UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION TO COMPEL GRANTED: April 28, 2026

CBCA 8787

YUANMING ZHANG,

Appellant,

v.

GENERAL SERVICES ADMINISTRATION,

Respondent.

Yuanming Zhang, pro se, Allen, TX.

Alexander Falciani, Office of General Counsel, General Services Administration, Philadelphia, PA, counsel for Respondent.

LESTER, Board Judge.

ORDER[1]

This order addresses an "Emergency Motion to Compel Discovery" that appellant, Yuanming Zhang, filed on April 10, 2026, as part of his effort to obtain document production from a non-respondent agency.

[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. 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binding in the appeals in which they are issued, they are, consistent with Board Rule 1(d) (48 CFR 6101.1(d) (2024)), not precedential in other appeals before the Board.

Background

Mr. Zhang purchased a vehicle from the General Services Administration (GSA) through an online GSA auction. He claims that the auction site (and his resulting contract) contained a misdescription of the vehicle that he purchased, and he submitted a claim to the GSA contracting officer seeking a refund and other monetary damages before filing this appeal. Mr. Zhang elected to proceed in this appeal using the small claims procedure in Board Rule 52 (48 CFR 6101.52 (2024)) but, at the same time, indicated that he wanted to take some discovery from the Government before submitting his case for decision on the written record under Rule 19. Because, under the small claims procedure, the Board is supposed to resolve an appeal, if possible, within 120 days after the procedure is elected, *see* Rule 52(c), the Board established an expedited schedule for discovery and Rule 19 briefing, with discovery closing on March 20; GSA's Rule 19 brief due by March 27; and Mr. Zhang's Rule 19 brief due by April 17, 2026. Applying the small claims procedure's timeline, a decision is due in this appeal, if possible, by May 18, 2026. Mr. Zhang later requested an enlargement to the discovery period through April 10, 2026, which the Board granted, but GSA still filed its Rule 19 brief in compliance with the original March 27, 2026, deadline.

On April 10, 2026, Mr. Zhang filed his emergency motion to compel, seeking to require GSA to produce responses to various document production requests that he had recently served. The requested documents include vehicle maintenance and usage files from another agency, the Department of the Interior's Fish and Wildlife Service (FWS), which was apparently the user agency of the vehicle that Mr. Zhang purchased. Less than an hour after Mr. Zhang filed his motion to compel, GSA filed its response to the motion, and, less than fifteen minutes after that, Mr. Zhang filed a reply.

Mr. Zhang subsequently provided the Board with a copy of an email that he had sent to GSA counsel on February 12, 2026, in which he had asked GSA to provide him with the following documents:

1. Full maintenance logs and service invoices from the owning agency (U.S. Fish and Wildlife Service) for the period January 1, 2020 through March 1, 2020, including any documentation relating to the January 21, 2020 "engine check" performed at Honest-1 Auto Care or any other service facility.
2. Any internal maintenance reports, inspection records, or documentation generated following the January 2020 service that relate to the vehicle's mechanical condition or its removal from service.

3. Documentation reflecting how the auction description for this vehicle was prepared, including communications, internal emails, or condition reports relied upon in preparing the listing.

Mr. Zhang reformatted those requests and resent them to GSA in a slightly modified form by email on March 16, 2026. Mr. Zhang also provided the Board with a copy of another email dated April 3, 2026, in which he had provided GSA with a new set of production requests that repeated some earlier requests but added new specific requests:

1. **The "Owning Agency" Data**: All records, emails, or forms provided by the U.S. Fish and Wildlife Service (USFWS) that GSA relied upon to prepare the auction description for VIN: 1FMCU49369KD10785.
2. **The "Best Effort" Basis**: Any documentation supporting GSA's affirmative statement that the "hybrid battery is inoperable," including any diagnostic reports that ruled out engine failure at the time of the listing.
3. **Disposal Records**: The "Turn-In" or "Property Disposal" form (e.g., Form [Standard Form (SF) 120] or SF-126) generated by USFWS when the vehicle was removed from service in 2020 at **87,834 miles**.
4. **Internal Communications**: Any internal GSA or USFWS communications regarding the "Engine Checked" entry at Honest-1 Auto Care on January 21, 2020.

In its response to the motion to compel, GSA reported that it had previously responded to the February 12 and March 16 requests by informing Mr. Zhang either that GSA possessed no responsive documents or that the information the requests sought was irrelevant to this appeal. It objected to Mr. Zhang's April 3 requests because they came too late for GSA to respond before the discovery deadline. It also objected to Mr. Zhang's request that GSA obtain and produce documents from the FWS, a separate agency that GSA does not control. GSA has not produced any documents to Mr. Zhang in response to any of his production requests.

