

the record of the appeal to the best of their knowledge and ability in accordance with applicable contract provisions and in accordance with law and regulation pertinent thereto.

(4) The chairman of the Board shall be responsible for establishing appropriate divisions of the Board in such manner as to provide for the most effective and expeditious handling of appeals. He shall be responsible for assigning appeals to the divisions for decision without regard to the Military Department or other procuring agency which entered into the contract involved. A division may consist of one or more members of the Board. A majority of the members of a division shall constitute a quorum for the transaction of the business of the division and the decision of a majority of the division shall constitute the decision of the Board provided that the chairman and two vice-chairmen jointly signify their approval of the decision. If a majority of the members of a division are unable to agree on a decision, or if the chairman or one or more of the vice-chairmen do not signify approval of the decision, determination of the appeal shall be made by the chairman and vice-chairmen. A decision by a majority of those individuals will constitute the decision of the Board. On request of the appellant, an appeal involving \$5,000 or less shall be decided under accelerated procedures as provided by the Rules of the Board.

5. When an appeal is taken pursuant to a disputes clause in a contract which limits appeals to disputes concerning questions of fact, the Board may nevertheless in its discretion hear, consider, and decide all questions of law necessary for the complete adjudication of the issue. When in the consideration of an appeal it appears that a claim is involved which is not cognizable under the terms of the contract, the Board may, insofar as the evidence permits, make findings of fact with respect to such a claim without expressing an opinion on the question of liability.

6. When a contract requires the Secretary of Defense or the Secretary of a Military Department, personally, to render a decision on the matter in dispute, the Armed Services Board of Contract Appeals, in accordance with the procedure set forth in paragraph 4, shall make findings and recommendations to the appropriate Secretary with respect thereto.

7. The Board shall have all powers necessary and incident to the proper performance of its duties. Subject to the approval of the Assistant Secretary of Defense (I&L) and the Assistant Secretaries of the Military Departments responsible for procurement, the Board shall adopt its own methods of procedure, and rules and regulations for its conduct and for the preparation and presentation of appeals and issuance of opinions. The Military Departments and other procuring agencies of the Department of Defense shall provide legal personnel to prepare and present the contentions of the departments or agencies in relation to appeals filed with the Board. It shall not be necessary for the Board, unless it otherwise desires, to communicate with more than one trial attorney in each of the departments or agencies concerning the preparation and presentation of appeals and the obtaining of all records deemed by the Board to be pertinent thereto.

8. Any member of the Board or any examiner, designated by the chairman of the Board, shall be authorized to hold hearings, examine witnesses, receive evidence and argument, and report the evidence and argument, to the designated division for consideration and determination of the appeal.

9. The chairman shall be responsible for the internal organization of the Board and for its administration. He shall provide within approved ceilings for the staffing of

the Board with nonmember personnel, including hearing examiners, as may be required for the performance of the functions of the Board. The chairman shall appoint a recorder of the Board. Such personnel shall be responsible to and shall function under the direction, supervision and control of the chairman.

10. Financing of the operations of the Board as authorized herein will be provided through the use of the Navy Management Fund in accordance with Department of Defense Regulations Covering the Operation of Management Funds.

11. The chairman of the Board will furnish to the Secretary of Defense and to the Secretaries of the Military Departments by July 31 of each year a report containing an account of the Board's transactions and proceedings for the preceding fiscal year. Within 30 days following the close of a calendar quarter, the chairman shall forward a report of the Board's proceedings for the quarter to the Assistant Secretary of Defense (I&L), the Assistant Secretaries of the Military Departments responsible for procurement, and to the Director of the Defense Supply Agency. Such reports shall disclose the number of appeals received, cases heard, opinions rendered, current reserve of pending matters, and such other information as may be required.

12. The Board shall have a seal bearing the following inscription: "Armed Services Board of Contract Appeals". This seal shall be affixed to all authentications of copies of records and to such other instruments as the Board may determine.

13. All appeals pending before the Board under the "Charter for the Armed Services Board of Contract Appeals", which became effective on February 1, 1959, shall continue to be subject to the jurisdiction of the Board as established hereunder.

14. This charter will become effective May 1, 1962.

[ASPR, Rev. 9, 15 April 1962] (Sec. 2203, 70A Stat. 120; 10 U.S.C. 2202. Interpret or apply secs. 2301-2314, 70A Stat. 127-133; 10 U.S.C. 2301-2314)

J. C. LAMBERT,  
Major General, U.S. Army,  
The Adjutant General.

[F.R. Doc. 62-6252; Filed, June 28, 1962;  
8:45 a.m.]

## Chapter V—Department of the Army

### SUBCHAPTER D—MILITARY RESERVATIONS AND NATIONAL CEMETERIES

#### PART 552—REGULATIONS AFFECTING MILITARY RESERVATIONS

##### Acquisition of Real Estate and Interests Therein; Miscellaneous Amendments

1. Section 552.34 is revised to read as follows:

##### § 552.34 Policies relative to new acquisition.

(a) *Present holdings inadequate for essential mission.* No request to acquire real estate by transfer from Navy or Air Force or from another Government agency, or by purchase, lease or condemnation will be considered or approved unless it is established that:

(1) The activity to be accommodated is essential to an assigned mission.

