit for a decision, at a place determined under ¶955.18. If a hearing is not requested by either party within the time prescribed by this Rule, the appeal shall be deemed to have been submitted under ¶955.12 without a hearing.
- (3) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, pleadings, discovery, and other prehearing activity will 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 decision within the 120-day limit. The Board, in its discretion, may shorten time periods prescribed elsewhere in these Rules as necessary to enable the Board to decide the

appeal within 120 days after the Board has received the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure. In so doing the Board may reserve whatever time up to 30 days it considers necessary for preparation of the decision.

- (4) Written decisions by the Board in cases processed under the SMALL CLAIMS (EXPEDITED) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge. If there has been a hearing, the Administrative Judge presiding at the hearing may, in his discretion, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the Appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for the record and payment purposes and for the establishment of the commencement date of the period for filing a motion for reconsideration under ¶955.30.
- (5) Decisions of the Board under the SMALL CLAIMS (EXPEDITED) procedure will not be published, will have no value as precedents, and in the absence of fraud, cannot be appealed.

(d) The ACCELERATED Procedure.

- (1) This procedure shall apply only to appeals where the amount in dispute is \$100,000 or less as to which the appellant has made the requisite election.
- (2) In cases proceeding under the ACCELERATED procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed elsewhere in these Rules as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure, and may reserve 30 days for preparation of the decision.
- (3) Written decisions by the Board in cases processed under the ACCELERATED procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge with the concurrence of the Chairman or Vice Chairman or other designated Administrative Judge, or by a majority among these two and an additional designated member in case of disagreement. Alternatively, in cases where the amount in dispute is \$50,000 or less as to which the ACCELERATED procedure has been elected and in which there has

been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as he deems appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the date of commencement of the period for filing a motion for reconsideration under ¶955.30.

- (e) Motions for Reconsideration in Cases Arising Under ¶955.13. Motions for Reconsideration of cases decided under either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be decided within the time periods prescribed by this ¶955.13 for the initial decisions of the appeal, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this section.
- (f) Except as herein modified, the rules of this part 955 otherwise apply in all aspects.

955.14 **Settling the record.**

- (a) The record upon which the Board's decision will be rendered consists of the appeal file described in ¶955.5, and to the extent the following items have been filed, pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will at all reasonable times be available for inspection by the parties at the office of the Board.
- (b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.
- (c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. 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.

955.15 **Discovery—depositions.**

- (a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order which justice requires to protect a party or per-

son from annoyance, embarrassment, oppression, or undue burden or expense, and those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

- (b) *When depositions permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.
- (c) *Orders on depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.
- (d) *Use as evidence.* No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions as evidence in supplementation of that record.
- (e) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

955.16 Interrogatories to parties, admission of facts, and production and inspection of documents.

- (a) *Interrogatories to parties.* After an appeal has been filed with the Board, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection by the party, the Board will determine the extent to which the interrogatories will be permitted. The scope and use of interrogatories will be controlled by ¶955.15.
- (b) *Admission of facts.* After an appeal has been filed with the Board, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the request for admission.

(c) *Production and inspection of documents.* Upon motion of any party showing good cause therefor, and upon notice, the Board may order the other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the Board shall specify just terms and conditions in making the inspection and taking the copies and photographs.

955.17 **Service of papers.**

Papers shall be served personally or by mailing the same, addressed to the party upon whom service is to be made. Copies of complaints, answers and simultaneous briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board, or on the letter transmitting the same, that a copy has been so furnished.

HEARINGS

955.18 **Where and when held.**

Hearings will ordinarily be held in the Washington, D.C. area, except that upon request reasonably made and upon good cause shown, the Board may 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.

955.19 **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 hearing shall be promptly acknowledged by the parties.

955.20 **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 ¶955.12.

955.21 **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 officer 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, or other evidence not ordinarily admissible under the generally accepted rules of evidence, may be admitted in the discretion of the presiding officer. 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.

955.22 Examination of witnesses.

Witnesses before the Board will be examined orally under oath or affirmation unless the facts are stipulated, or the presiding officer shall otherwise order. If the testimony of a witness is not given under oath, the Board may 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.

955.23 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.

955.24 Posthearing briefs.

Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding officer at the conclusion of the hearing. Ordinarily, they will be simultaneous briefs, exchanged within 30 days after receipt of transcript.

955.25 Transcript of proceedings.

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Transcripts or copies of the proceedings shall be supplied to the parties at such rates as may be fixed by contract between the Reporter and the U.S. Postal Service.

955.26 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.

REPRESENTATION

955.27 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. An attorney representing an appellant shall file a written notice of appearance with the Board.

955.28 The respondent.

Postal Service counsel, designated by the General Counsel, will represent the interest of the government before the Board. Counsel shall file a 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 Postal Service Counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal: *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.

DECISIONS

955.29 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 shall be open for public inspection at the offices of the Board in Washington, D.C. Decisions of the Board will be made solely upon the record, as described in ¶955.14.

MOTION FOR RECONSIDERATION

955.30 Motion 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.

DISMISSALS

955.31 **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. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

955.32 **Dismissal for failure to prosecute.**

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause when the appeal should not be either dismissed or granted, as appropriate. If the offending party shall fail to show such cause, the Board may take such action as it deems reasonable and proper under the circumstances.

EX PARTE COMMUNICATIONS

955.33 **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, 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.

SANCTIONS

955.34 **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.

SUBPOENAS

955.35 Subpoenas.

- (a) *General.* Upon written request of either party filed with the Recorder or on his own initiative, the Administrative Judge to whom a case is assigned or who is otherwise designated by the Chairman may issue a subpoena requiring:
 - (1) *Testimony at a deposition.* The deposing of a witness in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Board;
 - (2) *Testimony at a hearing.* The attendance of a witness for the purpose of taking testimony at a hearing; and
 - (3) *Production of books and papers.* In addition to (1) and (2), the production by the witness at the deposition or hearing of books and papers designated in the subpoena.
- (b) *Voluntary Cooperation.* Each party is expected (1) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (2) to secure voluntary attendance of desired third party books, papers, documents, or tangible things whenever possible.
- (c) *Requests for subpoenas.*
 - (1) A request for a subpoena shall normally be filed at least:
 - (i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;
 - (ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.
- (d) *Requests to quash or modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may

act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; issuance.*

- (1) Every subpoena shall state the name of the Board and the title of the appeal and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the Administrative Judge shall sign the subpoena and may in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.
- (2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(f) *Service.*

- (1) The party requesting issuance of subpoena shall arrange for service.
- (2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law.
- (3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(g) *Contumacy or refusal to obey a subpoena.* In case of contumacy or refusal to obey a subpoena by a person who resides, if found, or transacts business within the jurisdiction of a United States District Court, the board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

EFFECTIVE DATE AND APPLICABILITY

955.36 **Effective date and applicability.**

- (a) The provisions of ¶955.9 and 955.13 took effect on October 1, 1995. Pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601-613), ¶955.13 and 955.35 apply to appeals relating to contracts entered into on or after March 1, 1979. All other provisions of this part 955 took effect February 18, 1976. Except as otherwise directed by the Board, these rules shall not apply to appeals docketed prior to their effective date.

This page intentionally left blank