



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

ORDER DENYING, WITHOUT PREJUDICE, RESPONDENT'S MOTION
FOR LEAVE TO FILE EXHIBITS IN THEIR NATIVE FORMAT:

December 9, 2025

CBCA 7147, 8110

WILLIAMS BUILDING COMPANY, INC.,

Appellant,

v.

DEPARTMENT OF STATE,

Respondent.

Kevin M. Cox of Camardo Law Firm, P.C., Auburn, NY, counsel for Appellant.

Randal W. Wax, Office of the Legal Adviser, Buildings and Acquisitions, Department of State, Washington, DC, counsel for Respondent.

LESTER, Board Judge.

ORDER¹

¹ This order is being published to assist in providing greater transparency to the public about the manner in which the Board has addressed issues in cases before it. Nevertheless, although single-judge orders like this one are binding in the appeals in which they are issued, they are, consistent with Board Rule 1(d) (48 CFR 6101.1(d) (2024)) not precedential in other appeals before the Board.

This order addresses attempts by the Department of State's Bureau of Overseas Building Operations (OBO) to include Microsoft Excel (Excel) spreadsheets as exhibits in the Rule 4 appeal file and to file them with the Board.

Background

The Board recently lifted a stay of proceedings in these two consolidated appeals after, on July 23, 2025, the United States Court of Appeals for the Federal Circuit resolved a related appeal, *Williams Building Co. v. Secretary of State*, No. 2023-2337, 2025 WL 2057994 (Fed. Cir. July 23, 2025). That case arose out of the same contract as the one at issue here, and, as indicated in the Board's decision on respondent's motion for partial summary judgment dated November 21, 2025, the resolution of that case affects the scope of the appellant's recovery in these consolidated appeals.

On June 2, 2023, shortly before the Board stayed proceedings in these appeals, OBO filed a Rule 4 appeal file supplement that contained Exhibits 400 through 559. When OBO submitted those exhibits to the Clerk of the Board for filing, it also filed what it titled a "Motion To File Certain Exhibits in Native Format" in which it indicated that some of the exhibits that it needed to file were Excel spreadsheets. In the appeal file supplement that it submitted with the motion, it used "placeholder" documents in a portable document format (.pdf) as a substitute for forty-eight separate Excel spreadsheets. Each of the forty-eight "placeholder" documents was a one-page .pdf containing the following (or similar) language: "Excel File Produced in Native Format." Although OBO's index for the Rule 4 appeal file supplement describes the exhibits as representing subjects such as "[Williams Building Company (WBC)] Financial Statements 2016" (Exhibit 401), "WUAN Contract . . . Mod. 20 'Draft' support for daily rate" (Exhibit 407), "Statement of Cost Review Summary" (Exhibit 412), and "Change Order Log" (Exhibit 458), the only "document" associated with each title is the one-page document which reads, "Excel File Produced in Native Format."

In its June 2, 2023, motion, OBO requested "leave to file . . . a portion of its Rule 4 Exhibits in Native format with a separate PDF placeholder containing the required Rule 4 Exhibit stamp and Bates number." The Board, during the suspension of proceedings in the appeals, deferred resolution of OBO's motion. The Board has no record of OBO ever sending to the Clerk's office any of the forty-eight Excel documents represented by a "placeholder" .pdf. Although OBO filed a motion for partial summary judgment (that the Board resolved on November 21, 2025) in which OBO on several occasions referenced Exhibit 458, the only copy of Exhibit 458 in the record is OBO's single-page "placeholder" .pdf.

More recently, on September 30, 2025, after the Board had lifted the stay of proceedings, OBO filed a new appeal file supplement, adding Exhibits 600 to 634 (plus a corrected copy of an earlier-filed exhibit) to the record. Each of the exhibits identified as Exhibits 617 through 632 is a single-page .pdf document containing the following language: “No image available for this record.” Nevertheless, the index for Exhibits 617 through 632 describes the exhibits as substantive evidence, with titles such as “JS Held work paper: ‘WBC Summary (TW)’” (Exhibit 617) and “JS Held work paper: Labor Burden Native File SJA Working File” (Exhibit 631). OBO later delivered to the Clerk’s office a flash (or “thumb”) drive containing the Excel spreadsheets that OBO had identified as Exhibits 617 through 632. In the letter accompanying the delivery, OBO stated, “Enclosed please find 16 native Excel files, Respondent’s Rule 4 Exhibits numbers 617 through 632.” OBO did not file a motion seeking leave to submit the Excel spreadsheets underlying Exhibits 617 through 632 to the Board.

Discussion

The Board’s Rules do not permit the submission of Excel spreadsheets in native format as exhibits. Rule 4(b)(3) (48 CFR 6101.4(b)(3) (2024)) expressly provides that “[a]ppel file exhibits shall be in .pdf format or will be rejected.” The Board generated this requirement when updating its rules in 2018 “to make filing documentary evidence electronically in pdf format, rather than on paper, the default for Contract Disputes Act cases.” 83 Fed. Reg. 13211, 13212 (Mar. 18, 2018). The rule further provides that “[p]arties shall number the pages of each exhibit consecutively, unless an exhibit is already paginated in another logical manner,” something that cannot be done in a useable manner in an Excel spreadsheet. Rule 4(b)(5).

