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

28 October 1982

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 1982

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 International Communication Agency now known as the United States Information Agency, the Office of Personnel Management, and the Small Business Administration, 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 1982 (Including 60 reinstatements)	1273
B.	Appeals disposed of during FY 1982	980
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
Net Increase in Docket, FY 1982	293

D. Source of Appeals Docketed During FY 1982:

Army	448
Navy	221
Air Force	272
DLA	165
Other DoD	3
	1109

Special

State	1
HHS	68
AID	9
Office of Personnel Management	23
US Information Agency	2
Small Business Administration	1
Reinstated	60

E. Of Appeals Disposed of:

Withdrawn	6
Sustained, Denied, Compromised, or Dismissed after Substantial Board Proceedings	974
	980

F. Status of Cases Pending End of FY 1982:

Pending Administrative Disposition	4
Pending Agency or Court Action	0
Pending Prehearing Conference	17
Pending Action by Appellant	521
Pending Action by Government	556
Set for Hearing	192
Pending Transcripts or Briefs	120
Opinions Being Prepared	89
Being Processed Under Optional Accelerated and Expedited Procedure	95
	1594

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

Docketed	27,623
Reinstated	556
	28,179
Disposed of	26,585
	1,594

The disposals for Fiscal Year 1982 were near the average for the past five fiscal years. Settlements declined while other dismissals requiring a written order increased over FY 1981. The 1,273 appeals docketed in FY 1982 was a sharp increase over prior years. The 1,594 appeals pending at the end of the year is the highest workload in the history of the board.

It is difficult to ascertain the reasons for the increase for our subject matter statistics are based upon cases disposed of during the fiscal year rather than upon new or pending appeals. A few factors affecting the increase are apparent. The substantial increase in reinstatements was due to dismissals, in prior years, at the request of appellants who wanted to file direct access suits in the Court of Claims. In FY 1982 the court refused the petitions and remanded these cases to the ASBCA. Requests for fees and costs under the Equal Access to Justice Act are treated as reinstated appeals. There was an acute shortage of personnel in the recorder's office so that when duplicate copies of appeal letters reached the board from contractors and contracting officers, each was assigned a docket number. The Department of Health and Human Services has one very large construction project which has generated a substantial number of appeals, and is a one time phenomenon. The Office of Personnel Management is imposing fiscal restraints on Blue Cross and Blue Shield plans and is meeting resistance. But discounting the erroneous docket entries and remands, there were well over 1,200 new cases docketed. I could discern no pattern in the increase of appeals in the Department of Defense.

At the ASBCA, new cases are assigned to an individual judge who is responsible for management of the appeals on his or her docket. With almost 1,600 appeals, docket management has become a time consuming chore which interferes with other duties.

There is a large increase in the number of motions filed which require a decision, but most of which do not dispose of the appeal. This accounts for some of the longer average time on the docket shown in the attached statistics. We may need a detailed rule on motions.

The present authorized personnel strength of the ASBCA was based upon a statistical study made in 1978 and projections of the effect of the, then new, Contract Disputes Act on board workload. At that time there were 1,183 pending appeals and an estimate of about 1,000 new appeals a year. Now there are about 1,600 pending appeals and with an input of 1,273 cases during the past fiscal year. With the board's present resources the docket is unmanageable.

The workload studies assembled by the Office of Federal Procurement Policy, as required by the Contract Disputes Act covered Fiscal Years 1979-1981. These were analysed and those of all the BCAs compared. These indicate that the ASBCA should have 36 to 41 judges rather than the present 33, depending upon the weighting factors used and without consideration of the addition of the 293 case increase during Fiscal Year 1982. Rather than attempting to throw new people at an unmanageable docket, I propose to retain the services of a person or firm experienced and expert in court management, to study the board's procedures, to try to ascertain the sources of the problem, and to suggest solutions. Many state and federal courts have similar problems and have used such services.

