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48 CFR Part 6107

[CBCA Case 2025-61-02; Docket No. GSA-CBCA-2025-0070;
Sequence No. 1]

RIN 3090-AL16

**Civilian Board of Contract Appeals; Rules of Procedure of
the Civilian Board of Contract Appeals; Implementation of
the Administrative False Claims Act**

AGENCY: Civilian Board of Contract Appeals; General
Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The Civilian Board of Contract Appeals (Board) is issuing new rules of procedure to effectuate the new administrative scheme set forth in the Administrative False Claims Act of 2023, as amended by the National Defense Authorization Act for Fiscal Year 2025. The Board is issuing this final rule governing its administrative process for deciding claims brought by authorities, as defined by the Administrative False Claims Act (AFCA), seeking to impose civil penalties against persons who make, submit, or present false claims and statements to executive agencies of the United States of America.

DATES: This final rule is effective on [INSERT DATE 30 DAYS
AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Tara Mehrbach, Chief
Counsel, Civilian Board of Contract Appeals, at 202-606-

8790 or *tara.mehrbach@cbca.gov*. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or *GSARegSec@gsa.gov*. Please cite RIN 3090-AL16.

SUPPLEMENTARY INFORMATION:

I. Background

The Board was established within GSA by section 847 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109-163. Board members are administrative judges appointed by the Administrator of General Services under 41 U.S.C. 7105(b)(2) with the concurrence of the Office of Federal Procurement Policy.

On December 23, 2024, the National Defense Authorization Act (NDAA) for Fiscal Year 2025 (FY 2025 NDAA) (P.L. 118-159) was signed into law. The FY 2025 NDAA expands the Administrative False Claims Act of 2023 (AFCA), 31 U.S.C. 3801 et seq. This Act, previously known as the Program Fraud Civil Remedies Act of 1986, offers an administrative remedy for addressing false claims and statements made to the United States that the Department of Justice opts not to prosecute. The FY 2025 NDAA also amended the Contract Disputes Act (CDA), 41 U.S.C. 7101-7109. The CDA amendment expanded the jurisdiction of certain agency boards of contract appeals, including the Civilian Board of Contract Appeals, to hear cases referred to the Board under AFCA (41 U.S.C. 7105). The new statutory

language requires the Board to amend procedural regulations within 180 days of enactment of the FY 2025 NDAA (31 U.S.C. 3801 note).

AFCA provides an administrative process by which federal authorities can seek recovery of relatively small dollar value false claims (up to one million dollars) that the Department of Justice elects not to pursue. The liability provisions of AFCA remain closely modeled on those in the False Claims Act. The principal differences between the False Claims Act and AFCA are that AFCA does not include a qui tam enforcement mechanism, covers false written statements even in the absence of a claim, and provides for administrative rather than judicial resolution.

The Board's procedural rules, 48 CFR 6107, will govern the Board's processing of cases under AFCA. Under AFCA, a reviewing authority may seek, from the Attorney General or the Attorney General's delegate, permission to pursue a civil fraud claim against a person. If permission is granted, the reviewing official from the authority must notify the person alleged to be liable of fraud of the allegations and the amount of the alleged fraud. After adequate notice is provided to the person alleged to be liable for civil fraud, the person has 30 days to elect a hearing. If the person elects a hearing and the reviewing official refers the matter to the Board, as authorized by

41 U.S.C. 7105(e)(1)(E), a Board member may serve as the presiding officer, as defined by 31 U.S.C. 3801(a)(7)(C), to hear the referred administrative fraud case. The Board member, serving as the presiding officer, would commence an administrative hearing process unless the Board chair refused to accept the referral.

The Board's rules set forth the procedures to be followed if a case referral is made to the Board under AFCA and the Board accepts the referral. The rules generally (Rule 703) provide procedural specificity as to the hearings and determinations process set forth in 31 U.S.C. 3803. The rules establish that a case referral is effectuated by transmission through the Clerk of the Board of a complaint, a copy of the notice of referral that was provided to the respondent pursuant to AFCA, and the answer, if any. (Rule 703(b), Rule 703(e)).

The rules state that one Board member will preside in each referred case (Rule 703(a)(4)) and that the presiding Board member will set a schedule, oversee any discovery, conduct conferences, hearings, and other proceedings, and decide the merits of the case.

