

GENERAL SERVICES ADMINISTRATION  
Washington, DC 20405

ADM 9271.1C  
July 13, 2022

GSA ORDER

SUBJECT: Procedures for Selection and Appointment of Civilian Board of Contract Appeals Members, Chair, and Vice Chair

1. Purpose. To prescribe qualification, application, and selection and appointment procedures for Members of the Civilian Board of Contract Appeals and the Chair and Vice Chair(s).
2. Cancellation. ADM 9271.1B is cancelled. This Order supersedes and replaces all previous selection orders and memoranda.
3. Definitions.
  - a. Administrator. The Administrator of General Services.
  - b. Board or CBCA. The Civilian Board of Contract Appeals.
  - c. Chair. The Chair of the CBCA.
  - d. Vice Chair(s). The Vice Chair(s) of the CBCA.
  - e. Member. A Board Judge of the CBCA.
  - f. Registrar. An official of the Board appointed by the Chair to administer and manage the application process within the CBCA.
  - g. Register. The list of applicants determined to be eligible for appointment. Each register expires after all vacancies advertised in the vacancy announcement which generated that particular register have been filled.
4. Background. The Members of the CBCA are Board Judges employed by the General Services Administration. Appointments are made pursuant to 41 U.S.C. § 7105(b)(2) at the pay level specified by 5 U.S.C. § 5372a.

a. Introduction and Jurisdiction.

(1) The CBCA was established by section 847 of the National Defense Authorization Act for Fiscal Year 2006 to decide disputes between government contractors and executive agencies under the provisions of the Contract Disputes Act (CDA), 41 U.S.C. §§ 7101-7109, and regulations and rules issued under that statute.

(2) The Board's authority under the CDA extends to all agencies other than the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the National Aeronautics and Space Administration, the United States Postal Service, the Postal Regulatory Commission, and the Tennessee Valley Authority.

(3) In addition to cases under the CDA, the Board hears and decides various additional classes of cases, including but not limited to: cases arising under the Indian Self-Determination Act, 25 U.S.C. §§ 450j-1(f), 450m-1(d); disputes between insurance companies and the Department of Agriculture's Risk Management Agency involving actions of the Federal Crop Insurance Corporation under 7 U.S.C. § 1501 et seq.; claims by federal civilian employees under 31 U.S.C. § 3702 for reimbursement of expenses incurred while on official temporary duty travel or in connection with relocation to a new duty station; agency claims for payment under the Debt Collection Improvement Act of 1996, 31 U.S.C. §§ 3701-3733 (2018); claims by carriers or freight forwarders under 31 U.S.C. § 3726(i)(1) involving actions of the General Services Administration regarding payment for transportation services; applications by prevailing private parties for recovery of litigation and other costs under the Equal Access to Justice Act, 5 U.S.C. § 504; requests for binding arbitration from the Federal Motor Carrier Safety Administration in civil penalty forfeiture proceedings; requests for arbitration under Section 423 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. §5189a(d), as amended by Section 1219 of the Federal Aviation Administration Reauthorization Act of 2018, Pub. L. 115-254, to resolve disputes between FEMA and applicants for public assistance disaster grants arising from disasters that occurred after January 1, 2016; and requests for arbitration under Section 601 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, and Section 565 of the Consolidated and Further Continuing Appropriations Act, 2013, Public Law 113-6, to resolve disputes between applicants and the Federal Emergency Management Agency regarding funding for public assistance grant applications arising from Hurricanes Katrina and Rita. In addition, the Board provides alternative dispute resolution (ADR) services to executive agencies in both contract disputes which are the subject of a contracting officer's decision and other contract-related disputes.

b. Duties and Responsibilities.

(1) Board Member: A Board Member's duties include, but are not limited to, managing a docket of cases; holding conferences with parties; issuing subpoenas; deciding motions; resolving discovery issues and evidentiary questions; conducting hearings, which includes such functions as administering oaths, questioning witnesses, determining credibility, and making findings of fact and conclusions of law; making decisions both alone and with other Board Members; conducting mediation, arbitration, and other alternative dispute resolution proceedings; and taking any authorized action that is consistent with the goal of administering justice.

(2) Chair: The Chair's duties include all duties and responsibilities listed above for a Board Member, and, in addition, providing executive oversight, management, and direction of the Board and its staff and members by ensuring that laws, regulations, and Board policies are followed; supervising Board staff; monitoring Board caseloads; establishing the Board's Rules of Procedure; overseeing Board planning, budgets, spending, physical plant, and information technology; ensuring Board security and emergency preparedness; appointing others to and serving on Board committees; and issuing reports.

(3) Vice Chair: The Vice Chair's duties include all duties and responsibilities listed above for a Board Member, and, in addition, those duties and responsibilities assigned by the Chair.

5. Applications. To be considered for appointment as a Board Member, an applicant must meet all qualifying experience requirements listed below and must complete the application process. An applicant must be able to qualify for a top secret security clearance. All applicants will be considered without regard to race, religion, color, national origin, sex, sexual orientation, age, disability, genetic information, political affiliation, or any other non-merit factor.

a. Required qualifying experience. An applicant, at the time of application, must be licensed to practice as an attorney under the laws of a State or the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the Constitution. An applicant must have, in the aggregate, at least five years of public contract law experience consisting of serving as an attorney or judge in:

(1) Proceedings before any Federal agency boards of contract appeals or comparable Federal, State, or local administrative bodies;

(2) Actions in courts of record involving public contract issues fully comparable to those in proceedings before agency boards of contract appeals, or before Federal, State, or local administrative bodies; or

(3) Advising on public contracts, or teaching or writing on the subject of public contract law.

In the determination of whether public contract law experience involving State or local contracts qualifies, a direct comparison is made between the subject matter of such experience and the subject matter commonly involved in the practice of Federal public contract law. At least two years of the qualifying experience in public contract law must have been of a level of difficulty and responsibility comparable to the GS-15 grade level or above. Remuneration is not considered in the making of this comparison.

b. Application process. Those interested in applying for a Board Member position must submit the documents listed below via USAJOBS:

(1) A resume;

(2) A letter of good standing from the bar of a State or the District of Columbia, the Commonwealth of Puerto Rico, or any territorial court established under the Constitution of which the applicant is currently a member, and evidence that indicates the length of time the applicant has practiced law;

(3) An explanation of how the applicant meets the qualifying requirement of at least five years of public contract law experience, including specific examples;

(4) Two written work products of at least 5 pages but no more than 20 pages in length; and

(5) A list of four or more persons as references who have knowledge of the applicant's experience and professional qualifications, such as a judge before whom the applicant has appeared or opposing counsel or co-counsel. Contact information must be provided for each reference.

c. Ranking factors. An applicant must demonstrate the ability to conduct hearings in a dignified and orderly manner; prepare clear and concise decisions including statements of fact and law; and exercise sound judgment, judicial temperament, and poise. The following factors are considered in ranking each applicant:

(1) Knowledge of public contract and procurement law and knowledge of the Federal rules of evidence and civil procedure;

(2) Ability to understand and interpret law, and to analyze, synthesize, and evaluate evidence and find facts;

(3) Ability to communicate concisely and clearly and to preside at meetings, conferences, and hearings; and

(4) Ability to make independent decisions in a fair and impartial manner, to make and write prompt decisions, to manage time efficiently, and to operate in a collegial environment.

6. Process for Selection and Appointment of a Board Member.

a. Notification and Initiation of Selection Process: When there is a Board Member position to be filled, the Chair will meet with the Administrator to initiate the selection and appointment process. The Chair will provide to the Administrator a proposed timeline for each of the phases of the process, in coordination with the Office of Human Resources Management (OHRM). The CBCA will provide status updates regarding the selection process to the Administrator as requested. The Administrator will determine whether to use the optional Administrator's Final Review Panel (see section 6.e), and if so, will establish membership of that panel, in accordance with section 6.e(1) of this Order, as soon as possible after initiation of the selection process.

b. Determination of Minimum Qualifications: The GSA OHRM will review each application to determine the completeness of the application and whether the applicant meets the minimum qualifications set forth in 41 U.S.C. § 7105(b) and section 5.a of this Order.

(1) If an application is missing any of the required documents or the applicant's background and experience, as demonstrated in the application, do not meet the minimum qualifications, OHRM will designate the applicant "ineligible." OHRM will notify any applicant designated "ineligible" in writing and will include the applicant's right to appeal the designation within ten days of receipt by sending an appeal to the Registrar at [cbca.registrar@cbca.gov](mailto:cbca.registrar@cbca.gov). The Chair will consider all such appeals, and the Registrar will notify the applicant of the Chair's decision.

(2) If an applicant is determined by OHRM to meet the minimum qualifications, the application will be forwarded to the Registrar for review in accordance with section 6.c of this Order.

c. Board Judge Panel Review.

(1) Written Application Review: A panel of three Board Judges (Board Judge Panel) selected by the Chair will review all written applications forwarded to the Registrar and rank the applicants on a 100-point scale using the ranking factors listed in section 5.c of this Order.

(2) Interview: Those applicants ranked at 90 or above based upon the review of the written application materials will be invited for an interview with the Board Judge Panel. Based upon the interview, the Board Judge Panel will rank the applicants on a 50-point scale using the ranking factors listed in section 5.c of this Order. The Board Judge Panel will then combine the ranking scores from the written application review (up to 100) and the interview (up to 50).

(3) Reference Check: The Board Judge Panel will then contact at least two of the four persons provided as references for each applicant who has a cumulative score of 135 or above from the written application review and the interview. The Board Judge Panel will use a written questionnaire when contacting references. Using the ranking factors listed in section 5.c of this Order, the Board Judge Panel will rank the applicants on a 50-point scale based upon the reference checks. The Board Judge Panel will then assign a total ranking score to each applicant based upon the written application review (up to 100), the interview (up to 50), and the reference checks (up to 50), for a maximum possible score of 200 points. The Board Judge Panel will then provide the list of applicants in rank order to the Chair.

(4) The Registrar will notify applicants who score below 180 that they will not advance to the CBCA Executive Review phase and will receive no further consideration.

d. CBCA Executive Review: The Chair and Vice Chair(s) will review the written applications and the rankings of the Board Judge Review Panel for applicants who received a cumulative score of 180 or above and will invite applicants to a second interview. Based upon this review and interviews, the Chair and Vice Chair(s) will select which applicants will be added to the Register and in what order, using the ranking factors listed in section 5.c of this Order, as well as other factors deemed appropriate by the Chair. The Register will include a minimum of three applicants for a single vacancy, or a minimum of two applicants per vacancy for multiple vacancies.

(1) The Registrar will notify applicants not selected to advance to the Administrator's Final Review Panel, if convened, that they will receive no further consideration.

(2) The Board will provide the Register to OHRM.

e. Administrator's Final Review Panel: At the discretion of the Administrator, a Final Review Panel will convene to review the qualifications of the applicants on the Register for the purpose of making recommendations to the Administrator regarding which applicant(s) on the Register should be appointed as a Board Member.

(1) Panel Members: If the Administrator convenes a Final Review Panel, that Panel shall consist of the following: the GSA Deputy General Counsel; a senior attorney, no lower than the level of Assistant Director, with experience in government procurement law, from the National Courts Section of the Department of Justice, Civil Division; the CBCA Vice Chair; and a senior executive from a civilian Federal agency who is familiar with government procurement.

(2) Review and Recommendations: If a Final Review Panel is convened, that Panel will review the qualifications of the applicants on the Register and recommend to the Administrator which applicant(s) should be appointed as a Board Member. The Panel may, at its discretion, interview the applicants on the Register. In-person interviews will be conducted unless circumstances preclude their use, in which case virtual or telephonic interviews may be used. In selecting which applicant(s) will be recommended to the Administrator for appointment, the Final Review Panel shall consider the ranking factors in 5.c, required qualifying experience, and duties and responsibilities of a Board Judge as identified in this Order. The Final Review Panel will provide their recommendations to OHRM.

f. Appointment: OHRM shall provide to the Administrator the Register established pursuant to subsection d. of this section, as well as the Final Review Panel recommendations (if any) determined pursuant to subsection e. of this section. The Administrator shall, after consultation with the Administrator for Federal Procurement Policy, make an appointment. If the Administrator desires to appoint an applicant other than an applicant from the Register, the Administrator shall consult with the Chair before consulting with the Administrator for Federal Procurement Policy.

## 7. Process for selection and appointment of the Chair.

a. When the position of Chair becomes vacant or when there is an impending vacancy in the position of Chair, the Chair (or the Vice Chair(s) in the absence of the Chair) shall notify the Administrator and will request a meeting with the Administrator for the purpose of advising the Administrator of an impending vacancy.

b. The Administrator will appoint one of the Vice Chairs as the Chair. In the event that there are multiple Vice Chairs, the Chair position will be offered based on the seniority of the Vice Chairs. If those serving in the position of Vice Chair ask not to be appointed as the Chair, the Chair will notify all current Board Judges of the vacancy and invite any who are interested to apply for the position of Chair. The Chair and Vice Chair(s) will interview the candidates, and after considering the duties and

responsibilities of a Board Judge and of the Chair, as identified in this Order, will rank the applicants, and make a recommendation to the Administrator.

8. Process for selection and appointment of the Vice Chair(s).

a. When the position of Vice Chair becomes vacant, or the Chair becomes aware of an impending vacancy in the position of Vice Chair, the Chair will notify all Board Judges of the vacancy and invite any who are interested to apply for the position.

b. The Chair shall select the Vice Chair(s) from among the Board Judges who have applied. The Chair and Vice Chair(s) will interview the candidates, and after considering the duties and responsibilities of a Board Judge and of the Vice Chair, as identified in this Order, will rank the applicants, and make a recommendation to the Administrator.

9. Signature.



---

ROBIN CARNAHAN  
Administrator