(2) Real property under the control of the Army is inadequate to satisfy these requirements.

(3) No real property under the control of the Navy or Air Force or other Federal agencies is suitable and available for use by the Army on a permit or joint use basis.

(b) *Order of priority for method of acquisition.* If the activity qualifies as essential to an assigned mission but the need cannot be filled by the use of other Army property or other Federal property on a permit or joint use basis, the following alternatives will be considered in the order listed:

(1) Donation or long-term nominal rental lease.

(2) Transfer from Navy or Air Force. Acquisition of lands excess to the requirements of other military departments.

(3) Recapture of use.

(4) Public Domain. Withdrawal from the public domain for military use. (Public Law 85-337, Feb. 28, 1958 (72 Stat. 28) requires that an Act of Congress be obtained to withdraw, reserve, or restrict for defense purposes more than 5,000 acres of the public domain.)

(5) Acquisition by exchange. Exercise of existing authorities for the exchange of Government-owned real property for non-Government-owned real property that is by type or location adaptable to the military need.

(6) Transfer from other Federal agencies. Acquisition of lands excess to the requirement of Federal agencies other than military departments.

(7) Acquisition by purchase, lease or condemnation.

(c) *Current requirements given preference.* In considering the use of Army real property by another military department, current requirements will, in the absence of unusual circumstances, be given preference over future needs and mobilization requirements. If the current requirement will not continue through mobilization, care must be exercised to avoid modification of the property in a manner that would prevent its timely return to the holding department to meet the mobilization requirement. If it is contemplated that the current requirement will continue through mobilization, the property may be modified as required and the mobilization plans of the military departments concerned should be changed accordingly.

(d) *Firm requirements and minimum acquisition.* Requirements in each individual case will be firmly determined and only the minimum amount of property necessary will be acquired.

(e) *Factors considered insufficient justification for acquisition by lease.* Desirability of location in an urban area, reduced travel time for employees or business representatives, nominal savings in transportation costs, environmental considerations (such as noise or traffic), or desirability of single unit offices instead of split locations in close proximity will not be considered sufficient justification for acquiring leased space or facilities when Government-owned property is available. For exceptions, see paragraph (f) of this section.

(f) *Special location considerations.* Acquisition of title or a leasehold interest in real property may be justified where it is demonstrated that the func-

tion to be accommodated is an essential activity and the geographic location thereof in other than Government-owned space is vital to the accomplishment of the assigned mission. Examples that may fall in this group are recruiting stations (exclusive of kindred examining and induction units), airbases, air defense sites, and sites for construction of facilities for Reserve Components of the Armed Forces.

(g) *Army Reserve training sites.* In general, title to lands will not be acquired for exclusive use as training sites. Training sites will be acquired by one of the following means in the order listed:

(1) Use of lands under the control of the Department of the Army regardless of the agency maintaining jurisdiction, to include class II and industrial installations and other Reserve Component facilities, see title 10 U.S.C. 2331 and 2237.

(2) Use of reservoir lands of Civil Works Projects. By informal agreement with the Resident Engineer or Manager (when training activities do not involve exclusive use, construction, or destruction of vegetation) or by permit from the District Engineer (for other activities when such activities are compatible with the operation and maintenance of the project and will not endanger the use by the general public of public access areas).

(3) Use of lands, by permit or otherwise, under the control of the other military departments.

(4) Use of lands by permit of other Government-owned land, including the public domain.

(5) Use by license or nominal rental lease of local, county, or State-owned public lands.

(6) Use of privately owned land by short-term co-use lease under the authority granted in § 552.39.

(7) Use of non-Government-owned land by lease.

(8) Acquisition of lands excess to the requirements of the other military departments.

(9) Acquisition of lands excess to the requirements of Federal agencies other than the military departments.

(10) Acquisition of the non-Government-owned land.

(11) As a rule of thumb, lands will not be acquired for training from any source when the value of the land exceeds that of rural farm land in the area.

(h) *Public notice and release of information relative to proposed real estate acquisitions.* It is the policy of the Department of the Army to give notice to the public and to release information to the public as early as possible (at the site selection stage) and as completely as possible, consistent with existing regulations. Even though opposition may develop in some cases because of early release of information as to proposed acquisitions, application of this policy should more often result in favorable public relations, general public support of proposed acquisitions, and material assistance in the selection of sites which will fulfill the military requirement and still have the least impact on the civilian economy. This policy will permit con-

sideration of public preferences in the establishment of military facilities. Section 302 of the Act of July 14, 1960; Public Law 86-645, which is applicable to military as well as water resources public works projects, provides for dissemination of information on large new installations.

(1) *Restrictions relating to Agency Budget Estimates and Presidential Budget Recommendations.* Bureau of the Budget Circular No. A-10, as revised, places restrictions on disclosure of Agency Budget Estimates and Presidential Budget Recommendations. It provides that budget recommendations and estimates are administratively confidential until made public through formal transmittal of the budget to Congress. Public notice and release of information relative to proposed real property acquisitions will, therefore, exclude any information as to whether the proposed acquisition has been included in a pending budget not yet formally transmitted to the Congress or is to be included in a future budget. Public notice and release of information will be on the basis of "advance planning."

(2) *General application and exceptions.* Non-Government-owned real property generally is acquired by negotiations, based on its fair market value, as established by Government appraisal and regardless of who the owner is, how much the owner paid for the property, and how long the owner has owned the property. For this reason, public notice and release of information should not tend normally to increase the value of the land involved or create speculation therein. Experience has proved that interest of the Government in specific real property normally tends to discourage trafficking therein. Though normally the release of information should not result in subsequent disadvantage to the Government, information will not be released in any specific case where it might have that result. AR 345-15 applies to the acquisition of real property only in those instances in which the release of advance information on proposed plans might provide undue discriminatory advantage to private or personal interests.

(3) *Application to Army Reserve facilities.* During the preliminary site selection stage for Army Reserve facilities, the Army commander's representative will contact responsible local public officials to explain the nature of the proposed facility and to obtain their concurrence in the Army's acquisition and use of the site tentatively selected. Such a statement, including the names and titles of officials contacted, will be furnished by the Army commander to the District Engineer for inclusion in the Real Estate Planning Report. Release of information on Army Reserve centers will be made only by an authorized representative of the Army commander.

(4) *Use of unappropriated and non-navigable water.* It is the policy of the Department of the Army to utilize unappropriated and nonnavigable water upon or under lands under jurisdiction in such a manner as is consonant with the purposes of water laws which have been enacted by the several States.

(5) *Permanent construction.* If permanent construction, defined as that which produces a building suitable and appropriate to serve a specific purpose for a maximum period of time (at least 25 years) and with a minimum of maintenance, is to be constructed by the Government, the Government must either hold or acquire title to the land (inclusive of all mineral rights and improvements) or a permanent easement interest, with the following exceptions:

(1) *Right of reuse by exercise of National Security Clause.* Property, including land or buildings, over which the Government currently holds the right of reuse by exercise of the National Security Clause.

(2) *Right of reuse by exercise of National Emergency Use Provision.* Property, including land or buildings, over which the Government holds the right of reuse by exercise of a National Emergency Use Provision. Inasmuch as such rights inure to the Government only during the period or periods of national emergency as may be declared by the President or the Congress and are extinguished by the termination thereof, every effort will be made to negotiate a lease covering such property under terms that would provide for the right of continuous possession by the Government for a minimum of 25 years.

(3) *Rights-of-way.* Property required as a site for installation of utility lines and necessary appurtenances thereto, provided a long-term easement or lease can be secured at a consideration of \$1 per term or per annum.

(4) *Airbase.* Property required for airbases, provided such property can be acquired by lease containing provisions for:

(i) Right of continuous use by the Government under firm term or right of renewal, for a minimum of 50 years.

(ii) A rental consideration of \$1 per term or per annum.

(iii) Reserving to the Government title to all improvements to be placed on the land and the right to dispose of such improvements by sale or abandonment.

(iv) Waiver by the lessor of any and all claims for restoration of the leased premises.

(v) Use of the property for "Government purposes" rather than for a specific purpose.

(5) *Reserve Components facilities.* Property required for facilities for the Reserve Components of the Armed Forces, provided such property can be acquired by lease containing provisions detailed in subparagraph (4) (i), (ii), (iii), and (iv) of this paragraph. When possible the insertion in a lease of provision restricting the use of the land to a specific purpose will be avoided; use of a term as "Government purposes" should be employed, whenever possible.

(6) *Air defense sites.* Property required for air defense sites provided such property can be acquired by lease containing provisions detailed in subparagraph (4) (i), (ii), and (iv) of this paragraph and in addition thereto a right of continuous use by the Government under a firm term or right of re-

newal for as long as required for defense purposes.

(7) *Exception by Assistant Secretary of Defense (Installations and Logistics).* Where leases (for airbases, facilities for Reserve Components of the Armed Forces, or air defense sites) can be obtained containing some but not all of the above-listed provisions or where leases (for all other types of installations upon which permanent construction is to be placed by the Government) can be obtained containing similar provisions and it is considered to be to the best interest of the Government to acquire a lesser interest than fee title, it will be necessary to obtain approval from the Assistant Secretary of Defense (Installations and Logistics) prior to placing permanent construction thereon.

(8) *Construction projects not in excess of \$25,000.* Construction projects estimated to cost not in excess of \$25,000 will not be considered as permanent construction for purposes of applying the above policy.

(9) *Industrial installations.* See paragraph (1) of this section.

(k) *No permanent construction.* Where temporary construction or no construction is to be placed by the Government, acquisition of a lesser interest (leasehold, easement, license, as appropriate) will generally be considered to be in the best interest of the Government, with the following exceptions:

(1) *Cost of construction.* Where any proposed temporary construction to be placed by the Government has an estimated cost equal to or in excess of the current market value of the property.

(2) *Rent plus restoration.* Where the calculated period of required use is of sufficient duration that the sum expended for rentals over this period plus restoration, if required, would exceed 50 percent of the current market value of the property. (Apply calculated period of required use or 20 years, whichever is less.)

(3) *Easement costing 75 percent of fee value.* Where the cost of acquiring an easement right exceeds 75 percent of the current fair market value of the property.