Discussion

I. Timeliness of the April 3 Discovery Requests

GSA is technically correct that Mr. Zhang's April 3 discovery requests were late. Because, like Board Rule 14(b), "[t]he Federal Rules of Civil Procedure [(FRCP)] allow parties thirty days to respond to interrogatories and requests for production, . . . requests must be served at least thirty days prior to a completion of discovery deadline." *Thomas v.*

Pacificorp, 324 F.3d 1176, 1179 (10th Cir. 2003); *see Arnott v. Ashland Hospital Corp.*, No. 0:15-CV-0032-DLB, 2016 WL 7974071, at *2 (E.D. Ky. Apr. 14, 2016) ("[A] party must serve his discovery requests at least thirty days before the court-ordered discovery deadline to be timely and to necessitate a response."); *Pruitt v. Ryan*, No. CV-13-02357-PHX-DJH (ESW), 2016 WL 1376444, at *1-2 (D. Ariz. Apr. 7, 2016) ("Common sense dictates that any requests for discovery must be made in sufficient time to allow the opposing party to respond before the termination of discovery." (quoting *Adobe Systems Inc. v. Christenson*, No. 2:10-CV-00422-LRH-GWF, 2011 WL 1322529, at *2 (D. Nev. Apr. 5, 2011))), *aff'd*, 719 F. App'x 693 (7th Cir. 2019); *Carson v. Patterson Dental Supply, Inc.*, No. 2:08-CV-00653, 2009 WL 3127755, at *5 (S.D. Ohio Sept. 25, 2009) ("Because the discovery deadline date was before the expiration of the 30-day response period provided under [FRCP] 34(b)(2)(A), defendant was not required to produce the requested documents and plaintiff was not entitled to the documents.").

That being said, the appellant here is representing himself in this appeal. We generally do not hold pro se appellants to strict adherence to our procedural rules. *See, e.g.*, *King Rox LLC. v. Department of State*, CBCA 7598, 24-1 BCA ¶ 38,533, at 187,304 n.1; *Automated Power Systems, Inc.*, DOT BCA 2678, 00-2 BCA ¶ 31,030, at 153,248. We see no reason to deny Mr. Zhang an opportunity for discovery simply because he elected to use the small claims procedure, even though that election was the original basis for establishing an expedited discovery schedule. Mr. Zhang's decision to pursue new discovery now will affect the timing of the Board's ultimate decision in this appeal and push it beyond the 120-day deadline identified in Rule 52, but that is a choice that Mr. Zhang has made by making new discovery demands. We extend the discovery deadline to May 18 to provide GSA time to respond to Mr. Zhang's April 3 discovery requests. If GSA needs additional time, it may file a motion for an enlargement with the Board.

II. GSA's Relevance Objections

GSA objects that the requested documents are not relevant to the issues in the appeal. It is true that the requested documents are unnecessary to the legal arguments that GSA has raised in its Rule 19 brief and that, were we to find in GSA's favor based on those arguments, would render the requested discovery irrelevant. Nevertheless, the requested documents, although irrelevant to GSA, *are* relevant to Mr. Zhang's theory of the case. He claims that, in its auction listing, GSA misrepresented the condition of the vehicle that he purchased and has cited past precedential decisions supporting, he says, GSA's liability to him for damages caused by that misrepresentation. The documents that he seeks relate to the history of the vehicle's condition, which he believes may assist him in proving his misrepresentation argument.

GSA has asserted in its Rule 19 brief that Mr. Zhang's arguments are based on case law that the boards have abandoned and that no longer reflects current binding precedent. Had GSA, earlier in this appeal, filed a motion to dismiss this appeal for failure to state a claim or a motion for summary judgment, the Board could have addressed GSA's arguments, which, if successful, might have allowed for dismissal of the appeal without the need to obtain full briefing on the merits of Mr. Zhang's theory of the case. Instead, at the parties' request, we will be deciding this appeal only after full Rule 19 merits briefing. Following a Rule 19 election, the Board "set[s] a schedule for the parties to complete the evidentiary record" before having to submit their Rule 19 briefs. Rule 19(a). In his Rule 19 brief, Mr. Zhang will have to lay out the entirety of his arguments in support of judgment in his favor, including full development of his legal arguments, supported by relevant factual information, even though GSA says that they are based on outdated case law. Although we may ultimately reject Mr. Zhang's positions, Mr. Zhang is entitled, if not required, to develop the evidence that he believes is necessary to support his case before he files his Rule 19 brief. We have no basis to deny Mr. Zhang's discovery requests at this point in time based on relevance.

III. Mr. Zhang's Request that GSA Obtain and Produce Documents from the FWS

Consistent with the Board's Rules, because the respondent in this appeal is GSA (the agency that contracted with Mr. Zhang for the sale of the vehicle at issue in this case), an attorney employed by GSA entered an appearance in this appeal and is representing GSA before the Board. Mr. Zhang served document production requests on GSA, through counsel for GSA, seeking the production of maintenance and other records associated with the vehicle that he purchased, including documents from the FWS. GSA responded that it has no obligation to produce FWS records and, certainly, no ability to compel the FWS to provide it with the requested records. GSA objects to Mr. Zhang's insistence that it approach the FWS to obtain maintenance and other records relating to the vehicle at issue and then produce them as part of the discovery process.

Normally, a party responding to a document production request is required to produce all responsive, non-privileged documents in its "possession, custody, or control." FRCP 34(a). "By the same token, a party cannot be required to permit inspection of [or produce] documents or things that it does not have and does not control." 8B Charles Alan Wright, Arthur R. Miller, & Richard L. Marcus, Federal Practice and Procedure § 2210, at 162 (3rd ed. 2010). As GSA correctly notes, GSA is the respondent in this appeal. The FWS, which is a separate agency from GSA within the Executive Branch, is not a named party. GSA is represented by an attorney employed by GSA, not by the FWS, and the FWS does not answer to GSA. Generally, "a lawyer representing a governmental agency only represents that agency and not the government as a whole." *LHF, LLC v. General Services*

Administration, CBCA 395, et al., 08-2 BCA ¶ 33,915, at 167,820 (quoting *Gray v. Rhode Island Department of Children, Youth & Families*, 937 F. Supp. 153, 158 (D.R.I. 1996)); *see Heritage Reporting Corp. v. General Services Administration*, GSBCA 10396, 92-1 BCA ¶ 24,677, at 123,122 (1991) ("The Board recognizes that counsel for GSA does not represent [the non-respondent agency]."). The only exception to that rule is for attorneys from the Department of Justice (DOJ), who, when representing the United States before a federal court, represent the United States as a whole. *LHF, LLC*, 08-2 BCA at 167,819 (citing 28 U.S.C. § 516 (2000)); *see Hazeltine Corp. v. United States*, 10 Cl. Ct. 417, 439 (1986) ("Pursuant to 28 U.S.C. §§ 516-20 (1982), DOJ represents the United States in litigation."), *aff'd*, 820 F.2d 1190 (Fed. Cir. 1987); *CACI International Inc.*, ASBCA 63663, 26-1 BCA ¶ 39,005, at 189,954 (2025) ("[A]n attorney employed by an agency other than the Department of Justice cannot represent another agency."). As the Board previously recognized, "[t]reating the whole government as the [agency attorney's] client," at least outside the context of DOJ's role in federal court, would "create[] great difficulty in delineating the lines of ethical standards." *LHF, LLC*, 08-2 BCA at 167,820 (quoting *Gray*, 937 F. Supp. at 158); *see Report by the District of Columbia Bar Special Committee on Government Lawyers and the Model Rules of Professional Conduct*, 3 Wash. Law. 1, 55 (Sept./Oct. 1988) ("The identification of [an agency attorney's] client as the entire government would raise serious questions regarding client control and confidentiality."); Professional Ethics Committee, Federal Bar Association, *Opinion 73-1*, 32 Fed. B.J. 71, 72 (1973) ("[T]he client of the federally employed lawyer, using the term in the sense of where lies his immediate professional obligation and responsibility, is the agency where he is employed.").[2]

Certainly, GSA does not "control" activities at the FWS in such a way that it could easily compel the FWS to provide documents to GSA for production were the FWS to object and refuse to comply with a production request. *See Tennessee Valley Authority v. United States*, 51 Fed. Cl. 284, 285-87 (2001) (discussing inter-agency dispute between two agencies within the United States Government, which was allowed to be litigated in federal court, and mentioning a potentially complicated internal procedure involving the Attorney General for resolving inter-agency disputes); Daniel A. Farber & Anne Joseph O'Connell, *Agencies as*

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[2] To the extent that the Board in *CSI Aviation, Inc. v. General Services Administration*, CBCA 6543, 20-1 BCA ¶ 37,542, found that "a respondent *agency* appears before [the Board] on behalf of and in the interests of the United States and not of the agency alone," *id.* at 182,308, that decision does not provide a respondent agency attorney any real power or authority to compel a separate non-respondent agency to produce documents in response to an appellant's document production requests if the non-respondent agency objects or simply ignores the requests.

