§ 1023.5 Duties and responsibilities of the Chair.

The Chair shall be responsible for the following:
(a) The proper administration of the Board;
(b) Assignment and reassignment of cases, including alternative dispute resolution (ADR) proceedings, to administrative judges, hearing officers, and decision panels;
(c) Monitoring the progress of individual cases to promote their timely resolution;
(d) Appointment and supervision of a Recorder;
(e) Arranging for the services of masters, mediators, and other neutrals;
(f) Issuing delegations of Board authority to individual administrative judges, panels of judges, commissioners, masters, and hearing officers within such limits, if any, which a majority of the members of the Board shall establish;
(g) Designating an acting chair during the absence of both the Chair and the Vice Chair;
(h) Designating a member of another Federal board of contract appeals to serve as the third member of a decision panel if the Board is reduced to less than three members because of vacant positions, protracted absences, disabilities or disqualifications;
(i) Authorizing and approving ADR arrangements for Board cases; obtaining non-Board personnel to serve as settlement judges, third-party neutrals, masters and similar capacities; authorizing the use of Board-provided personnel and facilities in ADR capacities, for matters before the Board, and for other matters when requested by officials of the DOE; and entering into arrangements with other Federal administrative forums for the provision of personnel to serve in ADR capacities on a reciprocal basis;
(j) Recommending to the Secretary the selection of qualified and eligible members. New members shall, upon selection, be appointed to serve as provided in the CDA;
(k) Determining whether member duties are consistent with the CDA; and
(l) Reporting Board activities to the Secretary not less often than biennially.

§ 1023.6 Duties and responsibilities of Board members and staff.

(a) As is consistent with the Board’s functions, Board members and staff shall perform their duties with the highest integrity and consistent with the principles set forth in §1023.3.
(b) Members of the Board and Board attorneys may serve as commissioners, magistrates, masters, hearing officers, arbitrators, mediators, and neutrals and in other similar capacities.
(c) Except as may be ordered by a court of competent jurisdiction, members of the Board and its staff are permanently barred from ex parte disclosure of information concerning any Board deliberations.

§ 1023.7 Board decisions; assignment of judges.

(a) In each case, the Chair shall assign an administrative judge as the Presiding Administrative Judge to hear a case and develop the record upon which the decision will be made. A Presiding Judge has authority to act for the Board in all non-dispositive matters, except as otherwise provided in this Part. This subparagraph shall not preclude the Presiding Administrative Judge from taking dispositive actions as provided in this Part or by agreement of the parties. Other persons acting as commissioners, magistrates, masters, or hearing officers shall have such powers as the Board shall delegate.
(b) Except as provided by law, rule, or agreement of the parties, contract appeals and other cases are assigned to a deciding panel established by the Board Chair consisting of two or more administrative judges.
(c) The concurring votes of a majority of a deciding panel shall be sufficient to decide an appeal. All members assigned to a panel shall vote unless unavailable. The Chair will assign an additional member if necessary to resolve tie votes.

§ 1023.8 Alternative dispute resolution (ADR).

(a) Statement of Policy. It is the policy of the DOE and of the Board to facilitate consensual resolution of disputes and to employ ADR in all of the Board’s functions when agreed to by
the parties. ADR is a core judicial function performed by the Board and its judges.

(b) **ADR for Docketed Cases.** Pursuant to the agreement of the parties, the Board, in an exercise of discretion, may approve either the use of Board-annexed ADR (ADR which is conducted under Board auspices and pursuant to Board order) or the suspension of the Board’s procedural schedule to permit the parties to engage in ADR outside of the Board’s purview. While any form of ADR may be employed, the forms of ADR commonly employed using Board judges as neutrals are: case evaluation by a settlement judge (with or without mediation by the judge); arbitration; mini-trial; summary (time and procedurally limited) trial with one-judge; summary binding (non-appealable) bench decision; and fact-finding.

(c) **ADR for Non-Docketed Disputes.** As a general matter the earlier a dispute is identified and resolved, the less the financial and other costs incurred by the parties. When a contract is not yet complete there may be opportunities to eliminate tensions through ADR and to confine and resolve problems in a way that the remaining performance is eased and improved. For these reasons, the Board is available to provide a full range of ADR services and facilities before, as well as after, a case is filed with the Board. A contracting officer’s decision is not a prerequisite for the Board to provide ADR services and such services may be furnished whenever they are warranted by the overall best interests of the parties. The forms of ADR most suitable for mid-performance disputes are often the non-dispositive forms such as mediation, facilitation and fact-finding, mini-trials, or non-binding arbitration, although binding arbitration is also available.

(d) **Availability of Information on ADR.** Parties are encouraged to consult with the Board regarding the Board’s ADR services at the earliest possible time. A handbook describing Board ADR is available from the Board upon request.

§ 1023.101 Scope and purpose.

The rules of the Board of Contract Appeals are intended to govern all appeal procedures before the Department of Energy Board of Contract Appeals (Board) which are within the scope of the Contract Disputes Act of 1978 (41