(1) *Industrial installations—(1) Definitions.* Industrial facilities as used herein are defined as plants, buildings, utilities, improvements, and additions and appurtenances thereto used for military production and related purposes, including testing and development. Nonseverable industrial facilities as used herein are defined as industrial facilities located on other than Government-owned land, and which, after erection or installation, cannot be removed without substantial loss of value or damage thereto, or to the premises where installed.

(2) *Policy.* Industrial facilities will be located on land owned by the Government or in which the Government has a permanent, disposable interest. Nonseverable industrial facilities will be located on land in which the Government has a disposable interest equal in term to the estimated useful life of the facilities, unless the Head of a Procuring Activity, with consideration to any non-recoverable costs involved, determines that such location is not feasible. If the

Head of a Procuring Activity makes this determination, he may authorize the location of such facilities on other land, provided:

(i) The estimated useful life of the facilities will not extend beyond the contract under which the facilities are installed or the completion of the work for which the facilities are provided; or

(ii) The contractor agrees to purchase the facilities upon the end of the facilities contract at the acquisition cost of the facilities, less depreciation; or

(iii) The Secretary approves other provisions as being in the interest of national defense.

(iv) If location on land in which the Government does not have a disposable interest, as above set out, is authorized under subdivision (i), (ii), or (iii) of this subparagraph, the Government must have the right to abandon the facilities in place, with no obligation to restore or rehabilitate the facilities or the premises on which they are located.

(m) *Commercial and industrial type facilities—(1) Policy.* Privately owned or Government-owned and privately operated commercial and industrial type facilities will be used to the greatest extent practicable, recognizing the basic military necessity for integrated, self-sustaining units responsible to command and the necessity for operating anywhere in the world. It is the policy of the Department of the Army not to engage in the operation of industrial or commercial type facilities unless it can be demonstrated that it is necessary for the Government itself to perform the required work or service.

(2) *Definition.* Commercial and industrial type facilities are defined as those devoted to an activity which normally might be performed by private industry (except commissaries, post exchanges, and nonappropriated fund activities) including, but not limited to, warehouses, motor repair shops, bakeries, laundries, and drycleaning facilities.

(n) *Department of Defense policy relative to liaison with Governor of Commonwealth of Puerto Rico.* By letter dated August 19, 1953, the Secretary of Defense informed the Governor of the Commonwealth of Puerto Rico that the Department of Defense would establish liaison with the Governor to coordinate all military requirements for land acquisition in Puerto Rico. By memorandum dated August 19, 1953, the Secretary of Defense instructed that such liaison would be established under the direction of the Department of the Army, in coordination with the other interested services. On September 8, 1953, the Department of the Army requested the Commander in Chief, Caribbean Command, to establish such liaison. Liaison is being maintained locally between the Commandant of the Caribbean Sea Frontier and the Chairman of the Puerto Rico Planning Board. The liaison applies to the proposed acquisition of title or any interest in land which is other than (Federal) Government-owned land. In all cases, liaison action will be initiated during the advance planning or site selection stages. The purpose is to give Puerto Rican officials advance notice of

military real property requirements and to give them an opportunity to suggest suitable alternatives in an effort to improve public relations with Puerto Rican officials, landowners, and the general public.

2. In § 552.37, paragraphs (a), (c) (2), and (e) are revised, as follows:

§ 552.37 Acquisition by Chief of Engineers.

(a) *Statutory authority.* The Chief of Engineers, under the direction of the Secretary of the Army, is charged with the acquisition of all real estate for the use of the Department of the Army (10 U.S.C. 3038).

(c) *Delegated authority.* \* \* \*

(2) Leasehold acquisition where the estimated annual rental for any single leasehold does not exceed \$25,000 and the acquisition is not contravertial, unusual, or inconsistent with Department of Army policies.

(e) *Responsibility for all negotiations.* To avoid any possibility of misunderstanding by property owners and resultant embarrassment to the Department of the Army, under no circumstances will commitments be made either by negotiation or by dissemination of information to property owners, by any authority other than the Chief of Engineers. This is not intended to restrict the public notice and release of general information as set forth in § 552.34(h).

([AR 405-10, May 28, 1962] (Sec. 3012, 70A Stat. 157; 10 U.S.C. 3012))

J. C. LAMBERT,  
Major General, U.S. Army,  
The Adjutant General.

[P.R. Doc. 62-6291; Filed, June 28, 1962; 8:45 a.m.]

## Title 41—PUBLIC CONTRACTS

### Chapter 5—General Services Administration

#### MISCELLANEOUS AMENDMENTS TO CHAPTER

Chapter 5 of Title 41 is amended as follows:

#### PART 5-1—GENERAL

Sections 5-1.602(b) (1), 5-1.605(a), 5-1.606-55, 5-1.606-56, 5-1.606-57, are revised, to read as follows:

§ 5-1.602 Establishment and maintenance of a list of firms or individuals debarred or ineligible.

(b) \* \* \*

(1) Publication of the GSA Debarred Bidders List shall be based, in the case of GSA administrative debarments, on determinations made by the service performing the debarment, or confirmation of such debarment by the Administrator (or his designee); and in the case of statutory debarments on appropriate notification by the Comptroller General, the Secretary of Labor, or other debarring agency.

