ARMED SERVICES BOARD OF CONTRACT APPEALS
200 STOVALL STREET
ALEXANDRIA, VIRGINIA 22332-0700

31 October 1986

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 1986

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, and the Office of Personnel Management, all on a full-time basis; and some other agencies on an ad hoc arrangement.

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

A.	Appeals docketed during FY 1986 (Including 95 reinstatements)	1960
B.	Appeals disposed of during FY 1986	1938
C.	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
	Number of Cases Pending October 1, 1985	2074
	Number of Cases Pending October 1, 1986	2096
	Net Increase in Docket, FY 1986	22

D. Source of Appeals Docketed During FY 1986:

Army	669
Navy	545
Air Force	486
DLA	123
Misc. DOD	2
State	4
HHS	27
AID	2
Office of Personnel Management	1
Defense Mapping Agency	5
Defense Nuclear Agency	1
Reinstated	95
	1960

E. Of Appeals Disposed of:

Withdrawn	23
Sustained, Denied, Compromised, or Dismissed after Substantial Board Proceedings	1915
	1938

F. Status of Cases Pending End of FY 1986:

Complaint Due	390
Answer Due	262
Discovery	562
To Be Set	258
Hearing Set	241
Transcript & Briefs Due	134
Suspense	78
Ready to Write	171
TOTAL	2096
Rule 12	170

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

Docketed	33,667
Reinstated	735
	34,402
Disposed of	32,306
	2,096

In Fiscal Year 1985, the number of new appeals at the Board increased by 20% over the prior fiscal year. The number of cases pending on the docket at the end of the fiscal year had a similar 20% increase. During December 1985, the number of cases pending on the Board's docket exceeded 2,200 appeals. For Fiscal Year 1986, the total number of new appeals also exceeded those filed during the prior fiscal year by 20% -- a figure far in excess of any historical projections. Now for the good news, the number of pending cases on the Board's docket at the end of FY 86 exceeded the number pending at the end of FY 85 by only 1%.

Why has the Board's docket grown by only 22 appeals when a record number of new appeals (1960) were docketed in FY 86? The answer is hard work, better use of the Board's resources, and a more active participation by the Administrative Judges in processing the appeals on their dockets. The Board members have used pre-trial methods to reduce records only to disputed facts resulting in the issuance of more summary judgment decisions, have limited hearing time as well as the quantity of permissible discovery and played a more active role in the settlement process. The statistics reflect that in FY 86, the Board disposed of approximately 50% more appeals than in FY 85. These numbers are all the more impressive when compared with FY 78, the year in which the Contract Disputes Act was passed. In FY 86 the number of docketed appeals was more than 200% the number docketed in FY 78 and the Board disposed of more than 220% of the number of appeals disposed of in FY 78.

The assumption of a significant portion of the administrative and routine tasks by the Board's Commissioners has freed the judges to do judges' work. The judges have used this time to good advantage by holding a record number of hearings and by disposing of a significant portion of those appeals which have been on the docket for an inordinate length of time. At the conclusion of FY 86, there were no appeals which were ready to write prior to calendar year 1985. The more active role by the Administrative Judges has resulted in 296 appeals disposed of on the record without a hearing as compared to only 79 in FY 82.

On 5 June 1986, Deputy Under Secretary of Defense Taft approved the Board's management plan authorizing an additional four Administrative Judges, including a third Vice Chairman, and a substantial increase in the staff personnel. On 7 October 1986, in response to the request for the four judge spaces, the Office of Personnel Management advised it was allocating two additional supergrade spaces to DOD for use by the ASBCA and recommended that DOD reallocate two existing spaces. In anticipation that the allocation problems would be resolved quickly, an announcement for the Administrative Judge positions was issued and those responding applicants are being rated. As soon as the rating process is completed, nominations from the register will be forwarded for approval in accordance with the Board's Charter.

The approval of additional staff has necessitated the relocation of the Board. It is anticipated that the Board will physically move its office to Skyline 6 at Bailey's Crossroads, Falls Church, Virginia in the late spring of 1987. The projected move to a location which does not have a convenient subway stop will have an adverse impact on recruiting staff support at the lower grades. It has been extremely difficult to find competent personnel to fill existing vacancies let alone the additional spaces approved by DOD. Only by authorized overtime efforts has the staff been able to keep pace with the additional workload. As additional personnel are recruited, the need for overtime efforts will be eliminated. Revised rules, which are being processed in accordance with the Board's Charter, should help ease the administrative burdens associated with the appeals.

