RULES OF PROCEDURE
OF THE GENERAL SERVICES ADMINISTRATION
BOARD OF CONTRACT APPEALS

PART II -- EXPEDITED PROCEEDINGS

RULES OF PROCEDURE

OF THE GENERAL SERVICES ADMINISTRATION

BOARD OF CONTRACT APPEALS

FOREWORD

The General Services Administration Board of Contract Appeals was established under the Contract Disputes Act of 1978, 41 U.S.C. 601-613, as an independent tribunal to hear and decide contract disputes between government contractors and the General Services Administration (GSA) and other executive agencies of the United States.

As an agency board established under the Contract Disputes Act, the Board is required to "provide to the fullest extent practicable, informal, expeditious and inexpensive resolution of disputes." 41 U.S.C. 607(e). Part I of these rules represents the Board's concerted effort to be responsive to this charge in standard proceedings. In further response to this mandate, the Board also uses a variety of techniques intended to shorten and simplify, when appropriate, the proceedings normally used to resolve contract disputes. These techniques are described in Part II.

As indicated in Part II, the Board fully supports the use of alternative dispute resolution (ADR) in all appropriate cases. To encourage the prompt, expert, and inexpensive resolution of contract disputes as promoted by the Federal Acquisition Streamlining Act of 1994, Pub. L. No. 103-355, 108 Stat. 3243, the Board will also make a Board Neutral available for an ADR proceeding, as described in Rule 204, either before or after the issuance of a decision by a contracting officer of any agency if a joint written request is submitted to the Office of the Clerk of the Board by the parties.

The Board also conducts proceedings as required under other laws. In all matters before it, the Board will act in accordance with these rules and applicable standards of conduct so that the integrity, impartiality, and independence of the Board are preserved.

PART I -- STANDARD PROCEEDINGS

Rule 101

SCOPE OF RULES; DEFINITIONS; CONSTRUCTION; RULINGS AND ORDERS; PANELS; SITUS

(a) Scope. These rules govern proceedings in all cases filed with the Board on or after October 7, 1996, and all further proceedings in cases then pending, except to the extent that, in the opinion of the Board, their use in a particular case pending on the effective date would be infeasible or would work an injustice, in which event the former procedure applies. The Board will look to these rules for guidance in conducting other proceedings authorized by law.

(b) Definitions.

(1) Appeal; appellant. The term "appeal" means a contract dispute filed with the Board. The term "appellant" means a party filing an appeal.

(2) Application; applicant. The term "application" means a submission to the Board of a request for award of costs, under the Equal Access to Justice Act, 5 U.S.C. 504, pursuant to Rule 135. The term "applicant" means a party filing an application.

(3) Board judge; judge. The term "Board judge" or "judge" means a member of the Board.

(4) Case. The term "case" means an appeal, petition, or application.

(5) Filing.

(i) Any document, other than a notice of appeal or an application for award of costs, is filed when it is received by the Office of the Clerk of the Board during the Board's working hours. A notice of appeal or an application for award of costs is filed upon the earlier of (A) its receipt by the Office of the Clerk of the Board or (B) if mailed, the date on which it is mailed. A United States Postal Service postmark shall be prima facie evidence that the document with which it is associated was mailed on the date thereof.

(ii) Facsimile transmissions to the Board and the parties are permitted. Parties are expected to submit their facsimile machine numbers with their filings. The Board's facsimile machine number is: (202) 501-0664. The filing of a document by facsimile transmission occurs upon receipt by the Board of the entire printed submission. Parties are specifically cautioned that deadlines for the filing of cases will not be extended merely because the Board's facsimile machine is busy or otherwise unavailable at the time on which the filing is due.

(6) Party. The term "party" means an appellant, applicant, petitioner, or respondent.

(7) Petition; petitioner. The term "petition" means a request filed under 41 U.S.C. 605(c)(4) that the Board direct a contracting officer to issue a written decision on a claim. The term "petitioner" means a party submitting a petition.

(8) Respondent. The term "respondent" means the Government agency whose decision, action, or inaction is the subject of an appeal, petition, or application.

(9) Working day. The term "working day" means any day other than a Saturday, Sunday, or federal holiday.

(10) Working hours. The Board's working hours are 8:00 a.m. to 4:30 p.m., Eastern Time, on each working day.

(c) Construction. These rules shall be construed to secure the just, speedy, and inexpensive resolution of every case. The Board looks to the Federal Rules of Civil Procedure for guidance in construing those Board rules which are similar to Federal Rules.

(d) Rulings, orders, and directions. The Board may apply these rules and make such rulings and issue such orders and directions as are necessary to secure the just, speedy, and inexpensive resolution of every case before the Board. Any ruling, order, or direction that the Board may make or issue pursuant to these rules may be made on the motion or request of any party or on the initiative of the Board. The Board may also amend, alter, or vacate a ruling, order, or direction upon such terms as are just. In making rulings and issuing orders and directions pursuant to these rules, the Board takes into consideration those Federal Rules of Civil Procedure which address matters not specifically covered herein.

(e) Panels. Each case will be assigned to a panel consisting of three judges, with one member designated as the panel chairman, in accordance with such procedures as may be established by the Board. The panel chairman is responsible for processing the case, including scheduling and conducting proceedings and hearings. In addition, the panel chairman may, without participation by other panel members, decide an appeal under the small claims procedure (Rule 202), rule on nondispositive motions (except for amounts in controversy under Rule 202(a)(2)), and dismiss a case if no party objects (Rule 128(c)). All other matters, except for those before the full Board under Rule 130, are decided for the Board by a majority of the panel.

(f) Situs. The address of the Office of the Clerk of the Board is: Room 7022, General Services Administration Building, 18th and F Streets, N.W., Washington, DC 20405. The Clerk's telephone number is: (202) 501-0116. The Clerk's facsimile machine number is (202) 501-0664.

Rule 102

TIME: ENLARGEMENT; COMPUTATION

(a) Time for performing required actions. All time limitations prescribed in these rules or in any order or direction given by the Board are maximums, and the action required should be accomplished in less time whenever possible.

(b) Enlarging time. Upon request of a party for good cause shown, the Board may enlarge any time prescribed by these rules or by an order or direction of the Board. The exception is the time limit for filing appeals (Rule 105(b)(1)). A written request is required, but in exigent circumstances an oral request may be made and followed by a written request. An enlargement of time may be granted even though the request was filed after the time for taking the required action

expired, but the party requesting the enlargement must show good cause for its inability to make the request before that time expired.

(c) Computing time. Except as otherwise required by law, in computing a period of time prescribed by these rules or by order of the Board, the day from which the designated period of time begins to run shall not be counted, but the last day of the period shall be counted unless that day is (i) a Saturday, a Sunday, or a federal holiday, or (ii) a day on which the Office of the Clerk of the Board is required to close earlier than 4:30 p.m., or does not open at all, as in the case of inclement weather, in which event the period shall include the next working day. Except as otherwise provided in this paragraph, when the period of time prescribed or allowed is less than 11 days, any intervening Saturday, Sunday, or federal holiday shall not be counted. When the period of time prescribed or allowed is 11 days or more, intervening Saturdays, Sundays, and federal holidays shall be counted. Time for filing any document or copy thereof with the Board expires when the Office of the Clerk of the Board closes on the last day on which such filing may be made.

Rule 103

SERVICE OF PAPERS

(a) On whom and when service must be made. When a party sends a document to the Board it must at the same time send a copy to the other party by mail or some other equally or more expeditious means of transmittal. Subpoenas (Rule 120) and documents filed in camera (Rule 112(h)) are exceptions to this requirement. Any papers required to be served on a party (except requests for discovery and responses thereto, unless ordered by the Board to be filed) shall be filed with the Board before service or within a reasonable time thereafter.

(b) Proof of service. Except when service is not required, a party sending a document to the Board must indicate to the Board that a copy has also been sent to the other party. This may be done by certificate of service, by the notation of a photostatic copy (cc:), or by any other means that can reasonably be expected to indicate to the Board that the other party has been provided a copy.

(c) Failure to make service. If a document sent to the Board by a party does not indicate that a copy has been served on the other party, the Board may return the document to the party that submitted it with such directions as it considers appropriate, or the Board may inquire whether a party has received a copy and note on the record the fact of inquiry and the response, and may also direct the party that submitted the document to serve a copy on the other party. In the absence of proof of service a document may be treated by the Board as not properly filed.

Rule 104

APPEAL FILE

(a) Submission to the Board by the contracting officer. Within 30 calendar days from receipt of notice that an appeal has been filed, or within such time as the Board may allow, the contracting officer shall file with the Board appeal file exhibits consisting of all documents and other tangible things relevant to the claim and to the contracting officer's decision which has been appealed, including:

(1) The contracting officer's decision, if any, from which the appeal is taken;

(2) The contract, if any, including amendments, specifications, plans, and drawings;

(3) All correspondence between the parties that is relevant to the appeal, including the written claim or claims that are the subject of the appeal, and evidence of their certification, if any;

(4) Affidavits or statements of any witnesses on the matter in dispute and transcripts of any testimony taken before the filing of the notice of appeal;

(5) All documents and other tangible things on which the contracting officer relied in making the decision, and any correspondence relating thereto;

(6) The abstract of bids, if relevant; and

(7) Any additional existing evidence or information deemed necessary to determine the merits of the appeal.

The contracting officer shall serve a copy of the appeal file on the appellant at the same time that the contracting officer files it with the Board, except that (i) the contracting officer need not serve on the appellant those documents furnished the Board in camera pursuant to Rule 112(h), and (ii) the contracting officer shall serve documents submitted under protective order only on those individuals who have been granted access to such documents by the Board. However, the contracting officer must serve on the appellant a list identifying the specific documents filed in camera or under protective order with the Board, giving sufficient details necessary for their recognition. This list must also be filed with the Board as an exhibit to the appeal file.

(b) Submission to the Board by the appellant. Within 30 calendar days after filing of the respondent's appeal file exhibits, or within such time as the Board may allow, the appellant shall file with the Board for inclusion in the appeal file documents or other tangible things relevant to the appeal that have not been submitted by the contracting officer. The appellant shall serve a copy of its additional exhibits upon the respondent at the same time as it files them with the Board.

(c) Submissions on order of the Board. The Board may, at any time during the pendency of the appeal, require any party to file other documents and tangible things as additional exhibits.

(d) Organization of the appeal file. Appeal file exhibits may be originals or true, legible, and complete copies. They shall be arranged in chronological order within each submission, earliest documents first; bound in a loose-leaf binder on the left margin except where size or shape makes such binding impracticable; numbered; tabbed; and indexed. The numbering shall be consecutive, in whole arabic numerals (no letters, decimals, or fractions), and continuous from one submission to the next, so that the complete file, after all submissions, will consist of one set of consecutively numbered exhibits. In addition, the pages within each exhibit shall be numbered consecutively unless the exhibit already is paginated in a logical manner. Consecutive pagination of the entire file is not required. The index should include the date and a brief description of each exhibit and shall indicate which exhibits, if any, have been filed with the Board in camera or under protective order or otherwise have not been served on every other party.

(e) Lengthy or bulky materials. The Board may waive the requirement to furnish other parties copies or duplicates of bulky, lengthy, or outsized materials submitted to the Board as exhibits.

(f) Use of appeal file as evidence. All exhibits in the appeal file, except for those as to which an objection has been sustained, are part of the record upon which the Board will render its decision. Unless otherwise ordered by the Board, objection to any exhibit may be made at any time before the first witness is sworn or, if the appeal is submitted on the record pursuant to Rule 111, at any time prior to or concurrent with the first record submission. The Board may enlarge the time for such objections and will consider an objection made during a hearing if the ground for objection could not reasonably have been earlier known to the objecting party. If an objection is sustained, the Board will so note in the record.

(g) When appeal file not required. Upon motion of a party, the Board may postpone or dispense with the submission of any or all appeal file exhibits.

Rule 105

FILING CASES; TIME LIMITS FOR FILING; DOCKETING

(a) Filing cases. Filing of a case occurs as provided in Rule 101(b)(5).

(1) Notice of appeal.

(i) A notice of appeal shall be in writing and should be signed by the appellant or by the appellant's attorney or authorized representative. If the appeal is from a contracting officer's decision, the notice of appeal should describe the decision in enough detail to enable the Board to differentiate that decision from any other; the appellant can satisfy this requirement by attaching to the notice of appeal a copy of the contracting officer's decision. If an appeal is taken from the failure of a contracting officer to issue a decision, the notice of appeal should describe in detail the claim that the contracting officer has failed to decide; the appellant can satisfy this requirement by attaching a copy of the written claim submission to the notice of appeal.

(ii) A written notice in any form, including the one specified in the Appendix to these rules, is sufficient to initiate an appeal. The notice of appeal should include the following information: (A) the number and date of the contract; (B) the name of the agency and the component thereof against which the claim has been asserted; (C) the name of the contracting officer whose decision or failure to decide is appealed and the date of the decision, if any; (D) a brief account of the circumstances giving rise to the appeal; and (E) an estimate of the amount of money in controversy, if any and if known.

(iii) The appellant must send a copy of the notice of appeal to the contracting officer whose decision is appealed or, if there has been no decision, to the contracting officer before whom the appellant's claim is pending.

(2) Petition.

(i) A petition shall be in writing and signed by the petitioner or by the petitioner's attorney or authorized representative. The petition should describe in detail the claim that

the contracting officer has failed to decide; the contractor can satisfy this requirement by attaching to the petition a copy of the written claim submission.

(ii) The petition should include the following information: (A) the number and date of the contract; (B) the name of the agency and the component thereof against which the claim has been asserted; and (C) the name of the contracting officer whose decision is sought.

(3) Application. An application for costs shall meet all requirements specified in Rule 135(c).

(4) Other participation. The Board may, on motion, in its discretion, permit an entity to participate in a case in a special or limited way, such as by filing an amicus curiae brief.

(b) Time limits for filing.

(1) Appeals.

(i) An appeal from a decision of a contracting officer shall be filed no later than 90 calendar days after the date the appellant receives that decision.

(ii) An appeal may be filed with the Board should the contracting officer fail or refuse to issue a timely decision on a claim submitted in writing, properly certified if required.

(2) Applications. An application for costs shall be filed within 30 calendar days of a final disposition in the underlying appeal, as provided in Rule 135(b).

(c) Notice of docketing. Notices of appeal, petitions, and applications will be docketed by the Office of the Clerk of the Board, and a written notice of docketing will be sent promptly to all parties.

Rule 106

APPEARANCES; NOTICE OF APPEARANCE

(a) Appearances before the Board.

(1) Appellant; petitioner; applicant. Any appellant, petitioner, or applicant may appear before the Board by an attorney-at-law licensed to practice in a state, commonwealth, or territory of the United States, or in the District of Columbia. An individual appellant, petitioner, or applicant may appear in his own behalf; a corporation, trust, or association may appear by one of its officers or by any other authorized employee; and a partnership may appear by one of its members or by any other authorized employee.

(2) Respondent. The respondent may appear before the Board by an attorney-at-law licensed to practice in a state, commonwealth, or territory of the United States, or in the District of Columbia. Alternatively, if not prohibited by agency regulation or otherwise, the respondent may appear by the contracting officer or by the contracting officer's authorized representative.

(b) Notice of appearance. Unless a notice of appearance is filed by some other person, the person signing the notice of appeal, petition, or application shall be deemed to have appeared on behalf of the appellant, petitioner, or applicant, and the head of the respondent agency's litigation office shall be deemed to have appeared on behalf of the respondent. A notice of appearance in the form specified in the Appendix to these rules is sufficient. Attorneys representing parties before the Board are required to list the state bars to which they are admitted and their state bar numbers or other bar identifiers.

(c) Withdrawal of appearance. Any person who has filed a notice of appearance and who wishes to withdraw from a case must file a motion which includes the name, address, telephone number, and facsimile machine number of the person who will assume responsibility for representation of the party in question. The motion shall state the grounds for withdrawal unless it is accompanied by a representation from the successor representative or existing co-counsel that the established case schedule will be met.

Rule 107

PLEADINGS IN APPEALS

(a) Pleadings required and permitted. Except as the Board may otherwise order, the Board requires the submission of a complaint and an answer. In appropriate circumstances, the Board may order or permit a reply to an answer.

(b) Complaint. No later than 30 calendar days after the docketing of the appeal, the appellant shall file with the Board a complaint setting forth its claim or claims in simple, concise, and direct terms. The complaint should set forth the factual basis of the claim or claims, with appropriate reference to the contract provisions, and should state the amount in controversy, or an estimate thereof, if any and if known. No particular form is prescribed for a complaint, and the Board may designate the notice of appeal, a claim submission, or any other document as the complaint, either on its own initiative or on request of the appellant, if such document sufficiently states the factual basis and amount of the claim.

(c) Answer. No later than 30 calendar days after the filing of the complaint or of the Board's designation of a complaint, the respondent shall file with the Board an answer setting forth simple, concise, and direct statements of its defenses to the claim or claims asserted in the complaint, as well as any affirmative defenses it chooses to assert. A dispositive motion or a motion for a more definite statement may be filed in lieu of the answer only with the permission of the Board. If no answer is timely filed, the Board may enter a general denial, in which case the respondent may thereafter amend the answer to assert affirmative defenses only by leave of the Board and as otherwise prescribed by subparagraph (f) of this rule. The Board will inform the parties when it enters a general denial on behalf of the respondent.

(d) Reply to an answer. If the Board orders or permits a reply to an answer, it shall be filed as directed by the Board.

(e) Modifications to requirement for pleadings. If the appellant has elected the small claims procedure provided by Rule 202 or the accelerated procedure provided by Rule 203, the submission of pleadings shall be governed by the applicable rule.

(f) Amendment of pleadings. Each party to an appeal may amend its pleadings once without leave of the Board at any time before a responsive pleading is filed; if the pleading is one to which no responsive pleading is permitted, such amendment may be made at any time within 20 calendar days after it is served or, in small claims proceedings under Rule 202, within 10 working days after it is served. The Board may permit the parties to amend pleadings further on conditions fair to both parties. If a response to the unamended pleading was required by these rules or by an order of the Board, a response to the amended pleading shall be filed no later than 30 calendar days after the filing of the amended pleading or, in small claims proceedings, no later than 15 calendar days after the filing of the amended pleading. Rule 112(e) concerns amendments to pleadings to conform to the evidence.

Rule 108

MOTIONS

(a) How motions are made. Motions may be oral or written. A written motion shall indicate the relief sought and, either in the text of the motion or in an accompanying legal memorandum, the grounds therefor. In addition, a motion for summary relief shall comply with the requirements of paragraph (g) of this rule. Rule 125 prescribes the form and content of legal memoranda. Oral motions shall be made on the record and in the presence of the other party.

(b) When motions may be made. A motion filed in lieu of an answer pursuant to Rule 107(c) shall be filed no later than the date on which the answer is required to be filed or such later date as may be established by the Board. Any other dispositive motion shall be made as soon as practicable after the grounds therefor are known. Any other motion shall be made promptly or as required by these rules.

(c) Dispositive motions. The following dispositive motions may properly be made before the Board:

(1) Motions to dismiss for lack of jurisdiction or for failure to state a claim upon which relief can be granted;

(2) Motions to dismiss for failure to prosecute;

(3) Motions for summary relief (analogous to summary judgment); and

(4) Any other motion to dismiss.

(d) Other motions. Other motions may be made in good faith and in proper form.

(e) Jurisdictional questions. The Board may at any time consider the issue of its jurisdiction to decide a case. When all facts touching upon the Board's jurisdiction are not of record, or in other appropriate circumstances, a decision on a jurisdictional question may be deferred pending a hearing on the merits or the filing of record submissions.

(f) Procedure. Unless otherwise directed by the Board, a party may respond to a written motion other than a motion pursuant to Rule 130, 131, 132, or 133 at any time within 20 calendar days after the filing of the motion. Responses to motions pursuant to Rule 130, 131, 132, or 133 may be made only as permitted or directed by the Board. The Board may permit hearing or oral argument on written motions and may require additional submissions from any of the parties.

(g) Motions for summary relief.

(1) A motion for summary relief should be filed only when a party believes that, based upon uncontested material facts, it is entitled to relief in whole or in part as a matter of law. A motion for summary relief should be filed as soon as feasible, to allow the Board to rule on the motion in advance of a scheduled hearing date.

(2) With each motion for summary relief, there shall be served and filed a separate document titled Statement of Uncontested Facts, which shall contain in separately numbered paragraphs all of the material facts upon which the moving party bases its motion and as to which it contends there is no genuine issue. This statement shall include references to the supporting affidavits

or declarations and documents, if any, and to the Rule 104 appeal file exhibits relied upon to support such statement.

(3) An opposing party shall file with its opposition (or cross-motion) a separate document titled Statement of Genuine Issues. This document shall identify, by reference to specific paragraph numbers in the moving party's Statement of Uncontested Facts, those facts as to which the opposing party claims there is a genuine issue necessary to be litigated. An opposing party shall state the precise nature of its disagreement and give its version of the facts. This statement shall include references to the supporting affidavits or declarations and documents, if any, and to the Rule 104 appeal file exhibits that demonstrate the existence of a genuine dispute. An opposing party may also file a Statement of Uncontested Facts as to any relevant matters not covered by the moving party's statement.

(4) When a motion for summary relief is made and supported as provided in this rule, an opposing party may not rest upon the mere allegations or denials of its pleadings, but the opposing party's response, by affidavits or as otherwise provided by this rule, must set forth specific facts showing that there is a genuine issue of material fact. If the opposing party does not so respond, summary relief, if appropriate, shall be entered against that party. For good cause shown, if an opposing party cannot present facts essential to justify its opposition, the Board may defer ruling on the motion to permit affidavits to be obtained or depositions to be taken or other discovery to be conducted, or may make such other order as is just.

(h) Effect of pending motion. Except as these rules provide or the Board may order, a pending motion shall not excuse the parties from proceeding with the case in accordance with these rules and the orders and directions of the Board.

Rule 109

ELECTION OF HEARING OR RECORD SUBMISSION

Each party shall inform the Board, in writing, whether it elects a hearing or submission of its case on the record pursuant to Rule 111. Such an election may be filed at any time unless a time for filing is prescribed by the Board. A party electing to submit its case on the record pursuant to Rule 111 may also elect to appear at a hearing solely to cross-examine any witness presented by the opposing party, provided that the Board is informed of that party's intention within 10 working days of its receipt of notice of the election of hearing by the other party. If a hearing is elected, the election should state where and when the electing party desires the hearing to be held and should explain the reasons for its choices. A hearing will be held if either party elects one. If a party's decision whether to elect a hearing is dependent upon the intentions of the other party, it shall consult with the other party before filing its election. If there is to be a hearing, it will be held at a time and place prescribed by the Board after consultation with the party or parties electing the hearing. The record submissions from a party that has elected to submit its case on the record shall be due as provided in Rule 111.

Rule 110

CONFERENCES; CONFERENCE MEMORANDUM; PREHEARING ORDER; PREHEARING AND PRESUBMISSION BRIEFS

(a) Conferences. The Board may convene the parties in conference, either by telephone or in person, for any purpose. The conference may be stenographically or electronically recorded, at the discretion of the Board. Matters to be considered and actions to be taken at a conference may include:

(1) Simplifying, clarifying, or severing the issues;

(2) Stipulations, admissions, agreements, and rulings to govern the admissibility of evidence, understandings on matters already of record, or other similar means of avoiding unnecessary proof;

(3) Plans, schedules, and rulings to facilitate discovery;

(4) Limiting the number of witnesses and other means of avoiding cumulative evidence;

(5) Stipulations or agreements disposing of matters in dispute; or

(6) Ways to expedite disposition of the case or to facilitate settlement of the dispute, including, if the parties and the Board agree, the use of alternative dispute resolution techniques, as provided in Rules 201 and 204.

(b) Conference memorandum. The Board may prepare a memorandum of the results of a conference or issue an order reflecting any actions taken, or both. A memorandum or order so issued shall be placed in the record of the case and sent to each party. Each party shall have 5 working days after receipt of a memorandum to object to the substance of it.

(c) Prehearing order. The Board may issue a prehearing or presubmission order to govern the proceedings in a case.

(d) Prehearing or presubmission briefs. A party may, by leave of the Board, file a prehearing or presubmission brief at any time before the hearing or upon or before the date on which first record submissions are due.

Rule 111

SUBMISSION ON THE RECORD WITHOUT A HEARING

(a) Submission on the record. A party may elect to submit its case on the record without a hearing. A party submitting its case on the record may include in its written record submission or submissions:

(1) Any relevant documents or other tangible things it wishes the Board to admit into evidence;

(2) Affidavits, depositions, and other discovery materials that set forth relevant evidence; and

(3) A brief or memorandum of law.

The Board may require the submission of additional evidence or briefs and may order oral argument in a case submitted on the record.

(b) Time for submission.

(1) If both parties have elected to submit the case on the record, the Board will issue an order prescribing the time for initial and, if appropriate, reply record submissions.

(2) If one party has elected a hearing and the other party has elected to submit its case on the record, the party submitting on the record shall make its initial submission no later than the commencement of the hearing or at an earlier date if the Board so orders, and a further submission in the form of a brief at the time for submission of posthearing briefs.

(c) Objections to evidence. Unless otherwise directed by the Board, objections to evidence (other than the appeal file and supplements thereto) in a record submission may be made within 10 working days after the filing of the submission. Replies to such objections, if any, may be made within 10 working days after the filing of the objection. The Board may rule on such objections in its opinion deciding the merits or otherwise disposing of the case.

Rule 112

RECORD OF BOARD PROCEEDINGS

(a) Composition of the record for decision. The record upon which any decision of the Board will be rendered consists of:

(1) The notice of appeal, petition, or application;

(2) Appeal file exhibits other than those as to which an objection has been sustained;

(3) Hearing exhibits other than those as to which an objection has been sustained;

(4) Pleadings;

(5) Motions and responses thereto;

(6) Memoranda, orders, rulings, and directions to the parties issued by the Board;

(7) Documents and other tangible things admitted in evidence by the Board;

(8) Written transcripts or electronic recordings of proceedings;

(9) Stipulations and admissions by the parties;

(10) Depositions, or parts thereof, received in evidence;

(11) Written interrogatories and responses received in evidence;

(12) Briefs and memoranda of law; and

(13) Anything else that the Board may designate.

All other papers and documents in a case are part of the administrative record of the proceedings. The administrative record shall include file and hearing exhibits offered but not received in evidence in a case; it may also include correspondence with and between the parties, and depositions, interrogatories, offers of proof contained in the transcript, and other documents that are not part of the record for decision.

(b) Time for entry into the record. Except as the Board may otherwise order, nothing other than posthearing briefs will be received into the record after a hearing is completed. In cases submitted on the record without a hearing, nothing will be received into the record after the time for filing of the last record submission. Briefs will be due as provided in Rule 125(b).

(c) Closing of the record. Except as the Board may otherwise order, no proof shall be received in evidence after a hearing is completed or, in cases submitted on the record without a hearing, after notice by the Board to the parties that the record is closed and that the case is ready for decision.

(d) Notice that the case is ready for decision. The Board will give written notice to the parties when the record is closed and the case is ready for decision.

(e) Amendments to conform to the evidence. When issues within the proper scope of a case, but not raised in the pleadings, have been raised without objection or with permission of the Board at a hearing (see Rule 121(h)) or in record submissions, they shall be treated in all respects as if they had been raised in the pleadings. The Board may formally amend the pleadings to conform to the proof or may order that the record be deemed to contain pleadings so amended.