The rules provide for submission of an electronic evidence file, including exculpatory information under 31 U.S.C. 3803(e)(2), and an opportunity for objection to the admission of evidence (Rule 703(c), Rule 703(f)). The rules state that a presiding Board member may in his or her

discretion receive any evidence to which no party objects, will employ the Federal Rules of Evidence to resolve objections to the admissibility of evidence (Rule 703(g)), and may dismiss a case without reaching the merits in certain circumstances (Rule 703(h)). The rules clarify that a party representative need not be an attorney (Rule 703(d)) and that a ruling issued by a presiding judge will be provided to each party and, if resolved on the merits in whole or in part, posted on the Board's website (Rule 703(l)). Rulings by the presiding Board member are binding on the parties but are not precedential. (Rule 703(a)(4)).

II. Rules of Agency Procedure and Practice

Under the Administrative Procedure Act, rules of agency procedure or practice are exempt from the act's notice and comment rulemaking requirements. 5 U.S.C. 553(b)(A). As this rule constitutes the procedures to be followed for referrals to the Board under AFCA and the Board's practice requirements in these matters, the rule is exempt from notice and comment requirements.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O.

13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) has determined that this rule is a significant regulatory action and, therefore, it was reviewed under section 6(b) of E.O. 12866.

IV. Executive Order 14192

This rule is not an E.O. 14192 regulatory action because it imposes no more than de minimis cost.

V. Congressional Review Act

OIRA has determined that this rule does not meet the definition in 5 U.S.C. 804(2).

VI. Regulatory Flexibility Act

As this final rule is exempt from the Administrative Procedure Act's public notice requirements pursuant to 5 U.S.C. 553(b) (A) (rules of agency procedure or practice), a Regulatory Flexibility Analysis is not required.

VII. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 et seq., does not apply because this rule does not impose any new or modified information collection requirements that require the approval of the Office of Management and Budget.

VIII. Unfunded Mandates Reform Act of 1995

This rule will not impose a federal mandate that may result in the expenditure by state, local, and tribal

governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

List of Subjects 48 CFR Part 6107

Administrative practice and procedure, Claims, Fraud.

Erica S. Beardsley,
Chair, Civilian Board of Contract Appeals,
General Services Administration.

For the reasons set forth in the preamble, GSA adds 48 CFR part 6107 to read as follows:

PART 6107—ADMINISTRATIVE FALSE CLAIMS ACT REFERRALS

Sec.

6107.701 Scope [Rule 701].

6107.702 Authority [Rule 702].

6107.703 Rules for AFCA referrals [Rule 703].

6107.704 Effective date [Rule 704].

Authority: 41 U.S.C. 7105(e) (1) (E).

6107.701 Scope [Rule 701].

The rules in this part establish procedures for any matter referred to a member of the Board under the Administrative False Claims Act (AFCA), 31 U.S.C. 3803(d).

6107.702 Authority [Rule 702].

The Board is authorized to issue these rules under section 5203(g) (3) of the National Defense Authorization Act for Fiscal Year 2025 (P.L. 118-159), 31 U.S.C 3801 note, and the Contract Disputes Act (CDA), 41 U.S.C. 7105(e) (1) (E).

6107.703 Rules for AFCA referrals [Rule 703].

The rules of procedure for referrals under the AFCA are the same as the rules of procedure for CDA cases under part 6101 of this chapter, including the definitions, with the following exceptions:

(a) *Rule 1.*

(1) Rule 1(a) (48 CFR 6101.1(a)) does not apply.

(2) The definitions in Rule 1(b) (48 CFR 6101.1(b)) of "appeal; appellant," "appeal file," "application;

applicant," "Board judge; judge," "case," "party," "petition; petitioner," and "respondent" do not apply.

(3) The following definitions apply.

Case. "Case" means a matter involving one or more alleged false claims or statements by a "person" as defined in the AFCA that is referred to a member of the Board under the AFCA.

Complainant. "Complainant" means an agency or agency component whose authorized official refers a case to a Board member under the AFCA.

Evidence file. "Evidence file" means the submissions to the Board under Rule 703(c).

Party. "Party" means a complainant or a respondent.

