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

IN REPLY REFER TO

30 October 1979

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 1979

1. This report is furnished pursuant to paragraph 11 of Charter for the Armed Services Board of Contract Appeals, May 1, 1962. (DoD Directive 5154.17) 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, Education and Welfare, the International Communication Agency and the Office of Personnel Management, 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 1979 (Including 11 reinstatements)	1028
B.	Appeals disposed of during FY 1979	970
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
Net Increase in Docket, FY 1979	58

D. Source of Appeals Docketed During FY 1979:

Army	331
Navy	227
Air Force	186
DLA	218
Other DoD	4
	966

Special

State	5
HEW	38
AID	3
ICC	1
ICA	2
OPM	2
Reinstated	11

E. Of Appeals Disposed of:

Withdrawn	0
Sustained, Denied, Compromised, or Dismissed After Substantial Board Proceedings	970
	970

F. Status of Cases Pending End of FY 1979:

Pending Administrative Disposition	3
Pending Agency or Court Action	0
Pending Prehearing Conference	2
Pending Action by Appellant	494
Pending Action by Government	370
Set for Hearing	116
Pending Transcripts or Briefs	90
Opinions Being Prepared	41
Being Processed Under Optional Accelerated and Expedited Procedure	105
	1221

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

Docketed	24,308
Reinstated	454
	24,762
Disposed of	23,541
Pending	1,221

3. The ASBCA disposed of 970 appeals in Fiscal Year 1979, an increase of 97 over Fiscal Year 1978 disposals. The new appeals docketed in FY 1979, however, totaled 1028 for a net increase of 58, bringing the total cases on the docket to 1221 at the end of the fiscal year. This is the largest number of appeals on the docket since 1972.

4. The Contract Disputes Act of 1978 was approved on 1 November 1978 and became effective on 1 March 1979. This, as expected, accounts for some of the increase in the number of new appeals for, under the Disputes Act, the Board now has jurisdiction over any dispute relative to a contract and may consider claims for breach and equitable relief not available under the former Disputes clause. These appeals will increase in the future as more contractors become familiar with the Act. Also, the increased rates of inflation, with corresponding inroads into anticipated profits on fixed-price contracts, has resulted in claims which may not have been otherwise pursued.

5. The Contract Disputes Act requires that members of boards of contract appeals be appointed to serve in the manner of administrative law judges, and that board members will be at the GS-16 grade. This affected the ASBCA in two ways: it lost its five military members and it may fill vacancies only after following procedures mandated by the Act. A Government-wide procedure for the qualification of applicants for administrative judge positions is contemplated, but could not be established in time to meet present needs. With the assistance of the Office of Personnel Management, interim procedures were devised for the rating of candidates and the establishment of a register of eligible applicants to the ASBCA and at least three other boards. Wide notice of the procedures has resulted in a large number of applicants and the qualification process is continuing. The procedures are necessarily time-consuming but have produced a number of highly qualified applicants. The GS-16 grade authorized by the Contract Disputes Act has materially assisted in this effort. The ASBCA has nine member vacancies, most of which have existed for a large part of the fiscal year. Nominations for appointment have now been made. When these vacancies are filled the Board should, based on known data, be able to reduce the backlog of appeals in a reasonable time.

6. Where a contractor elects to proceed under the Disputes Act, he may elect an Accelerated procedure on claims of $50,000 or less,

which obligates the Board to render a decision within 180 days of the election. If his claim is $10,000 or less, he may elect an Expedited procedure and expect a decision in 120 days. The Accelerated procedure is proving to be very popular with the Expedited procedure less so. The parties are finding difficulty in presenting appeals under the Expedited procedure so as to comply with the four months' time constraints. The Board intends to meet the time requirements for these small claims cases and to date has done so in every case. With the large number of vacancies, this has meant giving priority to the Accelerated and Expedited cases so that disposition of some larger appeals has suffered. On 30 September 1979 there were 110 appeals ready for decision. The majority of these reached the ready-to-write status only recently following a heavy hearing calendar in the last half of the fiscal year. The appointment of new members to fill the existing vacancies will relieve the hearing schedules of those who heard these appeals so the decisions may be prepared.

7. A large number of relatively small claims formerly decided by the General Accounting Office will now, under the Contract Disputes Act, fall within the jurisdiction of contracting officers and the ASBCA. How many of these reach the ASBCA will depend upon the settlement rate of contracting officers.

8. The Army and Air Force European Boards of Contract Appeals are being disestablished. Appeals of the type previously resolved by those Boards will now come to the ASBCA. Pending appeals will be discussed with the commanding generals and agreement reached on which of them will be transferred to the ASBCA.

9. The ASBCA intends to enter into a training program for board members during Fiscal Year 1980, first for new members, to enhance skills in docket management and the decision-making process, similar to that now used for Federal judges. It will also continue a program to train members of the clerical staff with the aim of giving them the skills of legal clerks and possibly some paralegals.

10. Now about 85 percent of the Board's hearings are outside the Washington, D. C. area. Travel for members is time-consuming and disruptive of docket management. There is no apparent way this travel can be reduced for it is not cost effective to bring numbers of attorneys and witnesses to Washington in lieu of travel by one administrative judge. The Accelerated and Expedited procedure cases place an added burden on members and travel funds, for it is difficult to fit these hearings into a composite travel schedule and still meet the time requirements.

11. The Contract Disputes Act requires that money awards of boards of contract appeals be paid in the same manner as judgments of the courts. This payment is made by the Treasury, from an open appropriation, upon certification by the General Accounting Office.

The Treasury must be reimbursed by the contracting agency. Agreement has been reached with GAO and Treasury on a procedure for processing these awards, which includes waiver of the appeal period where no appeal of the Board's decision is contemplated.

12. The ASBCA should be able to meet its obligation of prompt and relatively inexpensive disposition of appeals with its presently authorized membership. If substantial numbers of appeals are received on claims of the kind formerly decided by the General Accounting Office, increasing the number of administrative judges would not be cost effective but it may be necessary to add staff attorneys and paralegals.

Harris J. Andrews Jr.

HARRIS J. ANDREWS, JR.
Chairman, Armed Services
Board of Contract Appeals

Attachments

Data re Appeals Disposed of* by the
Armed Services Board of Contract Appeals
During FY's 1975 - 1979

	FY 1975	FY 1976	FY 1977**	FY 1978	FY 1979
1. Origin of Appeals:					
Army	358	293	363	311	295
Navy	225	222	241	223	231
Air Force	240	190	212	178	206
DSA	185	181	159	130	168
Other (non-DOD)	53	32	36	31	70
2. Average amount of Claims (where Amount is stated):					
Prime Contractor	$495,230	$1,464,388	$225,271	$459,042	$3,025,596
Sub-Contractor	79,894	105,851	141,507	108,545	69,727
Government	200,303	122,212	123,502	328,126	286,388
3. Business Size:					
Small Business Contractor	641	587	697	575	598
Small Business Set Aside	164	129	168	167	196
4. Real Party in Interest:					
Prime Contractor	905	865	952	796	898
Sub	52	43	59	73	64
Both	-	-	-	4	8
5. Method of Award:					
Advertised	669	544	558	527	593
Negotiated	387	374	453	346	377

* Unless otherwise indicated.
** Covers the period from 1 July 1976 through 30 September 1977.

	FY 1975	FY 1976	FY 1977	FY 1978	FY 1979
Negotiated					
2304(a)(1)	71	57	80	52	58
2304(a)(2)	35	41	29	30	15
2304(a)(3)	10	2	16	12	19
2304(a)(4)	1	2	-	2	-
2304(a)(5)	2	-	1	1	1
2304(a)(6)	23	19	20	12	32
2304(a)(7)	8	2	2	1	3
2304(a)(8)	1	-	1	-	-
2304(a)(9)	3	3	1	5	-
2304(a)(10)	63	65	61	41	47
2304(a)(11)	13	18	26	14	9
2304(a)(12)	1	-	-	-	-
2304(a)(13)	1	-	2	-	-
2304(a)(14)	3	5	1	4	5
2304(a)(15)	-	2	6	7	-
2304(a)(16)	15	6	5	2	6
2304(a)(17)	7	17	9	7	4
6. Contract Type:					
FFP	777	757	877	756	777
Requirements	81	24	17	16	24
CPFF	48	29	37	18	15
CPIF	16	9	5	4	10
FPIF	36	24	19	9	18
Basic Agreement	3	-	3	8	-
Other	75	75	73	62	126
7. Kind of Procurement:					
Supply	540	488	437	380	391
Construction	244	234	323	321	319
R&D	20	20	37	21	24
Service	143	106	162	125	148
Surplus Sale	11	8	8	5	8
Other	98	62	44	21	80