(f) Enlargement of the record. The Board may at any time require or permit enlargement of the record with additional evidence and briefs. It may reopen the record to receive additional evidence and oral argument at a hearing.

(g) Inspection of the record of proceedings; release of any paper, document, or tangible thing prohibited. Except for any part thereof that is subject to a protective order or deemed an in camera submission, the record of proceedings in a case shall be made available for inspection by any person. Such record shall be made available at the Office of the Clerk of the Board during the Board's normal working hours, as soon as practicable given the demands on the Board of processing the subject case and other cases. Except as provided in Rule 123(c) and Rule 137(d), no paper, document, or tangible thing which is part of the record of proceedings in a case may be released from the offices of the Board. Copies may be obtained by any person as provided in Rule 138(d). If such inspection or copying involves more than minimal costs to the Board, reimbursement will be required.

(h) Protected and in camera submissions.

(1) A party may by motion request that the Board receive and hold materials under conditions that would limit access to them on the ground that such documents are privileged or confidential, or sensitive in some other way. The moving party must state the grounds for such limited access. The Board may also determine on its own initiative to hold materials under such conditions. The manner in which such materials will be held, the persons who shall have access to them, and the conditions (if any) under which such access will be allowed will be specified in an order of the Board. If the materials are held under such an order, they will be part of the record of the case. If the Board denies the motion, the materials may be returned to the party that submitted them. If the moving party asks, however, that the materials be placed in the administrative record, in camera, for the purpose of possible later review of the Board's denial, the Board will comply with the request.

(2) A party may also ask, or the Board may direct, that testimony be received under protective order or in camera. The procedures under subparagraph (h)(1) shall be followed with respect to such request or direction.

Rule 113

[RESERVED]

Rule 114

[RESERVED]

Rule 115

GENERAL PROVISIONS GOVERNING DISCOVERY

(a) Discovery methods. The parties may obtain discovery by one or more of the following methods:

(1) Depositions upon oral examination or written questions;

(2) Written interrogatories;

(3) Requests for production of documents or other tangible things; and

(4) Requests for admission.

(b) Scope of discovery. Except as otherwise limited by order of the Board in accordance with these rules, the parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending case, whether it relates to the claim or defense of a party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought will be inadmissible

if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) Discovery limits. The Board may limit the frequency or extent of use of the discovery methods set forth in this rule if it determines that:

(1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(2) The party seeking discovery has had ample opportunity by discovery in the case to obtain the information sought; or

(3) The discovery is unduly burdensome and expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake.

(d) Conduct of discovery. Parties may engage in discovery only to the extent the Board enters an order which either incorporates an agreed plan and schedule acceptable to the Board or otherwise permits such discovery as the moving party can demonstrate is required for the expeditious, fair, and reasonable resolution of the case.

(e) Discovery conference. Upon request of a party or on its own initiative, the Board may at any time hold an informal meeting or telephone conference with the parties to identify the issues for discovery purposes; establish a plan and schedule for discovery; set limitations on discovery, if any; and determine such other matters as are necessary for the proper management of discovery. The Board may include in the conference such other matters as it deems appropriate in accordance with Rule 110.

(f) Discovery objections.

(1) In connection with any discovery procedure, the Board, on motion or on its own initiative, may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including, but not limited to, one or more of the following:

(i) That the discovery not be had;

(ii) That the discovery be had only on specified terms and conditions, including a designation of the time and place, or that the scope of discovery be limited to certain matters;

(iii) That the discovery be conducted with no one present except persons designated by the Board; and

(iv) That confidential information not be disclosed or that it be disclosed only in a designated way.

(2) Unless otherwise ordered by the Board, any objection to a discovery request must be filed within 15 calendar days after receipt. A party shall fully respond to any discovery request to which it does not file a timely objection. The parties are required to make a good faith effort to resolve objections to discovery requests informally.

(3) A party receiving an objection to a discovery request, or a party which believes that another party's response to a discovery request is incomplete or entirely absent, may file a motion to compel a response, but such a motion must include a representation that the moving party has tried in good faith, prior to filing the motion, to resolve the matter informally. The motion to compel shall include a copy of each discovery request at issue and the response, if any.

(g) Failure to make or cooperate in discovery; sanctions. If a party fails (i) to appear for a deposition, after being served with a proper notice; (ii) to serve answers or objections to interrogatories submitted under Rule 117, after proper service of interrogatories; or (iii) to serve a written response to a request for inspection, production, and copying of any documents and things under Rule 117, the party seeking discovery may move the Board to impose appropriate sanctions under Rule 118.

(h) Subpoenas. A party may request the issuance of a subpoena in aid of discovery under the provision of Rule 120.

Rule 116

DEPOSITIONS

(a) When depositions may be taken. Upon request of a party, the Board may order the taking of testimony of any person by deposition upon oral examination or written questions before an officer authorized to administer oaths at the place of examination. Attendance of witnesses may be compelled by subpoena as provided in Rule 120, and the Board may upon motion order that the testimony at a deposition be recorded by other than stenographic means, in which event the order may designate the manner of recording, preserving, and filing the deposition and may include other provisions to ensure that the recorded testimony will be accurate and trustworthy. If the order is made, a party may, nevertheless, arrange to have a stenographic transcription made at its own expense.

(b) Depositions: time; place; manner of taking. The time, place, and manner of taking depositions, including the taking of depositions by telephone, shall be as agreed upon by the parties or, failing such agreement, as ordered by the Board. A deposition taken by telephone is taken at the place where the deponent is to answer questions.

(c) Use of depositions. At a hearing on the merits or upon a motion or interlocutory proceeding, any part or all of a deposition, so far as admissible and as though the witness were then present and testifying, may be used against a party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by a party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated to testify on behalf of a public or private corporation, partnership or association, or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by a party for any purpose in its own behalf if the Board finds that:

(i) The witness is dead;

(ii) The attendance of the witness at the place of hearing cannot be reasonably obtained, unless it appears that the absence of the witness was procured by the party offering the deposition;

(iii) The witness is unable to attend or testify because of illness, infirmity, age, or imprisonment;

(iv) The party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon request and notice, exceptional circumstances exist which make it desirable in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offering party to introduce any other part which in fairness ought to be considered with the part introduced.

(d) Depositions pending appeal from a decision of the Board. If an appeal has been taken from a decision of the Board, or before the taking of an appeal if the time therefor has not expired, the Board may allow the taking of depositions of witnesses to perpetuate their testimony for use in the event of further proceedings before the Board. In such case, the party that desires to perpetuate testimony may make a motion before the Board for leave to take the depositions as if the action were pending before the Board. The motion shall show:

(1) The names and addresses of the persons to be examined and the substance of the testimony which the moving party expects to elicit from each; and

(2) The reasons for perpetuating the testimony of the persons named.

If the Board finds that the perpetuation of testimony is proper to avoid a failure or a delay of justice, it may order the depositions to be taken and may make orders of the character provided for in Rule 115 and in this rule. Thereupon, the depositions may be taken and used as prescribed in these rules for depositions taken in actions pending before the Board. Upon request and for good cause shown, a judge may issue or obtain a subpoena, in accordance with Rule 120, for the purpose of perpetuating testimony by deposition during the pendency of an appeal from a Board decision.

Rule 117

INTERROGATORIES TO PARTIES; REQUESTS FOR ADMISSION; REQUESTS FOR PRODUCTION OF DOCUMENTS

Upon order from the Board permitting such discovery, a party may serve on another party written interrogatories, requests for admission, and requests for production of documents.

(a) Written interrogatories. Written interrogatories shall be answered separately in writing, signed under oath or accompanied by a declaration under penalty of perjury, and answered within 30 calendar days after service. Objections shall be filed within the time limits set forth in Rule 115(f)(2). An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory may involve an opinion or contention that relates to fact or the application of law to fact, but the Board may order that such an interrogatory need not be answered until after designated discovery has been completed or until a conference has been held, or some other event has occurred.

(b) Option to produce business records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon which the interrogatory has been served, or from an examination, audit, or inspection of such business records, including a compilation, abstract, or summary thereof, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries thereof. Such specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(c) Written requests for admission. A written request for the admission of the truth of any matter, within the proper scope of discovery, that relates to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents, is to be answered in writing and signed within 30 calendar days after service. Objections shall be filed within the time limits set forth in Rule 115(f)(2). Otherwise, the matter therein may be deemed to be admitted. Any matter admitted is conclusively established for the purpose of the pending action, unless the Board on motion permits withdrawal or amendment of the admission. Any admission made by a party under this paragraph is for the purpose of the pending action only and is not an admission for any other purpose, nor may it be used against the party in any other proceeding.

(d) Written requests for production of documents. A written request for the production, inspection, and copying of any documents and things shall be answered within 30 calendar days after service. Objections shall be filed within the time limits set forth in Rule 115(f)(2).

(e) Change in time for response. Upon request of a party, or on its own initiative, the Board may prescribe a period of time other than that specified in this rule.

(f) Responses. A party that has responded to written interrogatories, requests for admission, or requests for production of documents, upon becoming aware of deficiencies or inaccuracies in its original responses, or upon acquiring additional information or additional documents relevant thereto, shall, as quickly as practicable, and as often as necessary, supplement its responses to the requesting party with correct and sufficient additional information and such additional documents as are necessary to give a complete and accurate response to the request.

Rule 118

SANCTIONS AND OTHER PROCEEDINGS

(a) Standards. All parties and their representatives, attorneys, and any expert/consultant retained by them or their attorneys, must obey directions and orders prescribed by the Board and adhere to standards of conduct applicable to such parties and persons. As to an attorney, the standards include the rules of professional conduct and ethics of the jurisdictions in which an attorney is licensed to practice, to the extent that those rules are relevant to conduct affecting the integrity of the Board, its process, and its proceedings. The Board will also look to voluntary professional guidelines in evaluating an individual's conduct.

(b) Sanctions. When a party or its representative or attorney or any expert/consultant fails to comply with any direction or order issued by the Board (including an order to provide or permit discovery), or engages in misconduct affecting the Board, its process, or its proceedings, the Board may make such orders as are just, including the imposition of appropriate sanctions. The sanctions include:

(1) Taking the facts pertaining to the matter in dispute to be established for the purpose of the case in accordance with the contention of the party submitting the discovery request;

(2) Forbidding challenge of the accuracy of any evidence;

(3) Refusing to allow the disobedient party to support or oppose designated claims or defenses;

(4) Prohibiting the disobedient party from introducing in evidence designated documents or items of testimony;

(5) Striking pleadings or parts thereof, or staying further proceedings until the order is obeyed;

(6) Dismissing the case or any part thereof;

(7) Enforcing the protective order and disciplining individuals subject to such order for violation thereof, including disqualifying a party's representative, attorney, or expert/ consultant from further participation in the case; or

(8) Imposing such other sanctions as the Board deems appropriate.

(c) Denial of access to protected material for prior violations of protective orders. The Board may in its discretion deny access to protected material to any person found to have previously violated the Board's protective order.

(d) Disciplinary proceedings.

(1) In addition to the above procedures, the Board may discipline individual party representatives, attorneys, and experts/consultants for a violation of any Board order or direction or standard of conduct applicable to such individual where the violation seriously affects the integrity of the Board's process or proceedings. Sanctions may be public or private, and may include

admonishment, disqualification from a particular matter, referral to an appropriate licensing authority, or such other action as circumstances may warrant.

(2) The Board in its discretion may suspend an individual from appearing before the Board as a party representative, attorney, or expert/consultant if, after affording such individual notice and an opportunity to be heard, a majority of the members of the full Board determines such a sanction is warranted.

Rule 119

HEARINGS: SCHEDULING; NOTICE; UNEXCUSED ABSENCES

(a) Scheduling of hearings. Hearings will be held at the time and place ordered by the Board and will be scheduled at the discretion of the Board. In scheduling hearings, the Board will consider the requirements of these rules, the need for orderly management of the Board's caseload, and the stated desires of the parties as expressed in their elections filed pursuant to Rule 109 or otherwise. The time or place for hearing may be changed by the Board at any time.

(b) Notice of hearing. Notice of hearing will be by written order of the Board. Notice of changes in the hearing schedule will also be by written order when practicable but may be oral in exigent circumstances. Except as the Board may otherwise order, each party that plans to attend the hearing shall, within 10 working days of receipt of (1) a written notice of hearing or (2) any notice of a change in hearing schedule stating that an acknowledgment is required, notify the Board in writing that it will attend the hearing.

(c) Unexcused absence from hearing. In the event of the unexcused absence of a party from a hearing, the hearing will proceed, and the absent party will be deemed to have elected to submit its case on the record pursuant to Rule 111.

Rule 120

SUBPOENAS

(a) Voluntary cooperation in lieu of subpoena. Each party is expected to:

(1) Cooperate by making available witnesses and evidence under its control, when requested by another party, without issuance of a subpoena; and

(2) Secure voluntary attendance of third-party witnesses and production of evidence by third parties, when practicable, without issuance of a subpoena.

(b) General. Upon the written request of any party filed with the Office of the Clerk of the Board, or on the initiative of a judge, a subpoena may be issued that commands the person to whom it is directed to:

(1) Attend and give testimony at a deposition in a city or county where that person resides or is employed or transacts business in person, or at another location convenient to that person that is specifically determined by the Board;

(2) Attend and give testimony at a hearing; and

(3) Produce the books, papers, documents, and other tangible things designated in the subpoena.

(c) Request for subpoena. A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any documentary evidence sought. A request for a subpoena shall be filed at least 15 calendar days before the testimony of a witness or documentary evidence is to be provided. The Board may, in its discretion, honor requests for subpoenas not made within this time limitation.

(d) Form; issuance.

(1) Every subpoena shall be in the form specified in the Appendix to these rules. Unless a party has the approval of a judge to submit a subpoena in blank (in whole or in part), a party shall submit to the judge a completed subpoena (save the "Return on Service" portion). In issuing a subpoena to a requesting party, the judge shall sign the subpoena. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) If the person subpoenaed is located in a foreign country, a letter rogatory or a subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781-1784.

(e) Service.

(1) The party requesting a subpoena shall arrange for service. Service shall be made as soon as practicable after the subpoena has been issued.

(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 personal delivery of a copy to that person and tender of the fees for one day's attendance and the mileage allowed by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(f) Proof of service. The person serving the subpoena shall make proof of service thereof to the Board promptly and in any event before the date on which the person served must respond to the subpoena. Proof of service shall be made by completion and execution and submission to the Board of the "Return on Service" portion of a duplicate copy of the subpoena issued by a judge. If service is made by a person other than a United States marshal or his deputy, that person shall make an affidavit as proof by executing the "Return on Service" in the presence of a notary.

(g) Motion to quash or to modify. Upon written motion by the person subpoenaed or by a party, made within 14 calendar 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 party in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed documentary evidence. Where

circumstances require, the Board may act upon such a motion at any time after a copy has been served upon opposing parties.

(h) Contumacy or refusal to obey a subpoena. In a case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States district court, the Board shall apply to the court through the Attorney General of the United States for an order requiring the person to appear before the Board to give testimony, produce evidence or both. If a person fails to obey such an order, the court may punish that person for contempt of court.

Rule 121

HEARING PROCEDURES

(a) Nature and conduct of hearings. Except when necessary to maintain the confidentiality of protected material or testimony, or material submitted in camera, all hearings on the merits of cases shall be open to the public and conducted insofar as is convenient in regular hearing rooms. All other acts or proceedings may be done or conducted by the Board either in its offices or at other places.

(b) Continuances; change of location. Whenever practicable, a hearing will be conducted in one continuous session or a series of consecutive sessions at a single location. However, the Board may at any time continue the hearing to a future date and may arrange to conduct the hearing in more than one location. The Board may also continue a hearing to permit a party to conduct additional discovery on conditions established by the Board. In exercising its discretion to continue a hearing or to change its location, the Board will give due consideration to the same elements (set forth in Rule 119(a)) that it considers in scheduling hearings.

(c) Availability of witnesses, documents, and other tangible things. It is the responsibility of a party desiring to call any witness, or to use any document or other tangible thing as an exhibit in the course of a hearing, to ensure that whoever it wishes to call and whatever it wishes to use is available at the hearing.

(d) Enlargement of the record. The Board may at any time during the conduct of a hearing require evidence or argument in addition to that put forth by the parties.

(e) Examination of witnesses. Witnesses before the Board will testify under oath or affirmation. A party or the Board may obtain an answer from any witness to any question that is not the subject of an objection that the Board sustains.

(f) Refusal to be sworn. If a person called as a witness refuses to be sworn or to affirm before testifying, the Board may direct that witness to do so and, in the event of continued refusal, the Board may permit the taking of testimony without oath or affirmation. Alternatively, the Board may refuse to permit the examination of that witness, in which event it may state for the record the inferences it draws from the witness's refusal to testify under oath or affirmation. Alternatively, the Board may issue a subpoena to compel that witness to testify under oath or affirmation and, in the event of the witness's continued refusal to swear or affirm, may seek enforcement of that subpoena pursuant to Rule 120(h).

(g) Refusal to answer. If a witness refuses to answer a question put to him in the course of his testimony, the Board may direct that witness to answer and, in the event of continued refusal, the Board may state for the record the inferences it draws from the refusal to answer. Alternatively, the Board may issue a subpoena to compel that witness to testify and, in the event of the witness's continued refusal to testify, may seek enforcement of that subpoena pursuant to Rule 120(h).

(h) Issues not raised by pleadings. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may nevertheless be admitted by the Board if it is within the proper scope of the case. If such evidence is admitted, the Board may grant the objecting party a continuance to enable it to meet such evidence. If such evidence is admitted, the pleadings may be amended to conform to the evidence, as provided by Rule 112(e).

(i) Delay by parties. If the Board determines that the hearing is being unreasonably delayed by the failure of a party to produce evidence, or by the undue prolongation of the presentation of evidence, it may, by written order or by ruling from the bench, prescribe a time or times within which the presentation of evidence must be concluded, establish time limits on the direct or cross-examination of witnesses, and enforce such order or ruling by appropriate sanctions.

Rule 122

ADMISSIBILITY AND WEIGHT OF EVIDENCE

(a) Admissibility. Any relevant evidence may be received. The Board may exclude relevant evidence to avoid unfair prejudice, confusion of the issues, undue delay, waste of time, or needless presentation of cumulative evidence. Hearsay evidence is admissible unless the Board finds it unreliable or untrustworthy.

(b) Federal Rules of Evidence. As a general matter, and subject to the other provisions of this rule, the Board will base its evidentiary rulings on the Federal Rules of Evidence.

(c) Weight and credibility. The Board will determine the weight to be given to evidence and the credibility to be accorded witnesses.

(d) Submission of evidence in camera. Rule 112(h) governs submissions in camera.

Rule 123

EXHIBITS

(a) Marking of exhibits.

(1) Documents and other tangible things offered in evidence by a party will be marked for identification by the Board during the hearing or, if it is convenient for the Board and the parties, before the commencement of the hearing. They will be numbered consecutively as the exhibits of the party offering them.

(2) If a party elects to proceed on the record without a hearing pursuant to Rule 111, documentary evidence submitted by that party will be numbered consecutively by the Board as appeal file exhibits.

(b) Copies as exhibits. Except upon objection sustained by the Board for good cause shown, copies of documents may be offered and received into evidence as exhibits, provided they are of equal legibility and quality as the originals, and such copies shall have the same force and effect as if they were the originals. If the Board so directs, a party offering a copy of a document as an exhibit shall have the original available at the hearing for examination by the Board and any other party. When the original of a document has been received into evidence as an exhibit, an accurate copy thereof may be substituted in evidence for the original by leave of the Board at any time.

(c) Withdrawal of documentary exhibits and other papers. With the permission of the Board, a party may remove an exhibit during the course of a proceeding. Otherwise, except as provided in Rule 137(d), no withdrawal of any papers in the Board's file is permitted. Inspection of the file at the Board's offices is permitted by Rule 112(g).

(d) Disposition of physical exhibits. Any physical (as opposed to documentary) exhibit may be disposed of by the Board at any time more than 90 calendar days after the expiration of the period for appeal from the decision of the Board, unless it has been earlier withdrawn by the party that submitted it.

Rule 124

TRANSCRIPTS OF PROCEEDINGS; CORRECTIONS

(a) Transcripts. Except as the Board may otherwise order, all hearings, other than those under the small claims procedure prescribed by Rule 202, will be stenographically or electronically recorded and transcribed. Any other hearing or conference will be recorded or transcribed only by order of the Board. Copies or transcriptions of stenographic or electronic recordings not ordered to be transcribed by the Board will be furnished to the parties or other persons only on conditions prescribed by the Board, which may include the payment of the costs of copying or transcription. Each party is responsible for obtaining its own copy of the transcript if one is prepared.

(b) Corrections. Corrections to an official transcript will be made only when they involve errors affecting its substance. The Board may order such corrections on motion or on its own initiative, and only after notice to the parties giving them opportunity to object. Such corrections will ordinarily be made either by hand with pen and ink or by the appending of an errata sheet, but when no other method of correction is practicable the Board may require the reporter to provide substitute or additional pages.

Rule 125

BRIEFS AND MEMORANDA OF LAW

(a) Form and content of briefs and memoranda of law. Briefs and memoranda of law shall be typewritten on standard size 8-1/2 by 11-inch paper. Otherwise, no particular form or organization is prescribed. Posthearing briefs should, at a minimum, succinctly set forth (1) the facts

of the case with citations to those places in the record where supporting evidence can be found and (2) argument with citations to supporting legal authorities. Memoranda of law should generally adhere as closely as practicable to the form and content of briefs.

(b) Submission of posthearing briefs. Except as the Board may otherwise order, posthearing briefs shall be filed 30 calendar days after the Board's receipt of the transcript; reply briefs, if filed, shall be filed 15 calendar days after the parties' receipt of the initial posthearing briefs. The Board will notify the parties of the date of its receipt of the transcript. In the event one party has elected a hearing and the other party has elected to submit its case on the record pursuant to Rule 111, the filing of record submissions in the form of briefs shall be governed by this rule.

Rule 126

CONSOLIDATION; SEPARATE HEARINGS; SEPARATE DETERMINATION OF LIABILITY

(a) Consolidation. When cases involving common questions of law or fact are pending, the Board may:

(1) Order a joint hearing of any or all of the matters at issue in the cases;

(2) Order the cases consolidated; or

(3) Make such other orders concerning the proceedings therein as are intended to avoid unnecessary costs or delay.

(b) Separate hearings. The Board may order a separate hearing of any case or cases or of any claims or issues or number of claims or issues therein. The Board may enter appropriate orders or decisions with respect to any claims or issues that are heard separately.

(c) Separate determinations of liability. The Board may:

(1) Limit a hearing to those issues of law and fact relating to the right of a party to recover, reserving the determination of the amount of recovery, if any, for other proceedings; and

(2) In its decision of an appeal, irrespective of whether there is evidence in the record concerning the amount of recovery, and whether or not a stipulation or order has been made, reserve determination of the amount of recovery for other proceedings. In any instance in which the Board has reserved its determination of the amount of recovery for other proceedings, its decision on the question of the right to recover shall be final, subject to the provisions of Rules 130 through 133.

Rule 127

STAY OR SUSPENSION OF PROCEEDINGS; DISMISSALS IN LIEU OF STAY OR SUSPENSION

(a) Stay of proceedings to obtain contracting officer's decision. The Board may in its discretion stay proceedings to permit a contracting officer to issue a decision when an appeal has been taken from the contracting officer's alleged failure to render a timely decision.

(b) Suspension for other cause. The Board may suspend proceedings in a case for good cause. The order suspending proceedings will prescribe the duration of the suspension or the conditions on which it will expire. The order may also prescribe actions to be taken by the parties during the period of suspension or following its expiration.

(c) Dismissal in lieu of stay or suspension. When circumstances beyond the control of the Board prevent the continuation of proceedings in a case, the Board may, in lieu of issuing an order suspending proceedings, dismiss the case without prejudice to reinstatement. Such a dismissal may require reinstatement by a date certain or within a certain period of time after the occurrence of a specified event. If the order of dismissal does not otherwise provide, it will be subject to the provisions of Rule 128(b).

Rule 128

DISMISSALS

(a) Generally. A case may be dismissed by the Board on motion of either party. A case may also be dismissed for reasons cited by the Board in a show cause order to which response has been permitted. Every dismissal shall be with prejudice to reinstatement of the case unless a dismissal without prejudice has been requested by a party or specified in a show cause order.

(b) Dismissal without prejudice. When a case has been dismissed without prejudice to its reinstatement and neither party has requested, within the period of time specified in this paragraph, that the case be reinstated, the case shall be deemed to have been dismissed with prejudice as of the expiration of 180 calendar days from the date of dismissal, or such other period as the Board may prescribe.

(c) Issuance of order. An order of dismissal shall be issued by the panel of judges to which the case has been assigned if the motion is contested or if the Board is acting consequent to its own show cause order. An order of dismissal may be issued by the panel chairman alone if the motion to dismiss is not contested.

Rule 129

DECISIONS: FORMAT; PROCEDURE

Except as provided in Rule 202 (small claims procedure), decisions of the Board will be made in writing upon the record as prescribed in Rule 112. Each of the parties will be furnished a copy of the decision certified by the Office of the Clerk of the Board, and the date of the receipt thereof by each party will be established in the record.

Rule 130

FULL BOARD CONSIDERATION

(a) Requests.

(1) A request for full Board consideration is not favored. Ordinarily, full Board consideration will be ordered only when (i) it is necessary to secure or maintain uniformity of Board decisions, or (ii) the matter to be referred is one of exceptional importance.

(2) A request for full Board consideration may be made by either party on any date which is both (i) after the panel to which the case is assigned has issued its decision on a motion for reconsideration or relief from decision and (ii) within 10 working days after the date on which that party receives that decision. Any party making a request for full Board consideration shall state concisely in the motion the precise grounds on which the request is based.

(3) The full Board on its own may initiate consideration of a matter (i) at any time while the case is before the Board, (ii) no later than the last date on which any party may file a motion for reconsideration or relief from decision or order, or (iii) if such a motion is filed by a party, within ten days after a panel has resolved it.

(b) Consideration. Promptly after such a request is made, a ballot will be taken among the judges; if a majority of them favors the request, the request will be granted. The result of the vote will promptly be reported by the Board through an order. The concurring or dissenting view of any judge who wishes to express such a view may issue at the time of such order or at any time thereafter.

(c) Decisions. If full Board consideration is granted, a vote shall be taken promptly on the pending matter. After this vote is taken, the Board shall promptly, by order, issue its determination, which shall include the concurring or dissenting view of any judge who wishes to express such a view.

Rule 131

CLERICAL MISTAKES

Clerical mistakes in decisions, orders, or other parts of the record, and errors arising therein through oversight or inadvertence, may be corrected by the Board at any time on its own initiative or upon motion of a party on such terms, if any, as the Board may prescribe. During the pendency of an appeal to another tribunal, such mistakes may be corrected only with leave of the appellate tribunal.

Rule 132

RECONSIDERATION; AMENDMENT OF DECISIONS; NEW HEARINGS

(a) Grounds. Reconsideration may be granted, a decision or order may be altered or amended, or a new hearing may be granted, for any of the reasons stated in Rule 133(a) and the reasons established by the rules of common law or equity applicable as between private parties in the courts of the United States. Reconsideration, or a new hearing, may be granted on all or any of the issues. Arguments already made and reinterpretations of old evidence are not sufficient grounds for

granting reconsideration. On granting a motion for a new hearing, the Board may open the decision if one has been issued, take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions and direct the entry of a new decision.