That being said, the boards of contract appeals have the authority, when necessary, to waive their rules and allow a party to submit certain documents in their original native electronic format where “elements of these documents are both material and cannot be captured in hard copy.” *Alion Science & Technology Corp.*, ASBCA 58992, 15-1 BCA ¶ 36,168, at 176,940 n.4. If a party has a video of activity at a construction site that is relevant to the parties’ dispute, we cannot realistically preclude the party from introducing that video as an exhibit simply because it is not in a .pdf form. In fact, a party’s failure to provide documents to the opposing party in their native format, which may contain searchable information that the conversion into a .pdf will not carry, may constitute an abuse of the discovery process and create an evidentiary issue at a hearing. *See JE Dunn Construction Co.*, ASBCA 63183, 25-1 BCA ¶ 38,879, at 189,243-45, 189,252-53 (discussing the limited usefulness of .pdfs in construction delay analyses as a result of information contained in the native format lost in the conversion). “[W]e are to construe our rules liberally to provide for the informal and just resolution of matters before us, . . . and we

are entitled to modify our rules when necessary to achieve those goals.” *Safe Haven Enterprises, LLC v. Department of State*, CBCA 3871, et al., 15-1 BCA ¶ 35,928, at 175,604 (citing Rule 1(c)); *see* Rule 1(a) (“The Board may alter these procedures on its own initiative or on request of a party to promote the just, informal, expeditious, and inexpensive resolution of a case.”).

That being said, non-.pdf exhibits create some challenges for the Board. Excel spreadsheets and some other non-.pdf native formats can (whether intentionally or unintentionally) contain malware that, if loaded into the Board’s electronic appeal file directories, could wreak havoc on the Board’s record-keeping systems. *See, e.g.,* Sead Fadilpašić, *Watch Out, That Excel Document Could Be Infected with Dangerous Malware*, TechRadar (Nov. 12, 2024), <https://www.techradar.com/pro/security/watch-out-that-excel-document-could-be-infected-with-dangerous-malware>; Simon Hunt, *Add-Ins or Bad-Ins? The Dangers of Excel XLL Files*, Institute of Chartered Accountants in England & Wales (Feb. 2, 2023), <https://www.icaew.com/technical/technology/excel-community/excel-community-articles/2023/add-ins-or-bad-ins-the-dangers-of-excel-xll-files>. As a result, the Board has established internal protocols that require such exhibits to be stored outside of the Board’s regular systems and maintained separately. These burdens necessitate that we find good cause before allowing an exception to the rule requiring that exhibits be in .pdf form. A party that wishes to submit exhibits that do not conform with the requirements of the Board’s Rules can do so only with the express permission of the judge presiding in an appeal, based upon a showing of good cause.

Here, with regard to the Excel spreadsheets that are the subject of OBO’s June 2023 motion, OBO does not tell us why these Excel spreadsheets cannot be converted into and filed as .pdfs. We recognize that, in certain instances, the conversion of an Excel spreadsheet into a .pdf might render the resulting document mostly unreadable and virtually useless. Nevertheless, it seems possible that at least some of the documents subject to OBO’s June 2023 motion, such as a “Change Order Log,” could be converted effectively. Certainly, OBO has not made any kind of representation that they could not be usefully converted, much less provided an explanation as to why they could not. “Good cause” requires “[a] legally sufficient reason” or a “show[ing of] why a request should be granted or an action excused.” *4K Global-ACC Joint Venture, LLC v. Department of Labor*, CBCA 6683, et al., 22-1 BCA ¶ 38,227, at 185,654 (quoting Black’s Law Dictionary 266 (10th ed. 2014)). OBO has not satisfied the “good cause” requirement for filing the Excel spreadsheets subject to its June 2023 motion.

With regard to the Excel spreadsheets that OBO first identified in September 2025, OBO filed no motion for leave but simply sent the spreadsheets to the Clerk’s office. Before a party may submit Excel spreadsheets to the Board as appeal file exhibits, it must file a

motion for leave and obtain the presiding judge's express permission to do so. Because the Board's Rules preclude OBO from adding non-.pdf documents to the record absent leave from the presiding judge, the Excel spreadsheets that OBO identified as Exhibits 617 through 632 are viewed as having been rejected and are *not* currently considered a part of the record of this appeal.

To the extent that OBO wants to add any of the Excel spreadsheets that it identified in its June 2023 or September 2025 submissions to the appeal file, it shall first attempt to convert those spreadsheets into .pdfs, in as readable a form as possible. For those .pdf conversions that OBO determines will work for evidentiary purposes, OBO shall file those exhibits (in .pdf form) with the Board in lieu of submitting the Excel spreadsheets. For any Excel spreadsheets that OBO finds cannot be converted in an effective manner, OBO may file a motion identifying those exhibits and showing good cause for the need to file them with the Board in their native Excel format. With its motion for leave, OBO shall provide the Clerk of the Board a virus-free, single flash drive containing all of the Excel-formatted exhibits that it wants to file, identifying each one by the exhibit number that it previously identified for that exhibit but with the addition of "-E" to the number (labeling, for example, the native-format version of Exhibit 401 as "Exhibit 401-E").

Decision

OBO's motion for leave to file Excel spreadsheets is denied without prejudice to its refiling at a later date. The sixteen Excel files that OBO sent to the Clerk of the Board in September 2025 for inclusion in the Rule 4 appeal file as Exhibits 617 through 632 are considered rejected because, absent leave of the presiding judge, the Board's Rules do not permit their filing; counsel for OBO may contact the Clerk if it wishes to retrieve the flash drive on which it delivered those files. OBO shall make efforts to convert the Excel spreadsheets at issue into a .pdf form and shall make those .pdfs for which the conversion is successful a part of the appeal file. For any conversions that OBO finds insufficient, OBO may file another motion for leave to add those native-format documents to the appeal file, identifying good cause in the motion for their submission, and shall submit with the motion a virus-free, single flash drive using the protocols described above.

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge