



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
Interior Board of Contract Appeals  
801 N. Quincy St. Suite 300  
Arlington, VA 22203

703 235 3813

703 235 1281 (fax)

**CERTIFIED MAIL- -RETURN RECEIPT REQUESTED**

**September 5, 2006**

**William R. Perry, Esq.  
Lloyd Benton Miller, Esq.  
Sonosky, Chambers, Sachse  
Miller & Munson, LLP  
900 West Fifth Avenue, Suite 700  
Anchorage, AK 99501**

**DOCKETING NOTICE**

**IBCA 4810-2006  
Thru  
IBCA 4818-2006**

**Dear Mr. Perry:**

**The appeals of St. Croix Chippewa Indians of Wisconsin, filed with respect to Indian Health Service Indian Self-Determination and Education Assistance Act (ISDEAA) Contract Nos. 239-96-0022; 239-99-0009; 239-02-0009, have been assigned Administrative Judge Parrette docketed as follows:**

**IBCA 4810-2006 - Damages claimed in the amount of \$29,818.92 for year 1996  
IBCA 4811-2006 - Damages claimed in the amount of \$32,898.64 for year 1997  
IBCA 4812-2006 - Damages claimed in the amount of \$32,898.64 for year 1998  
IBCA 4813-2006 - Damages claimed in the amount of \$32,345.16 for year 1999  
IBCA 4814-2006 - Damages claimed in the amount of \$38,915.41 for year 2000  
IBCA 4815-2006 - Damages claimed in the amount of \$38,915.41 for year 2001  
IBCA 4816-2006 - Damages claimed in the amount of \$16,096.12 for year 2002  
IBCA 4817-2006 - Damages claimed in the amount of \$18,332.31 for year 2003  
IBCA 4818-2006 - Damages claimed in the amount of \$6,074.23 for year 2004**

**Future correspondence regarding these appeals should refer to those docket numbers. The Board should be addressed as follows:**

**Administrative Judge Bernard V. Parrette  
Interior Board of Contract Appeals  
801 N. Quincy Street, Suite 300  
Arlington, Virginia 22203**

**Appellant's request for a Stay has been granted. A copy of the Board's Rules of Procedure is enclosed. Appellant's counsel filed its Complaint with the Notice of Appeal.**

**Please note that Section 4.117 requires that a copy of any document filed with the Board be served upon the other party. It is equally important that all correspondence be dated before filing. Finally, please include an electronic copy of any filings on diskette or CD in Word Perfect or Word format with the hard copy of the original pleadings.**

**In addition to the Rules, we have enclosed copies of the Board's Notice Regarding Alternative Methods of Dispute Resolution (ADR), which was adopted on February 7, 1990, and of our Code of Professional Courtesy, adopted May 1, 1994. Both are self-explanatory. An increasingly high percentage of parties who choose ADR methods now resolve their disputes without the expense of a formal evidentiary hearing before the Board. The Code was similarly adopted because of a perceived need for it on the part of both judges and members of the bar. We commend it to your attention.**

**By copy of this docketing notice, the Office of the General Counsel, U.S. Department of Health and Human Services, Public Health Division, Rockville, Maryland is requested to designate counsel to represent the Government in this appeal. Likewise, by copy hereof, the Contracting Officer is reminded to compile the appeal file and transmit copies to the Board, Government counsel, and Appellant as specified in Section 4.104 of the Board's Rules. This requirement is also Stayed until further notice.**

**The Contracting Officer is also reminded to note the specific provisions of Section 4.104(c) requiring that documents included in the appeal file be legible, arranged in chronological order when practicable, numbered sequentially, tabbed, indexed to identify the contents of the file, and bound.**

Sincerely,



Andrea I. Lewis

Recorder

**Enclosures:**

**cc: Dennis S. Murphy, Contracting Officer  
Indian Health Service  
522 Minnesota Avenue., N.W., Room 119  
Bemidji, MN 56601**

**U.S. DHHS-Indian Health Service  
Public Health Division  
Room 4A-53 Parklawn Building  
5600 Fishers Lane  
Rockville, MD 20857**

ment of the Interior, has designated the Board to adjudicate its contract appeals, the term, "Department Counsel," shall mean Government Counsel assigned to represent such agency.

(3) *Interpretation of these rules.* These rules will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay.

(4) *Decisions on questions of law.* When an appeal is taken pursuant to a disputes clause in a contract which limits appeals to disputes concerning questions of fact, the Board will, nevertheless, consider and decide all questions of law necessary for the complete adjudication of the issues.

(f) *Ex parte communications.* No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, without the knowledge and consent of the adverse party, regarding any matter at issue in that appeal. This provision does not apply to consultation among Board members or to ex parte communications concerning the Board's administrative functions or procedures.

(g) *Sanctions.* If any party fails or refuses to obey an order issued by the Board, the Board may make such order in regard to the failure as it considers necessary to the just and expeditious conduct of the appeal.