(b) Procedure. Any motion under this rule shall comply with the provisions of Rule 108 and shall set forth:

(1) The reason or reasons why the Board should consider the motion; and

(2) The relief sought and the grounds therefor.

If the Board concludes that the reasons asserted for its consideration of the motion are insufficient, it may deny the motion without considering the relief sought and the grounds asserted therefor. If the Board grants the motion, it will issue an appropriate order which may include directions to the parties for further proceedings.

(c) Time for filing. A motion for reconsideration, to alter or amend a decision or order, or for a new hearing shall be filed in an appeal or petition within 30 calendar days and in an application within 7 working days after the date of receipt by the moving party of the decision or order. Not later than 30 calendar days after issuance of a decision or order, the Board may, on its own initiative, order reconsideration or a new hearing or alter or amend a decision or order for any reason that would justify such action on motion of a party.

(d) Effect of motion. A motion pending under this rule does not affect the finality of a decision or suspend its operation.

Rule 133

RELIEF FROM DECISION OR ORDER

(a) Grounds. The Board may relieve a party from the operation of a final decision or order for any of the following reasons:

(1) Newly discovered evidence which could not have been earlier discovered, even through due diligence;

(2) Justifiable or excusable mistake, inadvertence, surprise, or neglect;

(3) Fraud, misrepresentation, or other misconduct of an adverse party;

(4) The decision has been satisfied, released, or discharged, or a prior decision upon which it is based has been reversed or otherwise vacated, and it is no longer equitable that the decision should have prospective application;

(5) The decision is void, whether for lack of jurisdiction or otherwise; or

(6) Any other ground justifying relief from the operation of the decision or order.

(b) Procedure. Any motion under this rule shall comply with the provisions of Rules 108 and 132(b), and will be considered and ruled upon by the Board as provided in Rule 132.

(c) Time for filing. Any motion under this rule shall be filed as soon as practicable after the discovery of the reasons therefor, but in any event no later than 120 calendar days or, in appeals under the small claims procedure of Rule 202, no later than 30 calendar days after the date of the moving party's receipt of the decision or order from which relief is sought. In considering the timeliness of a motion filed under this rule, the Board may consider when the grounds therefor should reasonably have been known to the moving party.

(d) Effect of motion. A motion pending under this rule does not affect the finality of a decision or suspend its operation.

Rule 134

HARMLESS ERROR

No error in the admission or exclusion of evidence, and no error or defect in any ruling, order, or decision of the Board, and no other error in anything done or omitted to be done by the Board will be a ground for granting a new hearing or for vacating, reconsidering, modifying, or otherwise disturbing a decision or order of the Board unless refusal to act upon such error will prejudice a party or work a substantial injustice. At every stage of the proceedings the Board will disregard any error or defect that does not affect the substantial rights of the parties.

Rule 135

AWARD OF COSTS

(a) Applications for costs. An appropriate party in a proceeding before the Board may apply for an award of costs, including if applicable an award of attorney fees, under the Equal Access to Justice Act, 5 U.S.C. 504, or any other provision that may entitle that party to such an award, subsequent to the Board's decision in the proceeding. For purposes of this rule, "decision" includes orders of dismissal resulting from settlement agreements that bring to an end the proceedings before the Board.

(b) Time for filing. A party seeking an award may submit an application no later than 30 calendar days after a final disposition in the underlying appeal. In the case of an appeal that is adjudicated, the Board's decision becomes final (for purposes of this rule) when it is not appealed to the United States Court of Appeals for the Federal Circuit within the time permitted for appeal or, if the decision is appealed, when the time for petitioning the Supreme Court for certiorari has expired. In the case of an appeal that is resolved as a result of settlement, the Board's disposition becomes final (for purposes of this rule) after receipt by the applicant of the order granting or dismissing the appeal.

(c) Application requirements. An application for costs shall:

(1) Identify the applicant and the appeal for which costs are sought, and the amount being sought;

(2) Establish that all applicable prerequisites for an award have been satisfied, including a succinct statement of why the applicant is eligible for an award of costs;

(3) Be accompanied by an exhibit fully documenting any fees or expenses being sought, including the cost of any study, analysis, engineering report, test, project, or similar matter. The date and a description of all services rendered or costs incurred shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the particular services performed by specific date, the rate at which each fee has been computed, any expenses for which reimbursement is sought, and the total amount paid or payable by the applicant on account of the sought-after costs. Except in exceptional circumstances, all exhibits supporting applications for fees or expenses sought shall be publicly available. The Board may require the applicant to provide vouchers, receipts, or other substantiation for any costs claimed and/or to submit to an audit by the Government of the claimed costs;

(4) Be signed by the applicant or an authorized officer, employee, or attorney of the applicant;

(5) Contain or be accompanied by a written verification under oath or affirmation, or declaration under penalty of perjury, that the information provided in the application is true and correct;

(6) If the applicant asserts that it is a qualifying small business concern, contain evidence thereof; and

(7) If the application requests reimbursement of attorney fees that exceed the statutory rate, explain why an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies such fees.

(d) Proceedings.

(1) Within 30 calendar days after receipt by the respondent of an application under this rule, the respondent may file an answer. The answer shall explain in detail any objections to the award requested and set out the legal and factual bases supporting the respondent's position. If the respondent contends that any fees for consultants or expert witnesses for which reimbursement is sought in the application exceed the highest rate of compensation for expert witnesses paid by the agency, the respondent shall include in the answer evidence of such highest rate.

(2) Further proceedings shall be held only by order of the Board and only when necessary for full and fair resolution of the issues arising from the application. Such proceedings shall be
minimized to the extent possible and shall not include relitigation of the case on the merits. A request that the Board order further proceedings under this rule shall describe the disputed issues and explain why additional proceedings are necessary to resolve those issues.

(e) Decision. Any award ordered by the Board shall be paid pursuant to Rule 136.

Rule 136

PAYMENT OF BOARD AWARDS

(a) Generally. When permitted by law, payment of Board awards may be made in accordance with 31 U.S.C. 1304. Awards by the Board pursuant to the Equal Access to Justice Act shall be directly payable by the respondent agency over which the applicant has prevailed in the underlying appeal.

(b) Conditions for payment. Before a party may obtain payment of a Board award pursuant to 31 U.S.C. 1304, one of the following must occur:

(1) Both parties must, by execution of a Certificate of Finality, waive their rights to relief under Rules 132 and 133 and also their rights to appeal the decision of the Board; or

(2) The time for filing an appeal must expire.

(c) Procedure for filing of certificates of finality. Whenever the Board issues a decision or an order awarding a party any amount of money, it will attach to the copy of the decision sent to each party forms such as those illustrated in the Appendix to these rules. The conditions for payment prescribed in subparagraph (b)(1) of this rule are satisfied if each of the parties returns a completed and duly executed copy of this form to the Board. When the form is executed on behalf of an appellant or applicant by an attorney or other representative, proof of signatory authority shall also be furnished. Upon receipt of completed and duly executed Certificates of Finality from the parties, the Board will forward a copy of each such certificate (together with proof of signatory authority, if required) and a certified copy of its decision to the responsible agency for certification and transmission to the United States Department of the Treasury for payment.

(d) Procedure in absence of certificate of finality. When one or both of the parties fails to submit a duly executed Certificate of Finality, but the conditions for payment have been satisfied as provided in subparagraph (b)(2) of this rule, the appellant or applicant may file a written request that the Board forward its decision to the responsible agency for certification and transmission to the United States Department of the Treasury for payment. Thereupon, the Board will forward a copy of that request and a certified copy of its decision to the responsible agency.

(e) Stipulated award. When an appeal is settled, the parties may file with the Board a stipulation setting forth the amount of the award and stating (1) that they will not seek reconsideration of, or relief from, the Board's decision, and (2) that they will not appeal the decision. The Board will adopt the parties' stipulation by decision. The Board's decision under this paragraph is an adjudication of the case on the merits.

Rule 137

RECORD ON REVIEW OF A BOARD DECISION

(a) Record on review. When a party has appealed a Board decision to the United States Court of Appeals for the Federal Circuit, the record on review shall consist of the decision sought to be reviewed, the record before the Board as described in Rule 112, and such other material as may be required by the Court of Appeals.

(b) Notice. At the same time a party seeking review of a Board decision files a notice of appeal, that party shall provide a copy of the notice to the Board.

(c) Filing of certified list of record materials. Promptly after service upon the Board of a copy of the notice of appeal of a Board decision, the Office of the Clerk of the Board shall file with the Clerk of the United States Court of Appeals for the Federal Circuit a certified list of all documents, transcripts of testimony, exhibits, and other materials constituting the record, or a list of such parts thereof as the parties may designate, adequately describing each. The Board will retain the record and transmit any part thereof to the Court upon the Court's order during the pendency of the appeal.

(d) Request by attorney of record to review record. When a case is on appeal, an attorney of record may request permission from the Board to sign out the record on appeal to review and copy, for a reasonable period of time, if the attorney is unable to gain access to the record from another source.

Rule 138

OFFICE OF THE CLERK OF THE BOARD

(a) Open for the filing of papers. The Office of the Clerk of the Board shall receive all papers submitted for filing, and shall be open for this purpose from 8:00 a.m. to 4:30 p.m., Eastern Time, on each day that is not a Saturday, Sunday, federal holiday, a day on which the Office is required to close earlier than 4:30 p.m., or a day on which the Office does not open at all, as in the case of inclement weather.