Adversaries, 105 Calif. L. Rev. 1375 (2017) (discussing inter-agency conflicts and conflict resolution mechanisms). Nevertheless, "[t]he word 'control' [in the phrase 'possession, custody, or control'] is to be broadly construed." *Scott v. Arex, Inc.*, 124 F.R.D. 39, 41 (D. Conn. 1989). "Although 'control' has been customarily interpreted as requiring the party to have 'the legal right to obtain the documents requested on demand, . . . in practice[,] the courts have sometimes interpreted [FRCP] 34 to require production if the party has *the practical ability* to obtain the documents from another, irrespective of [its] legal entitlement to the documents." *Benisek v. Lamone*, 320 F.R.D. 32, 34 (D. Md. 2017) (quoting *Golden Trade, S.r.L. v. Lee Apparel Co.*, 143 F.R.D. 514, 525 (S.D.N.Y. 1992)) (emphasis added); *see Gross v. Lunduski*, 304 F.R.D. 136, 142 (W.D.N.Y. 2014) ("[E]ven where a party . . . lacks actual physical possession or custody of requested documents for purposes of [FRCP] 34(a), such party may nevertheless be found to have *control* of the documents within [FRCP] 34(a)'s scope of production if the party . . . *has the practical ability* to acquire the documents from a third-party."); *Bank of New York v. Meridien BIAO Bank Tanzania Ltd.*, 171 F.R.D. 135, 146 (S.D.N.Y. 1997) ("[D]ocuments are considered to be under a party's control when that party has the right, authority, or practical ability to obtain the documents from a non-party to the action.").

Applying that definition, courts have recognized that a respondent agency within the Executive Branch is typically more likely to be able to convince a sister non-respondent agency to provide documents for production in the respondent agency's lawsuit than is the private party seeking production, potentially creating a "practical ability" for the respondent agency to obtain the sister agency's documents:

> [T]he [Federal Deposit Insurance Corporation (FDIC)], as an arm of the government, is in a superior position to gain access to the documents of these other agencies. Because of this superior position, the court will not accept a naked averment by the FDIC that a particular document is not within its "possession." The FDIC must produce responsive documents that are in its "possession, custody or *control*," Fed. R. Civ. P. 34(a) (emphasis added), and "control" comprehends not only possession but also the right, authority, or ability to obtain the documents. Thus, the court finds that compliance with the magistrate's order requires the FDIC to make reasonable, diligent inquires, and, if applicable, demands of other agencies in order to obtain documents within the possession of such other agencies.

Comeau v. Rupp, 810 F. Supp. 1127, 1166 (D. Kan. 1992) (citations omitted); *see Benisek*, 320 F.R.D. at 35 (requiring state agencies named as parties in lawsuit to produce documents in possession of other state agencies after finding that a "demonstrated history of voluntary cooperation by [the other state agencies] with [the litigating agencies'] requests for

documents validates Plaintiffs' argument that [the litigating agencies] have the practical ability to obtain documents from the nonparties, irrespective of whether [the litigating agencies] also have the legal right to obtain documents from them"); *Rosie D. v. Romney*, 256 F. Supp. 2d 115, 119 (D. Mass. 2013) (finding that the defendant state agency had "the right to control and obtain the documents that are in the possession of the various non-defendant agencies"); *Compagnie Francaise d'Assurance Pour le Commerce Exterieur v. Phillips Petroleum Co.*, 105 F.R.D. 16, 35 (S.D.N.Y. 1984) ("When a government agency is a plaintiff, it has been held that the complaining agency may be required to produce the documents of another agency."); *Mountain Valley Lumber, Inc.*, AGBCA 2003-171-1, 06-2 BCA ¶ 33,339, at 165,313-16 (discussing sanctions that the board might impose on the respondent agency if a non-respondent agency did not comply with the board's subpoena). *But see State of New York ex rel. Boardman v. National Railroad Passenger Corp.*, 233 F.R.D. 259, 268 (N.D.N.Y. 2006) (finding that one state agency did not have "control" over another state agency's documents); *In re Sunrise Securities Litigation*, 109 B.R. 658, 661 (E.D. Penn. 1990) (finding the same regarding two federal agencies). "Whether a party has a sufficient degree of control over requested documents to constitute a practical ability to obtain the documents is a question of fact." *Gross*, 304 F.R.D. at 142-43.

