ARMED SERVICES BOARD OF CONTRACT APPEALS
200 STOVALL STREET
ALEXANDRIA, VIRGINIA 22332

31 October 1984

MEMORANDUM FOR: THE SECRETARY OF DEFENSE
THE SECRETARY OF THE ARMY
THE SECRETARY OF THE NAVY
THE SECRETARY OF THE AIR FORCE

SUBJECT: Report of Transactions and Proceedings of the Armed Services Board of Contract Appeals for the Fiscal Year Ending 30 September 1984

This report is furnished pursuant to paragraph 9 of Charter for the Armed Services Board of Contract Appeals, 1 July 1979. The statistics hereinafter set forth reflect the hearing, consideration and determination of appeals originating in the Army, Navy, Air Force and DLA and other Defense agencies. They also include appeals docketed by ASBCA for and at the request of the Department of State, the Agency for International Development, the Department of Health & Human Services, the Office of Personnel Management, and the Securities & Exchange Commission, all on a full-time basis; and some other agencies on an ad hoc arrangement.

2. The following statistics cover activities of the Board during the report period, and the current reserve of pending matters:

A.	Appeals docketed during FY 1984 (Including 20 reinstatements)	1369
B.	Appeals disposed of during FY 1984	1335
C.	Number of Cases Pending July 1, 1961	1040
	Number of Cases Pending July 1, 1962	894
	Number of Cases Pending July 1, 1963	838
	Number of Cases Pending July 1, 1964	822
	Number of Cases Pending July 1, 1965	807
	Number of Cases Pending July 1, 1966	875
	Number of Cases Pending July 1, 1967	873
	Number of Cases Pending July 1, 1968	911
	Number of Cases Pending July 1, 1969	899
	Number of Cases Pending July 1, 1970	1123
	Number of Cases Pending July 1, 1971	1265
	Number of Cases Pending July 1, 1972	1254

Number of Cases Pending July 1, 1973	1197
Number of Cases Pending July 1, 1974	1127
Number of Cases Pending July 1, 1975	1065
Number of Cases Pending July 1, 1976	1031
Number of Cases Pending October 1, 1977	1134
Number of Cases Pending October 1, 1978	1163
Number of Cases Pending October 1, 1979	1221
Number of Cases Pending October 1, 1980	1259
Number of Cases Pending October 1, 1981	1301
Number of Cases Pending October 1, 1982	1594
Number of Cases Pending October 1, 1983	1695
Number of Cases Pending October 1, 1984	1729
Net Increase in Docket, FY 1984	34

D. Source of Appeals Docketed During FY 1984:

Army	509
Navy	281
Air Force	274
DLA	215
Other DoD	6
	1285

Special

State	6
HHS	53
AID	3
Office of Personnel Management	1
Securities & Exchange Commission	1
Reinstated	20

E. Of Appeals Disposed of:

Withdrawn	9
Sustained, Denied, Compromised, or Dismissed after Substantial Board Proceedings	1326
	1335

F. Status of Cases Pending End of FY 1984:

Complaint Due	363
Answer Due	159
Reply Due	1
Discovery Start	300
Prehearing Conference	6
To Be Set	240
Hearing Set	111
Transcript & Briefs Due	176
Suspense	219
Ready to Write	154
TOTAL	1729
Rule 12	86

G. Summary since May 1, 1949 (date of creation of ASBCA from predecessor boards)

Docketed	30,196
Reinstated	608
	30,804
Disposed of	29,075
	1,729

During Fiscal Year 1984 the ASBCA received the highest number of new and reinstated appeals in the history of the board and disposed of the highest number. Despite the record disposals, the backlog continues to grow and, unfortunately, there are a substantial number of appeals which have been ready for decision much too long.

A management study of the ASBCA was performed by Columbia Technology, Inc. The study team consisted of persons experienced in court management as well as other management disciplines. The final report was received at the end of December 1983. It contains an integrated set of recommendations with two major premises: (1) that appeals be docketed promptly and managed toward early settlement or hearing, and (2) that the board members be freed of routine activities to allow them more time for decision writing. A number of procedural changes were suggested. Many of those which could be implemented with existing resources have been put into effect. But increased time spent on management of a large docket leaves even less time for opinion writing without adequate legal and clerical support staff. Pushing cases to early trial, without this support, merely increases the backlog of ready-to-write cases. I have made requests for the authorization of additional personnel, beginning in February; thus far, without result. We intend to concentrate in the next six months on disposing of the old ready-for-decision cases, if necessary, by delaying hearings, decision on motions, and accelerated/expedited procedure (Rule 12) cases. This will delay more recent cases and the need for the additional personnel requested still exists.