**§ 5-1.605 Causes and conditions applicable to determination of debarment by an executive agency.**

(a) Administrative debarments by GSA shall be made by the Commissioner of the procuring service primarily concerned in accordance with procedures set forth in § 5-1.606.

**§ 5-1.606-55 Institution of debarment proceedings.**

If a Commissioner decides to institute debarment proceedings, he shall send a letter by certified mail (return receipt requested) to the firm or individual proposed for debarment. The letter shall summarize the facts on which the debarment is predicated, specify a reasonable and definite period for the debarment, and advise that, unless a request for a hearing is received within 15 days from the date of receipt of such letter, the debarment will become effective when the 15-day period has elapsed. When debarment action is based on debarment by another agency, the firm or individual shall be so notified. However, no hearing is required in such cases, pursuant to § 1-1.605(b)(6). The Compliance Division shall be notified of this action.

**§ 5-1.606-56 Hearings.**

Hearings requested in connection with debarment proceedings shall be conducted before the Administrator or his designee, referred to in this § 5-1.606-56 as the reviewing authority. An opportunity shall be afforded to the firm or individual to appear, with witnesses and counsel, to present facts or circumstances showing cause why such firm or individual should not be debarred. If the firm or individual elects not to appear, the reviewing authority shall make a decision based on the facts on record and such additional evidence as may be furnished by the parties involved.

(a) The reviewing authority shall give notice of the date and place of hearing to the appropriate Commissioner and to the Office of General Counsel.

(b) Hearings shall be held by the reviewing authority within 30 days after the receipt of the request for a hearing, unless the reviewing authority considers that additional time should be granted.

(c) If a firm or individual who requested a hearing is determined by the reviewing authority to be responsible for any unreasonable delay in disposing of the matter, the reviewing authority shall authorize the Compliance Division to place such firm or individual on the GSA Debarred Bidders List pending final action by the reviewing authority. A copy of such notification shall be furnished to the Commissioner who initiated the debarment action.

(d) After consideration of the facts, the reviewing authority shall notify the firm or individual of the final decision.

**§ 5-1.606-57 Notice of final decision in debarment proceedings.**

When an intended debarment is upheld by the Administrator or his designee, referred to in this § 5-1.606-57 as the reviewing authority, as the result of

a hearing, or as the result of forfeiture of the right to be heard, the reviewing authority shall notify the firm or individual of the decision confirming the intended debarment, setting forth the period during which such debarment shall be effective. The period shall be equivalent to that originally imposed by the debarment Commissioner. If an intended debarment is not upheld by the reviewing authority, the reviewing authority shall so notify the firm or individual. Copies of such notification shall be furnished to the interested Commissioner, and to the Compliance Division for action to include the firm or individual in the GSA Debarred Bidders List or for retention without action, as appropriate.

**§ 5-1.606-58 Inquiries from debarred or ineligible bidders.**

Inquiries presented by debarred or ineligible bidders shall not be discussed but referred to the Office of General Counsel.

**§ 5-1.607 General Services Administration responsibility.**

**§ 5-1.607-51 Consolidated List of Administrative Debarments by Executive Agencies.**

(a) The Compliance Division compiles and arranges for the distribution of the Consolidated List of Administrative Debarments by Executive Agencies, and provides necessary related background material to other agencies, as set forth in § 1-1.607, under Reports Control Symbol AA-5.

(b) Notices issued by other agencies and furnished to GSA in accordance with § 1-1.606(c) are collected, processed, and disseminated by the Compliance Division as set forth in § 1-1.606(e) and § 1-1.607.

**PART 5-53—CONTRACT ADMINISTRATION**

Sections 5-53.602, 5-53.603, and 5-53.604 are deleted and revised; §§ 5-53.602 and 5-53.603 are added, to read as follows:

**§ 5-53.602 Notice to contractor.**

When a contracting officer has decided a disputed matter involving a question of fact, the contractor shall be notified of such decision in writing. The notice shall contain a paragraph substantially as follows:

This is the final decision of the contracting officer. Decisions on disputed questions of fact and on other questions that are subject to the Disputes clause may be appealed in accordance with the provisions of the Disputes clause. If you decide to make such an appeal from this decision, the appeal (in triplicate) addressed to the Administrator of General Services, General Services Administration, General Services Building, Washington 25, D.C., must be mailed or otherwise furnished to the contracting officer within thirty days from the date you receive this decision. Such appeal should refer to this decision and identify the contract. Pending final decision of the dispute, you shall proceed diligently with the performance of the contract and in accordance with this contracting officer's decision.

**§ 5-53.603 Appeals.**

Upon receipt of an appeal or notice of appeal, the rules set forth in Subpart 5-60.2 shall be observed.