Respondent. "Respondent" means a person or entity alleged by a complainant to have made one or more false claims or statements.

(4) In place of Rule 1(d) (48 CFR 6101.1(d)), substitute the following. One Board member will preside in each referred case. The presiding Board member will set a schedule, oversee any discovery, conduct conferences, hearings, and other proceedings, and decide the merits. References to "the Board" in the rules of procedure for CDA cases shall, as appropriate in context, mean the presiding Board member, whose rulings are not precedential.

(b) *Rule 2.* In place of Rule 2 (48 CFR 6101.2), substitute the following. A complainant may as authorized

by law refer a case by transmitting to the Board Chair, through the Clerk:

(1) the complaint;

(2) a copy of the notice of referral that was mailed or delivered to the respondent pursuant to the AFCA; and

(3) the answer, if any. If there is no answer, a referral may include a motion for a default decision. The Clerk will promptly notify the parties of the Board Chair's acceptance or non-acceptance of a referred case.

(c) *Rule 4.* In place of Rule 4 (48 CFR 6101.4), substitute the following. As directed by the presiding Board member, the parties shall submit an electronic evidence file organized substantially like an electronic appeal file under Rule 4(b) for CDA cases. The evidence file shall include without limitation any exculpatory information under 31 U.S.C. 3803(e)(2). Evidence file exhibits are part of the record of a case under Rule 9(a) (48 CFR 6101.9(a)) unless a party objects to an exhibit within the time set by the presiding Board member and the presiding Board member sustains the objection.

(d) *Rule 5.* In place of Rule 5(a) (48 CFR 6101.5(a)), substitute the following. A complainant may appear in a case through an attorney. A respondent may appear through an attorney or, if an individual, may appear for himself or herself. A corporation, trust, or association may appear by one of its officers. A limited liability corporation,

partnership, or joint venture may appear by one of its members. Each individual appearing on behalf of a party must have legal authority to appear. An attorney appearing in a case shall file a notice of appearance complying with Rule 5(b) (48 CFR 6101.5(b)).

(e) *Rule 6.* In place of Rule 6 (48 CFR 6101.6), substitute the following. The complaint and the answer (if the complainant received one) shall accompany a referral. The presiding Board member may accept amended or supplemental pleadings as is consistent with due process.

(f) *Rule 9.* In Rule 9(a)(1)(i) (48 CFR 6101.9(a)(1)(i)), replace "Rule 4 appeal file" with "Rule 703(c) evidence file." Rule 9(a)(2)(i) (48 CFR 6101.9(a)(2)(i)) does not apply.

(g) *Rule 10.* In place of Rule 10 (48 CFR 6101.10), substitute the following. The presiding Board member may in his or her discretion receive any evidence to which no party objects and will apply the Federal Rules of Evidence to resolve objections to the admissibility of evidence bearing on proof of fraud or falsity.

(h) *Rule 12.* In place of Rule 12 (48 CFR 6101.12), substitute the following. The presiding Board member may dismiss a case without reaching the merits:

(1) For lack of jurisdiction, or

(2) At the request of the complainant and with the approval of the Board Chair. The presiding Board member may stay a case as is consistent with due process.

(i) *Rule 17.* In Rule 17(a) (48 CFR 6101.17(a)), replace "appeal file" with "evidence file."

(j) *Rule 18.* In Rule 18 (48 CFR 6101.18), replace "judge" with "Board member."

(k) *Rule 21.* In Rule 21(a) (48 CFR 6101.21(a)), replace "judge" with "Board member."

(l) *Rule 25.* In Rule 25(a) (48 CFR 6101.25(a)), replace the second sentence with the following. The Board will send a copy of a decision to each party, requesting confirmation of receipt (see Rule 1 (48 CFR 6101.1)), and will post on its website a decision that resolves all or part of a case on the merits.

(m) *Rules 28, 31, 51-53.* Rules 28 (48 CFR 6101.28), 31 (48 CFR 6101.31), and 51 through 53 (48 CFR 6101.51-53) do not apply.

(n) *Rule 55.* Rule 55 (48 CFR 6101.55) does not apply. The effective date is stated in Rule 704 (48 CFR 6107.704).
6107.704 Effective date [Rule 704].

The effective date of these rules is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.