	FY 1975	FY 1976	FY 1977	FY 1978	FY 1979
8. Principal Contract Clause(s) involved in Dispute:					
Changes	315	271	275	280	286
Default	353	306	301	273	296
Inspection	13	15	23	19	20
Excess Costs	66	25	25	14	14
Cost Principles	101	35	18	17	29
Cost & Pricing Data	13	14	14	7	2
Termination for Convenience	27	32	31	31	23
G.F.P.	23	23	19	17	11
Liquidated Damages	21	12	20	17	19
Actual Damages (Gov't claim)	20	-	7	2	-
Warranty	18	22	18	10	18
Payments	69	44	48	41	45
Disputes (Juris.)	57	60	88	104	137
Labor	18	21	2	4	8
Requirements	22	25	2	1	-
Suspension of Work	14	15	16	18	18
Insurance	13	9	1	-	-
All Disputes	29	21	29	8	-
Shipment	1	-	1	-	-
Delivery	2	1	2	1	-
Property Disposal	17	15	3	-	-
Differing Site Conditions	30	26	25	26	19
1st Article	12	6	5	18	8
Incentive	5	3	-	-	-
Taxes	16	10	2	-	-
Discounts	20	15	1	-	1
Specifications	25	27	44	37	34
Price Escalation	2	2	13	5	7
Award Fee	-	-	5	-	-
Freight Charges	-	-	1	2	1
Utility Rates	5	3	-	-	-
Interest	-	-	-	-	-
Miller Act	4	2	-	-	-
Storage	2	2	1	-	-
General Average	-	-	-	-	-
Other	52	38	126	84	147

	FY 1975	FY 1976	FY 1977	FY 1978	FY 1979
9. Hearings and Days of Hearing:***					
Hearings:					
In Washington, D.C.	76	68	101	61	49
Outside Washington, D.C.	166	126	189	136	128
Percentage outside Washington, D.C.	69%	65%	65%	69%	72%
Days of Hearing:					
In Washington, D.C.	354	306	336	257	245
Outside Washington, D.C.	835	284	508	354	244
Percentage outside Washington, D.C.	68%	48%	60%	61%	50%
10. Pre-Hearing Discovery (cases in which sought):	29****	42	46	26	48
11. Pre-Hearing Conferences:	66	68	82	72	56
12. Rule 12 Proceedings:					
Number of Proceedings	165	148	196	176	198
13. Record only Dispositions:	153	125	123	102	104
14. Disposition:					
Settled	454	401	343	342	369
Dismissed (no reason given)	88	132	164	125	167
Rule 30	62	50	31	40	48
Rule 31	42	45	47	39	53
No jurisdiction	2	-	-	-	-

*** Relates to appeals disposed of during FY's 1975-1979.
**** Insufficient data base during period.

	FY 1975	FY 1976	FY 1977	FY 1978	FY 1979
14. Disposition: (continued)					
Denied	247	163	236	198	155
Sustained	166	127	190	129	153
(Remand)	48	36	90	84	82
(Amount Determined)*****	118	91	100	45	70
15. Time on Docket (Days from date of docketing to date of decision):					
All cases:					
Average	420	387	444	453	420
Median	300	284	327	318	267
Rule 12 cases:					
Average	205	217	246	253	272
Median	193	179	213	214	223
16. Time from date case ready for decision to date decision filed (days):					
All cases:					
Average	41	29	52	48	30
Median	5	3	6	5	3
Cases in which formal opinion filed:					
Average	85	71	99	94	62
Median	30	27	44	29	19
All Rule 12 cases:					
Average	16	13	16	14	17
Median	10	7	10	8	7

***** Total dollars determined during FY 75 was $64,799,102.
Total dollars determined during FY 76 was $23,020,314.
Total dollars determined during FY 77 was $ 6,816,931.
Total dollars determined during FY 78 was $52,058,649.
Total dollars determined during FY 79 was $ 9,147,657.