Part 5-60 is added, to read as follows:

**PART 5-60—CONTRACT APPEALS**

| Sec.                                                                                         | Scope of part.                                                 |
|----------------------------------------------------------------------------------------------|----------------------------------------------------------------|
| 5-60.000                                                                                     | Scope of part.                                                 |
| <b>Subpart 5-60.1—General Policy</b>                                                         |                                                                |
| 5-60.101                                                                                     | Jurisdiction for considering appeals.                          |
| 5-60.102                                                                                     | Organization and location of the Board.                        |
| 5-60.103                                                                                     | Receipt and disposition of appeals.                            |
| 5-60.104                                                                                     | Board of Contract Appeals procedure.                           |
| 5-60.104-1                                                                                   | Rules.                                                         |
| 5-60.104-2                                                                                   | Appearance of witnesses for GSA.                               |
| 5-60.104-3                                                                                   | Distribution of decisions.                                     |
| 5-60.105                                                                                     | Annual report.                                                 |
| <b>Subpart 5-60.2—Rules of the General Services Administration Board of Contract Appeals</b> |                                                                |
| 5-60.201                                                                                     | Notice of appeal.                                              |
| 5-60.202                                                                                     | Contents of notices of appeal.                                 |
| 5-60.203                                                                                     | Preparation of the appeal file.                                |
| 5-60.204                                                                                     | Scope of appeals.                                              |
| 5-60.205                                                                                     | Untimely appeals.                                              |
| 5-60.206                                                                                     | Conferences.                                                   |
| 5-60.207                                                                                     | Hearings.                                                      |
| 5-60.208                                                                                     | Submission without a hearing.                                  |
| 5-60.209                                                                                     | Absence of parties.                                            |
| 5-60.210                                                                                     | Nature of hearings.                                            |
| 5-60.211                                                                                     | Examination of witnesses.                                      |
| 5-60.212                                                                                     | Copies of papers.                                              |
| 5-60.213                                                                                     | Transcript of proceedings.                                     |
| 5-60.214                                                                                     | Representation.                                                |
| 5-60.215                                                                                     | Submission of additional information.                          |
| 5-60.216                                                                                     | Decisions.                                                     |
| 5-60.217                                                                                     | Reconsideration of appeals.                                    |
| 5-60.218                                                                                     | Extensions of time.                                            |
| 5-60.219                                                                                     | Optional accelerated procedure for cases involving small sums. |
| 5-60.220                                                                                     | Payment of claims.                                             |

**§ 5-60.000 Scope of part.**

This part establishes policies and procedures regarding matters to be considered by the Board of Contract Appeals, and the rules of the Board.

**Subpart 5-60.1—General Policy**

**§ 5-60.101 Jurisdiction for considering appeals.**

(a) Except as stated in (b) below, the General Services Administration Board of Contract Appeals (referred to in this Part 5-60 as "the Board") shall consider and determine appeals from decisions of contracting officers and other officials of GSA arising under contracts which contain provisions requiring the determination of appeals by the head of an agency or his duly authorized representative or board, and as otherwise authorized by the Administrator. The Board has authority to determine appeals falling within the scope of its jurisdiction as fully and finally as might the Administrator himself.

(b) The Administrator reserves the right to direct that the authority of the Board shall not be exercised where he may desire or be required to render a decision on the matter in dispute. In such instances, the Administrator may request the Board to submit findings and recommendations.

### § 5-60.102 Organization and location of the Board.

(a) The Board is located in Washington, D.C., and is a part of the staff of the Administrator.

(b) The Board consists of a Chairman and four to six other members, in addition to clerical personnel. At least three members of the Board must be trained in the law. In general, the appeals are assigned to a panel of at least three members of the Board. The decision of a majority of the panel constitutes the decision of the Board. Each panel shall have one member who is a graduate of an accredited law school or has equivalent legal training and experience. The Chairman is the administrative head of the Board but otherwise serves on an equal status with other members.

### § 5-60.103 Receipt and disposition of appeals.

(a) When a notice of appeal in any form is received in GSA, it shall be endorsed or stamped to show the date of receipt and immediately be forwarded to the Administrator. The Administrator will forward to the Board appeals submitted under the terms of the contract and such other appeals as he determines should be submitted to the Board for decision or recommendation. The Board shall assign a docket number to the appeal, acknowledge its receipt to the appellant, and forward copies of the appeal and acknowledgment to the contracting officer, and the Central Office service or staff office concerned, and the appropriate Assistant General Counsel or Regional Counsel, and such other persons as appropriate. A copy of the "Rules of the General Services Administration Board of Contract Appeals" shall be included with the acknowledgment to the appellant.

(b) When a statement of the matters in dispute is not included with the notice, the Board shall ask the appellant to specify the portion of the decision or finding of fact from which the appeal is taken. A copy of the reply shall be furnished to the contracting officer.

(c) Within 20 days after request by the Board, the contracting officer shall compile and transmit to the appropriate Central Office service or staff office and the appropriate legal counsel, either the original or copies of all documents pertaining to the appeal, including, but not limited to, the following:

(1) The findings of fact and the decision from which the appeal is taken;

(2) The invitation for bids, the contract, pertinent plans, specifications, amendments, and change orders;

(3) Correspondence between the parties and other data material to the appeal;

(4) Transcripts of any testimony taken during the course of the proceedings of the matter prior to the filing of the notice of appeal to the Administrator; and

(5) Such additional information as the contracting officer or other officials may consider material.