The General Accounting Office conducted an investigation of the ASBCA during FY 1984 at the request of the Senate Committee on Governmental Affairs. A team of investigators spent some eight or nine months at the offices of the board. Due to shifting focus and voluminous detail, it was never quite clear what they were looking for. As this is written, I have not been furnished their preliminary report.

The Congress passed a reenactment of the Equal Access to Justice Act, but as this is written the President has not acted upon it. If it becomes law, the boards of contract appeals will have jurisdiction to award costs and attorneys fees to individuals and small business firms covered by the Act. The Act would be retroactive as to requests which were timely filed but later dismissed for lack of jurisdiction. There were about 16 of such requests at the ASBCA. Based on some experience under the predecessor statute the impact on the board's workload from new requests would likely be substantial.

The attached statistics report appeals disposed of during the past five fiscal years. Previous reports listed the DAR provision under which contracts were negotiated. This has been deleted as no longer relevant. There was a noticeable increase in appeals by small business contractors. This is in part attributable to the increase in contracts awarded to small businesses, and in part to the fact that the small claims procedures make it easier and cheaper to process an appeal.

It should be noted that the statistics on pages 3 and 4 show only the principal issue on each case. Multiple issue cases may have claims under several catagories, for example; a construction contract appeal may involve changes, changed conditions, quality of workmanship, and delays but is reported under only one of them.

The statistics on page 5 should not be confused with current workload. For example during FY 1984 there were 379 hearings held, Rule 12 elections were made in 287 appeals, and there were 264 formal motions filed.

Harris J. Andrews, Jr.
Harris J. Andrews, Jr.
Chairman

Attachment

Data re Appeals Disposed of by the
Armed Services Board of Contract Appeals
During FY's 1980 - 1984

1. Origin of Appeals:	FY 1980	FY 1981	FY 1982	FY 1983	* FY 1984
Air Force	222	199	188	255	234
Army	440	322	341	425	524
DLA	174	154	139	157	218
Navy	230	206	198	212	267
Other (non-DOD)	54	34	72	82	63
2. Average amount of Claims (where Amount is stated):					
Prime Contractor	$398,412	$335,983	$420,115	$173,058	$241,096
Government	$109,266	$114,920	$380,718	$198,629	$137,371
Sub-Contractor	$ 66,297	$124,118	$271,128	$286,606	$238,968
3. Business Size:					
Small Business Contractor	716	544	644	781	966
Small Business Set Aside	167	128	180	177	302
4. Real Party in Interest					
Prime Contractor	1,037	832	814	1,013	1,120
Sub-Contractor	74	82	103	91	110
Both	9	1	12	5	23
Other			9	22	53
5. Method of Award					
Advertised	655	453	551	720	781
Negotiated	465	419	353	329	396
Other	-	43	34	31	------
Unknown				51	129

* 29 cases were cancelled as docketed in error or duplicates.

	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984
6. Contract Type:					
Basic Agreement	5	2	5	3	20
CPFF	25	29	19	42	24
CPIF	8	10	6	2	8
FFP	872	737	738	918	1,059
FPIF	13	24	13	7	5
Requirements	94	36	57	37	32
Other	103	77	100	122	158
7. Kind of Procurement:					
Construction	421	338	358	427	515
R&D	29	22	34	13	18
Service	190	135	212	236	246
Supply	426	380	299	401	437
Surplus Sale	19	21	20	24	16
Other	35	19	15	30	74