Through its Rules, the Board has adopted a requirement consistent with the "practical ability" definition of "control." Rule 16(a) of the Board's Rules provides that, before appellants and the Board have to go through the time and effort to request, issue, and serve subpoenas to non-respondent agencies, respondent agencies must work to try to avoid the need for those subpoenas:

> Subpoenas should rarely be necessary, as the Board expects parties to respond cooperatively to discovery requests and to try in good faith to secure the cooperation of third parties who have or may have evidence responsive to discovery requests.

That means that a respondent agency, before we will find that it cannot reasonably access requested documents from another agency, must do more than provide a "naked averment" of inaccessibility and instead must "make reasonable, diligent inquires, and, if applicable, demands of other agencies in order to obtain documents within the possession of such other agencies." *Comeau*, 810 F. Supp. at 1166. If discovery can be accomplished through such means, it eliminates the expense and time necessary for the issuance of formal subpoenas, which assists in helping achieve the Board's goal of "promot[ing] the just, informal, expeditious, and inexpensive resolution" of matters before it. Rule 1(a). Only if, "despite good-faith efforts," the agency "prove[s] unable to obtain materials from [the non-respondent agency]" should we find a lack of FRCP 34(a) "control." 8B Charles Alan Wright, Arthur R. Miller, & Richard L. Marcus, *supra*, § 2210, at 161-62; *see id.* at 160 ("Caution must be

exercised when the notion of control [based on a 'practical ability' to obtain documents from a nonparty] is extended in this manner . . . because sometimes the party's actual ability to obtain compliance from nonparties may prove more modest than anticipated."); *see also Searock v. Stripling*, 736 F.2d 650, 654 (11th Cir. 1984) (If a party is unable despite a good-faith effort to obtain documents for production from a nonparty, the tribunal should find an absence of requisite control for purposes of FRCP 34(a).).

Here, it does not appear that GSA has made any effort to obtain the requested documents from the FWS. We direct GSA to make that effort, to which, given the very small volume of documents responsive to Mr. Zhang's requests that seem likely to exist, we would hope the FWS could swiftly respond. GSA "is directed forthwith to produce the documents in question, or to provide [Mr. Zhang and the Board] with an affidavit detailing [precisely what] attempts [GSA] made to obtain those documents, when [it] made them, and to whom [its] demands were addressed." *Scott*, 124 F.R.D. at 42. Further, if GSA is unable to obtain cooperation from the FWS through informal efforts, we ask that, to the best of its ability, GSA provide Mr. Zhang and the Board with the names of and contact information for the individuals at the FWS most likely, within GSA's knowledge, to have access to responsive documents and, if known, the name of the office within the FWS that could accept service of a subpoena for production of those documents. The Board anticipates that, with that information, it would, as authorized by the Contract Disputes Act, 41 U.S.C. § 7105(f) (2018), be able to issue a subpoena to the FWS for production, a well-used procedure that, in the past, has allowed appellants to obtain documents from non-respondent agencies. *See, e.g.*, *Mountain Valley Lumber*, 06-2 BCA at 165,312-13; *Heritage Reporting Corp.*, GSBCA 10396, 91-2 BCA ¶ 23,845, at 119,486-88, *aff'd on reconsideration*, 91-2 BCA ¶ 23,884; *Heritage Reporting Corp.*, GSBCA 10396, 90-3 BCA ¶ 22,977, at 115,387-89.[3]

Decision

Mr. Zhang's motion to compel is **GRANTED**. GSA may have until May 18, 2026, to submit responses to Mr. Zhang's document production requests, and it shall file any documents produced with the Board as supplements to the Rule 4 appeal file. In preparing its responses, GSA shall work to attempt to obtain the FWS's cooperation in providing documents from the FWS's records responsive to Mr. Zhang's production requests. If GSA is unable to obtain the FWS's cooperation, GSA shall, no later than May 15, file an affidavit

[3] Although GSA suggests that Mr. Zhang could submit a Freedom of Information Act (FOIA) request to the FWS, "the Board process does not require the use of FOIA as a substitute for discovery." *Shawn Montee, Inc.*, AGBCA 2003-132-1, et al., 07-1 BCA ¶ 33,462, at 165,881 (2006).

with the Board containing the information identified earlier in this order. Mr. Zhang's obligation to file his Rule 19 brief remains suspended pending further order of the Board.

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