The Federal Courts Improvement Act of 1982, which established a new U.S. Circuit Court for the Federal Circuit and a new U.S. Claims Court, provides that appeals from BCA decisions under the Contract Disputes Act will be taken to the CAFC while Wunderlich Act appeals will go to the Claims Court. The CAFC has a local rule whereby the board must furnish to it a descriptive index of all of the documents in the record. This is a major undertaking in a large case. It would be most helpful if the parties furnish a descriptive index of the Rule 4 file and trial exhibits. The CAFC rules also provide that the board must retain the original file, until requested by the court, but that counsel for the parties be permitted to examine and copy. Additional reproduction equipment will be required.

The data processing software has finally been entered in the board's computer. Current data will be entered into it on all cases docketed beginning 1 October 1982. Data on prior pending appeals will be entered as time and manpower permit. Until this is done the equipment cannot be fully effective for docket management and reporting purposes.

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 1978 - 1982

	FY 1978	FY 1979	** FY 1980	*** FY 1981	**** FY 1982
1. Origin of Appeals:					
Army	311	295	440	322	341
Navy	223	231	230	206	198
Air Force	178	206	222	199	188
DLA	130	168	174	154	139
Other (non-DOD)	31	70	54	34	72
2. Average amount of Claims (where Amount is stated):					
Prime Contractor	$459,042	$3,025,596	$398,412	$335,983	$420,115
Government	328,126	286,388	109,266	114,920	$380,718
Sub-Contractor	108,545	69,727	66,297	124,118	$271,128
3. Business Size:					
Small Business Contractor	575	598	716	544	644
Small Business Set Aside	167	196	167	128	180
4. Real Party in Interest					
Prime Contractor	796	898	1,037	832	814
Sub-Contractor	73	64	74	82	103
Both	4	8	9	1	12
Other					9
5. Method of Award					
Advertised	527	593	655	453	551
Negotiated	346	377	465	419	353
Other	-	-	-	43	34

* Unless otherwise indicated.
** 12 cases were cancelled as docketed in error or duplicates.
*** 17 cases were cancelled as docketed in error or duplicates.
**** 35 cases were cancelled as docketed in error or duplicates.

	FY 1978	FY 1979	FY 1980	FY 1981	FY 1982
Negotiated					
2304(a)(1)	52	58	135	194	134
2304(a)(2)	30	15	28	52	24
2304(a)(3)	12	19	20	13	13
2304(a)(4)	2	-	2	3	6
2304(a)(5)	1	1	3	1	16
2304(a)(6)	12	32	27	17	37
2304(a)(7)	1	3	3	2	3
2304(a)(8)	-	-	1	-	-
2304(a)(9)	5	-	-	3	-
2304(a)(10)	41	47	67	82	60
2304(a)(11)	14	9	18	22	16
2304(a)(12)	-	-	-	3	1
2304(a)(13)	-	-	-	-	3
2304(a)(14)	4	5	9	9	7
2304(a)(15)	7	-	-	-	3
2304(a)(16)	2	6	8	3	10
2304(a)(17)	7	4	58	14	20
2304(a)(18)	-	-	-	1	-
6. Contract Type:					
FFP	756	777	872	737	738
Requirements	16	24	94	36	57
CPFF	18	15	25	29	19
CPIF	4	10	8	10	6
FPIF	9	18	13	24	13
Basic Agreement	8	-	5	2	5
Other	62	126	103	77	100
7. Kind of Procurement:					
Supply	380	391	426	380	299
Construction	321	319	421	338	358
R&D	21	24	29	22	34
Service	125	148	190	135	212
Surplus Sale	5	8	19	21	20
Other	21	80	35	19	15