Of importance is the fact that the average number of days on the docket for disposed cases has decreased from the prior fiscal year. It is the goal of the Board to improve this mark during the new fiscal year. The addition of new members and staff should help in reaching this goal. Of concern is the fact that the resources requested in the 19 June 1985 "ASBCA Management Improvement Plan" were based on projected case load increases of 8% per year with a 62% settlement rate. In the last two fiscal years, the new appeal increases were over 20% and the settlement rate fell below 60%. The marked increase in the productivity of the Administrative Judges will be impacted if the number of new appeals continues at this accelerated pace or if additional workload (e.g. bid protests) is added to the Board's docket by either a legislative or regulatory expansion of the Board's jurisdiction.

Paul Williams

PAUL WILLIAMS
Chairman

Attachment

Data re Appeals Disposed of by the
Armed Services Board of Contract Appeals
During FY's 1982 - 1986

1. Origin of Appeals:	FY 1982	FY 1983	* FY 1984	** FY 1985	*** FY 1986
Air Force	188	255	234	258	507
Army	341	425	524	463	623
DLA	139	157	218	232	165
Navy	198	212	267	251	549
Other	72	82	63	61	71
2. Average amount of Claims (where Amount is stated):					
Prime Contractor	$420,115	$173,058	$241,096	$294,304	$194,401
Government	$380,718	$198,629	$137,371	$803,406	$287,535
Sub-Contractor	$271,128	$286,606	$238,968	$102,762	$602,179
3. Business Size:					
Small Business Contractor	644	781	966	994	931
Small Business Set Aside	180	177	302	371	440
4. Real Party in Interest					
Prime Contractor	814	1,013	1,120	1,165	1,062
Sub-Contractor	103	91	110	49	55
Both	12	5	23	18	32
Other	9	22	53	33	1

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

	FY 1982	FY 1983	FY 1984	FY 1985	FY 1986
5. Hearings and Days of Hearing:*					
Hearings:					
In Washington, D.C	36	56	46	58	74
Outside Washington, D.C.	136	151	169	181	239
Percentage outside Washington, D.C.	79%	73%	79%	76%	76%
Days of Hearing:					
In Washington, D.C.	94	142	100	175	206
Outside Washington D.C.	286	278	349	393	687
Percentage outside Washington, D.C.	75%	66%	78%	69%	77%
6. Pre-Hearing Discovery (cases in which ruling sought):	77	148	137	300	418
7. Pre-Hearing Conferences:	56	49	114	228	298
8. Rule 12 Proceedings:					
Number of Proceedings	187	205	229	262	354
9. Record only Dispositions:	79	73	75	168	296
10. Disposition:					
Settled	459	489	522	506	817
Dismissed (no reason given)	14	23	28	15	67
Dism/Rule 30	78	123	124	118	224
Dism/Rule 31	88	107	184	41	58
Lack of Jurisdiction	4	35	31	45	58
Dism/Withdrawn				121	113
Req. CO/Decision	---	---	56	47	60

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

	FY 1982	FY 1983	FY 1984	FY 1985	FY 1986
Denied	168	192	205	226	286
Sustained	127	162	158	146	232
(Remand)	81	116	99	87	152
(Amount Determined)*	42	46	59	59	78
11. Time on Docket (days from date of docketing to date of decision):					
All cases:					
Average	438	422	450	484	440
Median	278	263	297	299	273
Rule 12 cases:					
Average	173	156	151	149	142
Median	148	137	149	130	134
12. Time from date appeal ready for decision to date decision filed (days):					
All cases:					
Average	34	49	50	72	49
Median	1	1	4	7	7
Cases in which formal opinion filed:					
Average	78	114	105	193	148
Median	27	29	19	53	51
All Rule 12 appeals:					
Average	17	14	16	13	18
Median	7	3	8	7	10

* 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.
* Total dollars determined during FY 85 was $ 1,952,442.
* Total dollars determined during FY 86 was $10,266,791.