	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984
8. Principal Contract Clause(s) or issue(s) involved in Dispute:*					
Actual Damages (Govt claim)	3	1	4	-	8
All Disputes	1	-	-	-	1
Allowable Costs	-	29	53	55	33
Basic Agreement				1	-
Bid Protest			9	8	3
Breach			8	6	6
Changes	374	266	236	285	243
Contract Disputes Act			18	13	93
Cost Acctg Standards			6	4	2
Cost or Pricing Data	4	9	14	17	19
Cost Principles	22	20	15	3	9
Default	283	235	210	250	253
Delivery	2	1	-	2	8
Differing Site Conditions	18	33	27	25	38
Discounts	1	-	1	-	1
Disputes (Juris.)	69	6	1	-	1
Economic Price Adj.				11	1
Equal Access to Justice				18	1
Estimated Quantity			6	3	9
Excess Costs	14	21	28	21	16
Excusable Delay	-	2	1	1	7
First Article	1	1	-	4	10
Freight Charges	2	3	1	-	1
G.F.P.	5	8	5	8	6
General Average	-	1	-	-	-
Government Delay	-	12	12	18	17
Guaranteed Descriptions	-	7	14	12	5
Inspection	10	11	19	20	19
Insurance	3	2	-	-	-
Intellectual Properties			3	-	-
Interest	3	5	9	5	6
Labor	10	8	5	7	5
Liability for HHG Damages	-	6	7	2	14
Limitation of Costs				9	8
Liquidated Damages	11	18	17	15	29
Miller Act	1	1	-	-	-
Mistake in Bid	-	12	11	11	15
Mutual Mistake			1	1	4
Option to Renew			2	2	2

	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984
8. Principal Contract Clause(s) involved in Dispute:*					
(continued)					
Payments	25	25	22	36	24
Price Escalation	9	6	2	1	4
Progress Payments			6	6	13
Property Disposal	3	7	1	1	1
Requirements	4	4	6	3	4
Risk of Loss			5	6	4
Shipment	1	1	-	-	-
Specifications	54	81	97	152	160
Storage	2	-	-	-	-
Suspension of Work	4	3	2	4	10
Taxes	4	2	3	7	6
Termination for Convenience	13	14	17	18	21
Value Engineering	-	5	6	6	4
Warranty	11	12	13	10	49
Other	145	37	15	10	32
Unknown				34	82

*The statistics on this page are no longer truly representative of the subject matter of the Board's cases, especially under the Contract Disputes Act. Changes in categories will be made as practical.

	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984
9. Hearings and Days of Hearing:*					
Hearings:					
In Washington, D.C	60	38	36	56	46
Outside Washington, D.C.	151	147	136	151	169
Percentage outside Washington, D.C.	72%	79%	79%	73%	79%
Days of Hearing:					
In Washington, D.C.	166	61	94	142	100
Outside Washington D.C.	317	304	286	278	349
Percentage outside Washington, D.C.	66%	83%	75%	66%	78%
10. Pre-Hearing Discovery (cases in which ruling sought):	27	58	77	148	137
11. Pre-Hearing Conferences:	75	120	56	49	114
12. Rule 12 Proceedings:					
Number of Proceedings	224	183	187	205	229
13. Record only Dispositions:	88	58	79	73	75
14. Disposition:					
Settled	633	478	459	489	523
Dismissed (no reason given)	40	17	14	23	30
Dism/Rule 30	83	28	78	123	124
Dism/Rule 31	60	90	88	107	184
Lack of Jurisdiction	11	3	4	35	31

* Relates to hearings in appeals disposed of during a particular FY.

	FY 1980	FY 1981	FY 1982	FY 1983	FY 1984
Denied	199	169	168	192	207
Sustained	94	130	127	162	158
(Remand)	64	77	81	116	99
(Not Stated)			4	-	-
(Amount Determined)*	30	53	42	46	59
15. Time on Docket (days from date of docketing to date of decision):					
All cases:					
Average	413	458	438	422	450
Median	265	287	278	263	297
Rule 12 cases:					
Average	190	171	173	156	151
Median	154	151	148	137	149
16. Time from date appeal ready for decision to date decision filed (days):					
All cases:					
Average	33	33	34	49	50
Median	4	1	1	1	4
Cases in which formal opinion filed:					
Average	40	65	78	114	105
Median	17	21	27	29	19
All Rule 12 appeals:					
Average	14	13	17	14	16
Median	8	5	7	3	8

*Total dollars determined during FY 80 was $11,095,383.
*Total dollars determined during FY 81 was $ 4,820,958.
*Total dollars determined during FY 82 was $35,142,367.
*Total dollars determined during FY 83 was $ 6,258,134.
*Total dollars determined during FY 84 was $19,104,775.