(d) Within 30 days from the receipt of the contracting officer's data, prescribed in (c), above, the responsible

service or staff office shall transmit the appeal file to the Board, together with a brief statement of the position of the Government.

### § 5-60.104 Board of Contract Appeals procedure.

#### § 5-60.104-1 Rules.

Appeals referred to the Board are handled in accordance with the rules of the Board (see Subpart 5-60.2). These rules outline the manner in which appeals are received, hearings conducted, and decisions rendered.

#### § 5-60.104-2 Appearance of witnesses for GSA.

GSA witnesses, as determined by the appropriate service or staff office in consultation with the Office of General Counsel, shall appear before the Board and give testimony.

#### § 5-60.104-3 Distribution of decisions.

A copy of the decision of the Board shall be furnished to each party, to all affected Central Office services and staff offices, all regional offices, and shall be available for public inspection unless prohibited by GSA regulations governing the availability of records.

### § 5-60.105 Annual report.

The Board shall submit to the Administrator, during the month of July of each year, a report containing an account of its transactions and proceedings for the preceding fiscal year.

## Subpart 5-60.2—Rules of the General Services Administration Board of Contract Appeals

### § 5-60.201 Notice of appeal.

A notice of appeal must be in writing, should be addressed to the Administrator of General Services, and mailed or otherwise furnished to the contracting officer. However, where the appeal is addressed to the contracting officer from whose decision the appeal is taken, or the head of the constituent General Services Administration organization, upon referral, the Board will proceed as though the appeal had been made to the Administrator. The notice of appeal must be mailed or otherwise filed within the time specified therefor in the contract, or as allowed in applicable provisions of directives or law.

### § 5-60.202 Contents of notices of appeal.

(a) A notice of appeal should indicate that an appeal is intended and should include the following information:

(1) Identification of contract involved (by number);

(2) The General Services Administration organization involved in the dispute, e.g., Public Buildings Service, Federal Supply Service, etc.;

(3) The decision or finding of fact from which the appeal is taken;

(4) The date of the decision;

(5) The contractual provisions concerned in the dispute; and

(6) The nature of the dispute, and the relief sought by the appellant.

(b) The notice of appeal shall be signed by the appellant personally, if an

individual, or if not, by an authorized officer of the appellant organization, or by the appellant's duly authorized representative. A brief in support of the complaint and argument may be submitted with the notice of appeal, or, if the appellant prefers, may be filed with the Board within 15 days after the mailing or filing of the notice.

### § 5-60.203 Preparation of the appeal file.

(a) When the Board has received the notice of appeal, it will promptly acknowledge its receipt to the appellant and furnish copies of the appeal and acknowledgment to the contracting officer and the Central Office service or staff office concerned. Within 20 days after request by the Board, the Contracting Officer, or other constituent element of the General Services Administration, shall compile and transmit to the Board either the original or copies of all documents pertinent to the appeal. This will constitute the appeal file and should include, but not be limited to, the following:

(1) The findings of fact and the decision from which the appeal is taken;

(2) The invitation for bids, the contract, pertinent plans, specifications, amendments, and change orders;

(3) Correspondence between the parties and other data material to the appeal;

(4) Transcripts of any testimony taken during the course of the proceedings of the matter prior to the filing of the appeal;

(5) Such additional information as the contracting officer, or other official may consider material; and

(6) A brief statement of the position of the Government.

(b) The appeal file will be available for inspection by representatives of both interested parties, in the offices of the Board.

### § 5-60.204 Scope of appeals.

When an appeal is within the jurisdiction of the Board, it will in its discretion hear, consider, and make decisions on all questions necessary for the complete adjudication of the issues. Appeals not falling within the scope of the Board's jurisdiction will be referred to the responsible constituent organizational element within the General Services Administration for appropriate action and notice thereof will be furnished to the appellant.

### § 5-60.205 Untimely appeals.

In cases where it is claimed by the Government that an appeal was not filed within the time specified, the Board's initial consideration will be limited solely to the timeliness of the appeal. The Board will not consider the merits or other factors of the appeal if the submission was untimely. If the Board determines that an appeal is untimely, it shall so notify the appellant and the appropriate officials of the General Services Administration.

### § 5-60.206 Conferences.

(a) The Board may, upon the request of either party, or in its own discretion,

arrange a conference of representatives of the appellant and the Government. This informal conference is designed to secure a just and less expensive determination of appeals without unnecessary delay. The conference will be held at a specified time and place to consider the following:

- (1) Simplification of the issues;
  - (2) Possibility of obtaining stipulations, admissions of fact, and introduction of documents;
  - (3) If a hearing is to be held, limitation of the number of expert witnesses; and
  - (4) Such other matters as may aid in the disposition of the appeal.
- (b) The results of the conference shall be reduced to writing by a designee of the Board and made a part of the official file.

#### § 5-60.207 Hearings.

The Board shall, at the request of either party, grant a hearing. In the absence of a request, the Board may, in its discretion, order and hold a hearing on any appeal. The parties involved will be given a minimum of 15 days' notice in writing of the time and place of the hearing. Unless there is substantial justification for holding the hearing elsewhere, it will be held in the General Services Building, Washington, D.C. The hearing will be presided over by a designated member of the panel which renders the decision.