[46 FR 57499, Nov. 24, 1981, as amended at 50 FR 8325, Mar. 1, 1985]

#### PREHEARING PROCEDURE RULES

##### § 4.101 Who may appeal.

Any contractor may appeal to the Board from decisions of contracting officers of any bureau or office of the Department of the Interior, or of any other agency with respect to which the Board exercises contract appeals jurisdiction, on disputed questions under contract provisions requiring the determination of such appeals by the head of the agency or his duly authorized representative or Board.

##### § 4.102 Appeals—how taken.

(a) *Notice of appeal.* Notice of an appeal must be in writing (a suggested

form of notice appears as appendix I to subpart C herein following §4.128). The original, together with two copies, may be filed with the Board or the contracting officer from whose decision the appeal is taken. The notice of appeal must be mailed or otherwise filed within 90 days from the date of receipt of the contracting officer's decision, if the appeal is subject to the Contract Disputes Act of 1978; otherwise, within the time specified therefor in the contract.

(b) *Contents of notice of appeal.* A notice of appeal should indicate that an appeal is thereby intended, and should identify the contract (by number), the Department's bureau or office involved in the dispute, and the decision from which the appeal is taken. The notice of appeal should be signed personally by the appellant (the contractor making the appeal), or by an authorized officer of the appellant corporation or member of the appellant firm, or by the contractor's duly authorized representative or attorney. The complaint referred to in §4.107 may be filed with the notice of appeal, or the contractor may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

(c) *Failure of CO to issue decision on claims of \$50,000 or less.* Where the contractor has submitted a claim of \$50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not complied, the contractor may file a notice of appeal as provided in paragraph (a) of this section, citing the failure of the contracting officer to issue a decision. (See §4.100(a)(2).)

(d) *Failure of CO to issue decision on claims in excess of \$50,000.* Where the contractor has submitted a claim in excess of \$50,000 to the contracting officer and the contracting officer has failed to issue a decision within a reasonable time, the contractor may file a notice of appeal as provided in paragraph (a) of this section, citing the failure to issue a decision. (See §4.100(a)(2).)

(e) *Optional stay of proceeding.* Upon docketing of appeals filed pursuant to paragraphs (c) or (d) of this section, the Board may at its option, stay further proceedings pending issuance of a final

decision by the contracting officer within such period of time as is determined by the Board. (See §4.100(a)(2).)

**§4.103 Forwarding and docketing of appeals.**

(a) *Forwarding of appeal.* When a notice of appeal in any form has been received by the contracting officer, he shall endorse thereon the date of mailing (or the date of receipt, if the notice was otherwise conveyed) and within 5 days shall forward said notice of appeal to the Board by certified mail. He shall also promptly notify the Department's Office of the Solicitor, in accordance with instructions of the Solicitor, that the appeal has been received in order that a Department counsel may be appointed.

(b) *Docketing of appeals.* When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writing of the fact of docketing, together with a copy of these rules, shall be mailed promptly by certified mail to the appellant. Also, a copy of such notice, together with a copy of the notice of appeal if not originally filed with the contracting officer, shall be mailed promptly by certified mail to the contracting officer. Such notice shall acknowledge receipt of the appeal and advise appellant of the appeal number assigned to the appeal.

**§4.104 Preparation, organization, transmittal, and status of appeal file.**

(a) *Preparation and transmittal of appeal file.* Following receipt of a notice of appeal, or advice that an appeal has been docketed, the contracting officer shall promptly, and in any event within 30 days, compile and transmit to the Board the appeal file which shall consist of copies of all documents pertinent to the appeal. Within the same time period the contracting officer shall also prepare and transmit a copy of the appeal file to the Department counsel and a copy to the appellant or appellant's counsel. (However, the obligations of this subparagraph are subject to the provisions of paragraph (e) of this section.)

(b) *Composition of appeal file.* The appeal file shall include the following:

(1) The findings of fact and decision from which the appeal is taken, and the letter or letters or other documents of claim in response to which the decision was issued;

(2) The contract, and pertinent plans, drawings, specifications, amendments, and change orders;

(3) All correspondence between the parties pertinent to the appeal; and

(4) Such additional information as may be considered pertinent and material.

(c) *Organization of appeal file.* Documents in the appeal file may be originals, legible facsimiles, or authenticated copies thereof, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file, and bound. Any single document consisting of three or more pages shall be numbered sequentially for convenient reference at the hearing and in the preparation of briefs.

(d) *Opportunity for appellant to supplement appeal file.* The appellant shall be afforded the opportunity of supplementing the appeal file with such documentation as may be deemed pertinent to the appeal. The appellant shall be obligated, however, to furnish to Department counsel a copy of any document by which the appeal file is supplemented.

(e) *Burdensome documents.* The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file if a party has shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, he shall notify the other party that the same or a copy is available for inspection at the offices of the Board or of the party filing the same.