(b) Decisions and orders. The Office of the Clerk shall keep in such form and manner as the Board may prescribe a correct copy of each decision or order of the Board subject to review and any other order or decision which the Board may direct to be kept.

(c) Docket. The Office of the Clerk shall keep a docket on which shall be entered the title and nature of all cases brought before the Board, the names of the persons filing such cases, the names of the attorneys or other persons appearing for the parties, and a record of all proceedings.

(d) Copies and certification of papers. Upon the request of any person, copies of papers and documents in a case may be provided by the Office of the Clerk. If making such copies involves more than minimal costs to the Board, reimbursement will be required. When required, the Office of the Clerk will certify copies of papers and documents as a true record of the Board. Except as provided in Rules 123(c) and 137(d), the Office of the Clerk will not release original records in its possession to any person.

Rule 139

SEAL OF THE BOARD

The Seal of the Board shall be a circular boss, the center portion of which shall depict the Seal of the General Services Administration. The outer margin of the seal shall bear the legend "Board of Contract Appeals." The Seal shall be the means of authentication of all records, notices, orders, dismissals, opinions, subpoenas, and certificates issued by the Board.

Rule 140

FORMS

The forms contained in the Appendix to these rules are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate. The subpoena form is a required form, and it may not be altered.

PART II -- EXPEDITED PROCEEDINGS

Rule 201

VARIATION FROM STANDARD PROCEEDINGS

The ultimate purpose of any Board proceeding is to resolve fairly and expeditiously any dispute properly before the Board. When, during the normal course of a Board proceeding, the parties agree that a change in established procedure will promote this end, the Board will make that change if it is deemed to be feasible and in the best interest of the parties, the Board, and the resolution of contract disputes. The following are examples of these changes:

(a) Establishing an expedited schedule of proceedings, such as by limiting the times provided in Part I of these rules for various filings, to facilitate a prompt resolution of the case;

(b) Developing a record and rendering a decision on the issue of entitlement prior to reviewing the issue of quantum in a party's claim;

(c) Developing a record and rendering a decision on any legal or factual issue in advance of others when that issue is deemed critical to resolving the case or effecting a settlement of any items in dispute; and

(d) Developing a record regarding relevant facts through an on-the-record round-table discussion with sworn witnesses, counsel, and the panel chairman rather than through formal direct and cross- examination of each of these same witnesses. This discussion shall be controlled by the panel chairman. It may be conducted, for example, through the presentation of narrative statements of witnesses or on an issue by issue basis. The panel chairman may also request that the parties' counsel or representatives present opening and/or closing statements in lieu of written briefs.

Rule 202

SMALL CLAIMS PROCEDURE

(a) Election.

(1) The small claims procedure is available solely at the appellant's election, and only when there is a monetary amount in dispute and that amount is $50,000 or less. Such election shall be made no later than 30 calendar days after the appellant's receipt of the agency answer, unless the panel chairman enlarges the time for good cause shown.

(2) At the request of the Government, or on its own initiative, the Board may determine whether the amount in dispute is greater than $50,000, such that the election is inappropriate. The Government shall raise any objection to the election no later than 10 working days after receipt of a notice of election.

(b) Decision. The panel chairman may issue a decision, which may be in summary form, orally or in writing. A decision which is issued orally shall be reduced to writing; however, such a decision takes effect at the time it is rendered, prior to being reduced to writing. A decision shall be final and conclusive and shall not be set aside except in case of fraud. A decision shall have no value as precedent.

(c) Procedure. Promptly after receipt of the appellant's election of the small claims procedure, the Board shall establish a schedule of proceedings that will allow for the timely resolution of the appeal. Pleadings, discovery, and other prehearing activities may be restricted or eliminated.

(d) Time of decision. Whenever possible, the panel chairman shall resolve an appeal under this procedure within 120 calendar days from the Board's receipt of the election. The time for processing an appeal under this procedure may be extended if the appellant has not adhered to the established schedule. Either party's failure to abide by the Board's schedule may result in the Board drawing evidentiary inferences adverse to the party at fault.

Rule 203

ACCELERATED PROCEDURE

(a) Election.

(1) The accelerated procedure is available solely at the appellant's election, and only when there is a monetary amount in dispute and that amount is $100,000 or less. Such election shall be made no later than 30 calendar days after the appellant's receipt of the agency answer, unless the panel chairman enlarges the time for good cause shown.

(2) At the request of the Government, or on its own initiative, the Board may determine whether the amount in dispute is greater than $100,000, such that the election is inappropriate. The Government shall raise any objection to the election no later than 10 working days after receipt of a notice of election.

(b) Decision. Each decision shall be rendered by the panel chairman with the concurrence of one of the other judges assigned to the panel; in the event the two judges disagree, the third judge assigned to the panel will participate in the decision.

(c) Procedure. Promptly after receipt of the appellant's election of the accelerated procedure, the Board shall establish a schedule of proceedings that will allow for the timely resolution of the appeal. Pleadings may be simplified, and discovery and other prehearing activities may be restricted or eliminated.

(d) Time of decision. Whenever possible, the panel chairman shall resolve an appeal under this procedure within 180 calendar days from the Board's receipt of the election. The time for processing an appeal under this procedure may be extended if the appellant has not adhered to the established schedule. Either party's failure to abide by the Board's schedule may result in the Board drawing evidentiary inferences adverse to the party at fault.

Rule 204

ALTERNATIVE DISPUTE RESOLUTION

(a) Availability of ADR procedures. The Board will make its services available for ADR proceedings in contract and procurement matters involving any agency, regardless of whether the agency uses the Board to resolve its Contract Disputes Act appeals.

(1) ADR subsequent to docketing of case at the Board. Parties are encouraged to consider the feasibility of using ADR as soon as their case is docketed. If, however, at any time during the course of a Board proceeding, the parties agree that their dispute may be resolved through the use of an ADR technique, the panel chairman may suspend proceedings for a reasonable period of time while the parties and the Board attempt to resolve the dispute in this manner. The use of an ADR technique will not toll any relevant statutory time limit for deciding the case.

(2) Other ADR. Upon request, the Board will make a Board Neutral available for an ADR proceeding involving any agency in any contract or procurement matter at any stage of a procurement, even if no contracting officer decision has been issued or is contemplated. To initiate an ADR proceeding, the parties shall jointly request the ADR in writing and direct such request to the Office of the Clerk of the Board. For agencies other than GSA, the Board will provide ADR services on a reimbursable basis.

(b) Conduct of ADR.

(1) Selection of Board Neutral. If ADR is agreed to by the parties and the Board, the parties may request the appointment of one or more Board judges to act as a Board Neutral or Neutrals. The parties may request that the Board's chairman appoint a particular judge or judges as the Board Neutral, or ask the Board's chairman to appoint any judge or judges as the Neutral. If, when ADR has been requested for a case that has already been docketed with the Board, as provided in subparagraph (a)(1) of this rule, the parties may request that the panel chairman serve as the Board Neutral. In such a situation, if the ADR is unsuccessful, (i) if the ADR has involved mediation, the panel chairman shall not retain the case, and (ii) if the ADR has not involved mediation, the panel chairman, after considering the parties' views, shall decide whether to retain the case.

(2) Retention and confidentiality of materials. The Board will review materials submitted by a party for an ADR proceeding, but will not retain such materials after the proceeding is concluded or otherwise terminated. Material created by a party for the purpose of an ADR proceeding is to be used solely for that proceeding unless the parties agree otherwise. Parties may request a protective order in an ADR proceeding in the manner provided in Rule 112(h).

(c) Types of ADR. ADR is not defined by any single procedure or set of procedures. The Board will consider the use of any technique proposed by the parties which is deemed to be fair, reasonable, and in the best interest of the parties, the Board, and the resolution of contract disputes. The following are examples of available techniques:

(1) Mediation. The Board Neutral, as mediator, aids the parties in settling their case. The mediator engages in ex parte discussions with the parties and facilitates the transmission of settlement offers. Although not authorized to render a decision in the dispute, the mediator may discuss with the parties, on a confidential basis, the strengths and weaknesses of their positions. No judge who has participated in discussions about the mediation will participate in a Board decision of the case if the ADR is unsuccessful.

(2) Neutral case evaluation. The parties agree to present to the Board Neutral information on which the Board Neutral bases a non-binding, oral, advisory opinion. The manner in which the information is presented will vary from case to case depending upon the agreement of the parties. Presentations generally fall between two extremes, ranging from an informal proffer of evidence together with limited argument from the parties to a more formal presentation of oral and documentary evidence and argument from counsel, such as through a mini-trial.

(3) Binding decision. One or more Board judges render a decision which, by prior agreement of the parties, is to be binding and non-appealable. As in the non-binding evaluation of a case by a Board Neutral, the manner in which information is presented for a binding decision may vary depending on the circumstances of the particular case.

(4) Other procedures. In addition to other ADR techniques, including modifications to those listed above, as agreed to by the Board and parties, the parties may use ADR techniques that do not require direct Board involvement.

(5) Selective use of standard procedures. Parties considering the use of ADR are encouraged to adapt for their purposes any provisions in Part I of the Board's rules which they believe will be useful. This includes but is not limited to provisions concerning record submittals, pretrial discovery procedures, and hearings.