#### § 5-60.208 Submission without a hearing.

If neither party to the dispute requests a hearing, and the Board does not require one, the decision will be made upon the available records and such additional evidence and argument as may be furnished by the parties involved. If such additional evidence or argument is furnished by one of the parties involved, the Board will make this information available to the other party. The other party may then present argument in rebuttal within a time limitation fixed by the Board.

#### § 5-60.209 Absence of parties.

The unexcused absence of a party or his authorized representative at the time and place set for the hearing will not be the occasion for delay of the hearing. In such event, the hearing will proceed and the case will be regarded as submitted on the record by the absent party.

#### § 5-60.210 Nature of hearings.

Hearings before the Board will be as informal as may be reasonably permitted under the circumstances. Hearings are held primarily for the purpose of listening to the presentation of both parties and serve as a basis for developing the Board's decision or recommendation. The parties involved may offer such relevant evidence or argument as they deem appropriate subject, however, to the exercise of reasonable discretion by the presiding member of the Board in supervising the extent and manner of presentation of such evidence. The weight to be attached to evidence presented in any

particular form will be determined by the Board.

#### § 5-60.211 Examination of witnesses.

Witnesses at hearings before the Board will not be required to testify under oath. However, if the circumstances so warrant, the presiding officer may warn the witness that his statements may be subject to the provisions of Title 18, U.S.C. secs. 287, 1001, and any other provisions of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof. All witnesses may be examined or cross-examined by the presiding member or other members of the Board, the parties, or their representatives.

#### § 5-60.212 Copies of papers.

Copies of papers, books, records, or documents will be accepted as evidence in lieu of submission of the original documents where such submission is not practicable. After a decision has become final, such copies of documents as are not needed for the official file will be returned to the parties entitled to them.

#### § 5-60.213 Transcript of proceedings.

Testimony at hearings shall be reported verbatim unless the Board otherwise orders. Transcripts of the proceedings will be supplied to the appellant and to other interested parties, other than employees of the United States, upon payment of the cost of recording by the public reporter. The transcript will be made available to elements within the General Services Administration and to other interested Government agencies upon request to the Board.

#### § 5-60.214 Representation.

An appellant may appear before the Board in person, may be represented by counsel, or by any other duly authorized representative.

#### § 5-60.215 Submission of additional information.

If the parties involved desire to submit additional argument or evidence subsequent to a hearing before the Board, they will do so within a period of time set by the presiding officer not in excess of 30 days. When such material is filed by either party involved, the Board will make this material available to the other party. An opportunity for rebuttal shall be given within a time limitation fixed by the presiding officer. In some instances, the Board may require that additional material be presented in order to make a just decision or recommendation.

#### § 5-60.216 Decisions.

The decision of the Board will be made in writing and will be accompanied by a report containing the pertinent factors which formed the basis for the decision. The appellant will be notified of the Board's decision by letter. The appellant and the appropriate administrative officials of the General Services Administration will be furnished copies of the decision, including the report. In certain instances, where the circum-

stances warrant, the decisions of the Board will be in summary form. In those instances where the Administrator of General Services reserves the right to make the decision, the appellant will be notified by a letter signed by the Administrator accompanied by a copy of the findings and recommendations made by the Board or otherwise appropriately documented.

#### § 5-60.217 Reconsideration of appeals.

A request for reconsideration of an appeal may be filed by either party within 30 days after the date of the decision. Such requests will be considered if based upon (a) newly discovered evidence or (b) a point of law. A motion for either rehearing or reconsideration shall set forth specifically the grounds relied upon to sustain the motion.

#### § 5-60.218 Extensions of time.

The Board may grant extensions of time except with respect to the filing of the notice of appeal.

#### § 5-60.219 Optional accelerated procedure for cases involving small sums.

An appeal involving relatively small sums of money (not in excess of \$5,000) shall be processed under this rule at the request of or upon the written approval of the appellant subject to the concurrence of the affected constituent element of the General Services Administration. For purposes of this rule, the amount involved in an appeal shall be the difference between the amount of the appellant's claim as stated in this complaint and the amount, if any, determined by the decision from which the appeal is taken.

(a) The appeal will be decided by a single designated member of the Board who shall have, for this purpose, all the authority and power of the full Board to hear, consider, determine, and reconsider the matter.

(b) The appeal shall be deemed submitted for decision on the record unless the appellant, or the Government, within 10 days after the appellant's receipt of the Government's answer to the appeal, requests the Board to schedule an oral hearing.

#### § 5-60.220 Payment of claims.

In cases where the Board finds in favor of the appellant, claims shall not be paid by the Office of Financial Management, OFA, General Services Administration, before 30 days after the date of the Board's decision unless, prior thereto, the Director of Financial Management is notified that the Government does not intend to request reconsideration of the appeal. If the Government requests reconsideration, payment shall be withheld pending the Board's final ruling on the matters involved in such request.

**Effective date.** These regulations are effective upon publication in the FEDERAL REGISTER.

(Sec. 205(e), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: June 25, 1962.

LAWSON B. KNOTT, Jr.,  
Acting Administrator.

[F.R. Doc. 62-6328; Filed, June 28, 1962; 8:52 a.m.]