**§4.105 Dismissal for lack of jurisdiction.**

Any motion challenging the jurisdiction of the Board shall be filed promptly. Hearing on the motion shall be afforded on application of either party, unless the Board determines that its decision on the motion will be deferred pending hearing on both the merits and

the motion. The Board has authority to raise at any time and on its own motion the issue of its jurisdiction to conduct a proceeding and may afford the parties an opportunity to be heard thereon.

#### § 4.106 Representation and appearances.

(a) *The Appellant.* An individual appellant may appear before the Board in person, a corporation by one of its officers, and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

(b) *The Government.* Department or Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant's attorney.

#### § 4.107 Pleadings.

(a) *Complaint.* Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and one copy of a complaint setting forth simple, concise, and direct statements of each claim, alleging the basis with appropriate reference to contract provisions for each claim, and the dollar amount claimed. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form or formality is required. Letter size paper should be used for the complaint and for all other papers filed with the Board. Where the appeal arises out of a contract made with the Department of the Interior, a copy of the complaint shall be served by appellant upon the Department counsel if known, otherwise, upon the Solicitor, U.S. Department of the Interior, C Street, between 18th and 19th Streets, NW, Washington, DC 20240. Where the appeal arises out of a contract made with an agency other than the Department of the Interior, a copy of the complaint shall be served by appellant upon the General Counsel for that agency. All such serv-

ice shall be made in accordance with § 4.117. Should the complaint not be received within 30 days, appellant's claim and appeal documents may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth a complaint and the Department counsel will be so notified.

(b) *Answer.* Within 30 days from receipt of said complaint, or the aforesaid notice from the Board, the Department counsel shall prepare and file with the Board an original and one copy of an answer thereto, setting forth simple, concise, and direct statements of the Government's defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counterclaims, as appropriate. One copy of the answer will be served by the Department counsel upon the appellant in accordance with § 4.117. Should the answer not be received within 30 days, the Board, may, in its discretion enter a general denial on behalf of the Government, and the appellant shall be so notified.

#### § 4.108 Amendments of pleadings or record.

(a) The Board may, in its discretion, upon its own initiative or upon application by a party, order a party to make a more definite statement of the complaint or answer or to reply to an answer.

(b) The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend his pleading upon conditions just to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings or the appeal file, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such circumstances motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings or said appeal file (which shall be deemed part of the pleadings for this purpose), it may be admitted within

**§ 4.109**

the proper scope of the appeal: *Provided, however,* That the objecting party may be granted a continuance if necessary to enable him to meet such evidence.

**§ 4.109 Hearing—election.**

Within 15 days after the Government's answer has been served upon the appellant, or within 20 days of the date upon which the Board enters a general denial on behalf of the Government, notification as to whether one or both of the parties desire an oral hearing on the appeal should be given to the Board. In the event either party requests an oral hearing, the Board will schedule the same as hereinafter provided. In the event both parties waive an oral hearing, the Board, unless it directs an oral hearing, will decide the appeal on the record before it, supplemented as it may permit or direct. A party failing to elect an oral hearing within the time limitations specified in this section may be deemed to have submitted its case on the record.

**§ 4.110 Prehearing briefs.**

Based on an examination of the appeal file, the pleadings, and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to § 4.109. In the absence of a Board requirement therefore, either party may, in its discretion, and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall be furnished simultaneously to the other party.

**§ 4.111 Prehearing or presubmission conference.**

Whether the case is to be submitted without a hearing or heard pursuant to §§ 4.118 through 4.123, the Board may upon its own initiative or upon the application of either party, call upon the parties to appear before a member or

hearing officer of the Board for a conference to consider:

(a) The simplification or clarification of the issues;

(b) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(c) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;

(d) The possibility of agreement disposing of all or any of the issues in dispute; and

(e) Such other matters as may aid in the disposition of the appeal.

Any conference results that are not reflected in a transcript shall be reduced to writing by the Board member or the hearing officer. This writing shall thereafter constitute part of the record.

**§ 4.112 Submission without a hearing.**

Either party may elect to waive a hearing and to submit his case upon the Board record, as settled pursuant to § 4.114. Such waiver shall not affect the other party's rights under § 4.109. In the event of such election (see the time limitations for election in § 4.109) the submission may be supplemented by oral argument (transcribed if requested) and by briefs.

**§ 4.113 Optional small claims (expedited) and accelerated procedures. (See § 4.100(a)(2).)**

(a) The procedures set forth in this rule are available solely at the election of the appellant.

(b) *Elections to utilize small claims (expedited) and accelerated procedure.* (1) In appeals where the amount in dispute is \$10,000 or less, the appellant may elect to have the appeal processed under a **SMALL CLAIMS (EXPEDITED)** procedure requiring a decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure. The details of this procedure appear in paragraph (c) of this section. An appellant may elect the **ACCELERATED** procedure rather than the **SMALL CLAIMS (EXPEDITED)**

