

## § 960.10

## 39 CFR Ch. I (7-1-06 Edition)

(b) The application shall also include a statement that the applicant's net worth does not exceed \$2 million (if an individual) or \$7 million (for all other applicants, including their affiliates.) However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states on the application that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the Postal Service to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

### § 960.10 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 960.4(f)) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled "Confidential Financial Information", accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b) (1) through (9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Postal Service's established procedures under the Freedom of Information Act, part 265 of this title.

### § 960.11 Documentation of fees and expenses.

(a) The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement 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 specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by

## United States Postal Service

## § 960.14

any other person or entity for the services provided. The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed. In addition, the Board of Contract Appeals may require an applicant to submit to an audit by the Postal Service of its claimed fees and expenses.

(b) Where the case has been sustained in part and denied in part or where the applicant has prevailed in only a significant and discrete substantive portion of the case, the application must be limited to fees and expenses allocable to the portion of the case as to which the applicant was the prevailing party.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

### **§ 960.12 When an application may be filed.**

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Postal Service's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this rule, final disposition means the later of (1) the date on which an initial decision or other recommended disposition of the merits of the proceeding by an adjudicative officer or intermediate review board becomes administratively final;

(2) Issuance of an order disposing of any petitions for reconsideration of the Postal Service's final order in the proceeding;

(3) If no petition for reconsideration is filed, the last date on which such a petition could have been filed;

(4) Issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal, which is not subject to a petition for reconsideration;

(5) In proceedings under 39 U.S.C. 3005, on the date that an Administrative Law Judge enters an order indefinitely suspending further proceedings

on the basis of a compromise agreement entered into between the parties; or

(6) In proceedings before the Board of Contract Appeals, the Board of Contract Appeals decision on quantum. When the Board decides only entitlement and remands the issue of quantum to the parties, the final disposition occurs when the parties execute an agreement on quantum, or if the parties cannot agree on quantum and resubmit the quantum dispute to the Board, when the Board issues a decision on quantum.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

### **Subpart C—Procedures for Considering Applications**

#### **§ 960.13 Filing and service of documents.**

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in § 960.11(b) for confidential financial information.

#### **§ 960.14 Answer to application.**

(a) Within 30 days after service of an application, counsel representing the Postal Service may file an answer to the application. Unless the Postal Service counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If the Postal Service counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the adjudicative officer upon request by Postal Service counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the Postal Service's position. If