	FY 1978	FY 1979	FY 1980	FY 1981	FY 1982
8. Principal Contract Clause(s) or issue(s) involved in Dispute:*****					
Actual Damages (Govt claim)	2	-	3	1	4
All Disputes	8	-	1	-	-
Allowable Costs	-	-	-	29	53
Bid Protest					9
Breach					8
Changes	280	286	374	266	236
Contract Disputes Act					18
Cost Acctg Standards					6
Cost or Pricing Data	7	2	4	9	14
Cost Principles	17	29	22	20	15
Default	273	296	283	235	210
Delivery	1	-	2	1	-
Differing Site Conditions	26	19	18	33	27
Discounts	-	1	1	-	1
Disputes (Juris.)	104	137	69	6	1
Estimated Quantity					6
Excess Costs	14	14	14	21	28
Excusable Delay	-	-	-	2	1
First Article	18	8	1	1	-
Freight Charges	2	1	2	3	1
G.F.P.	17	11	5	8	5
General Average	-	-	-	1	-
Government Delay	-	-	-	12	12
Guaranteed Descriptions	-	-	-	7	14
Inspection	19	20	10	11	19
Insurance	-	-	3	2	-
Intellectual Properties					3
Interest	-	-	3	5	9
Labor	4	8	10	8	5
Liability for HHG Damages	-	-	-	6	7
Liquidated Damages	17	19	11	18	17
Miller Act	-	-	1	1	-
Mistake in Bid	-	-	-	12	11
Mutual Mistake					1
Option to Renew					2

	FY 1978	FY 1979	FY 1980	FY 1981	FY 1982
8. Principal Contract Clause(s) involved in Dispute:*****					
(continued)					
Payments	41	45	25	25	22
Price Escalation	5	7	9	6	2
Progress Payments					6
Property Disposal	-	-	3	7	1
Requirements	1	-	4	4	6
Risk of Loss					5
Shipment	-	-	1	1	-
Specifications	37	34	54	81	97
Storage	-	-	2	-	-
Suspension of Work	18	18	4	3	2
Taxes	-	-	4	2	3
Termination for Convenience	31	23	13	14	17
Value Engineering	-	-	-	5	6
Warranty	10	18	11	12	13
Other	84	147	145	37	15

***** 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 1978	FY 1979	FY 1980	FY 1981	FY 1982
9. Hearings and Days of Hearing:******					
Hearings:					
In Washington, D.C	61	49	60	38	36
Outside Washington, D.C.	136	128	151	147	136
Percentage outside Washington, D.C.	69%	72%	72%	79%	79%
Days of Hearing:					
In Washington, D.C.	257	245	166	61	94
Outside Washington D.C.	354	244	317	304	286
Percentage outside Washington, D.C.	61%	50%	66%	83%	75%
10. Pre-Hearing Discovery (cases in which ruling sought):	26	48	27	58	77
11. Pre-Hearing Conferences:	72	56	75	120	56
12. Rule 12 Proceedings:					
Number of Proceedings	176	198	224	183	187
13. Record only Dispositions:	102	104	88	58	79
14. Disposition:					
Settled	342	369	633	478	459
Dismissed (no reason given)	125	167	40	17	14
Dism/Rule 30	40	48	83	28	78
Dism/Rule 31	39	53	60	90	88
Lack of Jurisdiction	-	-	11	3	4

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

	FY 1978	FY 1979	FY 1980	FY 1981	FY 1982
Denied	198	155	199	169	168
Sustained	129	153	94	130	127
(Remand)	84	82	64	77	81
(Not Stated)					4
(Amount Determined)*******	45	70	30	53	42
15. Time on Docket (days from date of docketing to date of decision):					
All cases:					
Average	453	420	413	458	438
Median	318	267	265	287	278
Rule 12 cases:					
Average	253	272	190	171	173
Median	214	223	154	151	148
16. Time from date appeal ready for decision to date decision filed (days):					
All cases:					
Average	48	30	33	33	34
Median	5	3	4	1	1
Cases in which formal opinion filed:					
Average	94	62	40	65	78
Median	29	19	17	21	27
All Rule 12 appeals:					
Average	14	17	14	13	17
Median	8	7	8	5	7

*******Total dollars determined during FY 78 was $52,058,649.
*******Total dollars determined during FY 79 was $ 9,147,657.
*******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.